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

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INVESTOR IN PEOPLE

# Cohabiting couples could be granted improved inheritance rights

Cohabiting couples who have lived together for five years could be given the same rights as married couples to inherit their partner's estate if he or she had failed to make a will.

The proposal has been put forward by the Law Commission as part of a major overhaul of the law relating to wills and intestacy. The Commission points out that many cohabitants believe they already have the same rights as spouses but this is not the case.

As the law stands now, if a person dies intestate – that is, without having made a will – then their cohabiting partner has no automatic right to inherit the estate.

Instead, the estate will be divided using a complex process laid down by law. This is the case regardless of how long the couple had lived together and even if they had children together.

In some circumstances, the surviving partner may be able to go to court to challenge the distribution of the estate but it can be difficult and emotionally draining, especially for someone who is still grieving for the loss of their partner.

The Commission is therefore proposing that couples who have a child together or who have lived together for five years or more should have the same rights on intestacy as spouses.

It also proposes that childless couples who lived together for more than two years but less than five should be entitled to half of the share of the estate that a surviving spouse would receive. However, the surviving partner would not receive anything under the intestacy rules if the deceased was still married or in a civil partnership at the time of death. The Commission also proposes changes relating to married

### Rules relating to spouses may also change

couples. It says: "Where the deceased is not survived by any children (or grandchildren or great-grandchildren), his or her spouse is entitled to everything in the estate up to a maximum of £450,000 but must share anything over that sum with any surviving parent or any surviving brother or sister of the deceased.

"We have proposed changes to the intestacy rules so that a surviving spouse would inherit the whole estate in such cases."

There are several other proposals and the Commission has launched a public consultation which runs until February. It's hoped that a draft Bill will be produced within two years.

If the proposals are adopted they will provide the biggest shake-up of intestacy rules for many years and will provide more protection for many people, particularly cohabiting couples.

However, the best way for couples to protect their interests, whether they are married or not, is simply to draw up a will and keep it up to date. That removes all uncertainty and enables you to ensure that your estate is divided exactly according to your wishes.

Unfortunately, tens of thousands of people die each year without having made a will. That's when the uncertainty and the problems arise for their families and loved ones.

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## Receptionist in age discrimination case receives £6,000

A 66-year-old receptionist who brought an age discrimination claim against a medical practice has received £6,000 in an out-of-court settlement.

Ruth McNeil left a permanent job with Marks and Spencer last September to work for the medical practice in Lothian in Scotland. However, when she presented her P45 giving her date of birth she was told she could not be offered a contract.

She brought a claim of age discrimination with the backing of the

Equality and Human Rights Commission in Scotland.

Ms McNeil said: "To have been offered a job I was really looking forward to on the basis of a successful interview, only to be told that due to my age I could not be kept on was devastating.

"I was never asked my age at the interview and never thought, given my skills and experience, that it would have been relevant. To make matters worse I was told that I did not look my age and it was suggested that had they known I

would never have been employed."

The medical practice has agreed to pay her £6,000 compensation. The practice cannot be named under the terms of the settlement.

Discriminating against employees and job applicants on grounds of age is illegal under the Employment Equality (Age) Regulations 2006.

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# Support is growing for calls to make pre-nuptial agreements legally binding

One of Britain's leading lawyers is calling for pre-nuptial agreements to become legally binding.

Baroness Deech, who is Professor of Law at Gresham College and chairman of the Bar Standards Board which regulates barristers, believes our divorce laws need to be reformed to reflect the changes in our society. She believes that in particular, the law relating to pre-nuptial agreements, or pre-nups as they are known, needs to be clarified.

At the moment, courts will take pre-nups into account if they are considered to be fair and properly drawn up but they are not necessarily binding. This is in contrast to many other countries where the contracts are enforceable.

The Law Commission is carrying out a review to examine the enforceability of pre-nups. In a statement it said: "There is a view that the fact that pre-nuptial agreements are not currently binding may deter people from marrying or



entering into civil partnerships in some cases."

However, the Commission is not expected to publish its report until 2012. In the meantime, there has been an increasing tendency for courts to give more weight to pre-nups, as in the case earlier this year of German heiress Katrin Radmacher and her former husband, Nicolas Granatino.

Before they married they drew up a

pre-nup saying that he would not make a claim on her money if they ended up divorcing. Mr Granatino challenged the agreement when the couple divorced but the Court of Appeal ruled that it should be upheld with only a few modifications. In giving his judgment after the hearing, Lord Justice Thorpe said it was becoming "increasingly unrealistic" for courts to disregard pre-nups.



