



## July 2021 News Articles

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### **New scheme offers 30% discounted homes to first time buyers**

First time buyers are being offered discounted homes as part of a new government housing scheme.

The First Homes scheme will help local first-time buyers on to the property ladder by offering homes at a discount of at least 30% compared to the market price.

That same percentage will then be passed on with the sale of the property to future first-time buyers, meaning homes will always be sold below market value – benefiting local communities for generations to come.

The scheme will support local people who struggle to afford market prices in their area but want to stay in the communities where they live and work.

The first properties went on the market in Derbyshire on June 4. Further sites are set to launch across the country in the coming weeks. A further 1,500 will enter the market from the autumn, with at least 10,000 homes a year being delivered in the years ahead and more if there is demand.

Major high-street lenders Halifax and Nationwide Building Society, along with local building societies and community lenders, announced that they will be offering high loan-to-value mortgages against First Homes to support the roll-out of the scheme.

First Homes follows on from the 95% mortgage guarantee scheme which helps first-time buyers secure a mortgage with just a 5% deposit and the government's 'Own Your Home' campaign showcasing the range of flexible home ownership options available.

First-time buyers can find the right scheme for them via the [Own Your Home website](#) which provides a single gateway for all routes to home ownership.

Housing Secretary Robert Jenrick said: “These homes will be locked in for perpetuity to first-time buyers and key workers from their local area – making them an asset to both their owners and the wider local community.”

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

## **Introduction of no-fault divorce delayed until next year**

The introduction of no-fault divorces, which was due to take place this autumn, has been postponed until next year.

The courts minister Chris Philp made the announcement in response to a parliamentary question.

He said the provisions of the Divorce, Dissolution and Separation Act 2020 must be put back because not enough progress had been made in making the necessary preparations. The Ministry of Justice (MoJ) is now hoping to go ahead by 6 April 2022.

The cautious approach reflects the concerns expressed by critics of the bill that it will make it too easy for couples to end their marriage before exploring every avenue to find a way to stay together.

Under current law, one spouse must allege adultery, unreasonable behaviour or desertion in order to start divorce proceedings immediately.

Under the new law, they will only have to state that the marriage has broken down irretrievably.

The Act also allows couples to jointly apply for a divorce, where the decision to separate is mutual.

As a safeguard against couples rushing too quickly into ending their marriage, there must be a minimum six-month period between the lodging of a petition to the divorce being made final.

The MoJ is working with the family procedure rule committee to identify what amendments are needed and create new practice directions.

Philp said: ‘The Ministry of Justice is committed to ensuring that the amended digital service allows for a smooth transition from the existing service which has reformed the way divorce is administered in the courts and improved the service received by divorcing couples at a traumatic point in their lives.

‘Following detailed design work, it is now clear that these amendments, along with the full and rigorous testing of the new system ahead of implementation, will not conclude before the end of the year.’

Law Society president I. Stephanie Boyce said: “While we’re disappointed at the delay to the reforms, we welcome the continued commitment to ensuring the reforms are fit for purpose. It is better to have a working system in place rather than forging ahead when there are known issues.”

We shall keep clients informed of developments.

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

## **Adult brothers not entitled to further money under father's will**

Two adult brothers have failed in their attempt to be given a share of their deceased father's estate after being left out of his will.

The High Court ruled that it was clear that the father had made provision for them while he was alive and did not want them to receive anything further.

The brothers were aged 40 and 39. Their father had been married to their mother for 34 years. The couple divorced in 2007.

The marital assets were split approximately 50/50. He remarried and, in 2015, made a will under which his second wife was principal beneficiary.

The father died in 2017. His estate was worth around £2.2 million.

The court heard evidence that the father and his first wife had funded the private education, gap years and university courses of both brothers.

In 2008, following the sale of a property in London, the father gifted one brother £177,000 and the other £185,000. In a letter to them at the time, he indicated that they should invest the money in property and that they should expect no further financial assistance from him.

