

# newsletter

## Introduction

**W**ith another year over and as a new one begins, we bring you a range of legal news items in this our 4th issue. Whilst difficult times affect everyone in this straitened economic climate, it is more important than ever to seek our advice **before** you enter into a transaction: the old adage 'prevention is better than cure' is one we urge you to have at the forefront of your minds.

There were numerous legislative changes during the course of 2008. One in particular, the Consumer Credit Act 2006 which made changes to the Consumer Credit Act 1974, took effect in April 2008. It has changed the basis on which the Courts can interfere with consumer credit agreements. We propose to help hundreds of individuals trapped in their homes by a particular mortgage product to take advantage of the change. Time is running out for everyone affected so if any of you have, or know someone who has, a **Shared Appreciation Mortgage** with Bank of Scotland or Barclays, contact us **now** to join in the Group Action in the High Court to challenge these unfair products.

Never deterred by difficult cases and with a robust QC's opinion which urges all those affected to sue now, our litigation department headed by Hilary Messer expects the claims to be amongst the first to be considered under the new law. For further information, please go to our dedicated website [www.samgroupaction.com](http://www.samgroupaction.com). For all your other legal needs, contact us by telephone on 0118 9842266 or via our website [www.rwp-solicitors.co.uk](http://www.rwp-solicitors.co.uk).

**We hope all will have enjoyed a peaceful holiday and here's to a more prosperous new year for everyone...**

## COURTING PROTECTION

**O**nce upon a time the King took responsibility for protecting lunatics and their property. Ultimately such role was delegated to the Chancery Courts. Once a person was, by inquisition no less, found to be a lunatic the necessary protection was afforded by the Chancery Court. By a 13th century statute, on the King's Prerogative the Crown was given custody of the lands of 'natural fools' and wardship of the property of the insane during their insanity.

Times have now changed and helpfully so have attitudes towards persons lacking capacity; but the protective regime, updated and revised, still exists. Decisions are now made on behalf of people who lack mental capacity by the new Court of Protection, introduced by the Mental Capacity Act 2005.

Such Court, formerly an office of the Supreme Court, now has the status of a superior Court of record in its own right, with regional venues

around the country as well as a central office in London.

Thankfully no longer subject to inquisition to determine sanity, the Court of Protection assumes a person to have mental capacity unless it is established otherwise. In practical terms, unless you are dealing with urgent welfare or contentious circumstances, you are most likely to come into contact with the new Court if the need arises for you to apply to become a "deputy", perhaps on behalf of a friend or family member who has not set up an Enduring Power of Attorney or a Lasting Power of Attorney.

Our experience with the new Court is that it is regrettably much less efficient than under the old regime. If you find yourself in any situation where you need to deal with the Court of Protection, or if we can help you with any issues concerning mental capacity, *please contact us on 0118 9842266 or email [pangbourne@rwp-solicitors.co.uk](mailto:pangbourne@rwp-solicitors.co.uk)*

## It's a hip update

**Y**es, HIPs are *still* with us, but are they really serving any useful purpose?

Whilst compulsory, for now you can still market without one so long as a HIP has been ordered. That means when you go to look at a property via an agent you do not know if a HIP will actually be available.

Even if it is, although Regulation compliant, we find most are inadequate. Often there is no official Search, simply a 'personal Search' backed up by indemnity insurance. Do you want insurance that pays out when you have been landed with the problem and are stuck with it? Far better to be informed with the full Search and go into the transaction 'eyes wide open' surely?

Does the Energy Performance Report help you? From 1 October it became compulsory: **all homes being sold for occupation** need an EPC which must be provided to the prospective buyer, regardless of when the homes in question were first marketed. Trading standards

officers will be responsible for enforcing this requirement and the penalty is for breach is £200 plus provision of the EPC.

Landlords too are caught. If you are a landlord, to let your property you must produce an EPC.

