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

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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.

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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.

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New scheme to end age discrimination at work

The government is launching an 'older workers champion scheme' to tackle age discrimination in the workplace.

The move follows concerns that older workers have to cope with much higher levels of long-term unemployment than younger people.

The scheme, which is now undergoing trials, will offer older jobseekers a career review, online support and a link-up to local businesses with vacancies to fill.

Research suggests that if the 1.2 million people over 50 who are unemployed were offered jobs, it could add £50 billion to the UK economy.

Employment Minister Esther McVey, pictured below, said: "Despite the recent impressive trends in those over 50 getting back into work, older workers still in many cases face outdated stereotypes when it comes to business hiring practices.

"As part of our long-term economic plan, our champions will tackle outdated views that older workers are somehow 'past it' so that more people get the security of a regular wage."



The scheme will offer a 'career review' with a dedicated expert to recognise and champion older workers' transferable skills from previous careers, and to



ensure jobseekers get the training needed to fill any skills gaps preventing them moving to a new career.

There will also be 'older worker' champions who will focus on going out to smaller and medium-sized businesses to ensure they recognise the benefits of hiring older workers, and to tackle outdated stereotypes that they are somehow 'past it'. It is illegal for employers to discriminate against workers on the basis of their age.

Anyone who has been discriminated against in this way may be entitled to compensation.

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Judge and Priestley expands its Property Department with its first Head of Leasehold Enfranchisement

Judge and Priestley expanded its property department with the appointment of Daniel Tang as the firm's head of Leasehold Enfranchisement, specializing in Lease Extensions, Enfranchisement, and the Right to Manage. Daniel also has experience in a wide range of residential property law including service charge litigation, tribunal applications and licence alterations.



"I am excited about the prospect of creating and developing a new department that is focused purely on providing Leasehold Reform work. It is still regarded by many as an area of great mystery and one fraught with pitfalls for the unwary. My aim is to ensure that our clients get the best possible advice and outcome for each situation and I believe this is best achieved by fully understanding our client's wishes whilst helping them navigate their way through the, at times, complex law." – Daniel Tang.

Since qualifying, Daniel has worked at two enterprising London law firms, both at which he was promoted to

partnership level. It is within these roles that he developed his interest and expertise in Leasehold Reform work and for which he won a "News on the Block" award in 2014.

Daniel is as passionate about the traditional values of law firms as he is modern technological advancements and believes a combination of the two achieves the best experience and results for his clients. And thus, contrary to popular belief, one need not be sacrificed for the benefit of another.

"Having provided legal services in the Kent area since 1889, Judge & Priestley is now laying the foundations for its future. We're pleased to be welcoming a new Solicitor who has built a solid reputation in London for his enfranchisement work. We foresee that he will be playing a part in building the firm, serving both our Bromley community, and those in other parts of the UK, for many years to come." – Steve Taylor, Managing Director at Judge and Priestley LLP.

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One million cohabiting partners could miss out

More than one million people risk leaving their partners with nothing when they die because they haven't made a will.

Their estates could pass to an estranged spouse, or family members they may not even like.

This is because if somebody dies intestate – without a will - then their assets will be inherited by their spouse or civil partner, even if the relationship has been over for a long time.

Their current partner will lose out.

If the person who dies doesn't have a spouse or civil partner, then their estate would be inherited by their children. Again, cohabiting partners could be left with nothing.

Another potential issue could be if a couple live together and have children but aren't married. Should one of them die, then their assets would be passed

on to their children, but could be held in trust until the children reach the age of 18. That could mean the family are not able to access vital funds for several years.

The Law Society has urged people to make sure they have a valid and up-to-date will in place, so that if the worst does happen, they know their loved ones will be secure.

The government recently made updates to the Inheritance and Trustees' Powers Act 2014 to increase protection for spouses and civil partners.

However, cohabiting couples are still in a vulnerable position within the current law. Some legal experts have criticised the government's inability to keep the



law in line with the changing structure of family dynamics.