Further correspondence supported his expectation that they would be financially independent following the gifts.

Following his death, the brothers applied for an order under the Inheritance (Provision for Family and Dependents) Act 1975 for reasonable financial provision to be made for them from their father's estate.

The court rejected the application.

It noted that the brothers were adults who had lived their own lives and made their own lifestyle decisions without any further financial assistance after 2008.

Neither could demonstrate needs for maintenance which they could not meet, if necessary, by adjustment to their lifestyle. Both had received financial assistance from their mother over the years following the divorce.

A parent was not legally obliged to maintain an adult child. The father had no obligations or responsibilities towards either brother at the time of his death. On their own evidence, they had sought further financial assistance from him after the 2008 gifts, which he had refused.

The most important aspect of his relationship with the brothers as far as their claim was concerned was that, after he made the 2008 gifts, he was not prepared to provide further financial assistance to them.

In all the circumstances, the father's will did not fail to make reasonable financial provision for them.

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

## **Mother ordered to return abducted children to Lanzarote**

A mother who wrongfully removed her two sons from their home after separating from their father has been ordered to return them to Lanzarote.

The two boys, referred to only as X and Y, were three years and 18 months old, respectively.

The father was Italian but had lived in Lanzarote since he was seven and was now 36. Both boys were born in Lanzarote. The parents were never married.

The mother, who was British, described their relationship as one in which she felt controlled and coerced, and in which she suffered more vivid forms of domestic abuse, including physical violence.

On 14 January 2021, the mother removed X from school, and flew with the boys to England; she did that without notice to the father and without his consent. The father immediately lodged a complaint with the police in Lanzarote, alleging abduction.

The mother issued proceedings in Spain for sole custody and guardianship of the two children, and financial maintenance. Within those proceedings, the mother sought leave to relocate the children to England, offering contact with the father.

There was to be a hearing to be arranged in the court in Spain.

They were currently staying with the mother's father in England. If there had been a wrongful removal of the two boys from Lanzarote to England, the court would be obliged to order the return of the children under the Hague Convention on the Civil Aspects of International Child Abduction 1980 unless specified exceptions applied.

The mother sought to demonstrate that there was a "grave" risk that the return of the boys to Lanzarote would expose them to "physical or psychological harm or otherwise place them in an intolerable situation".

The High Court ruled against her. It held that there had been a wrongful removal of the two boys from Lanzarote to England. The mother had failed in her efforts to demonstrate that her case fell within the limited exceptions specified in the Convention.

Thus, the court was obliged to make a return order in respect of the children. However, it would be wrong to require the mother and children to return to Lanzarote until after the hearing within the domestic custody proceedings in the court in Spain.

The Spanish court might undertake a much more focused welfare review and reach a welfare decision by reference to the children's best interests, and it would be wrong to require the mother and children to return to Lanzarote only for the Spanish court to rule a few weeks later that it would be in the boys' best interests for them to return to England.

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

## **Court outlines tests for delusional mindset when making a will**

The High Court has outlined some tests for mental capacity and whether a person may have had delusional beliefs when making a will.

The issue arose following a family dispute involving a brother and sister.

Their parents had divorced in 1980 when their mother discovered letters written by her husband which revealed that he had sexually abused his daughter, the sister in this case.

When the mother died, she left the daughter out of her will because their relationship had deteriorated over the years.

The daughter responded by challenging the will.

The judge found that the mother had "taken against" the daughter and irrationally maintained that the daughter had cut her out of her life, rather than the other way around.

She made wills in 2010 and 2013. In the 2010 will she left a diamond ring to the daughter and her residuary estate to her son.

In the 2013 will she left everything to her son and his family. The daughter was to receive nothing.

She had said that she would not give anything to the daughter as she was "a shopaholic and would just fritter it away". She also believed that the daughter had never been sexually abused by her father and that there were no letters proving the abuse existed.

