

LAW BRIEF

Cohabiting couples could be granted improved inheritance rights

Cohabiting couples who have lived together for five years could be given the same rights as married couples to inherit their partner's estate if he or she had failed to make a will.

The proposal has been put forward by the Law Commission as part of a major overhaul of the law relating to wills and intestacy. The Commission points out that many cohabitants believe they already have the same rights as spouses but this is not the case.

As the law stands now, if a person dies intestate – that is, without having made a will – then their cohabiting partner has no automatic right to inherit the estate.

Instead, the estate will be divided using a complex process laid down by law. This is the case regardless of how long the couple had lived together and even if they had children together.

In some circumstances, the surviving partner may be able to go to court to challenge the distribution of the estate but it can be difficult and emotionally draining, especially for someone who is still grieving for the loss of their partner.

The Commission is therefore proposing that couples who have a child together or who have lived together for five years or more should have the same rights on intestacy as spouses.

It also proposes that childless couples who lived together for more than two years but less than five should be entitled to half of the share of the estate that a surviving spouse would receive. However, the surviving partner would not receive anything under the intestacy rules if the deceased was still married or in a civil partnership at the time of death. The Commission also proposes changes relating to married



Rules relating to spouses may also change

couples. It says: "Where the deceased is not survived by any children (or grandchildren or great-grandchildren), his or her spouse is entitled to everything in the estate up to a maximum of £450,000 but must share anything over that sum with any surviving parent or any surviving brother or sister of the deceased.

"We have proposed changes to the intestacy rules so that a surviving spouse would inherit the whole estate in such cases."

There are several other proposals and the Commission has launched a public consultation which runs until February. It's hoped that a draft Bill will be produced within two years.

If the proposals are adopted they will provide the biggest shake-up of intestacy rules for many years and will provide more protection for many people, particularly cohabiting couples.

However, the best way for couples to protect their interests, whether they are married or not, is simply to draw up a will and keep it up to date. That removes all uncertainty and enables you to ensure that your estate is divided exactly according to your wishes.

Unfortunately, tens of thousands of people die each year without having made a will. That's when the uncertainty and the problems arise for their families and loved ones.

Please contact us if you would like more information about making a will.

Rising dementia figures highlight need for LPAs

The number of people suffering from dementia is expected to double over the next 20 years, according to a report published by Alzheimer's Disease International.

The research team was led by Professor Martin Prince of the Institute of Psychiatry at King's College London.

The report predicts that by next year there will be 35 million people worldwide suffering from dementia. That figure is expected to rise to 65 million by 2030 and to 115 million

by 2050. The increase is largely down to the fact that people are living longer than ever before.

It is impossible to predict our future health but we can take steps now to protect our interests if we suffer from dementia or lose our mental capacity for any other reason in the future.

Lasting Powers of Attorney (LPAs) enable you to nominate someone such as a family member or trusted associate to make decisions on your behalf if you ever lose the ability to do so yourself.

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.

LPAs should be drawn up with the help of a solicitor to ensure that they accurately express your wishes and protect your interests.

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

Negligent consultants are liable for damages

A construction company is to receive compensation from a firm of consultant engineers who provided negligent advice on a building project.

The engineers had been asked to advise on the kind of foundations needed to support a proposed water treatment works.

After carrying out tests, they recommended that a conventional approach with some modifications would

be sufficient. The project went ahead on that basis but it then transpired that the recommended foundations would not meet the required standard and a more expensive approach would have to be taken. This led to considerable extra cost and delays.

The construction company sought damages on the basis that the advice given by the consultants had been negligent. The court held that the consultants had been in breach of

their duty to exercise reasonable skill in carrying out their work. They were ordered to pay compensation for the cost of carrying out the remedial work required to get the project back on track.

They were also ordered to pay more than a third of the construction company's legal costs.

Please contact us if you would like more information about professional negligence issues.

Late payments still a major headache despite some signs of improvement

Late payments are still causing a major headache for many businesses despite new research showing there's been a slight improvement in the time firms take to settle invoices.

Experian's Late Payment Index shows that, on average, UK businesses were paying their bills 21.54 days beyond terms in September compared with 23.6 days in August – an improvement of 2.06 days.

Larger businesses employing more than 501 employees produced the biggest monthly improvement, down 13.5% to 24.63 days beyond terms. This still leaves them a long way behind the September 2008 level of 15.44 days. Businesses employing between 26 and 50 employees also made improvements and are now paying 18.52 days late.