HIPs were supposedly created with the intention of lessening the likelihood that a sale would fall through after a full survey report revealed all, saving costs and keeping chains going. When the survey report was dropped as a mandatory requisite, the impact of the HIP and its chances of achieving such ends were radically reduced.

Are they serving any useful purpose? Whatever you think, if you need a compliant and full Search HIP we will be pleased to prepare the same for you and at no fee if we act for you in your sale.

*Please contact Ros Sanderson on 0118 9842266 or [ros@rwp-solicitors.co.uk](mailto:ros@rwp-solicitors.co.uk) for more information.*

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# newsletter

## Insure: are you covered?

**T**he requirements placed on solicitors and conveyancers by lenders have become more and more onerous over time, which cause delay and increase costs.

When certifying title to a property any lender requires us to give specific particulars of current buildings insurance for the property or there is an implied undertaking contained in the documentation that we are satisfied that the

buildings insurance complies with the particular lender's requirements

Not surprisingly every lender has different requirements! We have to identify them and often we have to write to the insurance company to obtain their confirmation that all of the lender's requirements are covered. This is time-consuming, hence the delays and increased costs.

You could avoid such a situation by asking your lender to insure the property in the first instance.

Their insurance may be more expensive but, in the long run, this could avoid delay and save you money.

Once completion has taken place and our responsibility to your lender has come to an end, you can then 'shop-around' at your leisure to obtain a better price. Most lenders will simply make a one-off administration fee of approximately £25.00 (usually payable each time you switch insurance companies) for checking the new insurance cover.

## DIY

**O**ccasionally we receive enquiries from people who have elected to take DIY one stage further! They take on the task of obtaining a Grant of Probate or Letters of Administration themselves. Very often this is because they perceive it will be cheaper than instructing a solicitor.

Generally this is not the case. Even where the administration of the estate appears to be straightforward, the DIY enthusiast will not know of the many and varied situations in which inheritance tax could be saved. Why pay the Exchequer more if you can avoid it?

For example, for married couples and civil partners there is an opportunity to look back to the estates of pre-deceased spouses. It would be easy to miss that opportunity to gain an additional £312,000 taxed at the nil rate. In a stroke, an additional £124,800 could be lost to the estate and the pockets of the beneficiaries. Further, those disappointed beneficiaries may hold you personally liable and sue!

We urge anyone who is thinking of going it alone to come and see us. Your initial consultation will be free if you instruct us to act for you thereafter.

*For value for money and peace of mind, contact Kathryn Tarry on 0118 9842266.*

## A year on ...

**I**t is more than a year since changes to the application of the Nil Rate Band were introduced. The Nil Rate Band (currently £312,000 for the tax year from 6th April 2008 to the 5th April 2009) is the value that can be given away on death free of inheritance tax. Each individual has one Nil Rate Band allowance on death.

However, in the case of married couples and civil partners, there is no inheritance tax charge in any event if the estate of the first to die is left to the surviving spouse or civil partner. Under the old rules, this meant that the Nil Rate Band of the first to die often went unused. To get round this problem, we advised you consider discretionary trust Wills where the Nil Rate Band of the first spouse or civil partner to die was instead placed in trust.

Under the new rules, if the Nil Rate Band of the first deceased spouse or civil partner is unused, this can be carried over on death to the estate of the second.

If you have discretionary trust Wills in place, should you change them to reflect the new legislation? If you have lost a spouse or civil partner and their Will contained just such a discretionary trust, can you make use of the new legislation?

The answer will depend on your own personal circumstances and, if you would like to find out more about this, our probate specialist Kathryn Tarry will be happy to advise you. *Call on 0118 9842266 or email to [kathryn@rwp-solicitors.co.uk](mailto:kathryn@rwp-solicitors.co.uk) to book an appointment.*

## Employment matters

**D**iscrimination claims are becoming more widespread and some situations require lateral thinking to identify potential problems and so to avoid them.

■ a colour-blind graduate has won the right to bring a sex discrimination claim. His application to join the police was turned down as a result of his colour blindness. An employment tribunal has allowed him to proceed with a time-barred indirect sex discrimination claim on the basis that more males are affected by colour blindness than females.

