

Autumn
2008

Incorporating Keith A Pearce

NEWS BRIEF - legal news that affects you and your business

Rising dementia figures highlight the value of powers of attorney

A group of scientists has warned the Government that the number of dementia cases could double within a generation.

The scientists, from leading universities around the UK, say more investment is needed in the health service as we know it may become unsustainable. The warning has been backed up by the Alzheimer's Research Trust. The Chief Executive, Rebecca Wood, said: "If underinvestment persists, the economic consequences arising from dementia care costs will be catastrophic."

Despite these and similar warnings, research by the insurance company Standard Life shows that three out of four people have made no arrangements to enable someone to manage their financial affairs should failing mental health make it impossible for them to do so themselves.

This is in spite of the fact that it can be difficult and time-consuming to unfreeze the assets of a family member who suddenly becomes mentally incapacitated. Fortunately, the law has been modified to make it easier for people to prepare for a time when ill health or mental incapacity means they are no longer able to make decisions for themselves.

In the past it was possible to use the Enduring Power of Attorney (EPA) system to appoint someone you trust to operate your bank account and manage your financial affairs if you became incapable of doing so yourself.

The Mental Capacity Act has now replaced EPAs with a revised provision called a Lasting Power of Attorney (LPA). The LPA has to be registered with the Office of the Public Guardian before it can be acted upon which should make it more secure and less open to abuse.

It also needs to be accompanied by a certificate signed by someone like a solicitor or a doctor confirming that you understand what it means to grant someone power of attorney



Prepare for the future while you are fit and healthy

over your affairs and you are entering into it freely. The new system also provides more scope. LPAs can be used to cover financial matters like EPAs used to do but they can also cover health and personal welfare.

It means you can say in advance the extent of the medical treatment you would like to receive if you become incapacitated and delegate an attorney to make such decisions on your behalf. Setting up an LPA gives you more control over what happens to you in future and makes it easier for your family to administer your affairs.

Please contact us if you would like more information.

Delay can be costly if you want to make a claim

The need to take professional advice as soon as possible when facing legal problems was illustrated in a recent case before the Court of Appeal.

It involved a man who wanted to claim damages against a financial services company which had advised him about his pension arrangements.

He claimed that the firm had been negligent and in breach of its duty under the Financial Services Act 1986 when it had advised him to transfer the accrued benefits in his occupational pension to a personal pension fund withdrawal scheme. He submitted that he suffered a loss because of this transfer and



because of the company's failure to advise him on purchasing an annuity.

The judge found that the claimant had suffered a loss within two years of making the transfer. In spite of this, he did not issue proceedings until more than six years later. This meant his claim was statute barred and could not go ahead

because such proceedings have to be brought within six years of the loss being discovered.

The judge found that the claimant had sufficient knowledge of his losses to have begun proceedings three years earlier but failed to do so. The Court of Appeal has now upheld the ruling that his claim for damages was statute barred under the Limitation Act 1980.

Anyone in similar circumstances who feels they may have a claim to make should seek legal advice as soon as possible. Unnecessary delay could prevent the case being heard and result in the claim being lost.

Equality bill to promote equal pay and allow use of positive discrimination

The Government has announced new measures to promote equality by banning age discrimination and helping women to achieve equal pay with their male counterparts.

The law will also be changed to allow positive discrimination in favour of women and ethnic minorities to promote more diversity in the workplace.

The measures are being put forward in the new Equality Bill. The Government says the Bill is needed because although there has been a lot of progress towards equality, there is still a long way to go. "Women are paid on average 12.6% less per hour than men; disabled people are two and a half times more likely to be out of work, and ethnic minorities a fifth less likely to find work; and two thirds of over-fifties feel that they are turned down for a job because they are too old."

Harriet Harman, the Minister for Women and Equality, outlined some of the main provisions in the Bill in a statement to the House of Commons. It will include powers to ban all unjustified discrimination against older people, such as denying them medical treatment. Age discrimination is already banned in the workplace. There will also be measures

to make pay scales more transparent to ensure that inequalities between men and women cannot be hidden. Employers will be obliged to reveal details about their pay structures to see if there are any discrepancies between male and female employees doing the same work.

A Government statement says: "The Equality Bill will ban 'gagging clauses' so that work colleagues can compare wages and challenge employers who unlawfully pay them less. Nearly a quarter of employers ban their staff from talking about their wages, with women more likely to be in the dark about colleagues' pay than men."

Employers will be allowed to use positive discrimination when choosing between two equally qualified candidates to ensure a more diverse workplace if particular groups such as women or ethnic minorities are under-represented.

