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Legally Speaking - Judge & Priestley's Quarterly Legal Update for Private Clients

SUMMER
2018



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Welcome to J & P's latest newsletter, specially designed to keep you up to date with all the latest legal developments affecting you and your family.

Got something on your mind? ... give us a call or email us.

For more than 125 years we have been providing clients with expert and professional legal advice. We understand the value of a personal and friendly service.

Judge & Priestley
LLP
Justin House
6 West Street
Bromley
Kent BR1 1JN

J & P welcomes Ryan Taylor to the growing team

The Private Client team at Judge & Priestley continues to grow and expand its fields of expertise, with the addition of a specialist Contentious Probate Solicitor.

Ryan Taylor has joined the team to help advise clients on deceased estates, where there may be a dispute over the Will, the appropriate person to administer the estate, or who is to inherit under a Will or intestacy.

His aim in contentious probate matters, is always to try and bring about a timely resolution, whilst limiting the impact on both the parties and the assets involved as much as possible.

Ryan has over six years' experience in private client work, with a particular focus on estate disputes. He has practised in these contentious matters in Australia and England, as a qualified solicitor in both jurisdictions.

The skills he brings complement the wealth of experience already held in our private client team, which is accredited for Wills & Inheritance Quality by the Law Society, and includes three qualified STEP (Society of Trust and Estate

Practitioners) members. Ryan and the team's expertise can help guide you through this important and complex field of law, to help give you peace of mind and assist your loved-ones at difficult times.

At Judge & Priestley we have a team of specialist probate solicitors, based in Bromley, who guide family members, friends, executors and administrators through the decisions that need to be made and the steps that need to be taken. We're sensitive to circumstances. We know just how difficult this is. But our experience as lawyers, and our empathy as people, makes the process as smooth and straightforward as it can be.

We handle cases ranging from large estates with complex property, financial and family issues, to the modest assets of people who have died with few loved ones around them. There is often a Will, and that helps determine how the estate should be administered. But sometimes there isn't, and that leads to a different procedure governed by the law of intestacy. In each scenario there are strict legal rules to follow and court applications to be made. Our lawyers are skilled in the law, in the processes



and in the practicalities and sensitivities of dividing assets and meeting tax and other liabilities. Clients tell us that our support made everything far easier than they expected it to be

Please contact Ryan on 020 8290 7346 or email rtaylor@judge-priestley.co.uk if you would like to find out any further information.

Primark ordered to pay transgender employee £47,000

A transgender employee has won her claim of constructive dismissal after she was forced to resign following a series of discriminatory comments from her colleagues.

Miss Alexandra de Souza E Souza worked as a retail assistant for high street clothing brand Primark.

She was subjected to various bullying comments and actions by several of her colleagues, including being told she had a "man's voice", "had evil inside her" and even that she was "a joke".

Miss De Souza was also sprayed with perfume, and had her privacy invaded in the ladies' room when a colleague told a tradesman he could enter to



carry out maintenance because there were "no women in there".

Miss De Souza reported the discriminatory behaviour to her superiors, leading Primark's HR team to order the department leader to investigate.

However, she was not informed of the outcome of the investigation or given the opportunity to appeal it.

The harassment continued so Miss De Souza refused to return to work unless

Primark addressed the situation. Eventually she emailed a resignation letter.

She then took the case to an Employment Tribunal which ruled in her favour.

It found that Primark did not deal properly with the discrimination or harassment that she was subjected to on several occasions.

She was awarded £47,433.03 for loss of past and future earnings, loss of pension, interest and injury to her feelings.

For more details contact
Paul Stevens - 020 8290 7422
pstevens@judge-priestley.co.uk

Challenges of ageing – how LPAs can help you

The government has announced it's providing a £300m fund to help the 10 million Britons alive today who can expect to live to 100 or more.

The extra money will include grants for research into age-related illnesses such as dementia.

The 'healthy ageing programme' will drive the development of new products and services to help people to live in their homes for longer, tackle loneliness, and increase independence and wellbeing.

Separately, with an estimated 850,000 people in the UK living with dementia, the government will be investing an extra £40m into the UK Dementia Research Institute to create a new hub in partnership with University College

London that will host 350 leading scientists. The extra funding shows the importance the government attaches to the growing problem of dementia and related illnesses as the population ages.

We cannot predict our future health, but we can take legal steps to protect our interests in case there is ever a time when we lose mental capacity and can't make decisions for ourselves.

One of the best ways to do this is to set up lasting powers of attorney (LPA).

