

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

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INVESTOR IN PEOPLE

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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Wealthy place conditions on their children before letting them inherit large sums

Many wealthy families now place strict conditions on their children's behaviour before allowing them to inherit large sums of money, according to new research.

Barclays Wealth and the Economist Intelligence Unit surveyed 790 people across the world with assets of more than £100,000 to invest. The researchers found that more than a third of those questioned thought it was a bad idea to leave large sums to their children.

Surprisingly perhaps, those who had inherited wealth themselves were less willing to pass on large sums than people who had built up wealth through their own efforts. There was concern among those interviewed that inheriting money might reduce their children's desire to succeed in their own right.

The answer for many families is to set conditions whereby children have to accomplish certain goals before they can inherit. This approach was particularly popular with the very wealthy. For example, nearly 60% of people with assets above £5m insist that their children must do things like gain a university degree or hold down a responsible job for a specified amount of time. Others have decided that while they will provide for their families, they will also leave large sums to worthwhile causes.

Very few of us consider ourselves to be rich but whatever assets we have the principles are the same. If you work hard all your life and manage to accumulate some wealth then it is only natural that you should want to pass some of it on to your children.



On the other hand, you want to



ensure that they appreciate what they are getting and are able to cope with it responsibly. It is not surprising therefore that an increasing number of people are giving more and more thought to inheritance planning. If you want your wishes to be carried out then it is important to start preparing now.

It may be necessary to update your will to stipulate how you want your wealth to be divided and what conditions if any you may wish to apply. Even if you don't feel it necessary to make such stipulations it is still important to make sure your will reflects your current thinking. People's circumstances and views change as time goes by and so a will made several years ago may divide up your assets in a way that is no longer suitable or in line with your current thinking.

It is also important to get advice about inheritance tax so your beneficiaries don't end up giving large amounts of your money back to the Treasury. Trusts can often provide an efficient way of passing on wealth.

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Husband tries to reduce money paid to his ex-wife

A husband has lost his appeal to have the lump sum he paid to his former wife reduced because she later remarried.

The couple divorced in 1993 and the husband complied with a consent order to make regular maintenance payments to her. In 2005, he contacted her to say that he was about to start taking his pension and his income would be reduced.

They agreed that he should pay her a one-off lump sum in return for being able to stop paying maintenance in future. He asked her if she intended to marry another man with whom she had started a relationship. She replied that she had no plans to marry or cohabit. The couple then agreed on a lump sum payment of £125,000 and a consent order was made to that effect. In 2006, the wife did in fact

remarry. Her former husband applied to have the consent order set aside so the lump sum could be reduced. He said the sum had been agreed on the basis that his former wife would not remarry and the consent order should therefore be ruled invalid. However, the judge refused the application because he considered that the remarriage had not been planned when the lump sum was agreed and the wife was being open and honest about her intentions at that time.

The Appeal Court upheld the ruling saying that the wife's statement that she wasn't planning to marry could only be taken as her intention at that specific time. It could not be taken to imply that she would never marry again. That was a risk her former husband had to take.

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Pregnant woman called 'useless' wins her claim for damages

A woman who was told by her employer that she would be useless because she was pregnant is to receive substantial damages after winning her claim for sex discrimination.

Louise Manning earned £55,000 a year as a senior sales executive for a company supplying security systems.

She told the employment tribunal that when she was being interviewed for the job, her employer said he was going to ask her something he should not be asking. He then questioned her about whether she planned to start a family. She said she answered honestly that she and her husband had no such plans.

However, a year after getting the job she found that she had unexpectedly become pregnant. She wanted to continue with her career but she said her employer reacted very badly saying that she would never be the same again. He sent her a memo saying that he felt betrayed and was tempted to dismiss her and take the consequences.

She was twice demoted while on maternity leave. She resigned and took her case to a tribunal to claim compensation. The tribunal found that the firm had committed 24 acts of sex discrimination. The law offers employees substantial protection against discrimination, whether it's to do with matters of sex, race or disability.

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'Compensation culture' a myth say researchers

Claims about compensation culture spiralling out of control have been contradicted by research carried out at Warwick University's School of Law.

