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Incorporating Keith A Pearce

NEWS BRIEF - legal news that affects you and your business

Parents of older children will be entitled to request flexible hours

The right to request flexible working is to be extended to parents who have children up to the age of 16.

Until now, the right has only applied to parents of children under six or who are disabled.

The announcement by Business Secretary John Hutton follows a review carried out for the Government by Imelda Walsh, HR director at Sainsburys.

There will now be a consultation process on how the proposals should be implemented. It's estimated that up to 4.5 million parents could benefit. However, it should be remembered that although firms must give proper consideration to requests for flexible working, they do not have to grant those requests.

Mr Hutton said: "It is important that employers retain control over deciding whether it suits their business to allow people to work flexibly, but extending the right to request to parents of older children will allow families to take priority when decisions are made."

The review recommended that any change should be implemented at once rather than in stages to avoid creating confusion for both employers and employees. It also found that small businesses had a better record than large ones for accepting requests for flexible working.



More rights for agency workers

Agency workers will be entitled to the same treatment as permanent staff after 12 weeks in employment under a deal agreed between the Government, the unions and the CBI.

The three parties say they have tried to reach an agreement that would protect the rights of workers at the same time as maintaining flexibility for employers.

A joint statement by the Government, the CBI and the TUC says that the equal treatment to which agency workers will be entitled after 12 weeks "will be defined to mean at least the basic working and employment conditions that would apply to the workers concerned if they had been recruited directly by that undertaking to occupy the same job".

The contract clause that cost a developer more than £3.5m

The need to make sure that contracts are completely watertight has been illustrated in a recent case where a dispute over the meaning of a single clause cost a property developer more than £3.5m.

The case involved Chartbrook Ltd and Persimmon Homes. The two companies agreed that Persimmon should build a mixed residential and commercial development on land owned by Chartbrook.

Under their agreement, the amount paid by Persimmon for the land would include an additional residential payment which was defined as "23.4% of the price achieved for each residential unit in excess of the minimum guaranteed residential unit value less the costs and incentives."

The problem then arose as to what that phrase actually meant. Chartbrook interpreted it as meaning that it was entitled to share in the net proceeds



for each unit above the minimum guaranteed amount. Persimmon saw it differently and believed that Chartbrook should receive either 23.4% of the net sales revenue or the minimum guaranteed amount, whichever was the greater.

The stakes were enormous because the difference in cash terms between the two interpretations was more than £3.5m. The High Court ruled in Chartbrook's favour and that ruling has now been upheld by the Court of Appeal.

Persimmon submitted that evidence from

the pre-contract negotiations between the two companies supported its definition of the phrase. However, both the High Court and Court of Appeal ruled this to be inadmissible and said that pre-contract negotiations should not be used to define terms in a contract.

Lord Justice Rimer said: "I would reject any suggestion that this is a case in which it is legitimate, as part of the construction exercise, to have recourse to the pre-contract negotiations. The basic rule is that they are out of bounds." The court ruled that the final wording of the contract was what really mattered and the final phrase contained in the contract clearly supported Chartbrook's interpretation.

It is clear from this case that companies should ensure the wording in a contract correctly reflects the true nature of the agreement. If there is a dispute then it is unlikely that the courts will allow evidence from pre-contractual negotiations to be used.

Judge decides where a child should go to school

A family court has had to decide whether a child should live with her father and attend school in England or live with her mother and attend school in Germany.

As always in these cases, the needs of the child were considered paramount and given the most weight by the court.

When the parents separated a shared residency order was made in respect of their daughter. The father then chose to

remain in England while the mother went to live in Germany.

The court decided that the main point to consider was which parent was most likely to promote the child's relationship with the other parent.

It was decided, having taken all the circumstances into account, that if the order was to let the child attend school in England then her father would be

more likely to promote her continuing relationship with her mother than would be the case if the situation was reversed and the child went to school in Germany instead.

It was accepted that this could be the 'least worst' option but it was considered the best approach in the circumstances. It was therefore decided that the girl should attend school in England and live with her father.

Court of Protection can help when a loved one loses mental capacity

The law changed last year making several improvements to the power of attorney system which allows people to appoint someone to act on their behalf if they lose mental capacity.

Enduring Powers of Attorney (EPA) were replaced by Lasting Powers of Attorney (LPA) which are much wider in scope.