These are legal documents that enable you appoint someone you trust to make decisions on your behalf if you ever lose the capacity to make such decisions for yourself. You can appoint deputies to look after your financial matters or health and welfare issues, or both if you



so choose. LPAs give you the peace of mind that comes from knowing that you and your loved ones will be protected whatever happens in the future.

For more details contact
David Chandra - 020 8290 7348
dchandra@judge-priestley.co.uk

Empty homes tax to be doubled to boost housing market

The government is to give local authorities the power to double council tax on homes that are left empty for long periods.

It's hoped the move will bring more properties back into use and ease the pressure on the housing market.

The new legislation will allow councils to charge double the rate of Council Tax on homes left empty for two years or more. Local authorities can currently levy a 50% premium.

There are currently just over 200,000 long-term empty dwellings in England, compared to 300,000 in 2010.

Through the New Homes Bonus scheme introduced in 2011, councils earn the same financial reward for bringing



an empty home back into use as for building a new one.

Meanwhile, the government says it wants estate agents to become "professionalised" to improve the housing market and reduce the number of sales that fall through each year.

Ministers say delays and complications during the process of buying or selling a home can cause unnecessary financial and emotional stress to customers.

This uncertainty can lead to delayed decisions and contribute to over one quarter of house sales falling through annually.

Research shows that 6 out of 10 buyers and sellers have experienced stress, and a quarter of sellers would use a different estate agent next time.

The government will now consult on how to introduce higher professional standards for estate agents.

For more details contact
Madelaine Henwood - 020 8290 7413
mhenwood@judge-priestley.co.uk

91-year-old allowed to buy home he shared with partner

A 91-year-old man has won a longstanding legal battle to be allowed to buy the home he shared with his partner.

The couple had lived together in the home for 20 years. After the partner died, the man discovered she had made a will leaving all her estate to her daughter and nothing to him.

The daughter then began legal proceedings to gain possession of the house.

The man said that he and his partner had expected him to die first so she had not included him in her will. He accepted there was never any understanding

that he would have an interest in his partner's estate.

He had the means to buy a house if necessary, but he wished to remain in the home where he had lived with his partner because he was in poor health and was assisted by his neighbours.

The recorder concluded that the will had not made reasonable financial provision for his continued maintenance. He should therefore be given the option to buy the house from the estate for £385,000.

That figure was based on a valuation of the property obtained by the daughter.

A joint expert had concluded that the property was worth £340,000.

The High Court and the Court of Appeal have upheld the decision. They held that the recorder had been entitled to conclude that the woman's will did not make reasonable provision for her long-term elderly partner because it did not allow him to remain in their home.

The Appeal Court said the broad concept of "maintenance" could extend to the provision of a house.

For more details contact
David Chandra - 020 8290 7348
dchandra@judge-priestley.co.uk

More rights for grandparents to see grandkids?

Grandparents may be granted stronger legal rights to see their grandchildren under proposals being considered by Prime Minister Theresa May and the Ministry of Justice.

Justice Minister Lucy Frazer said her department was considering changing the law so there is a "presumption" that grandparents should be able to see their grandchildren unless there are reasons against them doing so.

Under the present system, grandparents must apply to court for "child arrangement orders" if family disputes arise. Figures released by the Ministry of Justice show that 2,000 grandparents applied in 2016. That's a 25% increase on the year before.

A ministry spokesman said: "We will consider any proposals for helping children maintain involvement with grandparents, together with other potential reforms to the family justice system which are currently being looked at."



It's understood that the proposals would require judges to give greater weight to the rights of grandparents and the potential benefits of contact to the grandchildren.

Ms Frazer told the Daily Telegraph that she would consider whether there needs

to be "a change in the law in relation to presumption" to see if grandparents needed more rights.

Theresa May said that the government would look carefully at the issue of legal rights for grandparents.

She said: "We can all, I am sure, sympathise with those who experience the anguish of being prevented from seeing their grandchildren if a parental relationship ends.

"Of course, when making decisions about a child's future, the first consideration must be their welfare, but the law already allows family courts to order that a child should spend time with their grandparents."

We shall keep clients informed of developments.

For more details contact
Anila Naeem - 0208 290 7344
anaeem@judge-priestley.co.uk

Divorced wife prevents family home from being sold

A divorced wife has prevented her ex-husband from selling the family home until their daughter has finished her education.

The couple's marriage broke down after 25 years together, and the husband's business had gone into liquidation.

The husband issued an application under the Family Procedure Rules 2010 for an interim order for the sale of the property.

The wife agreed the house would need to be sold but wished to remain living there for another 18 months to allow her daughter to complete her education at the local school.

The judge granted the interim order, concluding that there was good reason to sell the home.