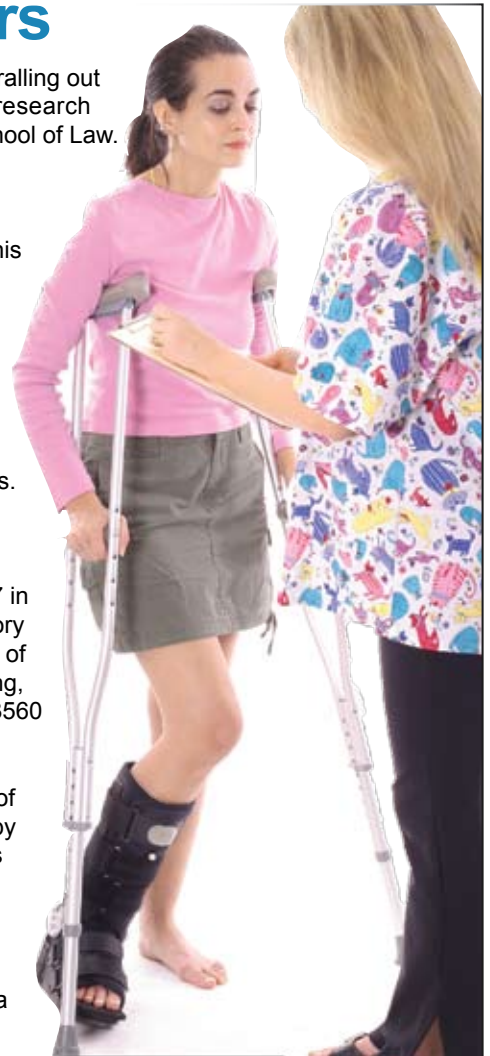
The research shows that the number of claims going through the courts has actually fallen rather than increased. This reinforces statements from MPs that compensation culture is a myth. The Warwick researchers wanted to see whether changes introduced in the Management of Health and Safety at Work regulations 2003 had any impact on the number of compensation claims in relation to workplace accidents.

They found that the number of personal injury actions in the Queen's Bench Division of the High Court fell from 1187 in 1999 to 570 in 2003. It was a similar story in the County Courts where the number of small claims recorded under the heading, Negligence – personal injury, fell from 3560 in 1999 to 2210 in 2003.

The research only measures one area of course but the findings are backed up by other sources. The Constitutional Affairs Select Committee, which scrutinised the Compensation Bill as it made its way through Parliament, came to the conclusion that contrary to all the publicity, Britain is not moving towards a compensation culture.

The Select Committee also observed that alleged fears over health and safety issues have sometimes been used by organisations as an excuse to ban activities that they don't want to provide for purely financial reasons.

Hopefully, the Warwick University research will go some way to exploding the myth of compensation culture which has done so much damage. Many genuine injury victims have been discouraged from making a claim and



getting the compensation they deserve because they have been made to feel they are somehow doing something wrong. Nothing could be further from the truth. People who have been injured as a result of someone else's negligence are entitled to compensation and they should not be made to feel uneasy about asserting their rights.

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Woman fails to get a share of home after 15 years cohabiting

A woman has failed to win a share in the home in which she lived with her former partner for 15 years.

The couple were not married but the court accepted that they had effectively lived together at the property as husband and wife. The man owned the house before they met. However, she then moved in and lived there until their relationship broke up 15 years later. During their relationship she had helped him with his business and eventually became a partner. Their income from the business was used to pay the mortgage and for renovations to the property which they carried out together.

When the relationship ended the woman claimed a share in the property on the basis that there was an understanding between them that they owned the property jointly. However, the judge ruled that there was insufficient evidence to support her claim. That ruling was upheld by the Court of Appeal which

said the fact that money from the couple's business was used to pay the mortgage was not sufficient evidence to prove that there was an agreement between them that she should have a beneficial interest in the property.

It is not uncommon for financial disputes to emerge when cohabiting couples separate. Many women believe that a couple who live together as husband and wife have a common law marriage which gives them the same rights as a married couple. This is a myth as there is no such thing as a common law marriage. The Government recently urged cohabiting couples to draw up living together agreements to protect themselves and help to avoid bitter disputes once the relationship ends.

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Battle of wills divides family after grandmother's death

The Court of Appeal has had to decide which of two conflicting wills drawn up by a grandmother was the most recent and therefore the one that should decide how her estate is divided between members of her family.

When the woman died her will showed that she had left her estate to her son. Probate was granted but then the woman's grandson discovered another will which left the estate to him and another relative.

The grandson applied for a declaration that the second will was his grandmother's last true will and that the grant of probate for the earlier will



should be revoked. The case proved complicated and the judge considered that there were some inconsistencies in the evidence. Nevertheless, the court decided that it was reasonable to conclude that the grandmother knew about the second will and approved of it and it should therefore be accepted as

representing her true wishes. That ruling was then upheld by the Court of Appeal. It is not uncommon for disagreements to emerge within families because a close relative did not make a will or failed to update an existing will to reflect their changing views.

This case illustrates the need for people to ensure their wills are drawn up properly and kept up to date. It is also important to let your family know where your will is kept and the name of the solicitor that helped you to draw it up.

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New Year brings a surge in divorce inquiries

The New Year is traditionally a time when people take stock of their lives and look to make a fresh start.