The law will also allow positive discrimination in favour of men if the circumstances call for it. The Equality Bill is clearly intended to create more protection for women and various groups



who have been treated unfairly.

However, the law already provides considerable protection against various forms of discrimination. Anyone who feels they have been treated unfairly, particularly in the workplace, should seek legal advice as soon as possible.

Father granted unsupervised contact with his daughter

The Court of Appeal has granted a father the right to have unsupervised contact with his daughter.

After separating from his partner, the father maintained contact with his three-year-old daughter by telephone and during visits which were supervised by the local authority and the child's aunt.

The mother opposed the application for unsupervised contact and made



allegations about the father relating to domestic violence, drinking and unpredictable outbursts. She also

referred to sexual fantasies expressed during the relationship. The father denied all the allegations.

The child's social worker and her guardian both gave evidence that there was no reason not to allow unsupervised contact. The judge concluded that the father did not pose a risk to his daughter and that it would be in her best interests to have unsupervised contact with him. That decision was then upheld in the Court of Appeal.

Man who worked 25 years for nothing can't inherit farm

The stress and anguish that can arise from a person's failure to make a will has been highlighted in the case of a farm labourer who worked without pay for 25 years on the understanding that he would eventually inherit the farm.

David Thorner, who is 57, spent most of his adult life helping out on a farm in Somerset owned by his cousin Peter Thorner. He agreed not to take any wages on the understanding that he would inherit the land, worth £2m, when his cousin died.

Peter made a will leaving the estate to David. Later he made an alteration to the will relating to a completely different matter but then never returned it to his

solicitor. When he died, the will could not be found. In the absence of a will, other members of Peter's family claimed the estate. The case ended up in the High Court which recognised David's remarkable commitment and accepted that his cousin Peter had wanted him to inherit. David was awarded the farm with the remainder of the estate, valued at over £1m, going to other members of the family.

However, Peter's sisters challenged the ruling and have now won their case in the Court of Appeal. Lord Justice Lloyd said David Thorner had a strong moral claim to the farm but it would be a dangerous precedent for him to inherit it. "This is another case, where,

what appears to have been a man's testamentary intentions have failed because, for whatever reason, he did not take the proper steps to put them into effect."

Mr Thorner lost his case and was refused permission to appeal to the House of Lords. He was also ordered to pay costs.

The case has attracted widespread publicity and illustrates the problems that can arise if someone fails to make a will or fails to keep it up to date. Anyone who has not made a will or updated it to reflect changes in their circumstances should consider doing so as soon as possible.

More Companies Act measures come into effect

This autumn sees the latest raft of Companies Act provisions coming into force. The measures, effective from 1st October, are designed to reduce the administrative burden on companies by streamlining procedures.

There are changes relating to corporate directors and under-age directors, general duties of directors in respect of conflicts of interest, declarations by a director of an interest in an existing transaction or arrangement, and new procedures for private companies to make capital reductions supported by a solvency statement instead of by a court order.

Every company will have to have at least one director who is a natural person. However, there will be a grace period until October 2010 for any company that only had corporate directors at the time the Companies Act received the Royal Assent on 8th November 2006.

All directors must now be at least 16 years old. Existing under-age directorships will cease. It is not necessary to notify the Registrar but the register of directors will need to be amended to reflect that the under-age directorship has ceased. The change is retrospective and will affect any director who has not reached the age of 16 on 1st October 2008.

There are several changes covering the duty of directors to avoid conflicts of interest, not to accept benefits from third parties and to declare any personal interest in proposed transactions. The Act provides private companies wanting to reduce the amount of share capital with an alternative to the existing method of passing a special resolution and obtaining

court approval. They can now proceed with a special resolution supported by a solvency statement from the directors. It's intended that the solvency statement approach will provide a cheaper and simpler way to reduce capital.

However, if company directors make a solvency statement without having reasonable grounds to believe it to be accurate then they could be committing an offence punishable by a fine, up to two years imprisonment or both.

The Act introduces several more changes which are effective from October including measures relating to objections to company names, trading disclosures, control of public donations and the power of the court to grant relief in certain cases.

Measures introduced last April mean that firms no longer have to appoint a company secretary unless they want to and they no longer have to have the signature of two directors to execute deeds. The signature of one director will be enough provided that it is witnessed.

Many of the measures are quite technical and could have a significant impact on the way companies conduct their affairs. There will be more changes coming into effect next year.

Please contact us if you would like more information about the Companies Act 2006 or any aspect of company law.