The wife appealed on the basis that the judge had no jurisdiction to terminate her rights of occupation of the home under the 2010 Rules.

She claimed it was well established that an order for sale could not be made as an interim measure during financial remedy proceedings.

The 2010 Rules regulated the procedure of the court and could not extend the court's jurisdiction. There was no freestanding power to make an interim order for the sale of the home.

The Court of Appeal concluded that the judge had reached the wrong decision. There was no proper application before him on which he could make an interim order for the sale of the matrimonial home. The order was set aside.



J&P family law specialist
Anila Naeem

For more details contact
Anila Naeem - 0208 290 7344
anaeem@judge-priestley.co.uk

Couple win dispute with neighbour over knotweed

A couple have won a dispute with their neighbour after Japanese knotweed invaded their garden, knocking £50,000 off the value of their property.

Adam and Eleanor Smith had bought their Cornwall home for £200,000 in 2002 from Rosemary Line.

Mrs Line's kept some of the neighbouring land, which had Japanese knotweed growing on it. The plant, which can damage building foundations, later spread on to the Smith's driveway.

They spent over a decade asking Mrs Line to sort out the problem, but little was done.

They say their property should now be worth £500,000 but the knotweed on the driveway has devalued it by 10%, leaving the Smith's £50,000 worse off.

They took the dispute to court, but Mrs Line blamed the Smiths for the spread of the knotweed.

She said that she had taken steps to deal with the problem. However,

satellite images taken over several years showed the weed had spread.

The court ruled in favour of the Smiths. It held that while it wasn't illegal to grow Japanese knotweed, it was illegal to allow it to spread.

Mrs Line was ordered to eradicate the weed over the next five years and to pay court costs.

For more details contact
Mark Oakley - 020 8290 7337
moakley@judge-priestley.co.uk

'Home inheritance tax allowance' rises by £25,000

The main residence inheritance tax allowance has risen by £25,000, reducing the death duty burden for thousands of families.

The allowance was introduced in April last year and was set at £100,000. In April this year it rose to £125,000 and will rise to £175,000 by 2020.

It only applies to a person's home, not the rest of their estate.

When added to the £325,000 nil-rate band for inheritance tax, it currently provides a combined tax-free band of £450,000. This will rise to £500,000 by 2020.

Married couples can combine their allowances. When one partner dies, their share of the estate is passed on to their spouse free of any inheritance tax.

This means that by 2020, a married couple could have a combined allowance of £1m.

However, the allowance is only available when the property is left to "direct descendants". It doesn't apply to trusts.

Meanwhile, the Office of Tax Simplification is carrying out a



review of inheritance tax thresholds to bring them up to date. For example, the maximum sum that can be gifted tax free has been frozen at £3,000 a year since 1981, when it would have been enough for a deposit on an average home.

It's estimated that bringing this and other tax benefits in line with modern day prices could benefit up to three million people a year.

For more details contact

David Chandra - 020 8290 7348 dchandra@judge-priestley.co.uk

Stressed office manager awarded £60,000 compensation

An office manager who resigned after being placed in a stressful and "intolerable situation" has been awarded £60,000 compensation.

Mrs A Fletcher had worked for Ashby Lowery estate agents in Northampton since 2003. She acted as deputy to the owner and was left in charge when he was away.

She dealt with the landlords and tenants, and was in charge of more than 20 staff, including the admin, lettings and management teams.

The office ran smoothly and staff morale was high until the business

was taken over by Countrywide Estate Agents. Mrs Fletcher said several problems arose after the transfer including payment of salaries and pension scheme enrolment.

There was very little training on the new systems and some suppliers weren't paid on time, which resulted in them withholding their services.

This put more pressure on Mrs Fletcher, who said she had to deal with 700 email complaints within four months.

She resigned and brought a claim of constructive dismissal, saying there

had been a lack of support. The Employment Tribunal found in her favour. The judge said she had been placed under severe stress following the takeover.

"The real reason for the resignation was the intolerable situation she found herself in. I conclude that there was a constructive dismissal, and it was unfair."

Mrs Fletcher was awarded £60,252 compensation.

For more details contact

Paul Stevens - 020 8290 7422 pstevens@judge-priestley.co.uk



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Meet the team



Mark Oakley



Anila Naeem



Nitika Singh



David Chandra



Madelaine Henwood



Brian Tan



Steve Taylor



Tony Clarke



Paul Stevens



Louise Hyland

For further information T. 020 8290 0333 F. 020 8464 3332

Justin House, 6 West Street, Bromley, Kent BR1 1JN

E. info@judge-priestley.co.uk

www.judge-priestley.co.uk

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