Sadly, for many married couples who have been experiencing difficulties in their relationships, it can be a time when they decide the only way forward is for them to separate. Family lawyers receive a surge of inquiries in the first few months of the year from people wanting to begin divorce proceedings.

It's a traumatic time for all concerned. As well as the emotional upheaval there are numerous practical matters to consider such as what arrangements will be made for the children and how joint assets will be shared out.

Emotion and bitterness can often cloud issues but both partners will do themselves a big favour if they try to be honest and reasonable right from the outset. It's not uncommon for people to dig their heels in and complicate matters but it rarely does much good. In the end, the courts will impose a settlement, if necessary, which is fair to both sides.

Each partner should realise that as a general principle, everything they own irrespective of where it came from will be regarded as part of their joint assets to be shared out. The law also works from the starting point that these assets should be shared out equally unless there are good reasons to justify an alternative split.

Some people try to tip the balance in their favour by concealing their assets or squirreling money away in a secret bank account. The other partner can try to counter this financial infidelity by keeping copies of bank statements and similar documents whenever possible.

If they suspect that their partner is concealing assets they should inform their solicitor so those assets can be frozen and

included in the divorce settlement. Some people think they can circumvent the system by putting money into their pension but that won't work either as pensions are now considered as part of the pot to be shared out.

For most couples, the most valuable asset will be the family home. Sometimes it may have to be sold so the proceeds can be divided; sometimes it's possible for one party to remain there in return for concessions in other parts of the settlement.

There could be an issue if the family home is in only one partner's name. If this is the case then your solicitor may need to register a caution against the property so that your partner can't sell until the divorce proceedings are settled.

Joint bank accounts and credit cards will have to be cancelled and replaced by individual accounts. Wills should be revised as each party makes a clean break and reassesses

how they want to provide for their loved ones in the future. Most couples try to reach amicable arrangements over the children but where this is not possible then mediation may help. A trained mediator can act as an honest broker enabling a couple to overcome stumbling blocks. Mediation can also help couples to remain on good terms, which is the best approach in the long term, especially if children are involved.

If a couple still can't agree then they may need to go to court. They should realise, however, that a court will always try to do what is best for the child rather than what may seem best for the parents. It's unlikely that divorce will ever be easy but couples can save themselves a lot of stress if they are prepared to act reasonably and get professional advice from the beginning to ensure a fair settlement.

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Clearing up confusion over when you need a HIP

The Government has issued guidelines to clear up any confusion about the need for Home Information Packs (HIPs) when selling a house.

HIPs have been compulsory when selling houses of all sizes since December. They're intended to simplify and speed up the process by obliging the vendor to provide potential buyers with important information such as the results of local searches and evidence of title as soon as the property is put on the market.

This was the kind of information that each buyer used to have to find out for themselves.

However, many sellers and estate agents have since questioned what exactly constitutes the marketing of a house and whether informal or one-off viewings trigger the need to provide a HIP.

The Department for Communities and Local Government has issued a statement pointing out that "a property is put on the market when the fact that it is available for sale is made public".

That means when it is advertised to the public or a section of the public in any way. Even letting people know by word of mouth will count as marketing. However, one to one sales that do not involve any other person or marketing to the public are not included in the legislation.

The statement points out that when someone acting as an estate agent introduces a seller to a buyer then a HIP will



be needed. "This means that the HIP duties will usually be triggered where an estate agent, as part of his business, arranges 'informal or one-off viewings' of a property that is available for sale, or communicates this availability by any means to anyone as part of an attempt to sell it."

HIPs are still quite new so it is not surprising that there should still be some uncertainty about them. Please contact us if you would like more information about HIPs or any aspect of buying or selling a house.

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Injured prison officer is entitled to claim damages

A prison officer who had to give up his job after being attacked by an inmate has won the right to claim damages against the Ministry of Justice.

The incident happened after the prison officer had been involved in an exercise with other members of his team to open a cell which had been closed and barricaded by an inmate. The operation was successful and the prison officer then escorted the inmate to the segregation unit.

The officer was not given the prisoner's history sheet outlining his violent past. The next day he was attacked without warning when he entered the prisoner's cell. He was hit in the eye and had to give up his career in the service because of his injury. The officer later discovered that the inmate had previously

been involved in 20 violent incidents including 14 involving prison staff. The officer claimed that he would have taken extra precautions if he had been alerted to the inmate's record and the attack could have been avoided. However, the Ministry of Justice said the officer knew about the inmate's violent nature from the fact that he had barricaded the cell the previous day.

The High Court found that the Ministry was negligent in not alerting him to the prisoner's violent past. It was the Ministry's duty to keep the officer reasonably safe and so it should have provided him with information about the inmate's past.

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