August 2021 News Articles

Stories included

Lasting Powers of Attorney to be made safer and simpler

The process of managing a loved one's affairs using a Lasting Power of Attorney (LPA) is to be made simpler and safer.

An LPA is a legal document that allows people to appoint someone else (an attorney) to make decisions about their welfare, money or property. They are often used by older people to choose someone they know and trust to make decisions for them should they lose capacity in the future - but can be made by anyone over the age of 18.

The number of registered LPAs has increased enormously in recent years to more than five million, but the process of making one retains many paper-based features that are over 30 years old.

The Office of the Public Guardian (OPG), which administers the system, has begun a 12-week consultation to examine the entire process – with a view to boosting the powers to prevent fraud and abuse while introducing a mainly digital service.

It will examine how technology can be used to update methods of witnessing, improve access and speed up the service.

The consultation will propose widening the OPG's legal powers to check identities and stop or delay any registrations that raise concern. It will also look at making the process for objecting to the registration of an LPA simpler to help stop potentially abusive LPAs.

While the service will become predominantly digital, alternatives such as paper will remain for those unable to use the internet.

Justice Minister Alex Chalk said: “A lasting power of attorney provides comfort and security to millions of people as they plan for old age.”

Nick Goodwin, Public Guardian for England and Wales, said: “More people are taking the vital step to plan for the future by applying for lasting powers of attorney, and we want to make sure that it is as safe and simple as possible to do so.”

The consultation will look at:

- How witnessing works, and whether remote witnessing or other safeguards are desirable
- How to reduce the chance of an LPA being rejected due to avoidable errors
- Whether the OPG’s remit should be expanded to have the legal authority to carry out further checks such as identification verification
- How people can object to an LPA and the process itself, as well as when is the right time for an objection to be made
- Whether a new urgent service is needed to ensure those who need an LPA granted quickly can get one
- How solicitors access the service and the best way to facilitate this.

Any substantial changes will require amendments to the Mental Capacity Act 2005 which brought in the current system.

We shall keep clients informed of developments.

Please contact us if you would like more information about Lasting Powers of Attorney.

UK house prices rise by 10% over the year but sales start to slow

UK house prices rose by 10% in the year to May, according to the latest figures from the Land Registry.

On a non-seasonally adjusted basis, average house prices increased by 0.9% between April and May this year, compared with an increase of 0.5% during the same period in 2020.

The UK Property Transactions Statistics showed that in May this year, on a seasonally adjusted basis, the estimated number of transactions of residential properties with a value of £40,000 or greater was 114,940.

This is 138.2% higher than a year ago.

However, there are signs that the housing market is slowing down. Between April and May, UK transactions decreased by 3.8% on a seasonally adjusted basis.

House price growth was strongest in the North West where prices increased by 15.2% in the year to May. The lowest annual growth was in London, where prices increased by 5.2%.

In England, the May data shows that house prices rose by 0.4% compared with April.

The regional data indicates that:

- the North East experienced the greatest monthly price rise, up by 1.4%
- the East of England saw the lowest monthly price growth, with a fall of 1.0%
- the North West experienced the greatest annual price rise, up by 15.2%
- London saw the lowest annual price growth, with a rise of 5.2%

Please contact us if you would like advice about the legal aspects of buying or selling a home.

Cohabiting couples with children to qualify for bereavement benefit

Cohabiting couples are to qualify for bereavement payments if one of them dies leaving dependent children.

Previously, a surviving parent could only claim the financial support if they had been married or in a civil partnership at the time of their spouse or civil partner's death.

Under plans being drawn up by the government, Widowed Parent's Allowance and Bereavement Support Payments will be extended to surviving cohabiting partners with children who were living with their partner at the time of death.

It's estimated that more than 22,000 families will now be able to claim this help, totalling an additional £320 million in support for bereaved children over the next five years.