No more underage directors

Private Rented Sector will 'outstrip other types of investment property'

The value of the Private Rented Sector now exceeds that of all privately-owned commercial property, according to research carried out for the Association of Residential Letting Agents (ARLA).

The researchers estimate that the sector is worth £500bn – that's more than the combined total of all privately-owned commercial property including offices, shops, hotels, factories and leisure facilities. Their report forecasts that rents will rise significantly in the short term and the sector will continue to outperform other kinds of investment property. The research was carried out on behalf of ARLA by Michael Ball, Professor of Urban and Property Economics, at Reading University.

The report says residential property investment is driven by the prospect of capital gains. "Capital appreciation has been good over the long term. Real house prices rose by 4.2% a year on average between 1981 and 2003, while capital values for commercial property fell by 1.2% by the same measure."

Meanwhile, an ARLA survey shows that more people are looking to the private rented sector as a good investment and many existing investors are just as active and busy as ever as they respond to changing market conditions. Some are taking advantage of the drop in house prices to add to their portfolios.

Of course, while buy to let is holding firm in an uncertain economic climate, it is not without its pitfalls. Investors need to be careful where they place their money and make sure they choose the right



properties in the right areas. They should also remember that there are numerous legal requirements landlords have to meet such as obtaining licences for some houses in multiple occupation, fulfilling all their obligations to tenants and entering into tenancy deposit schemes. All landlords run the risk of sometimes having to deal with problem tenants. Some may fail to keep up with the rent or not treat your property as well as they should. In these circumstances, you may need to take legal advice so you can take action to recover rent arrears or to recover your property.

As the figures show, buy to let remains an attractive proposition for both small and large investors as long as they are prepared to plan carefully and follow the correct legal procedures at all times.



Pre-nuptial agreements could become legally binding following review

Pre-nuptial agreements could become legally binding once a review has been carried out by the Law Commission.

Pre and post marriage contracts have become more popular in recent years. The courts will take them into account if they are considered to be fair and properly drawn up but they are not necessarily binding.

Now the Law Commission is to carry out a review which it says will "examine the status and enforceability of agreements made between spouses or civil partners (or those contemplating marriage or civil partnership) concerning their property and finances".

The statement goes on to say: "The legal recognition of marital property agreements is of great social importance. Relationship breakdown remains a significant phenomenon and financial and property disputes between separating spouses and civil partners often lead to distress and expense for all involved. There is a view that the fact that pre-nuptial agreements are not currently binding may deter people from marrying or entering into civil partnerships in some cases."

The review is due to begin next year but the resulting report is not expected until 2012. In the meantime, pre-nuptial



agreements remain popular and still have a valuable role to play. People should not be discouraged by the fact that they are not automatically binding because the courts will give them serious consideration if they are drawn up in a way that is fair to both parties.

The court will be influenced by whether both sides had legal advice from a solicitor to ensure they were fully aware of what they were doing when they signed the agreement. It is also essential that the bride and groom fully disclose their full assets to each other. Keeping quiet about secret bank accounts could nullify the agreement and defeat the object of drawing it up in the first place.

Pre-nups can be drawn up in several ways depending on the circumstances. For example, couples can agree to ring fence the assets they had before the marriage so they are not taken into account in any future divorce settlement. It is also possible to relate any provisions to the length of the marriage so that one side perhaps receives very little if the marriage is short lived but receives more if it survives for several years.

Many couples who make such arrangements say it strengthens their relationship to know that they have been able to discuss and agree on important issues that could affect their future.

Elderly sisters lose battle to change inheritance tax rules

Two elderly sisters have lost their battle in the European Court of Human Rights to change Britain's inheritance tax rules.

Joyce and Sybil Burden have lived together all their lives. Their home and the small farm around it in Wiltshire are worth an estimated £875,000. They say that when one of them dies, the other will have to sell up and move out to pay the crippling costs of inheritance tax which is levied at 40% of the value of the estate apart from the first £312,000 at current rates.

They appealed to the European Court arguing that they should be given the same rights for tax purposes as gay and lesbian couples who enter into civil partnerships. This would mean that when the first sister died, the surviving sister would be exempt from inheritance tax and so would be able to keep the home.

However, the European Court has ruled against them. Many people will no doubt sympathise with the sisters and their plight. According to a survey carried out for the BBC, 60% of people would like to see inheritance tax scrapped even if it meant paying more income tax.

That seems unlikely, however, which means that thousands of people need to plan ahead if they want to reduce the inheritance tax burden as much as possible. Family members and cohabiting couples are particularly at risk of falling foul of the inheritance tax laws.

The rules changed last year to help married couples but they too could still benefit from some forward planning. Please contact us if you would like more information.

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