The property and finance LPA allows you to appoint someone to look after your financial affairs whereas the personal welfare LPA lets you grant an attorney authority over such matters as health care and the kind of treatment you receive. LPAs have attracted a great deal of interest and allowed thousands of people to gain the peace of mind that comes from knowing that your affairs will be in good hands should your health suffer to a point where you can no longer make decisions for yourself.

However, while LPAs are a welcome development, they can only help if a person takes the necessary action when they are fit and healthy. Sadly, thousands of people each year lose mental capacity without having



made any arrangements for their care or for how their affairs should be managed. This can create injustices that cause enormous difficulties for their families.

It could be, for example, that a man has lived with his partner for several years but never married. He always intended to leave everything to her when he died but like many people he never got round to making a will. Now he has lost mental

capacity due to illness and it is too late to do so. Unfortunately, because he has no will, when he dies his assets will be divided up in a way set down by law. It means much of his estate may pass to relatives he would not have chosen as his beneficiaries and his partner may end up with little or nothing.

There may also be situations where someone made a will several years ago but their circumstances have now changed dramatically. It could be that their family would benefit from a tax point of view or perhaps some other perspective if the will could be altered to everyone's benefit.

The solution in at least some of these cases could be to make an application to the Court of Protection. It has the powers to effectively create a will or approve changes in the terms of an existing will if there is a convincing case for doing so and there is reliable evidence that the changes would be in accordance with the person's wishes had they not lost capacity.

Please contact us if you would like more information about the Court of Protection or Lasting Powers of Attorney.

**Enormous difficulties
for families**

Husband must double maintenance payments to former wife

The High Court has doubled the amount of maintenance a man must pay to his former wife because his income has increased considerably since they divorced six years ago.

The couple had been married for 11 years and had two sons. During the marriage the wife agreed to sacrifice her career to look after the children leaving the husband free to concentrate on his work.

When they divorced they agreed on a one-off lump sum and periodical payments of £33,000 a year for the wife together with extra money for the two

children until they were 17 or until they had finished their education.

After six years the wife applied to have the payments increased on the basis that her husband's income had risen considerably whereas her earning capacity remained limited because she had devoted her time to bringing up the children.

The High Court held that the wife's current earning capacity was indeed far less than it would have been had she continued her career after the birth of the second child. By staying at home she had enabled her husband to pursue

his career and also spared him the cost of employing a nanny. The couple's joint decision that she should give up her career put her at a disadvantage financially and this should be taken into account in the payments she received from her husband. It was also significant that a large proportion of the child maintenance would no longer be available to her as the children reached 17 or finished their education.

The court ruled, therefore, that the periodical payments to the wife should be increased to £65,000 a year in keeping with the increase in the husband's income.

Consumers 'happy with new system of buying and selling houses'

Consumers who took part in the early trials of Home Information Packs (HIPs) were happy with the system, according to a survey carried out by the research organisation Ipsos MORI.

HIPs have been required by law since last December by anyone selling a home of any size in England and Wales. They contain information about the property for sale such as the results of local searches and an energy performance certificate.

The research showed that "72% of sellers were satisfied with the HIP, 79% agreed that it contained everything expected, and 81% understood the documents, including their energy rating, from A-G, in the Energy Performance Certificate (EPC)".

Nearly one third of buyers said they intended to carry out the recommendations in the EPC to improve the energy efficiency of their home. Just under 60% of buyers said they would have liked to have seen the HIP earlier in the process. Many didn't get the chance to see it until after they had made an offer on the property.

In response to the findings, the Government has organised a public information campaign to raise awareness of HIPs

Shared ownership sales

The Department for Communities and Local Government has confirmed that HIPs are needed when a home is being sold on shared ownership terms, although this would not apply if the property was being sold to a sitting tenant as no marketing would have taken place and the property would not be conveyed with vacant possession.

The statement says: "However, if it is an ordinary open market sale on shared ownership terms then a HIP would be needed unless some other exception applied."



and remind estate agents of their responsibility to make sure the packs are readily available to ensure buyers get the full benefit.

The findings are based on trials that took place between November 2006 and April last year and so many of the problems and delays in providing HIPs have now been ironed out.