Work and Pensions Minister Baroness Stedman-Scott said: "The death of a loved one is devastating and can also come with significant financial implications. This change will mean more families can access support during the most difficult of times, and I hope to make that possible as swiftly as I can."

Once approved by Parliament, the changes will apply retrospectively from 30 August 2018, with any backdated payments being made as lump sums.

The changes are to be welcomed but cohabiting couples still have far fewer legal protections than those who are married or in civil partnerships.

In fact, cohabitees have very few automatic legal rights, which means they could lose their home and large sums of money if their relationship ends. For example, one partner may be forced to move out of their home if their name is not on the title deeds, even if they have lived there for many years and helped to pay the mortgage.

The Law Society has urged cohabiting couples to draw up living together agreements to decide in advance how their assets should be divided if their relationship breaks down.

It has offered helpful advice on the kind of areas cohabitation agreements can cover. These include:

- how you pay rent, mortgage or household bills

- finances, for example what happens to joint bank accounts or pensions
- property and assets – owned before or bought while living together
- arrangements for children
- pets
- next of kin rights.

Pension access and property title deeds are also important areas to consider alongside a cohabitation agreement.

Each partner should also make a will if they want to make sure they inherit from each other if one of them dies. This could be particularly important for those who are still married to a previous partner but now live with someone else. If you don't make a will and are still married, your estranged spouse could end up inheriting most of your estate leaving your current partner with nothing or very little.

It is important to consult your solicitor to ensure the cohabitation agreements are properly drawn up.
For an agreement to be valid both partners need to enter into it freely and voluntarily, the agreement needs to be in the form of a deed and each person needs to sign it.

Each partner should get legal advice independently of one another to make sure they understand and are happy with the agreement. It's also important to keep the cohabitation agreement updated to cover new events such as the birth of a child or the purchase of property.

Please contact us if you would more information about the issues raised in this article or any aspect of family law.

Father can't use Hague Convention to get children returned to Austria

A father has been told that he cannot invoke the Hague Convention to have his children returned to Austria after their mother took them to live in England.

The Family Court was told that the children were British citizens born in the UK in 2012 and 2019 and were aged nine and two.

The parents had a volatile relationship. The mother alleged that the father was controlling and violent, had affairs, and had raped her on two occasions. Her case was that the father had family in Austria, he set up a business and moved there in June 2019, and she and the children joined him in July 2019 for a trial period to try to save the marriage.

In February 2020, the mother returned to England with the children permanently. She claimed that the father had agreed to their return; however, he asserted that he had agreed to what he believed was only a weekend break.

The father applied for them to be returned to Austria under the Hague Convention on the Civil Aspects of International Child Abduction 1980.

The court ruled against him. It held that for him to successfully argue that the mother had wrongfully retained the children in England in February 2020, the children had to have been habitually resident in Austria at that point.

The court was satisfied that neither child had achieved the requisite degree of integration in Austria to establish habitual residence. Rather, they had remained habitually resident in England. Consequently, the retention was not wrongful under the Convention.

That conclusion was based on the fact that the eldest child was born in the UK, was a British citizen with a UK passport and lived in England for the first seven years of her life. She attended school in England and had friends she had known since nursery.

Accordingly, she had a deep connection with England, established over several years since birth.

The youngest child had a lesser connection given her age, but it was still a strong one. Both children were habitually resident in England prior to their departure to Austria in July 2019.

The court was satisfied that, at the time the mother and children travelled to Austria in July 2019, it was the mother's intention that the move was for a trial period and the father was aware of that.

Although the children were registered as residents on arrival in Austria and had a right of abode there, it was necessary to consider the stability of that residence.

First, the eldest child's attendance at school in Austria was irregular to the extent that the father had been fined for her absence. There was no evidence that she became integrated within a friendship group among her peers, participated in school or social activities, or developed German language skills.

Second, the children lived in a highly dysfunctional home, characterised by frequent arguments and domestic violence that had resulted in the children's family life becoming the subject of investigation by the Austrian police and assessment by Austrian social services.

