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

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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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## How Brexit affects divorce across UK and EU

The connection between Brexit and divorce may not be immediately apparent but it is real and is already having some major effects.

The most obvious has been the shelving of the commitment made under Theresa May's government to end the 'blame game' in divorce.

The government wanted to introduce legislation to improve the process and remove some of the stress and animosity that sometimes occurs in divorce proceedings.

However, the fact that Brexit took up so much parliamentary time meant the plans had to be put on hold. The General Election created more uncertainty and it's unclear when, or even if, the new government will resurrect the proposals.

Meanwhile, the Ministry of Justice (MoJ) has issued guidance on how couples should deal with cross border divorce after the UK leaves the European Union.

It says that if your divorce is making its way through the courts in England or Wales at the time the UK leaves the EU then your case will continue under current rules and you do not need to take any further action.

If you apply for divorce after the UK leaves the EU, new rules will be in place, but you should apply in the same way. If your divorce has been made final in the UK before Brexit and you



are a UK citizen divorcing an EU national or person living in the EU, or if you are an EU citizen, then you will need to take steps to make sure your divorce is recognised in the EU.

You should therefore get a certificate from the court that granted your divorce and send it for acceptance (registration) to the EU country you need to recognise your divorce.

The MoJ statement suggests that you speak to your solicitor to get specific advice about your case and any action needed.

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## Oldest worker to win age claim awarded £200,000

An 89-year-old woman who became the oldest person in the UK to win an age discrimination claim after being dismissed from her job has accepted a cash settlement of £200,000.

Eileen Jolly told the Employment Tribunal that she felt "humiliated and degraded" by the way she was treated by the Royal Berkshire NHS Foundation Trust.

Mrs Jolly had started working for the NHS in 1991 when she was 61. In 2005, she became a medical secretary. Part of her role involved ensuring that no one went beyond the 52-week waiting time limit for surgery.

The system was changed in 2015 to an electronic patient record system. Mrs Jolly was scheduled to receive formal training on the new system but, for reasons outside her control, that never took place.



When she returned from holiday in 2016, she was called to see the director of operations who told her to collect her things and leave the premises because she was being investigated in relation to breaches of the 52-week deadline.

A trust manager carried out an investigation which included feedback from Mrs Jolly's colleagues about her age and frailty. She was then dismissed for failing in her duties to manage the waiting list.

The Employment Tribunal upheld her claim of unfair dismissal and age

discrimination. Judge Gumbiti-Zimuto said: "There is a suspicion of the Claimant (Mrs Jolly) being a scapegoat.

"She was not offered training where it might be considered appropriate (remembering that this is a case where an investigation found that consultants and admin staff required more training).

The judge added that the Trust's investigation had been unreasonable because it took into account comments from colleagues about Mrs Jolly's age and frailty.

Mrs Jolly was due to appear at a separate hearing to determine the level of compensation she should receive but has now agreed an offer from the trust of £200,000.

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## Taking medical and legal steps against illness

With no cure for dementia diseases like Alzheimer's likely to emerge soon, health organisations across the world are stressing the need for people to take preventive measures to protect themselves as they get older.

The NHS official guidance says: "There is currently no 'cure' for dementia. In fact, because dementia is caused by different diseases it is unlikely that there will be a single cure for dementia."

The NHS says research has shown that cardiovascular diseases increase the risk of Alzheimer's and vascular dementia.

The risk can be reduced if people take preventive measures such as stopping smoking, keeping alcohol consumption to a minimum, eating a healthy, well balanced diet and exercising for at least 150 minutes a week.

As well as health issues for sufferers of debilitating illnesses, there are also practical matters relating to how their

financial and business affairs should be managed. Sufferers may have to rely on their families to make important decisions for them, but this can be difficult if legal arrangements have not been made in advance. Families may have to go through complicated court procedures to be granted authority to manage the sufferer's affairs.