■ in one of the first decisions of its kind, an employment tribunal has held that a 62 year old employee was subjected to harassment on the grounds of age, in breach of the Employment Equality (Age) Regulations 2006. He was "understandably very offended" by the statement in his performance review that "ambition is not a motivation for Joe (due to age)" and by other comments that had been made about his age during his review meeting and consequently he was awarded monetary compensation.

■ another tribunal held that an advert that a teaching vacancy "would suit candidates in the first five years of their career" amounted to indirect age discrimination, being a criterion that may put people over sixty at a disadvantage.

What may constitute discrimination and be actionable as such is not necessarily what you may expect. It is easy to get it right; it is even easier to get it wrong. *Seek advice from Hilary Messer or Anjam Beg on 0118 9842266 on all employment matters.*



## JUST LIVING TOGETHER...?

**M**ore than 2 million couples cohabit in England and Wales. Nearly three quarters of a million of them have 1 or more dependant children. Most have never thought about the consequences of breakdown and naively assume "the law" will protect them.

Currently it does not. Whilst proposals have been considered to protect such couples and their children from financial hardship in the event their relationship breaks down, until the law changes, there is no specific protection.

You can however help yourself: make a Cohabitation Agreement. If you get it right you should know where you stand and reduce the risk of litigation, with the attendant emotional and financial cost to all, if the cohabitation ends.

70 years ago such agreements were deemed void on public policy grounds. In 1938 the Court declared

*"the law will not enforce an immoral promise, such as a promise between a man and a woman to live together without being married"*

Times may have moved on but legislative change still take time! Without such an agreement, your remedies may be extremely limited if it all goes wrong.

Come and see us before that happens. Protect yourself and avoid the contractual traps and legal pitfalls with our advice and assistance.

For more information contact Hilary Messer on 0118 9842266 or [hilary@rwp-solicitors.co.uk](mailto:hilary@rwp-solicitors.co.uk)

## LPA's

**You have nothing to fear...**

**Lasting Powers of Attorney:  
Don't be afraid of the new law**

**T**here was a great flurry of activity in the run up to 1 October 2007 when lots of our clients hurried to make Enduring Powers of Attorney (EPA) before the law changed. However, if you did not give an EPA in time, you cannot now have one. The new law has introduced Lasting Powers of Attorney (LPA) instead. Most solicitors predicted that the process of helping someone effect a LPA would be a more difficult and time consuming process than before, and correspondingly more costly, and it is true to say that the predictions were correct in that regard.

However, LPA's are now with us and they are not to be viewed with alarm. Indeed, the new documents have been introduced in order to minimise the risk of financial abuse for the donor and to offer you greater protection.

The old EPA dealt only with the financial affairs of the donor. The beauty of the LPA is it can deal with either the financial or the personal affairs of the donor, or both, at your election.

A Lasting Power of Attorney is a valuable document, especially so once you have lost or are losing the mental capacity to look after your own affairs. It gives you the opportunity in advance to chose the right person to act on your behalf; it gives you choice and it enables you to make those difficult personal decisions to provide for your future.

We are urging our clients not to shy away from facing these issues whilst they are fit and healthy. *Please contact us to make your appointment with Kathryn Tarry or Anjam Beg today on 0118 9842266.*

## Jersey Divorce ruling

**English Courts Snubbed?**

**W**althy individuals may now have further reason to move assets offshore, especially if they are about to marry or are married. It seems the long reach of the English law in terms of recovery of assets after division in divorce may not be as long as it once it was.

Until now, offshore jurisdictions such as Jersey and the other Channel Islands, and tax havens including British territories and dependancies in the Carribean, have usually bowed to the authority of the English Courts. Consequently millions of pounds have been handed over to divorcees pursuant to orders made here.

