

Complex Divorces to be Made Simpler?



All too often, the wrangling over the financial arrangements on divorce turns out to be lengthy, expensive and a cause of anxiety and anger.

(unless this is completely impracticable) approximately four weeks before the final hearing. Among a number of other requirements is one that stipulates that these reviews be tightly drawn and contain only evidence (not argument) relating to the parties' financial resources, living standards etc. There is also a requirement that the evidence bundle presented to the Court does not exceed 350 pages.

In order to reduce these negative aspects, Mr Justice Mostyn has released a statement outlining procedures designed to enhance efficiency in the disposal of financial remedy cases to be heard by a High Court judge.

Since only higher value and more complex cases are allocated to the High Court in the first place, these requirements pose a tough test in some cases and make it important that information you wish to rely on is well organised and carefully considered for its evidential value.

The changes include a requirement that a 'pre-trial review' be held before the allocated trial judge

The changes follow hard upon several 'high net worth' divorce cases in which the costs of litigation have spiralled.

Will Aid Month At Neves



Throughout November Neves took part in the Will Aid Scheme. Celebrating its 26th year running, Will Aid is a special partnership between the legal profession and nine of the UK's best-loved charities. Every November, participating solicitors waive their fee for writing a basic Will. Instead, clients are invited to make a donation to Will Aid. Each year, thousands of people use the Will Aid scheme helping to raise valuable funds for charities such as Age UK, NSPCC and British Red Cross.

A huge thank you to Lesley Paton, Jennifer Duckett, Paul Ashby, Paula Cummins, Pauline Howe and Priya Patel for all their hard work on this very worthwhile scheme.

What Our Clients Say About Us

"Thank you for your support in this matter, which was found to be painless and efficient."

"Thank you for such a professional, yet warm and unbelievably efficient service. If only all my previous legal service appointments had been this good. I won't be changing solicitors anytime soon!"

"You made the process seem that little easier and through all of the twists and turns you immediately grasped the changes in the situation and the effects it had on us. I would not hesitate to recommend you in the future"

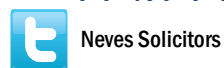


"We very much appreciate the manner in which the business transactions were conducted, efficient and pleasant."

"Could not be happier with the service I received and the very positive outcome"

"Excellent services provided, queries dealt with promptly, matters expedited efficiently! Thank-you"

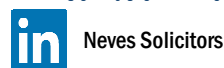
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Power of Attorney Cancelled After Court Challenge



When the holder of a Lasting Power of Attorney (LPA) does not act in the best interests of the person who created the power, an application may be

made to the Court of Protection to have them removed.

A recent case heard by the Court involved an elderly woman who, after her husband died, made a will which gave virtually her whole estate to her son and named him as her executor. At the same time as her will was made, she created an LPA making him her attorney.

The LPA did not impose any restrictions on the attorney. The will and LPA were made in March 2010 and an application to register the LPA, so that the attorney could assume his powers under it, was made in November 2010.

The woman's main asset was a bungalow. As she had become increasingly frail, her son decided she should move in with him and his partner and that her bungalow should be renovated and let out. He obtained a loan of

£72,000, secured against his mother's property, to that end.

However, his relationship with his partner broke down and his mother never did move in with him. The loan was spent in renovating his partner's property, leaving his mother with the responsibility of paying for the mortgage from her pension income of about £20,000 per year.

In 2012, the woman's grandson contacted the Office of the Public Guardian, voicing his concerns about the mortgage.

The subsequent investigation revealed that the woman now lacked the mental capacity to terminate the LPA and wished her son to continue to manage her affairs.

However, the Public Guardian found that the mortgage arrangements could not be considered to be in the mother's best interests and applied for the son to be removed as her attorney.

The judge concluded that even if the loan made to the son was in fact a gift, it would have been reprehensible of him to have accepted it and that, in any event, his mother did not have sufficient legal capacity to approve it. The Court revoked the LPA.

Out-of-Date Will Leads to Dispute With Charity

In a case which underscores the wisdom of keeping your will up to date, changes in the law relating to Inheritance Tax (IHT) led to a bitter dispute between a widow's family and her favourite charity in respect of her £680,805 estate.

In an apparently straightforward attempt to achieve tax efficiency, the widow had in 2001 signed a professionally drafted will, leaving to her family the proportion of her estate which fell below the nil rate threshold for IHT, which was £325,000 at the date of her death in 2011. The balance she left in trust for the Woodland Trust.

Between the signing of the will and her death, the Finance Act 2008 became law. In a widely welcomed loosening of the IHT regime, the Act made it possible for the unused portion of the nil rate band to be transferred between spouses and civil partners. The widow's husband had died many years earlier. His nil rate band was unused and £650,000 of her estate was thus free from IHT.

In those circumstances, a dispute arose as to whether the charity was entitled to £355,805 from the widow's estate, or just the lesser amount of £30,805 as claimed by her family – that being the sum remaining after the total available nil rate band was exhausted. A judge ruled in the family's favour on that issue.

In dismissing the Woodland Trust's challenge to the decision of the lower court, the Court of Appeal found that the implicit purpose of the will was to leave as much as possible to family members without incurring IHT. The widow was unlikely to have had a sophisticated appreciation of the intricacies of tax planning and, on a correct interpretation of her will, her family was entitled to inherit up to the full extent of the tax break available to her on her death.

Charities are eager to maximise their bequests and cases in which wills are challenged are by no means uncommon. This dispute could have been avoided had the will been brought up to date with a simple codicil.