You may not be able to predict your future health, but it is possible to put procedures in place so that people you trust will be able help you if you do fall ill in the future. The best way to do this is by setting up a Lasting Power of Attorney (LPA).

An LPA enables you to nominate someone you trust to make decisions on your behalf if you ever lose the ability to do so yourself through illnesses such as dementia.

The property and finance LPA allows you to appoint someone to look after your financial affairs and the personal welfare LPA lets you grant an attorney



authority over such matters as health care and the kind of treatment you receive.

They give you the peace of mind of knowing that whatever happens in the future, your interests will be protected by people you trust and have chosen to represent you.

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## Mother fails to prevent children living with grandparents

A mother has lost her appeal against a special guardianship order that placed her children in the care of their paternal grandparents.

The case involved children who had been the subject of a child protection plan due to parental neglect.

A residency order was made and the children lived with their parental grandparents.

The mother was allowed contact but wanted her children to be returned to her.



### Family Law

The local authority brought care proceedings after allegations of mistreatment were made against the grandparents and the children's father.

The judge could see no evidence that the grandparents had behaved in any way that could be harmful to the children. He heard that the mother's home was not a safe environment due to a risk of domestic violence.

He granted a special guardianship order (SGO) to the grandparents.

The Court of Appeal upheld the decision. It would only consider overturning the judge's ruling if it was proven that it had been irrational.

That was not the case. The judge was entitled to listen to the professional advice from the local authority's social and care workers.

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## Court upholds woman's second will despite her dementia

The High Court has declared that an 86-year-old woman's will was valid even though she suffered from dementia at the time she made it.

The case involved a family dispute between two brothers and two sisters.

Their mother had died in 2015, aged 86. She had made a will in 2010 leaving her house to one of the brothers.

However, she then made a second will in 2011 declaring that her estate should be shared equally between all four siblings.

The brother who had originally been left the house claimed that his mother was suffering from dementia when she made the 2011 will and so lacked testamentary capacity.

He said the 2010 will, leaving him the house, should therefore stand.

The court heard evidence from the mother's solicitor who confirmed that he had no concerns regarding her mental capacity.

She had left the brother her house in the 2010 will because she felt she had helped him less than the other siblings.

However, on reflection, she changed her mind about this and so decided to divide everything equally.

The court upheld the 2011 will. It held that the evidence showed the mother understood what she was doing. She had given clear instructions and had acted promptly in executing the second will.

Her dementia had not adversely affected her testamentary capacity.

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# Government issues guidance on buying a home

The government has issued a comprehensive guide on how to buy a home. The guide focuses on freehold properties and will be particularly useful to first time buyers.

It takes you through the various stages of the process, beginning with how to work out how much you can afford. It also looks at the various schemes available for people just starting out on the property ladder, such as Help to Buy ISAs.

There is also some useful advice on preparing to apply for a mortgage, including how to check your credit score before approaching a bank or building society.

Many people, even those who have bought properties in the past, may not be aware that they have to provide proof of identity as part of the anti-money laundering regulations.

The guide says: "Estate agents, lawyers and mortgage lenders are required by law to check your identity to prevent money laundering and fraud.

"At several stages during the transaction you will have to produce documents to prove your identity or address and information on your source of funds. This could include receipts from the sale of another property, savings, inheritance



monies and financial gifts from family and friends.

"Checking this information is a legal requirement to help safeguard your transaction; failing to provide ID documents could slow down the process."

The guide also offers advice on choosing a home, applying for a mortgage and the differences between buying an older property and one that is newly built or still at the planning stage.

Many people choose to sell their home as they get older and move into

specialist retirement properties. The guide says that while this may have many advantages, buyers should be aware that such properties are likely to be sold as leasehold rather than freehold, meaning you may have to pay ground rent, service charges and event fees, or be subject to restricted sales clauses.

It says: "You should do your research carefully and make sure you and your legal representative check the small print in detail to understand current and future costs."

The guide stresses that buying a property will probably be the largest purchase you will ever make in your lifetime, so it is crucial to get all the right information and the right kind of expert help, particularly from a solicitor.

