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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.

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

For more than 100 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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Rising dementia figures highlight the value of powers of attorney

A group of scientists has warned the Government that the number of dementia cases could double within a generation.

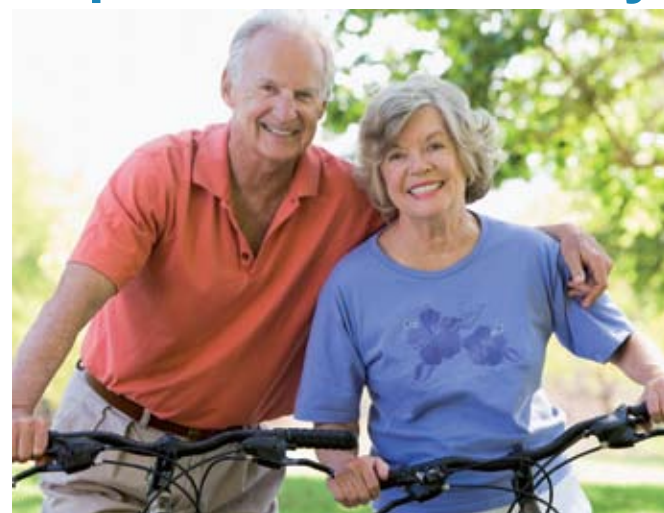
The scientists, from leading universities around the UK, say more investment is needed in the health service as we know it may become unsustainable. The warning has been backed up by the Alzheimer's Research Trust. The Chief Executive, Rebecca Wood, said: "If underinvestment persists, the economic consequences arising from dementia care costs will be catastrophic."

Despite these and similar warnings, research by the insurance company Standard Life shows that three out of four people have made no arrangements to enable someone to manage their financial affairs should failing mental health make it impossible for them to do so themselves.

This is in spite of the fact that it can be difficult and time-consuming to unfreeze the assets of a family member who suddenly becomes mentally incapacitated. Fortunately, the law has been modified to make it easier for people to prepare for a time when ill health or mental incapacity means they are no longer able to make decisions for themselves.

In the past it was possible to use the Enduring Power of Attorney (EPA) system to appoint someone you trust to operate your bank account and manage your financial affairs if you became incapable of doing so yourself.

The Mental Capacity Act has now replaced EPAs with a revised provision called a Lasting Power of Attorney (LPA). The LPA has to be registered with the Office of the Public Guardian before it can be acted upon which should make it more secure and less open to abuse. It also needs to be accompanied by a certificate signed by someone like a solicitor or a doctor confirming that you understand what it means to grant someone power of attorney over your affairs and you are entering into it freely. The new system also



Prepare for the future while you are fit and healthy

provides more scope. LPAs can be used to cover financial matters like EPAs used to do but they can also cover health and personal welfare.

It means you can say in advance the extent of the medical treatment you would like to receive if you become incapacitated and delegate an attorney to make such decisions on your behalf. Setting up an LPA gives you more control over what happens to you in future and makes it easier for your family to administer your affairs.

For more details contact

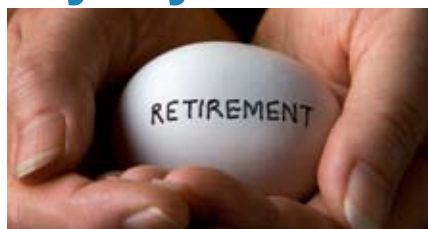
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Delay can be costly if you want to make a claim

The need to take professional advice as soon as possible when facing legal problems was illustrated in a recent case before the Court of Appeal.

It involved a man who wanted to claim damages against a financial services company which had advised him about his pension arrangements.

He claimed that the firm had been negligent and in breach of its duty under the Financial Services Act 1986 when it had advised him to transfer the accrued benefits in his occupational pension to a personal pension fund withdrawal scheme. He submitted that he suffered a loss because of this transfer and



because of the company's failure to advise him on purchasing an annuity. The judge found that the claimant had suffered a loss within two years of making the transfer. In spite of this, he did not issue proceedings until more than six years later.