The tide may now be turning. In a recent decision in Jersey, the island's Royal Court rejected an order by the High Court in London that a millionaire Indian jeweller must hand over a share of his assets, held offshore on the Channel island in a trust previously shared with his ex-wife.

The Jersey ruling was made in the case of Mubarak v Mubarik, a long-running dispute over the wealth of Iqbal Mubarik, owner of the Dianoor jewellery chain, and who last year was ordered by the High Court to give his ex-wife money from a trust in Jersey thought to be worth about £18m. The Jersey Royal Court found that under the trust's own rules, Mr Mubarik was not legally entitled to pay his wife money from it, and refused to force him to do so.

The decision is likely to catch the eye of the super-rich, wary of settling down here due to London's reputation as Europe's costliest place to divorce. For the rest of us, there's always the lottery!



## Planning Changes?

**I**n the current economic climate and with the crash of the housing market, finally some changes which might benefit those who are forced to stay put, rather than selling and moving on or up.

Certain works to your home which previously would have required planning permission will now be allowed under the General Development Order as a permitted development.

These include

- a rear extension
- loft conversion
- roof extension

The changes to the Planning Laws came into force on 1 October 2008. Thereafter, subject to conditions, express planning permission will not be required for certain types of development.

In an attempt to combat flooding, the rules for

driveways are altered: certain works will actually require express planning permission.

Further, remember that local authorities have power to introduce local variations by using Local Development Orders, so please take advice before you build!

*If you want to find out more contact Anjam Beg on 0118 9842266 or [anjam@rwp-solicitors.co.uk](mailto:anjam@rwp-solicitors.co.uk)*

## MAKING YOUR WILL

### A FLEXIBLE APPROACH OFFERED BY rwp solicitors

**W**e are very aware of the importance of having a valid will and the need to regularly update it. We know that making or amending your Will can be daunting and is therefore neglected by some or put off to another day..

Because a Will is the **only** way of ensuring that your wishes are met, and your loved ones safeguarded and provided for after you die, with the least amount of worry, we have revised our service to make it easier for you to chose the most appropriate and cost effective way for you to do that.

### CHOOSE ANY ONE OF THESE THREE OPTIONS:

#### 1. FIXED FEE STRAIGHT-FORWARD WILLS

Simply telephone or email us for an instruction sheet which you can fill in at your leisure. Complete

and send it back to us and then make an appointment to come in. At a half hour interview you can discuss your requirements. We will then prepare a Will for you which meets those requirements and provide two witnesses so you can sign. It may even be possible to complete the whole document the same day. *The fixed fee for this service is £195 + VAT.*

#### 2. FIXED FEE STRAIGHT-FORWARD WILLS INCLUDING UPDATES AT ANY TIME DURING YOUR LIFETIME

As 1 above but includes amending (but not complete redrafting) your Will at any time in the future, as your circumstances change, without any extra charge. *The fixed fee for this service is £500 + VAT.*

#### 3. MORE COMPLICATED WILLS, TAILORED TO YOUR SPECIFIC NEEDS INCLUDING ALL ASPECTS OF INHERITANCE TAX AND ESTATE PLANNING

This option is suited to clients with complex affairs or possibly with a multiplicity of varying beneficiaries

with differing needs. We will spend as much time with you as you need, to assess your circumstances, both financial and personal, and advise you on the best way to prepare your Will, provide you with a draft for you to consider and continue to talk you through any aspects or worries until you feel, and are, happy to sign the final document. *The cost for this bespoke personal service will be based on our hourly charges of £215 plus VAT and will be calculated solely on the time spent on the matter.*

Whichever option suits you best, we will be pleased to keep your signed Will in safe storage at no additional charge.

You can be assured of a friendly, professional and personal service from a specialist qualified solicitor.

*Telephone Kathryn or Tricia on 0118 9842266 or email [kathryn@rwp-solicitors.co.uk](mailto:kathryn@rwp-solicitors.co.uk) or [tricia@rwp-solicitors.co.uk](mailto:tricia@rwp-solicitors.co.uk) to choose the best option for you.*

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