It says: "Once your offer has been accepted, you need to select a legal representative. They play a key role in helping you purchase your home – they carry out the appropriate legal checks on the property, complete the legal work for your property purchase and, if you are getting a mortgage, ensure that it meets your lender's requirements.

"They will identify any title or planning issues; advise you on which searches to have carried out and do the legal work of transferring the ownership of the property from the seller to you.

"You should instruct a legal representative as soon as your offer has been accepted, but if you have any special requirements (for example if you only want a home which you can run a business from), you might want to instruct a legal representative to check this for you before you put your offer in."

## Women 'should have right to know men's pay rates'

Eight out of ten people say women should have the right to know how their pay compares with male colleagues doing the same work.

The Fawcett Society, a charity that campaigns for gender equality, carried out research showing that one in three women had no idea what their male co-workers were paid, leaving them unaware of possible discrimination.

Four out of ten women who were able to find out the comparable rates reported that male colleagues were on higher wages for doing the same work.

The polling shows that 79% of people agree that a woman should be able to find out whether she is being paid less than a man for equal work. That includes 74% of men.

Sam Smethers, Fawcett Society Chief Executive, said: "Nearly 50 years on from the Equal Pay Act, equal pay for equal work is still a distant dream for many women. Pay secrecy means



women cannot know if they are being paid equally and fairly."

It's against the law to discriminate against women by paying them less than men for doing the same or broadly comparable work.

Women who suspect they earn less than their male counterparts should seek legal advice as soon as possible.

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# Refunds for people overcharged for deputyships

People who were overcharged when arranging deputyships over a seven-year period can now claim refunds.

It's thought the average pay-out could be £240.

The Ministry of Justice (MoJ) sets the level of fees for the appointment of deputies, who help people that lose the capacity to manage their financial and welfare interests. The Office of the Public Guardian (OPG) administers the process.

The refunds are being offered to those who were charged more than was necessary for certain deputyships for any period between 1 April 2008 and 31 March 2015.

A statement from the OPG said: "Due to difficulty in predicting costs as the number of deputyships rose faster than expected, the fees charged did not match how much it cost OPG to supervise.

"Since 1 April 2015, clients have not been overcharged."

If you are a former client now able to make all your own decisions, the former client's attorney or acting on behalf of someone who has died, then you will need to apply for a refund. Full guidance for those applying is available online



and there is a dedicated refunds helpline for those who need it. If you think you may be eligible you can visit [www.gov.uk/deputyship-refund](http://www.gov.uk/deputyship-refund) to get more details and to apply.

People who don't have internet access or need help with their refund can contact the OPG on 0300 456 0300 and select option 6 to speak to a member of the refunds team. The scheme is open for 3 years so there's plenty of time to apply.

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## Court allows trust correction to prevent £112,000 tax bill

A family have succeeded in correcting an error in a trust fund that would have resulted in a tax bill of £112,000.

The case involved a trust created in 2011 in respect of the estate of a man who had died in 2010.

A beneficiary of his will was entitled to £250,000 from his estate.

To avoid inheritance tax becoming payable on her death, she executed the Deed of Variation under the Inheritance Tax Act 1984, meaning that her interest in the estate was given to the trust.

In February 2012, she required further income so it was proposed that the trustees make an appointment to her, giving her an irrevocable life interest in the trust, so that income from the trust fund could be mandated to her.

A tax expert said that the appointment would not affect tax planning. On that advice, the trustees executed the Deed of Appointment (DoA).

On the beneficiary's death in 2016, it became apparent that the specialist's advice was incorrect. The interest created under the DoA was treated

as part of her estate, creating a £112,000 tax liability.

The trustees applied to have the DoA rescinded as it had been created in error following mistaken advice.

The court accepted that the trustees would not have entered into the DoA if the correct advice had been given.

It would be unfair to leave the mistake uncorrected and so rescission should be granted.

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