



Your quarterly bulletin on legal news, views and advice from Quality Solicitors Rose & Rose

### THINKING OF GIVING YOUR HOME AWAY?

For most people their biggest single asset is their home and many homeowners think about giving it away late in life in order to avoid either the Inheritance Tax (IHT) liability on the property or its value being eroded through having to pay for care needs.

It may seem attractive to give away your house to avoid these outcomes, but in practice divesting yourself of any assets should only be undertaken with the benefit of expert legal advice as there are many potential pitfalls. These are just some of the issues that can arise:

#### CARE COSTS

Where a property is given away with the result that its former owner thereby lacks assets from which to fund long-term care costs, it is quite normal for the local council which ends up footing the care bill to contest the arrangement.

#### LOSS OF IHT RELIEFS

There is a special relief for IHT called the Additional Threshold or Residence Nil-Rate Band, which extends the IHT nil-rate band as it applies to the deceased's residential property if it is passed to lineal descendants. This relief is not available when the property is gifted away before death.

#### FAILED GIFTS

Passing title is not a gift for IHT purposes if the donor still retains an interest in the asset passed.

So, if you give away your house but carry on living in it, it will continue to be treated as part of your estate on death unless a full market rent is paid to the new owner, and the rent will be taxable in their hands.



#### PRACTICAL ISSUES

There are many practical issues involved with gifting property. For example, if the property is gifted to three children, one of whom subsequently becomes bankrupt or uses their share as collateral for a mortgage on which they then default, there can be significant problems if the receiver in bankruptcy or mortgagee seeks to force the sale of the property.

**There are myriad issues and potential complications in circumstances like these. If you are seeking to protect your estate from the deprivations of IHT, our expert advice will help you achieve your wishes if possible.**

### POWER OF ATTORNEY FEES FALL

With the recent furore over the Government's proposed increase in the cost of obtaining probate on larger estates, it is nice to see that the direction of change in costs charged by the state is not inexorably upward.

On 1 April, the cost of registering a Lasting Power of Attorney (LPA) reduced from £110 to £82, after the Court of Protection realised that the number of LPAs being registered meant that its income was exceeding the cost of running the service.

The fee for resubmitting an LPA for registration has also fallen – from £55 to £41.

LPAs are an extremely useful way of making sure that your financial affairs and any healthcare wishes are dealt with by those you trust in the event that you become unable to deal with them yourself.

**For advice on the benefits and uses of LPAs, contact us.**





## MUTUAL WILL VOIDS THIRTEEN LATER WILLS

**A**lthough a worryingly high proportion of the population never make a will, a fairly large number of those who do make more than one. It is sensible to make a new will or add codicils to an existing will if your circumstances change significantly. However, some people do take the process to extremes, as is evidenced by a case involving the estate of a woman who made 13 different wills between 2004 and 2014.

Her final will was admitted to probate in 2016 and its validity was challenged by her two daughters, who each stood to inherit £100,000 more under a will she had made in 2000 than they would under her final will. The challenge was made on the basis that the deceased woman and her late husband had created 'mutual wills' in 2000. Mutual wills create a binding agreement between two or more people which prevents the surviving party/parties from disposing of the

estate in a different way. As the promise made is binding, a subsequent will cannot revoke it. In the case in point, the judge found that the wills were mutual wills and all of the subsequent wills were therefore void.

Mutual wills are usually entered into to ensure that when an estate passes from one of a couple to the other, the intentions expressed in the original wills are adhered to: there are many circumstances where this can be beneficial. The practical issue for a survivor who has entered into a mutual will and wishes to change the way their assets are distributed is that they will need to address this whilst alive, as the mutual will determines the distribution of the estate assets on the death of the surviving party to the agreement.

WE CAN ADVISE YOU ON ANY WILL OR PROBATE MATTER.

## COMMERCIAL COURT IMPOSES PRISON SENTENCES ON DIRECTORS

**T**he Commercial Court does not take defiance of its orders lightly and has a panoply of powers to enforce obedience. In one case that proved the point, the Court ordered sequestration of an overseas company's assets and imposed prison sentences on five members of its senior management.