Third, their six-month residence in Austria was not uninterrupted. They had briefly returned to England and were then separated from their mother for six weeks in Austria, further disrupting any integration there.

Fourth, there had been an additional level of conflict involving the father and his relatives in Austria, further militating against the children developing a degree of family and social integration while there.

Fifth, the youngest child's social and family environment was associated with those on whom she was dependent. Although the father was well settled and integrated in Austria while the children were there, the mother was not.

Sixth, the eldest child had made clear that she continued to view the concept of home as applying only to England.

For all those reasons, the children's family and social lives were highly unstable and disrupted such that they had not achieved the requisite degree of integration in Austria to end their habitual residence in England.

Please contact us if you would like more information about the issues raised in this article or any aspect of family law.

Landlord loses service charge appeal after failing to consult tenants

A landlord has lost its appeal against a decision that it could not impose service charges for certain works because it had failed to consult tenants properly.

The landlord owned several flats let on long leases. It carried out various works to the flats and, in 2017, sought to recover the cost from the lessees through the service charge.

It applied to the First Tier Tribunal (FTT) for a determination of how much the charge should be.

The FTT held that one aspect of the works, the complete replacement of the asphalt on balcony areas, had been unnecessary and its cost could not be passed on through the service charge. It also held that the asphalt replacement had not been part of the pre-works consultation conducted by the landlord as required by the Landlord and Tenant Act.

The landlord applied for dispensation from the consultation requirements so that it might again try to include the cost of the asphalt work in the service charge.

The lessees objected, arguing that the lack of consultation had deprived them of the opportunity to seek expert advice on the work and to assess whether there was a more economic approach.

The FTT found that the lessees had made out a credible case that they had been prejudiced by the lack of consultation.

In reaching that decision, it relied on evidence of one lessee (M) that she would have referred to an expert had the scale and extent of the balcony works been properly communicated at the start of the consultation process.

However, it granted dispensation on condition that the landlord paid the reasonable costs of an expert to advise the tenants on the necessity of replacing the asphalt plus the tenants' reasonable costs of the dispensation application.

The landlord appealed, arguing that the lessees had not shown prejudice because they had not adduced expert evidence that the asphalt replacement was unnecessary.

The case went all the way to the Court of Appeal, which upheld the tribunal’s decision.

It held that the FTT had been entitled to find that M would have commissioned a surveyor's report had the landlord's notice of intention referred to the balcony works.

M had inspected the estimates and put in observations, which made it the more plausible that she would have instructed an expert.

Consultation was a group process in which a landlord had to supply each tenant with notice of their intention to carry out works. If all tenants suffered prejudice because a defect in the consultation process meant that one had not persuaded the landlord to limit the cost of works in some respect, there was no reason why the FTT should be unable to make dispensation conditional on every tenant being compensated.

Please contact us if you would like more information about the issues raised in this article or any aspect of commercial property law.

Judge was wrong to order that children be returned to ‘abusive’ father

The Court of Appeal has ruled that a judge was wrong to order that two children should be returned to their father, who the mother claimed had been abusive.

The mother was English, and the father was American. They married in 2015 and lived in England with the mother’s daughter from a previous relationship.

In 2017, they had a child together. The father returned to live in the US for his job but visited every few months. They had another child in 2018. In November 2019, the mother and the children moved to the US to join the father.

He lost his job in 2020, and mother and the children returned to England.

She gave him no prior indication that they were leaving the US and misled him as to what they were doing on the day they left.

The father made an application under the Hague Convention on the Civil Aspects of International Child Abduction 1980 for the return of his two children.

The mother responded that the children were not habitually resident in the US at the date of their removal; that the father had acquiesced in their remaining in England; and that there was a grave risk that the children's return would expose them to physical or psychological harm or otherwise place them in an intolerable situation.