Housing Minister Caroline Flint said: "Consumers are already benefiting from the introduction of HIPs. Search costs are falling as a result of increased transparency in the market, energy ratings can help people to reduce fuel bills, and first time buyers are receiving important information about their home for free."

We are happy to provide more information about HIPs or any aspect of buying and selling a home.

Houses in Multiple Occupation come under review by Government

The Government has begun a review aimed at improving the management of Houses in Multiple Occupation (HMOs) and the conditions of people living in them.

It follows concerns over the so called 'studentification' of many towns and cities which have reported an increasing number of empty properties when universities are closed during the summer months. Many shops, pubs and businesses close down during the quiet periods creating 'ghost towns'.

The Department for Communities and Local Government believes that too many HMOs in one area can have a negative impact on local public services and reduce the opportunities for low-cost home ownership.

It says that some campaigners want to limit the number of HMOs through the use of restraining policies such as refusing planning permission for change of use to an HMO once a certain



concentration is reached in an area. In order to do this there would need to be a clearer definition of HMO for planning purposes. The review will try to identify good practice ideas in areas which are coping well with a high concentration of HMOs and see whether those ideas could be applied to areas experiencing difficulties.

It will also examine whether planning policies can provide a suitable way to

tackle these problems. Launching the review, Housing Minister Caroline Flint said: "It is not acceptable that in too many areas people living in HMOs and local communities alike are having their quality of life affected. We must have balanced, sustainable communities where settled communities can live side by side with those in HMOs.

"The new HMO licensing scheme and tenancy deposit schemes are already making a difference but I want to know what more we can do to provide the right housing in the right place, guarantee proper living conditions for all, and ensure our towns are places people want to live and work in over the long term."

The new review will be combined with the Private Rented Sector review announced in January to look into standards of accommodation and the rights and responsibilities of landlords and tenants.

More women setting up businesses but they still trail behind the men

An increasing number of women are setting up their own businesses to get more flexibility between work and family life, according to Government research.

Most of them are very positive about the benefits of being self-employed with 86% saying they would be prepared to set up their business all over again if necessary.

The research, commissioned by the Minister for Women and Equality, Harriet Harman, reveals that there are now more than one million self-employed women in the UK.

That's a rise of 17% since 2000. They still lag behind men, however. Even though women make up half the population, they only account for just over a quarter of the total number of self-employed.

Now ministers are starting a publicity campaign



to encourage even more women to set up their own businesses. Harriet Harman said: "Women want to call the shots by running their own business. They're recognising that being their own boss gives them control and allows them to balance their work and family life."

Anyone thinking of setting up a business should make sure they do their homework first and seek legal advice on a range of subjects such as leaseholds of premises, business contracts and employment matters.

We have helped numerous new businesses get off the ground and are able to offer advice on such things as whether to set up as a sole trader, partnership or a new company.

We also have valuable contacts including accountants, surveyors, valuers and financial advisers who can provide added value to the services we provide.

Court balances conflicting claims as will is ruled invalid

A court has had to rule on the validity of a man's will following conflicting claims from his daughter and his cohabiting partner.

The man made the will while terminally ill in hospital with liver disease. It was drawn up by his brother who was named as executor along with the man's partner with whom he had lived for two years.

The man died five days after making the will which left all his estate to his partner. His daughter then claimed that he had lacked testamentary capacity when he made the will and so the court should rule it invalid. She was able to produce evidence from a hospital consultant that her father did not have the capacity to understand and authorise legal documents in the days before his death.

For her part, the cohabiting partner argued that she qualified as a claimant



under the Inheritance (Provision for Family Dependents) Act 1975 and should be allowed to inherit the estate.

The court ruled that the father did lack the necessary capacity to understand and authorise the will and it should

therefore be declared invalid. However, his partner had lived with him for more than two years before his death and so she was entitled to make a claim on the estate. This entitlement had to be balanced against the fact that the man loved his daughter and wanted to provide for her.

After considering all the circumstances, the court awarded the partner a lifetime interest in the house and awarded the rest of the assets to the daughter.

The judge clearly tried to be fair to both parties but much of the trouble may have been avoided if the man had taken legal advice long before he became ill and had drawn up a will while he was still fit and able. The thought of making a will may make some people feel uncomfortable but if it is drawn up properly with the help of a solicitor it can prevent a great deal of heartache for your family in future.

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