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

AUTUMN  
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# 2016: A roller-coaster ride for followers of UK residential property market activity

2016 has been something of a roller-coaster ride for followers of residential property market activity. The first quarter of the year was notable for a mini-boom as landlords and second home buyers rushed to complete purchases ahead of the changes to stamp duty introduced from 1st April.

From that date anyone paying more than £40,000 for a property other than their main home has faced a stamp duty surcharge of 3% of the buying price, adding £6,000 to the cost of buying a £200,000 property.

The rush to beat this increase in the tax bill on buying second homes and rental properties led to sharp rises in UK mortgage lending and house sales, especially in March, as the changes loomed.

Data from the Council of Mortgage Lenders showed gross mortgage lending of £25.7 billion was up by 59% on the previous March and it was the highest March figure since 2007, before the financial crisis.

Additional figures from the HMRC show that 161,990 property sales of £40,000 or more were registered during the month, a 77% increase on the figure for March 2015.

That boom led to an inevitable slowdown in activity post the 1st April deadline. This in turn led into the June / July period where confidence in property markets was dented by the run-up to and the outcome of the Brexit referendum.

In the aftermath of the result experts lined up to predict dire consequences for the UK residential property market and indeed there was a definite hiatus in activity as buyers and investors took stock of the situation.



Figures released by the Royal Institution of Chartered Surveyors (RICS) over the summer



## Buyer demand rose in September for first time since Stamp Duty deadline

suggested that demand for homes to buy hit an eight-year low in June / July and the rate of month on month house price growth in the UK fell to a modest 0.5% in July (UK House Price Index).

Latest data published in October suggest that the market has rebounded reasonably as Brexit fears for the market recede. RICS have reported that buyer demand rose in September for the first time since the rush to beat the stamp duty deadline in March.

Figures from the Council of Mortgage Lenders show the number of both first time buyer and home mover loans approved grew year on year in August and it was the second highest month for loan approvals this year after March. Data from the Land Registry on actual sold prices in August show the month on month price increase across the UK accelerating from 0.5% in July to 1.3% in August.

The only area of the residential market that still seems subdued is the buy-to-let market. According to the Council

of Mortgage Lenders, landlords' agreed 19,400 loans in August, up 4% compared to July but down 13% compared to August 2015. Given the significant spike in buy-to-let sales in the first quarter, when many landlords admit to bringing forward intended purchasing activity for the year, this is not perhaps that surprising.

Positive drivers of pricing in the market remain the historically low interest rates as a result of the Bank of England's Quantitative Easing programme and the lack of supply of both new and existing housing stock to purchase. These are countered somewhat by an on-going programme of taxation changes that negatively affect the buy-to-let market.

As long as the two key positive factors remain in play then the immediate prospects for the UK residential property market would seem to be for further price rises going forward.

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# Protect yourself with a lasting power of attorney

People are being urged to safeguard their future as the population ages by taking out a lasting power of attorney (LPA).

The Law Society says that with people living longer, it's vitally important that we plan ahead because there may come a time when we can no longer make vital decisions about our finances and our care.

An LPA enables you to choose to give someone you trust the power to act on your behalf in situations which you specify. They are your attorney, which means they are your representative.

A Society statement says: "There are two different types of LPA: property and affairs, and health and welfare. You can choose to make either type, or just



one. You can have the same attorney for both, or you can appoint different attorneys.

"The first type of LPA covers decisions about money and property. If there comes a time when you can no longer manage your finances, the attorney will do this for you. This could include paying

bills, collecting benefits, or selling your house.

"A health and welfare LPA allows the attorney to make decisions on your behalf about your future day-to-day care if you are no longer able to care for yourself, including, if you wish, the power to accept or refuse life-sustaining treatment on your behalf."

The President of the Law Society, Jonathan Smithers, said: "Once you have an idea of what you - or perhaps your parents or other older relatives - want to do, talk to a solicitor about getting a lasting power of attorney drawn up and registered."

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## Tycoon to pay ex-wife £300,000...20 years after divorce

A businessman who earned all his wealth several years after divorcing his wife has agreed to pay her £300,000 in a belated settlement.

Dale Vince and Kathleen Julie Wyatt separated in 1984 when they were both in their early 20s. They divorced in 1992. Mr Vince was penniless at the time but went on to become a millionaire after setting up a business creating energy from wind power.

In 2011 - 19 years after the divorce - Ms Wyatt applied for ancillary relief to give her a £1.9m share of Mr Vince's newly acquired wealth. He responded by applying for the application to be struck out as an abuse of process because of the time delay in bringing the claim.

The case went all the way to the Supreme Court, which ruled in Ms Wyatt's favour.

Lord Wilson said Ms Wyatt's claim was not an abuse of process and was legally recognisable but she was wrong to ask for £1.9m because an award of that size was "out of the question". He described Mr Vince as a remarkable man who

had built up a green energy business that was now worth £57m.

Following the Supreme Court ruling that the claim could go ahead, the couple reached an agreement that Ms Wyatt would accept £300,000.

The settlement was approved in the High Court by family judge, Mr Justice Cobb. He said: "I am perfectly satisfied that it is reasonable, and that the wife is entitled to receive a modest capital award following the breakdown of this marriage.

"The lump sum payment agreed between the parties fairly represents, in my view, a realistic and balanced appraisal of the unusual circumstances of this case."

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## Dementia sufferer's will favouring grandson is invalid

A 91-year-old woman's will leaving all her estate to her grandson has been declared invalid because she suffered from dementia and was unaware of the consequences of her actions.