The improvements are certainly welcome but have to be put in the context that we were starting from a very low base and the late payment problem is still far worse than it was only a year ago.

It remains a major issue for many businesses, despite the slight



improvements of a day or two here and there. A recent survey carried out by the Forum of Private Business found that late payments continue to cause small businesses the most headaches, even more so than lack of sales and the decline in bank lending.

Businesses still need to keep a close watch on late payments and take action to protect themselves as quickly as possible. Make sure you get good legal advice first to ensure all the procedures are carried out correctly.

Please contact us if you would like more information about recovering debts and ensuring prompt payment.

Agencies fined £39m for boycott and price fixing

Six recruitment agencies have been fined a total of £39.27m for price fixing and for boycotting another company.

The fines were imposed by the Office of Fair Trading after it concluded that the firms had engaged in anti-competitive conduct in breach of the Competition Act 1998.

They were found to have boycotted a company called Parc UK which had entered the industry in 2003 with the intention of acting as an intermediary between construction companies and recruitment agencies.

This put pressure on the profit margins of the recruitment firms. Instead of competing with Parc on price and quality of service, they formed a cartel and decided to boycott it by not supplying it with candidates wishing to work in construction.

They also reached an agreement to fix target fees for supplying workers to certain construction companies and intermediaries like Parc.

Please contact us if you would more information about competition issues.

Judge was wrong to transfer children's residence

The Court of Appeal has ruled that a judge was wrong to transfer the residence of three children to their father even though the mother had refused to allow contact in the past.

The father had made an application for contact following the breakdown of the marriage. The mother made allegations about him relating to domestic violence and submitted that he should be barred from having contact.

The judge dismissed the allegations as unfounded

and ordered that contact rights should be granted. The mother still refused so the father applied for a residence order. Shortly before the trial, the mother relented and signed a statement admitting that she had been wrong to refuse contact and accepting that the court should grant a contact order.

However, she also asked the court to confirm that the children should continue living with her. The judge decided that he could not rely on the mother's new assurances and ordered that residence should be

transferred to the father. However, that ruling has now been overturned by the Court of Appeal. It held that transferring residence from the primary carer in this way should only be done as a last resort.

The court had to balance the risks of removing the children from their primary carer, their mother, against the possibility that she might refuse contact again in future. The judge had got that risk balance wrong and the residence order he made was premature.

Please contact us if you would like more information about family law issues.



Funding of care for the elderly comes under scrutiny

The current system of funding care for the elderly has often been criticised because some people have to sell their homes and pay hundreds of thousands of pounds for their care while others pay nothing at all.

It means that for some people, the inheritance they hoped to pass on to their children gets used up in care costs. Now the Government has begun a public consultation on proposals to reform the system.

The proposals are contained in a Green Paper called, Shaping the Future of Care Together, which highlights the time bomb facing us as the population ages. It estimates that there will be 1.7m people requiring care by 2026.

Their care bill will be too great for

Man awarded damages after tripping on loose stones

A 64-year-old man who broke two bones in his leg after tripping on loose stones has received nearly £8,000 in compensation.

The man had been walking his dog when he fell over the stones on some land near the back of his home. He broke the tibia and the fibula in his right leg.

As a result of the injuries he can now only walk about three quarters of a mile and finds it difficult to kneel down. He has had to give the dog away because he can no longer take it for walks.

The land where the fall took place belonged to the same community association that owned the man's home.

He alleged that the association had been negligent in allowing the area to reach such a dangerous state of disrepair and in allowing people to walk through when it was unsafe to do so.

The association admitted liability and agreed to pay £7,875 to compensate for the man's pain, suffering and loss of amenity.

Anyone who suffers an injury as a result of someone else's negligence is entitled to claim compensation. Please contact us if you would like more information.



the taxpayer to support and so the Government is looking at three possible ways to meet the cost. One involves a dual approach in which the state and the individual share the costs, the second is an optional insurance scheme which would cost individuals up to £25,000 over a working lifetime and the third is a compulsory insurance scheme which would cost up to £20,000.

The proposals may be a step in the right direction but they are still only at the consultation stage and with an election coming up before too long, they may

never come into effect. It means that the current system is likely to remain in place for several years.

The capital threshold at which the elderly start paying for their care is £23,000 – only a fraction of the cost of an average house – so it means some elderly people will still have to sell their homes while others get care for free.

Even if one of the new proposals does eventually come into effect, it will only cover the cost of the care – other expenses like accommodation and food will still need to be met by the individual or their families.