This meant his claim was statute barred and could not go ahead because such

proceedings have to be brought within six years of the loss being discovered. The judge found that the claimant had sufficient knowledge of his losses to have begun proceedings three years earlier but failed to do so. The Court of Appeal has now upheld the ruling that his claim for damages was statute barred under the Limitation Act 1980.

Anyone in similar circumstances who feels they may have a claim to make should seek legal advice as soon as possible.

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Equality bill to promote equal pay and allow use of positive discrimination

The Government has announced new measures to promote equality by banning age discrimination and helping women to achieve equal pay with their male counterparts.

The law will also be changed to allow positive discrimination in favour of women and ethnic minorities to promote more diversity in the workplace.

The measures are being put forward in the new Equality Bill.

The Government says the Bill is needed because although there has been a lot of progress towards equality, there is still a long way to go. "Women are paid on average 12.6% less per hour than men; disabled people are two and a half times more likely to be out of work, and ethnic minorities a fifth less likely to find work; and two thirds of over-fifties feel that they are turned down for a job because they are too old."

Harriet Harman, the Minister for Women and Equality, outlined some of the main provisions in the Bill in a statement to the House of Commons. It will include powers to ban all unjustified discrimination against older people, such as denying them medical treatment.

Age discrimination is already banned in the workplace. There will also be measures to make pay scales more

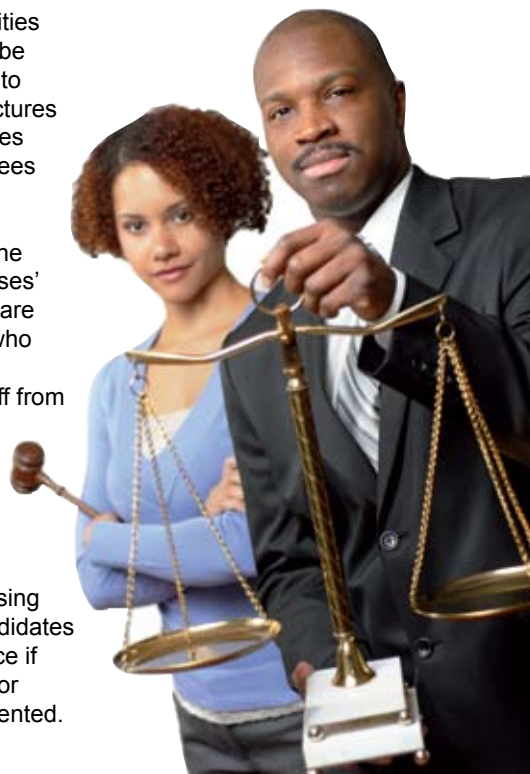
transparent to ensure that inequalities between men and women cannot be hidden. Employers will be obliged to reveal details about their pay structures to see if there are any discrepancies between male and female employees doing the same work.

A Government statement says: "The Equality Bill will ban 'gagging clauses' so that work colleagues can compare wages and challenge employers who unlawfully pay them less. Nearly a quarter of employers ban their staff from talking about their wages, with women more likely to be in the dark about colleagues' pay than men."

Employers will be allowed to use positive discrimination when choosing between two equally qualified candidates to ensure a more diverse workplace if particular groups such as women or ethnic minorities are under-represented.

The law will also allow positive discrimination in favour of men if the circumstances call for it. For example, a school which employs mainly women teachers may be able to discriminate in favour of a man to redress the balance.

The Equality Bill is clearly intended to create more protection for women and



various groups who have been treated unfairly. However, the law already provides considerable protection against various forms of discrimination.

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Father granted unsupervised contact with his daughter

The Court of Appeal has granted a father the right to have unsupervised contact with his daughter.

After separating from his partner, the father maintained contact with his three-year-old daughter by telephone and during visits which were supervised by the local authority and the child's aunt. The mother opposed the application for unsupervised contact and made allegations about the father relating to domestic violence, drinking and unpredictable outbursts. She also



referred to sexual fantasies expressed during the relationship. The father denied all the allegations.

The child's social worker and her guardian both gave evidence that there was no reason not to allow unsupervised contact.