The case involved a woman who had six grandchildren who all stood to inherit when she died. Three months before her death, her grandson helped her to draw up a will leaving all her estate to him.

When she died, her other grandchildren challenged the will on the basis that the woman suffered from

dementia and lacked testamentary capacity - that is, she was unable to understand what she was doing and what effect the will would have.

The grandchildren produced medical notes covering a three-year period before her death stating that she suffered from a dementing illness, with bouts of extreme confusion and forgetfulness.

Family members also reported that she had been severely confused shortly before the will's execution, having stated that she needed to go home to

cook for her daughter, who had died several years before.

The court found in favour of the grandchildren. It held that for the will to be valid, the woman had to have understood the nature of its contents and that it involved her estate.

The evidence showed that on the balance of probabilities, the woman had not had testamentary capacity.

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# Second marriages sparking disputes over wills

High divorce rates and the increasing number of people entering into second relationships is leading to more and more disputes over wills and family inheritance.

Conflicts due to second marriages have now become one of the main reasons for families taking legal action following the death of a relative.

A typical problem arises when a man marries for a second time and then leaves all his estate to his second wife and nothing or very little to the children of his first marriage.

Such children may well be adults in their thirties and forties who find it very hard to accept that the wealth their father built up in a long marriage with their mother should suddenly be left to a second wife who may only have been with him for a few years.

It's a very human problem and the resentment is made worse when they think that their father's estate will eventually pass to the children of his second wife who may have had very little contact with him at all.

The problem also occurs the other way round with a man leaving most of his wealth to the children of his first marriage and not providing adequately



for the needs of his second wife. She may then be prompted to challenge the will.

There are also cases in which a will ignores someone like a son or daughter who expects to inherit but gives no explanation as to why that person has missed out.

Many of these problems could be avoided if people made their intentions

clear when drafting their will. If you want to exclude someone who might otherwise expect to inherit then it's best to explain why you want to do that. A statement of wishes will be recognised by the courts and avoid any potential disputes.

Relatives will already be under stress because of the bereavement. The last thing they want is to get embroiled in legal action.

There could, however, be strong reasons why someone might need to challenge a will. Disputes can arise because a relative feels the person making the will was subjected to undue influence by someone who wants to benefit unfairly.

This might be relevant if close relatives are overlooked and the estate is left to someone outside the family.

Or it could be that a man remarries in his sixties and so he draws up a new will to include provision for his new wife. Five or six years later he changes the will and decides to leave her a little more.

A few years down the line he updates the will again and leaves even more to the second wife. It may all be perfectly above board but it can lead to his family claiming that his second wife exercised undue influence over him.

Anyone wanting to challenge a will must do so within six months of probate being granted.

## School was entitled to dismiss teacher with links to sex offender

A school was entitled to dismiss its head teacher after she failed to disclose her relationship with a man convicted of making indecent images of children.

The Employment Tribunal heard that the man was sentenced to a community order and a sexual offences prevention order forbidding him from having unsupervised access to children under 18.

The head teacher was not cohabiting with him but they had a close relationship. The school considered that she had put the children's safety at risk by failing to disclose her association with the man and she was dismissed for gross misconduct.

The head claimed that she had taken advice from various quarters before deciding that she was under

no obligation to disclose the information.

The employment tribunal found that although there were some deficiencies in the dismissal process, there was a 90% chance that she would have been fairly dismissed if proper procedures had been followed.

It considered that she was 100% at fault and should receive no compensation.

The Court of Appeal has upheld that decision. It said that as a head teacher with safeguarding responsibilities, she should have realised that her association with that person posed a risk to the children.

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# Parents warned about secretly recording children

A judge has outlined why it would nearly always be wrong to secretly record children's conversations as a way of gathering evidence in family proceedings.

The issue arose in a case involving a dispute between a father and mother over the residence of their daughter.

The father and his new partner wanted to know what the child was saying at meetings with her social worker, a family support worker and her guardian. They sewed button-sized recording devices into the girl's school uniform on the days when a meeting was due to take place.

The device recorded everything she did that day, including conversations with her friends, her teachers and her mother. The father transcribed conversations which he felt were relevant and tried to use them as evidence.

The court held that the father and his partner could not meet the girl's emotional needs and ordered that she should live with her mother. The judge then criticised the use of the recordings, saying they served no useful purpose and would distress the daughter if she found out about them. The father's actions could also affect the family's standing in the



community, as other parents would be concerned that their children's conversations might have been recorded as a result of talking to the daughter.

The judge said anyone considering doing something similar should first think carefully about the consequences. Experience suggested that the covert recording of others normally said more about the recorder than the recorded.

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# Fingerprint expert wins dismissal claim against police

A fingerprint expert who was sacked after making a mistake has won her unfair dismissal claim against the police.

Fiona McBride was one of four specialists who said a fingerprint found at a crime scene was that of an investigating officer who had been told to stay away from the premises. This turned out to be wrong and all four experts were suspended from duty.

They were reinstated following an investigation but weren't allowed to resume their normal duties.

Following police reorganisation, all four were offered a pay-off to leave the service. Three accepted but Ms McBride



refused and was eventually sacked. The Employment Tribunal found that she had been unfairly dismissed.

It awarded her £31,000 compensation and ordered that she should get her job back as a fingerprint officer. The case

went all the way to the Supreme Court, which has now ruled in her favour.

It also ruled that the case should be sent back to the tribunal so that the level of compensation could be increased.

Ms McBride told the BBC: "From the outset I was not interested in compensation for the loss of my job. I just wanted it back.

"Now, thanks to the support of my solicitors...and the five judges who heard my appeal, this is now possible."

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