One way to ease the problem is for people to start planning now for their old age so they can minimise the cost and the stress. For example, it may be possible to protect some assets by using trusts. It needs careful planning but could save elderly people and their families thousands of pounds in future.

Please contact us if you would like more information about funding care for the elderly.

A better way to buy and sell homes?

The Law Society is looking at ways to improve the process of buying and selling homes for the benefit of consumers.

It has been working on formal proposals and consulting with various individuals, firms and organisations involved in conveyancing to get a full picture of all the issues involved.

The general consensus from most professionals was that while no radical changes are needed, there are some improvements that could be made, particularly in the area of accreditation schemes.

The Law Society has often raised concerns that some professionals involved in conveyancing, such as estate agents, are not strictly regulated in the way that solicitors are.

This has led the society to warn sellers that they may not always get the best service or value for money, particularly when paying for Home Information Packs (HIPs) which have to be provided when a house is put on the market.

A Law Society spokesman, Paul Marsh,

urged consumers to approach their solicitor before buying a HIP because law firms are strictly regulated and are required to be fully open with clients about their fees etc.

This would ensure that the HIP contained all the necessary information and was priced fairly.

He also advised sellers to consult their solicitor before filling out Property Information Questionnaires (PIQs) which are now an obligatory part of HIPs. Mr Marsh said: "PIQs are supposed to provide information for potential buyers about the property, but if they are not completed correctly it could

harm the relationship between buyer and seller.

"A solicitor will be able to assist in completing the questionnaire to ensure it is accurate.

"The professional integrity and legal skills which solicitors traditionally bring to the housing market are just as key now as they have always been and probably more important than ever."

Please contact us if you would like more information about HIPs or any aspect of buying and selling a property.



Car valeters set alarm bells ringing for employers

Firms who hire self-employed sub-contractors may need to re-evaluate some of their contracts following a landmark case in the Court of Appeal involving 20 car valeters.

The valeters were taken on as self-employed contractors by a company specialising in car cleaning services.



They had signed contracts which described them as self-employed sub-contractors. Later, after they had been working for the company for several years, they argued that they were effectively employees and so should be given the same rights as other employees, including holiday pay etc.

The company was able to point to its written contract but that wasn't enough to convince the Court of Appeal.

The Appeal Court judges said the issue was whether the written contract represented the true nature of the

working relationship, not only at the time it was drawn up, but later when that relationship may have evolved and changed. In this case it was clear that the valeters were not in business on their own and did not have any customers of their own.

They were expected to turn up for work to meet the requirements of the company's customers and the reality of their situation was that they were employees, despite what a contract drawn up several years ago might say.

The case obviously has serious implications for companies hiring contractors. It is, of course, important to have written contracts but it's also essential to ensure that they reflect the reality of the working relationship. Otherwise, employers may not be able to rely on them in the event of a dispute as they could be ruled invalid.

If that happens then sub-contractors could gain full employment rights including holiday pay, maternity entitlement, unfair dismissal protection

and so on. There may also be tax implications for the employer.

It would be wise for employers to review the contracts periodically, especially those drawn up several years ago, to ensure they reflect the current working practices and can still be relied upon in the event of a dispute.

Please contact us if you would like more information about this or any issue relating to employment law.



Improved rights for agency workers put back until 2011

The Government has announced that new employment rights for agency workers will not come into effect for another two years.

The EU Agency Workers Directive means that temporary employees in the UK become entitled to the same pay, holidays and general conditions as permanent staff after they have been working for a company for 12 weeks.

It was originally thought that the directive might come into force next April but now the date has been put back until 2011.

Director personally responsible for paying company debt

The director of a company in liquidation has been held to be personally responsible for some of its debts. The company had entered into a contract with a supplier to provide it with meat products. At first the supplier addressed its invoices to the company.

Later, however, the supplier suspected that the company was getting into financial difficulties and started addressing invoices personally to one of the directors. The company then went into liquidation and so the supplier took action against the director to recover money owed.

It submitted that it had told the director at the time that it was no longer prepared to invoice the company but would only

supply products on the basis that it invoiced him personally. It said it had confirmed its position both by letter and in a telephone conversation. The director claimed that the supplier had merely changed the name on the invoice to avoid confusion with another of its customers. He said he had never been told that he was being invoiced personally.

The court held that on the basis of the available evidence, the supplier's version of events was more likely to be correct. The director was therefore personally liable to pay the outstanding balance on the invoices.

Please contact us if you would like more information about contractual liability and directors' duties.

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