The judge found that the mother's beliefs were irrational to the point of being delusional. He accepted the evidence of the daughter's expert that the mother was suffering from an affective disorder which included a complex grief reaction and depression which impaired her testamentary capacity.

The brother appealed but the High Court upheld the decision and outlined the correct tests for assessing delusional behaviour.

When considering whether a testator (person making a will) held delusional beliefs impairing their testamentary capacity, the relevant false belief had to be irrational and fixed in nature.

However, it was not essential to demonstrate that it would have been impossible to reason the testator out of the belief. It would be sufficient to show that the belief was formed and maintained in the face of clear evidence to the contrary, of which the testator was aware and would not have forgotten.

The case was adjourned to allow the brother and sister time to reach an amicable agreement without the stress and cost of further court proceedings.

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

## **Wife fails to overturn divorce obtained by husband in China**

The Family Court has rejected a wife's application to overturn a divorce obtained by her husband in China.

It held that the husband had taken reasonable steps to notify her of the proceedings and she had had reasonable opportunity to take part but had declined to do so.

The wife was 34 and of Polish origin. The husband was 45 and Chinese. They married in 2017 and the wife joined the husband's company in a senior role.

The couple based themselves in England but spent time in China for business purposes. The husband's business was very successful, he was considerably wealthy, and the couple's lifestyle was opulent.

However, they separated in early 2019 and the wife was dismissed from the business. The husband supported her financially for a few months but then closed their joint account and provided nothing.

The wife began divorce proceedings in England in May 2019, which became delayed. In the meantime, the husband had returned to live in China and began divorce proceedings there in October 2019.

It was common ground that, the wife was likely to receive no financial relief under a Chinese divorce.

The Chinese court set a hearing for 22 April 2020. The husband did not attempt to notify the wife of the Chinese proceedings until 10 April, when his lawyers emailed her.

He had no postal address for her as she kept it private, having asserted that he was violent against her.

The Chinese court adjourned the case until November. The husband continued to send correspondence to the wife's email address, but she took no part in the proceedings. Following the November hearing, the Chinese court issued a ruling in December permitting the divorce.

The ruling allowed for the wife to appeal but she did not do so.

The wife contended that, under the Family Law Act 1986, the divorce should not be recognised because she was not properly notified of the proceedings or given the chance to participate. She also made allegations against the Chinese legal system.

The court refused the application for several reasons including:

- Although she was not made aware of the divorce proceedings when the husband issued them in October 2019, she knew about them by April 2020. She knew which court was involved and the identity of the judge.
- The court did not underestimate the difficulties for a foreign national in attempting to participate in proceedings in China. However, the mere fact of such problems was not enough to prevent the husband from relying on a properly obtained divorce.
- The husband should have attempted to notify the wife of the Chinese proceedings well before April 2020, but the April hearing was adjourned until November 2020 and little or no prejudice appeared to have been caused to her. From April she had had the opportunity to participate. She could have attended in person, with a friend or interpreter. She could have instructed a lawyer or executed a power of attorney to authorise someone to attend on her behalf.
- The wife was well aware of the Chinese decree of divorce and the appeal route available to her, but she chose not to appeal. It was not the fault of the Chinese court or the husband if the wife did not take steps available to her.

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

#### **Adult brothers not entitled to further money under father's will**

Miles v Shearer  
 [2021] EWHC 1000 (Ch)  
 23 April 2021  
 Sir Julian Flaux C

#### **Mother ordered to return abducted children to Lanzarote**

C v B  
 27 May 2021  
 [2021] EWHC 1369 (Fam)  
 J Cobb

#### **Court outlines tests for delusional mindset when making a will**

Clitheroe (Deceased), Re  
 Also known as: Clitheroe v Bond  
 Chancery Division  
 4 May 2021  
 [2021] EWHC 1102 (Ch)  
 Falk J

#### **Wife fails to overturn divorce obtained by husband in China**

J v J  
 Family Court  
 14 May 2021  
 [2021] EWFC 43  
 Peel J