Council Replaces 'Aggressive' Niece as Attorney



In a recent judgment delivered by the Court of Protection, a local council was successful in wresting control over an old man's finances from a family member.

The 91-year-old man has been resident in a care home for more than a year and suffers from Alzheimer's disease. He also suffers from a delusional disorder which has led to anti-social behaviour and to his being sectioned under the Mental Health Act 1983 on three separate occasions. On the last of these occasions, he was released to the care home where he now lives.

It was discovered that a number of withdrawals had been made from the man's bank account. Some £2,000 had been taken out since he went into care and the circumstances of the withdrawals were such that there was a 'safeguarding of vulnerable adults' alert, and an investigation regarding this is ongoing. The investigation concerns the role of the man's niece in looking after his finances.

It was also revealed that he had made a will which leaves his entire estate (worth approximately £750,000) to his niece, replacing an earlier will which divided his estate equally between his nieces and nephews.

In considering the application from the local council to be appointed the man's 'deputy' and manage his property and financial affairs, the Court heard deeply conflicting statements from council employees and the niece.

Among the more telling evidence was commentary from council employees about the tantrums and aggressive behaviour shown by the niece when it was suggested that she had failed to put her uncle's interests above her own when dealing with his affairs.

The judge hearing the case concluded that he would be wary of appointing the niece as the man's deputy 'in circumstances which by no stretch of the imagination can be described as free of conflict of interest and undue influence'.

The case illustrates the importance of ensuring that when you are acting on someone else's behalf, you put their interests first at all times and can demonstrate that this is the case.

Private Client

If you need help or assistance with any Wills, Probate or Trusts law then contact our private client team.

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Buying a House and Consumer Protection

With the appointment of an Ombudsman for Estate Agents (now called the Property Ombudsman), the laying down in statute of the duties of estate agents and the passing of the Consumers, Estate Agents and Redress Act 2007 (CEARA), a property purchaser might reasonably conclude that their interests are strongly protected under the law. This view is likely to be bolstered by an awareness of the existence of the National Association of Estate Agents' (NAEA) own disciplinary and redress scheme. However, the assumption that a buyer's interests are well protected is not as well founded as you might think.

The estate agent's main duty is to the vendor of the property, so the regulations under which they operate relate mainly to their relationship with the vendor. They are bound not to discriminate against purchasers who do not wish to buy other services they offer and to declare a personal interest to any

buyer. It is important to note that even when the sales particulars of a property are inaccurate, the right of redress may be limited. Recently, the court ruled that an agent was not liable for providing false information to the effect that a property included a substantial area of land which was not in fact registered in the vendor's name. The estate agent had simply accepted without enquiry that the area of land was part of the property and included it in the sale particulars. The court considered that any purchaser would have made sure that a proper search of the title was done and in any event the offer for sale was 'subject to contract' – placing the onus on the purchaser to make sure their enquiries were carried out carefully!

The Ombudsman service deals with claims against estate agents, but its powers are limited and the maximum award that can be made is £25,000. In practice, most awards are a small fraction of that amount.



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In 2010, protection was given to buyers who buy 'off plan', with the launch of the Consumer Code for Home Builders.

In 2013, the Government has repealed the Property Misdescription Act 1991, which made it a criminal offence to make a misleading or false statement regarding properties offered for sale. However, consumers continue to benefit from general

consumer protection legislation in the Consumer Protection from Unfair Trading Regulations 2008.

Worryingly for home buyers, a 2014 decision of the court found a surveyor who had carried out a survey for the purposes of valuing the property for a mortgage, and who noticed cracks in a wall, was not negligent in failing to advise the buyer to have a full structural survey. The house was affected by subsidence, leading to expensive repairs being necessary.

Residential Property

If you are in the process of buying or selling a property then contact our a member of our conveyancing team who will be happy to assist.

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Document Disclosable When No Dispute

When an informal conversation over dinner in a restaurant that included a proposed agreement between a divorcing couple did not lead to a settlement, the court was faced with a decision as to whether matters discussed during the conversation could subsequently be disclosed in evidence.

The circumstances arose when a couple who were divorcing had met for dinner to discuss the settlement of their financial affairs.

At the meeting, the husband prepared in written form a proposed agreement which he gave to his wife to consider.

Among the statements in the husband's proposal was one that his wife was currently living in London. This was significant, as in the later legal argument, the husband claimed that she was not habitually resident in the UK and thus the English court did not have jurisdiction to hear the case concerning the financial settlement. He alleged that the wife was 'forum shopping' – seeking to have the case heard in the UK because the courts here are among the most generous for spouses in such cases.

The wife stated that she had attended the dinner in an attempt to patch up their marriage if possible and that she was not expecting any form of legal discussion.

The husband claimed his intention was to settle financial matters with his wife.

Both had attended the meeting having filed preliminary 'protective' legal proceedings in their preferred legal jurisdiction, but neither had told the other that they had done so. Such filings are made to 'set the ball rolling' in the jurisdiction of the individual's choice. The case will normally be dealt with in the country in which the first action is filed.

The husband argued that the proposed agreement was 'without prejudice' and could not therefore be given in evidence in court proceedings. The without prejudice rule excludes from evidence, as Mr Justice Rooney put it, 'written or oral communications made in a genuine attempt to settle a dispute between the parties'.

The decision turned on the nature of the meeting between the couple and, crucially, the fact that there was as yet no dispute to settle, as neither was aware that the other had filed protective proceedings.

Accordingly, the document could not be privileged as there was no dispute to which it related and, even if there was, it was not clear that the couple had met in order to try to settle a dispute.



Family

If you need help or assistance with any family law issues then contact our family team.

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