The judge concluded that the father did not pose a risk to his daughter and that it would be in her interests to have unsupervised contact with him. That decision was upheld in the Appeal Court.

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Injured motorcyclist awarded damages and care costs for life

A motorcyclist who suffered multiple injuries in a road accident has been awarded compensation for his suffering together with various awards to cover his loss of earnings and the cost of his future care.

The victim was a 37-year-old mechanic and self-employed builder when he was knocked off his bike by a car driver who admitted liability. He had to undergo 11 operations after sustaining fractures to his spine, head, pelvis and legs as well as his hand and wrists. He can now only

walk short distances and has to use a wheelchair most of the time.

The accident had also caused him to suffer from a psychiatric disorder. He had been looked after by his fiancé for the five years since the accident happened but she is now exhausted by the effort and needs more help.

Before the accident the victim was fit and hardworking and was starting a new market stall business. He enjoyed playing sports and had a full and active

life with his fiancé and her children. Now he will never be able to work again and needs constant care.

He was awarded £157,000 for the pain and suffering that he had endured. There were also several other large awards made to cover his loss of future earnings and the ongoing cost of providing him with carers for the rest of his life.

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Report says house buyers are being misled by some estate agency HIPs

House buyers are being misled by false information in Home Information Packs (HIPs) produced by some estate agents, according to an investigation by trading standards officers.

The officers from Birmingham Trading Standards visited 15 estate agencies in the city and asked to see HIPs for different properties. They selected six to subject to a detailed inspection and found that five of them were unsatisfactory.



Some wrongly claimed that information was not available or answered questions by stating "not as far as is known" even though the information was readily available from the local authority.

The officers suspect that the problems arose because private search companies are cutting corners to save money. The Trading Standards

report gives several examples of faults contained in the HIPs they inspected. Some claimed there was no planning history on the property when in fact it was readily available.

Others provided inaccurate dates for planning proposals or stated that there were no planning restrictions when there was a restriction on permitted development.

'Simply not worth the paper they're written on'

In one example, a HIP claimed that the property was in Worcestershire when it was actually in Birmingham. There was also a case where the HIP said that planning history only dated back as far as 1990 when in fact the local council held paper records from 1948.

The investigation was carried out in Birmingham but it's feared that the same thing is happening in other areas across the country.

Councillor Neil Eustace, Chair of the Birmingham Public Protection Committee, said: "The results of this survey are shocking. Buying a house is one of the most important investments most people will make and they rely on professionals to do their job properly.

"Some of this inaccurate or missing information could result in someone buying a house they would otherwise think twice about. These searches are simply not worth the paper they are written on."

The Law Society said the Birmingham findings seem to confirm reports it had received that some estate agents are being paid commission by search companies to include poor quality searches in their HIPs. The society president, Paul Marsh, urged sellers to consult a solicitor for advice about HIPs.

Mr Marsh said: "If the pack is to provide any value to the consumer at all it needs to be accurate and contain reliable information. That requires those who compile these packs to understand what they are doing. Anyone who buys a HIP from an unregulated estate agent or HIP provider might as well throw their money away.

"It makes perfect sense in a slow market to use the time you have properly and instruct a solicitor not only in the preparation of a HIP but on all the paper work involved in the selling of your home. All the research shows that instructing a solicitor early on in the transaction will speed up the process of selling a property significantly and ensure it runs as smoothly as possible."

Man who worked 25 years for nothing can't inherit farm

The stress and anguish that can arise from a person's failure to make a will has been highlighted in the case of a farm labourer who worked without pay for 25 years on the understanding that he would eventually inherit the farm.

David Thorner, who is 57, spent most of his adult life helping out on a farm in Somerset owned by his cousin Peter Thorner. He agreed not to take any wages on the understanding that he would inherit the land, worth £2m, when his cousin died. He lived on little more than pocket money from his parents in the meantime.

Peter made a will leaving the estate to David. Later he made an alteration to the will relating to a completely different matter but then never returned it to his solicitor. When he died, the will could not be found.