Whatever the circumstances are within your family, the only way to ensure your assets are divided as you wish and your loved ones are taken care of, is to make a will that clearly states your intentions.

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Man wins sex discrimination claim over flexible working

We tend to associate flexible working with women but it should also be available to men on an equal basis, as highlighted in a recent case before the Employment Tribunal.

It involved a man who was employed by a large accountancy firm. He had worked successfully on a full time basis but then asked if he could change to flexible hours when his marriage began to break down.

He wanted to have more time to spend with his daughter who would no longer be living with him. However, his manager was unhelpful and said that because of his high level position in the



Employment Law

business, it wasn't possible for him to be allowed to work flexibly.

This was in contrast to the way female staff in similar positions had been treated when they had asked for flexible hours. He was told that the likelihood of promotion would be reduced if he worked part time.

He raised the issue again following his divorce because his wife had left the area. He wanted to have more time to

travel to see his daughter. This time he was allowed to reduce his hours but not by as many as he wanted. He was also placed on a longer trial period than women in similar situations.

The tribunal found that the man had been discriminated against on the grounds of his sex.

Anyone who feels they have been subjected to discrimination at work on the grounds of race, sex or age may be entitled to claim compensation.

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Couple correct £650,000 error in trust document

A married couple have been allowed to remove a clause from a trust document that could have cost £650,000 in tax liability.

The issue arose after the husband set up a trust for which both he and his wife were among the trustees. When drawing up the trust, he decided to appoint certain assets to himself, and also make dispositions in favour of his children in order to reduce any future inheritance tax liability.

However, shares in various companies were left out of the settlement by mistake. The effect was to create a potential capital gains tax liability of £650,000.

Once the error was discovered, the trustees sought a declaration from the court that the shares could be included in the settlement and so protected from any tax liability. The court

held that a correction could only be granted if the wording of the trust did not reflect the true intentions of the trustees.

In this case, the trust was set up as a legitimate way to transfer assets to the couple's children in a tax efficient manner. The clause omitting the shares from the settlement clearly went against this intention as it left the children open to paying a large tax bill.

The couple were therefore entitled to have the clause rescinded as it clearly did not reflect their intentions and they would never have agreed to it if they had understood the implications involved.

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Stamp duty changes a 'boost for 98% of buyers'

Changes to stamp duty announced in the Autumn Statement by Chancellor George Osborne have helped stimulate the housing market, according to solicitors and estate agents.

Mr Osborne said 98% of people in England and Wales will now pay less duty when buying a property. Only those buying homes worth more than £937,000 will be worse off.

The changes, which came into effect on Dec 4, introduced more gradual increases in stamp duty rates. Under the previous system, the duty had been criticised for being what was described as a slab tax, meaning it suddenly jumped by large amounts between the different thresholds.

This meant that someone buying a home for £250,000 would pay a 1% stamp duty of £2,500.

However, if the property went over the £250,000 threshold, even by only £1, then the rate would jump to 3%. This 3% would apply to the whole purchase price meaning that the



buyer would have to pay an extra £5,000, simply because of that £1 extra on the purchase price. The new system is more progressive. The rates of stamp duty only apply to the amount of the purchase price that falls within each band.

This means that a person buying a house for £200,000 will pay nothing on the first £125,000, as that is zero rated.

They will then pay 2% on the next £75,000, making a total tax bill of £1,500. Under the previous system they would have paid 1% on the total purchase price, providing them with a bill of £2,000.

The new system therefore saves them £500.

Solicitors and estate agents have already reported increased activity in the housing market. There are concerns, however, that the changes could lead to an increase in house prices.

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Parents may 'abduct their children' following cutbacks

Family lawyers have warned that cuts in legal aid have led to many parents losing faith in the system, with some even starting to take the law into their own hands.

Figures released by CAFCASS (Children and Family Court Advisory and Support Service) have shown a drop in the number of private family law cases. There were 2,928 new cases in July 2014, which was a 36% fall from the same month the previous year.