In the context of proceedings to enforce an arbitration award worth over \$4 million, the Court had issued a worldwide freezing injunction against the company and its bosses.

However, the order, which also required full disclosure of the company's assets, had



been wilfully disobeyed and the company had continued to trade as if nothing had happened. It had done nothing to 'purge its contempt', despite having been afforded an opportunity to do so.

Although there was no evidence that the company had any assets within England and Wales, the Court found that the issue of a writ of sequestration would bring pressure to bear and would not be futile.

Five of the company's directors or de facto directors, three of them members of the same family, were also sentenced to terms of imprisonment of varying lengths for their contempt of court.

DEFIANCE OF COURT ORDERS CAN PROVE COSTLY IN MORE WAYS THAN ONE. WE CAN ADVISE YOU ON DEALING WITH UNCOOPERATIVE DEBTORS.

## WHEN REFUSING TO DO WRONG CAN STILL MEAN TROUBLE

**B**reaches of competition law can lead to fearsome penalties and the law itself is very strict. In a recent case, a company that was invited to discussions on joining in cartel activity (which is illegal) and attended them, but refused to engage in the cartel, has been fined by the Competition and Markets Authority (CMA).

The company attended a meeting and provided pricing information to the other attendees. Three companies went ahead and, following the uncovering of the cartel and a CMA investigation, were fined more than £2.6 million for offences such as bid rigging and 'market sharing'. The investigation started when a fourth company, which had joined the cartel, subsequently 'blew the whistle' and then cooperated with the CMA to gather the necessary evidence for the prosecution.

The company that blew the whistle received immunity from prosecution.

However, the company that attended discussions but refused to participate in the cartel activity was nonetheless fined £130,000 for unlawfully providing commercially sensitive pricing information to the cartel companies.

IF YOU ARE ASKED TO SHARE COMMERCIAL SENSITIVE INFORMATION WITH A COMPETITOR, ALARM BELLS SHOULD RING IMMEDIATELY. TO MAKE SURE YOUR BUSINESS ACTIVITIES DO NOT LAND YOU IN HOT WATER WITH THE CMA OR ANY OTHER GOVERNMENT BODY, ASK OUR ADVICE.



## MOTHER DENIED CHILD RESIDENCE ORDER

When a couple split up, it is very common for one of them to wish to move away, often to the area where they grew up or have family. This can create significant issues as far as the children are concerned and disputes in such cases are common.

In a recent example, a Scottish court has refused the request of an English woman to move to England with her infant son after opposition from her husband.

The couple are separated but live in the same house, which is owned by the husband. They accept that their marriage broke down irretrievably in 2016. The wife applied to the Scottish Court of Session for an order that would enable her to return to the Midlands, taking their two-year-old son with her.

Her husband opposed the application, arguing that it would be better for their son to remain in Scotland and to continue to be

looked after by both parents, albeit separately.

The wife claimed that she was the full-time carer for their son and that her husband's job often kept him away from home until quite late in the evening. However, her claims were denied by the husband and the judgment contains many pages of accusation and counter-accusation between the two about their respective behaviour.

Scottish law requires that the decision in such cases is made based on consideration of the child's welfare and, where applicable, his or her wishes. As the child is two, the latter requirement was not in point.

Hearing that the parents were planning to sell the family home and buy separate properties, the judge ruled that the child should remain in Scotland with residence shared between them. Refusing to make a formal order for residence in favour of one or



the other, he commented that the boy 'is not a prize to be won or lost in this contest. He is a little boy with two parents whose ongoing involvement in his life he has come to expect insofar as a two-year-old child has any expectations.'

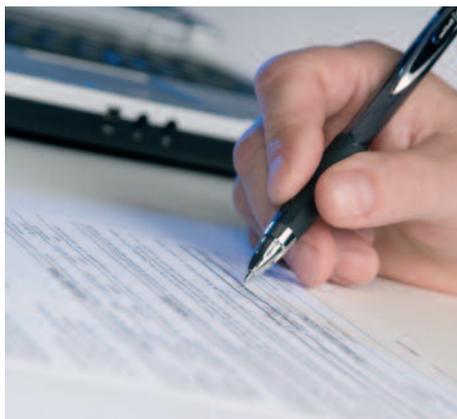
FOR ADVICE ON ANY ASPECT OF MARRIAGE BREAK-UP, CONTACT US.