In the absence of a will, other members of Peter's family claimed the estate. The case ended up in the High Court which recognised David's remarkable commitment and accepted that his cousin Peter had wanted him to inherit.

David was awarded the farm with the remainder of the estate, valued at over £1m, going to other members of the family.

However, Peter's sisters challenged the ruling and have now won their case in the Court of Appeal.

Lord Justice Lloyd said David Thorner had a strong moral claim to the farm but it would be a dangerous precedent for him to inherit it. "This is another case, where, what appears to have been a man's testamentary intentions have failed because, for whatever reason, he did not take the proper steps to put them into effect."

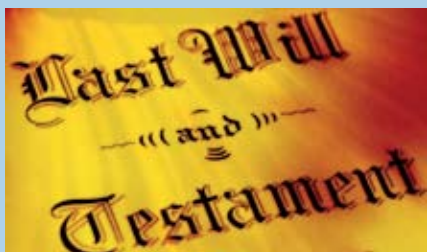
Mr Thorner lost his case and was refused permission to appeal to the House of Lords. He was also ordered to pay costs.

The case has attracted widespread publicity and illustrates the problems that can arise if someone fails to make a will or fails to keep it up to date.

Anyone who has not made a will or updated it to reflect changes in their circumstances should consider doing so as soon as possible.

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Pre-nuptial agreements could become legally binding following review

Pre-nuptial agreements could become legally binding once a review has been carried out by the Law Commission.

Pre and post marriage contracts have become more popular in recent years. The courts will take them into account if they are considered to be fair and properly drawn up but they are not necessarily binding.

Now the Law Commission is to carry out a review which it says will "examine the status and enforceability of agreements made between spouses or civil partners (or those contemplating marriage or civil partnership) concerning their property and finances".

The statement goes on to say: "The legal recognition of marital property agreements is of great social importance. Relationship breakdown remains a significant phenomenon and financial and property disputes between separating spouses and civil partners often lead to distress and expense for all involved. 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."

The review is due to begin next year but the resulting report is not expected until 2012. In the meantime, pre-nuptial



agreements remain popular and still have a valuable role to play. People should not be discouraged by the fact that they are not automatically binding because the courts will give them serious consideration if they are drawn up in a way that is fair to both parties. The court will be influenced by whether both sides had legal advice from a solicitor to ensure they were fully aware of what they were doing when they signed the agreement. It is also essential that the bride and groom fully disclose their full assets to each other. Keeping quiet about secret bank accounts could nullify the agreement and defeat the object of drawing it up in the first place.

Pre-nups can be drawn up in several ways depending on the circumstances. For example, couples can agree to ring fence the assets they had before the marriage so they are not taken into account in any future divorce settlement. It is also possible to relate any provisions to the length of the marriage so that one side perhaps receives very little if the marriage is short lived but receives more if it survives for several years. Many couples who make such arrangements say it strengthens their relationship to know that they have been able to discuss and agree on important issues that could affect their future.

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Elderly sisters lose battle to change inheritance tax rules

Two elderly sisters have lost their battle in the European Court of Human Rights to change Britain's inheritance tax rules. Joyce and Sybil Burden have lived together all their lives. Their home and the small farm around it in Wiltshire are worth an estimated £875,000. They say that when one of them dies, the other will have to sell up and move out to pay the crippling costs of inheritance tax which is levied at 40% of the value of the estate apart from the first £312,000 at current rates.

They appealed to the European Court arguing that they should be given the same rights for tax purposes as gay and lesbian couples who enter into civil partnerships. This would mean that when the first sister died, the surviving sister would be exempt from inheritance tax and so would be able to keep the home. However, the European Court has ruled against them. Many

people will no doubt sympathise with the sisters and their plight. According to a survey carried out for the BBC, 60% of people would like to see inheritance tax scrapped even if it meant paying more income tax.

That seems unlikely, however, which means that thousands of people need to plan ahead if they want to reduce the inheritance tax burden as much as possible. Family members and cohabiting couples are particularly at risk of falling foul of the inheritance tax laws. The rules changed last year to help married couples but they too could still benefit from some forward planning.

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