She alleged that the father was guilty of serious domestic violence to her; a highly abusive sustained course of conduct towards her eldest daughter, which included making it known that he didn't want her in the US, grabbing her and confining her to her room.

She claimed he had also been abusive to one of the other children by smacking her, squeezing her ribs and threatening her with a belt.

The judge ruled against the mother saying there was no ground for refusing to order the return of the two younger children to the US.

The Court of Appeal overturned that decision.

It held that the judge's approach was flawed. She had not analysed the effect of the allegations of abuse but had improperly discounted them by reference to their being "no mention of smacking" in the mother's messages to her friends and by reference to "the context of considerable stress" of the family situation.

As a result, she had not considered how the children would be protected from the risk that would be created if they were living with the father, if the allegations were true.

The judge's analysis had also failed to recognise the effect of the children being placed in the care of the father against whom serious allegations had been made.

It would create a grave risk of physical or psychological harm if the children returned to their father because their mother would not be there to protect them as she had refused to return to the US.

This was not because she was unfairly trying to take advantage of her own wrongful abduction.

She had a valid reason for remaining in the UK as the eldest daughter's situation in the US had become untenable. The separation of the children from their mother further reinforced the creation of a grave risk to their wellbeing.

There was nothing in the circumstances that justified the court exercising its discretion other than by declining to order the children's return.

Please contact us if you would like more information about the issues raised in this article or any aspect of family law.

Care order placing child with mother instead of foster parents set aside

The Court of Appeal has set aside a court order that a girl should be returned to her mother rather than stay with foster parents.

The girl was 18 months old and was referred to in court as X. Her mother had agreed to X being accommodated with foster parents when she was three days old. The mother had seven other children who were the subject of care proceedings.

The local authority applied for a placement order in respect of X. The options were care and placement orders or X being cared for by the mother.

A social worker had reported that the mother would need an intensive package of support if X were returned to her care. The judge heard evidence from the mother, two social workers and the guardian.

The social workers supported the local authority's plan for adoption, but the guardian noted that it was a finely balanced case and recommended that the hearing be adjourned to enable the local authority to prepare a support and rehabilitation plan.

Before addressing the welfare checklist and without balancing the proposed care options, the judge concluded that the mother could parent X with appropriate support and a comprehensive support plan.

He held that adoption was a draconian order of last resort and "something else would do".

The judge determined the care proceedings by rejecting the local authority's care plan for adoption and concluded that X should be restored to her mother's care.

The Court of Appeal has set aside that decision.

The court noted that all the parties involved had not agreed the threshold for making a care order before the hearing, but the judge proceeded on the basis that the threshold criteria had been crossed, which was not satisfactory.

Either the facts which established the threshold had to be agreed or they had to be determined by the court. The judge rejected adoption before his analysis of the welfare checklist. The judgment did not contain any comprehensive evaluation of the positives and negatives of the two competing options, which was required in every case.

As a result of his rejection of adoption before he had undertaken any welfare analysis, he did not analyse the pros and cons of each option.

The absence of any clarity as to what package of support would be available to the mother meant that the judge was not able to carry out the required balancing exercise. The order was set aside because the judgment did not contain the required analysis.

The case was remitted for a rehearing.

Please contact us if you would like more information about the issues raised in this article or any aspect family law.

Cases featured

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K v T
11 June 2021
[2021] EWHC 1525 (Fam)
MacDonald J

Landlord loses service charge appeal after failing to consult tenants
Aster Communities v Chapman
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[2021] EWCA Civ 660
King LJ; Newey LJ; Phillips LJ

Judge was wrong to order that children be returned to 'abusive' father A (Children) (Abduction: Article 13(b)), Re
Court of Appeal (Civil Division)
Judgment Date
23 June 2021
Where Reported
[2021] EWCA Civ 939
Moylan LJ; Baker LJ; Arnold LJ;

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8 July 2021
[2021] EWCA Civ 1019
Moylan LJ; Baker LJ; Nugee LJ