## CHARITY DIRECTOR'S MISCONDUCT MADE DISMISSAL INEVITABLE

No matter how gross an employee's suspected misconduct may be, it is always vital to approach matters with an open mind. However, in *Soll (Vale) v Jagers*, the Employment Appeal Tribunal (EAT) ruled that the dismissal of a former charity director who doctored his own employment contract with a view to personal gain was inevitable.

The man had been in 'without prejudice' negotiations with the charity's board of trustees with a view to agreeing terms for the termination of his employment. He was suspended during an inquiry into his conduct and faced seven disciplinary charges. Another was added after evidence emerged that, during the course of the negotiations, he had altered the terms of his contract in a bid to improve his position.

One of the modifications to the original contract purported to increase the period of notice to which he was entitled from three months to 14 months. He was ultimately found guilty of that and three other charges



and summarily dismissed for gross misconduct.

After he launched proceedings, an Employment Tribunal (ET) found on the balance of probabilities that he knew that he was presenting a false document and that he was responsible for the alterations. The ET nevertheless found that his dismissal was unfair in that the person who made the dismissal decision had himself uncovered the matters that had led to the initial seven

charges, and had prejudged the issues and approached the matter with a closed mind.

Although the ET accepted that the man's conduct had contributed to his dismissal, it did not consider that it was appropriate to make any reduction under Polkey to the amount of his compensation nor that there should be any reduction in the award greater than 10 per cent.

In overturning that decision, the EAT found that, given the nature of the former director's misconduct, his employment would have been terminated in any event. The ET's conclusion to the contrary was perverse. In the circumstances, he had suffered no loss and his compensation was assessed at nil.

WE CAN ADVISE YOU ON ANY DISCIPLINARY MATTER.

## DENIED DIVORCE CASE HEADING TO SUPREME COURT

It has been revealed that the widely reported case last March in which a wife was not granted a divorce from her husband because she could not demonstrate that his behaviour had been unreasonable will be decided by the Supreme Court.

Under English law, there are only five grounds under which divorce can be sought. These are:

- adultery;
- desertion;
- separation for two years where the spouse consents;
- separation for five years without the spouse's consent; or
- unreasonable behaviour.

In the case in point the first four criteria did not apply, and the wife therefore sought a divorce on the ground of her husband's unreasonable behaviour. In such cases, the person seeking the divorce must show that the spouse 'has behaved in such a way that [he or she] cannot reasonably be expected to live with [him or her]'.

The husband opposed the divorce application. Other than perhaps his refusal to accede to her request for a divorce, his behaviour was, in the view of the Court of Appeal, not sufficiently unreasonable to grant a divorce, despite it being clear that the marriage had broken down. The husband claims that the breakdown is not irretrievable and, since

they have not yet been separated for five years, the termination of the marriage now would require that unreasonable behaviour be proved.

The wife's evidence alluded to her husband prioritising work over family life, making her feel unappreciated because he had not provided her 'with love, attention or affection and was not supporting of her role as a homemaker and mother', their having arguments and his having embarrassed her by chastising her in front of others.

However, the Court of Appeal, noting that Parliament had not set the law to allow 'divorce on demand', concluded, in the words of Lady Justice Hallett 'with no enthusiasm whatsoever', that the marriage must, in the absence of the husband's agreement, continue until the separation has lasted for five years.

The circumstances in this case are very unusual, although divorces that are fractious are not.

IF YOUR RELATIONSHIP IS BREAKING DOWN OR HAS BROKEN DOWN, WE CAN HELP YOU RESOLVE THE DIFFERENCES AS AMICABLY AS POSSIBLE AND ADVISE YOU HOW TO ACHIEVE THE BEST OUTCOME FOR YOU AND FOR ANY CHILDREN INVOLVED.



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