Legal aid cuts for most private family law cases began in April 2013. There is still

public funding available for mediation. However, figures from the Ministry of Justice show the number of cases referred to mediation has plummeted.

Simon Bethel, chair of Resolution's children committee, and Naomi Angell, chair of the Law Society's family law committee, believe the downturn is due to the cut in legal aid for private family cases.

Mr Bethel said: "Rather than receiving expert help to try and secure working shared care arrangements for their children, they (parents) are giving up.



"This drop in court applications could mean that there are more separated families where children are needlessly missing out on a relationship with one of their parents, which has long-term repercussions for the child and for their family."

Ms Angell believes that many people are not aware that legal aid is still available to them. She says they feel forced to either give up on their children or to abduct them.

She said: "We were always worried that the cuts would mean that out of desperation people would take things into their own hands.

"I am absolutely certain that children are being denied access to their parents – which seriously undermines the concept of shared parenting being introduced by the Children and Families Bill."

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Woman wins claim against tour firm

A woman who suffers from arthritis has won a discrimination claim against a tour operator after her holiday was interrupted by civil unrest.

The woman had booked a package holiday in Tunisia. After civil unrest broke out, the tour operator arranged for her to be flown home. She was transferred to Monastir airport where she had to stand for several hours because she wasn't provided with seating facilities or a wheelchair.

This caused her significant pain and she developed a migraine. She later had to return to the hotel when it became apparent that there was no flight available. She took legal action against the tour operator for unlawful

discrimination. She claimed it had failed to make reasonable adjustments to alleviate the pain from standing at the airport.

The tour operator argued that because the incident happened in Tunisia, the woman wasn't protected under EU law.

The case went to the Court of Appeal which ruled that the tour operator was still obliged to make reasonable adjustments under equality legislation even though the problem occurred at an airport outside the EU. The woman was awarded £7,500 compensation.

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Court helps manage dementia sufferer's affairs

The Court of Protection safeguards the interests of elderly or vulnerable people who can no longer look after themselves. It can also help families settle disputes over the care of a loved one.

A recent case involved a woman who had not drawn up a lasting power of attorney stating who she wanted to look after her affairs for her if she ever lost the capacity to do so herself. This created numerous problems for her and her family once she started to develop dementia.

She was unable to make rational decisions about her financial affairs yet her children could not make decisions for her. Nor could they agree on what

was the best way to manage her affairs. The woman had made a will in which she appointed her elder daughter as her sole executrix.

She had savings of approximately £25,000 which she wanted to be divided equally between her children after she died. However, that still left the problem of how to manage her affairs while she was still alive.

The elder daughter and her sister applied to the Court of Protection to be



appointed as their mother's deputies so they could make decisions on her behalf.

Their brother objected saying the application was made maliciously with the intention of excluding him from his mother's affairs.

The court noted that the mother had wanted her elder daughter to be her sole executrix. It dismissed the brother's objections and ruled that the two sisters should be appointed as their mother's deputies.

The Court of Protection can be used in this way to appoint deputies and settle family disputes.

However, it is much better and easier for all concerned if a person draws up a lasting power of attorney in advance while he or she is still fit and of sound mind. That way, they can state who they want to look after their affairs when they can no longer do so themselves. This can prevent problems for their families.

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Woman doubles her inheritance

A woman has won a legal dispute with a charity over the meaning of her mother's will. It means she will inherit an extra £325,000.

The case involved a woman who made a will leaving her daughter all the tax-free money from her estate. The remainder was to go to charity.

When the woman died, her estate was valued at £680,805. This meant her daughter would inherit £325,000 – the full allowance available in the nil-rate band for inheritance tax purposes. The charity would receive the rest.

However, the daughter and the executors of the will argued that the nil-rate band should be doubled because the woman's husband had



died before her and so she was entitled to add his nil-rate band allowance to hers.

This would have the effect of doubling the allowance, and therefore the daughter's inheritance, to £650,000. It would also reduce the amount going to charity to only £30,805.

The judge found in favour of the daughter and the trustees.

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