The Court of Appeal ruling will influence future divorce settlements with the presumption being that pre-nups should be enforced unless there are compelling reasons to doubt their validity. Such doubts might arise if one party signed without getting proper legal advice or if someone failed to disclose all their assets when the contract was being drawn up.

However, Baroness Deech believes it is for Parliament not the courts to clarify the situation. In the meantime, couples who draw up pre-nups can be more confident than ever before that their wishes will be followed in the event of a divorce.

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## 64-year-old man awarded damages after tripping on loose stones

A 64-year-old man who broke two bones in his leg after tripping on loose stones has received nearly £8,000 in compensation.

The man had been walking his dog when he fell over the stones on some land near the back of his home. He broke the tibia and the fibula in his right leg.

As a result of the injuries he can now only walk about three quarters of a mile and finds it difficult to kneel down. He has had to give the dog away because he can no longer take it for walks. The land where the fall took place belonged to the same community

association that owned the man's home. He alleged that the association had been negligent in allowing the area to reach such a dangerous state of disrepair and in allowing people to walk through when it was unsafe to do so. The association admitted liability and agreed to pay £7,875 to compensate for the man's pain, suffering and loss of amenity.

Anyone who suffers an injury as a result of someone else's negligence is entitled to claim compensation.

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## Judge was wrong to transfer children's residence

The Court of Appeal has ruled that a judge was wrong to transfer the residence of three children to their father even though the mother had refused to allow contact in the past. The father had made an application for contact following the breakdown of the marriage.

The mother made allegations about him relating to domestic violence and submitted that he should be barred from having contact. The judge dismissed the allegations as unfounded and ordered that contact rights should



be granted. The mother still refused so the father applied for a residence order. Shortly before the trial, the mother relented and signed a statement admitting that she had been wrong to refuse contact and accepting that the court should grant a contact order.

However, she also asked the court to confirm that the children should continue living with her. The judge decided that he could not rely on the mother's new assurances and ordered that residence should be transferred to the father.

However, that ruling has now been overturned by the Court of Appeal. It held that transferring residence from the primary carer in this way should only be done as a last resort. The court had to balance the risks of removing the children from their primary carer, their mother, against the possibility that she might refuse contact again in future. The judge had got that risk balance wrong and the residence order he made was premature.

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# Funding of care for the elderly comes under scrutiny

The current system of funding care for the elderly has often been criticised because some people have to sell their homes and pay hundreds of thousands of pounds for their care while others pay nothing at all.

It means that for some people, the inheritance they hoped to pass on to their children gets used up in care costs. Now the Government has begun a public consultation on proposals to reform the system.

The proposals are contained in a Green Paper called, Shaping the Future of Care Together, which highlights the time bomb facing us as the population ages. It estimates that there will be 1.7m people requiring care by 2026.

Their care bill will be too great for



the taxpayer to support and so the Government is looking at three possible ways to meet the cost. One involves a dual approach in which the state and the individual share the costs, the second is an optional insurance scheme which would cost individuals up to £25,000 over a working lifetime and the third is a compulsory insurance scheme which would cost up to £20,000.

The proposals may be a step in the right direction but they are still only at the consultation stage and with an election coming up before too long, they may

never come into effect. It means that the current system is likely to remain in place for several years.

The capital threshold at which the elderly start paying for their care is only £23,000 – only a fraction of the cost of an average house – so it means some elderly people will still have to sell their homes while others get care for free.

Even if one of the new proposals does eventually come into effect, it will only cover the cost of the care – other expenses like accommodation and food will still need to be met by the individual or their families.

One way to ease the problem is for people to start planning now for their old age so they can minimise the cost and the stress. For example, it may be possible to protect some assets by using trusts. It needs careful planning but could save elderly people and their families thousands of pounds in future.

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## Covenant halts extension of riverside house

A homeowner has been prevented from adding an extension to his property because it is subject to a restrictive covenant forbidding anything that might cause a nuisance.

The man had obtained planning permission for an extension to the house on an estate next to the River Thames. Some of his neighbours objected because they felt that, among other things, it would spoil their views of the river. They pointed out that the property was subject to a covenant preventing anything that would create a nuisance or annoyance to other homeowners on the estate.

The homeowner submitted that the covenant was only intended to restrict activities at the house which might be construed as being a nuisance or annoyance. It was not designed to include the building of an extension. However, the Court of Appeal has ruled against him. It held that the covenant was broad enough to mean that the building of an extension would be considered as an “annoyance” to neighbours.

Several properties are subject to covenants of some kind. It is important that homeowners know about them and understand the restrictions they impose before agreeing to buy a property.

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## A better way to buy and sell homes?

The Law Society is looking at ways to improve the process of buying and selling homes for the benefit of consumers.

It has been working on formal proposals and consulting with various individuals, firms and organisations involved in conveyancing to get a full picture of all the issues involved.

The general consensus from most professionals was that while no radical changes are needed, there are some improvements that could be made, particularly in the area of accreditation schemes.

The Law Society has often raised concerns that some professionals involved in conveyancing, such as estate agents, are not strictly regulated in the way that solicitors are.

This has led the society to warn sellers that they may not always get the best service or value for money, particularly when paying for Home Information Packs (HIPs) which have to be provided when a house is put on the market.

A Law Society spokesman, Paul Marsh,

urged consumers to approach their solicitor before buying a HIP because law firms are strictly regulated and are required to be fully open with clients about their fees etc.

This would ensure that the HIP contained all the necessary information and was priced fairly.

He also advised sellers to consult their solicitor before filling out Property Information Questionnaires (PIQs) which are now an obligatory part of HIPs. Mr Marsh said: “PIQs are supposed to provide information for potential buyers about the property, but if they are not completed correctly it could

harm the relationship between buyer and seller.

“A solicitor will be able to assist in completing the questionnaire to ensure it is accurate.

“The professional integrity and legal skills which solicitors traditionally bring to the housing market are just as key now as they have always been and probably more important than ever.”

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# Insist on a fair settlement if you are made redundant

Workers facing redundancy are being urged to ensure they get a fair settlement if their employer puts pressure on them to sign a compromise agreement.

The warning from the Law Society comes after a surge in the use of compromise agreements because companies have been forced to lay people off during the current economic downturn. The agreements are also used when settling some unfair dismissal claims or cases involving discrimination.

They usually require an employee to waive the right to make a claim against the employer in the future in return for a financial settlement now. They can be very helpful to both sides in ensuring a clean break that is fair to everyone. However, the Law Society fears that many redundant workers are signing the agreements without getting the full entitlement they deserve.

The Law Society President, Robert Heslett, said: "Compromise agreements are an effective tool in ensuring both employer and employee can resolve an issue fairly. However, the agreements will



usually emanate from the employer and employees should not take it as read that it is the best deal on the table.

"Seeking the advice of a solicitor once the agreement is offered is essential. Without one, employees could be walking away with a settlement which is far from a compromise. A solicitor can negotiate on an employee's behalf." It is a legal requirement that employees receive independent advice before signing a compromise agreement.

Many employers are prepared to pay for this advice or at least contribute towards the cost in order to smooth the process along. It means that in many cases, employees will be able to receive expert advice at no or minimal cost to themselves.

Mr Heslett urged employees to consult a solicitor as professional advice can make a big difference to the settlement achieved. "What might appear to be a golden handshake of sorts might not be best for the employee, especially in the current job market. Four month's pay might sound like a good offer, but if your notice period is three months, you are really only getting an extra month's pay to leave quietly."

The agreements can be complex and restrictive as well as offering the employee less than the full entitlement. People facing this kind of situation should always seek legal advice to protect their interests.

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## Rising dementia figures highlight need for LPAs

The number of people suffering from dementia is expected to double over the next 20 years, according to a report published by Alzheimer's Disease International.

The research team was led by Professor Martin Prince of the Institute of Psychiatry at King's College London.

The report predicts that by next year there will be 35 million people worldwide suffering from dementia. That figure is expected to rise to 65 million by 2030 and to 115 million by 2050.

The increase is largely down to the fact that people are living longer than ever before.

It is impossible to predict our future health but we can take steps now to protect our interests if we suffer from dementia or lose our mental capacity for any other reason in the future.

Lasting Powers of Attorney (LPAs) enable you to nominate someone such as a family member or trusted associate to make decisions on your behalf if you ever lose the ability to do so yourself.

The property and finance LPA allows you to appoint someone to look after your financial affairs, and the personal welfare LPA lets you grant an attorney authority over such matters as health care and the kind of treatment you receive.

LPAs should be drawn up with the help of a solicitor to ensure that they accurately express your wishes and protect your interests.

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