



## LEGAL REVIEW SUMMER 2017

Your legal bulletin on news & views from Moss Solicitors LLP

### 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

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.***



Keith Vaughan, who joins us at the end of August, is a highly experienced solicitor having practised law for over 40 years.

Throughout his career, Keith has specialised in all aspects of corporate, commercial and commercial property work. His experience means that, in most situations which businesses encounter from time to time, he has "Seen it all before". He does however relish the occasional fresh challenge.

Keith has been involved in the Leicestershire business community since qualification and, as the former finance partner of a large regional practice, has practical experience of running a business. This is helpful in enabling him to recognise the business needs of his clients.

Keith was heavily involved in shaping the business environment of the East Midlands during his time as a member of the East Midlands Council of the Confederation of British Industry.

## SUPPORT DERBYSHIRE, LEICESTERSHIRE & RUTLAND AIR AMBULANCE

**M**oss Solicitors have chosen to support Derbyshire, Leicestershire & Rutland Air Ambulance this year, as one of the participating solicitors during its **Make A Will Week (16th-20th October)**.

Gifts in Wills are tremendously important to the charity. One in seven of their lifesaving missions are funded from these generous donations, and this is growing year on year. This charity provides an emergency medical healthcare service across these 3 counties, and surrounding areas, and its staff attend a wide range of incidents, from medical emergencies to industrial accidents, sporting injuries to road traffic collisions. Last year, they attended over 1,800 incidents, utilising both helicopter and critical care car (used at night or when the weather is inclement), saving many lives and keeping families together.

Charlotte Jolliffe, In Memory Giving Officer said, "It was lovely to welcome Anthony Benskin – Partner at Moss Solicitors - to our airbase at East Midlands Airport so that he could meet



our crew and learn first-hand about the service that we provide".

Moss' Wills & Probate Department has agreed to write and update Wills for the charity's supporters. Instead of paying a solicitor's fee, clients will be invited to make a donation to the local air ambulance. Support in this way will keep the air ambulance flying and saving lives in our local community.

## PUT IT IN WRITING!

**I**t is astonishing how often disputes over the beneficial ownership of assets become the subject of lengthy court proceedings. In a case decided in March, an argument about the ownership of a property ended up (at huge cost to the loser) in the Court of Appeal.

The issue was whether the property was owned in accordance with how much the two owners had contributed to its purchase and normal running costs or whether it was owned in some other proportion. In the absence of compelling evidence that ownership of the

property was shared in any other proportion, the Court of Appeal upheld the lower court's decision that it should be determined by the relative contributions of the owners.

This dispute would not have arisen if the people involved had taken the precaution of executing a simple agreement at the outset.

***For advice on any matter relating to property ownership or cohabitation, contact us.***

## SUPREME COURT UPHOLDS REALITY PRINCIPLE IN PROPERTY VALUATION

**P**roperty valuations can be a live issue for many reasons, not just on sale. Differences of opinion on the value put on property when businesses are being broken up are common, insurers are known to contest claims if a property is wrongly valued, and a revaluation can prop up a sagging balance sheet. However, on a day-to-day basis, one of the most common issues surrounding the value of property is the tax bill it carries in the form of business rates.

So it was when a dispute over the value of a property for business rates purposes went all the way to the Supreme Court. The dispute was based on the appropriate value to place on a building which, at the time of its rateable value assessment, was still in the course of redevelopment and could not be occupied.

In such cases, should it be valued as it is, or as it 'should be'? The Supreme



Court put it thus – 'Does a commercial building which is in the course of redevelopment have to be valued for the purposes of rating as if it were still a useable office?'

When the rateable value was being assessed in January 2012, the premises were vacant and could not be occupied as the renovations still required to make them fit for occupation were extensive. The owner's agent suggested to the local valuation officer (LVO) that the rateable value should therefore be reduced from £102,000 to £1. The LVO refused, citing

legislation which required the LVO to assume a property is in 'reasonable repair' for valuation purposes. The Valuation Tribunal sided with the property owner, holding that the condition of the building precluded the conclusion that it was in reasonable repair.

The Court gave weight to the 'reality principle', which establishes that 'the property must be valued as it exists at the relevant date'. Accordingly, the presumption that it was in reasonable repair could not stand.

The decision overturned an earlier ruling by the Court of Appeal which had cast doubt on the applicability of the reality principle. It will come as a considerable relief to developers who are refurbishing properties.

***For advice on the conduct of any dispute with the local planning or valuation authorities, 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%.

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.

**Contact us for advice on any disciplinary matter.**

## 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.**

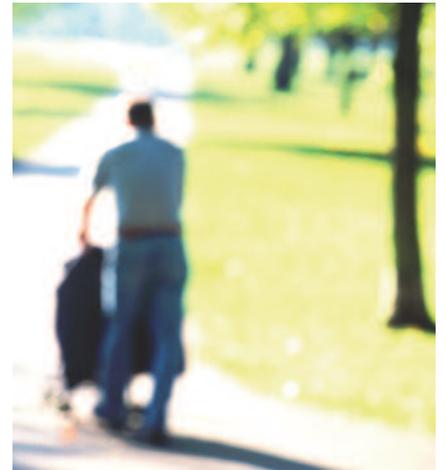
## SHARED PARENTAL PAY – ET UPHOLDS FATHER'S DISCRIMINATION CLAIM

The introduction of the Shared Parental Leave Regulations 2014 has given eligible parents more flexibility as to how leave can be taken after the birth or adoption of a child. Shared parental leave (SPL) enables mothers to share up to 50 weeks' maternity leave and 37 weeks' pay with their partner so that both parents are able to keep a strong link to their workplace. However, the Regulations only require that employees taking SPL are paid at the statutory rate, which is currently £140.98 per week, or 90% of the employee's average weekly earnings, whichever is lower.

There is no statutory requirement for employers that offer enhanced maternity rights to women on maternity leave to 'mirror' those arrangements for employees who opt to take SPL. However, guidance produced by the Government – 'Employers' Technical Guide to Shared Parental Leave and Pay' – stresses that if an occupational scheme is offered to a mother on SPL, it could constitute sex discrimination if the same rights are not afforded to fathers or a mother's partner.

In a recent case on this topic (*Ali v Capita Customer Management Limited*), the Employment Tribunal (ET) upheld a father's claim that a policy giving mothers with 26 weeks' employment service the option of 14 weeks' enhanced maternity pay followed by 25 weeks payable at the statutory rate, whereas fathers were only entitled to take two weeks' paternity leave on full pay then SPL paid at the statutory rate, was discriminatory on the grounds of sex. In the ET's view, the

aim of SPL is to encourage fathers to take a greater role in childcare. It is up to the parents to choose who has the role of primary carer and the decision should be free from 'generalised assumptions' on the part of the employer that the mother is better placed to fulfil this role than the father.



As the judgment was at ET level, it is not binding. However, it has been reported that the employer intends to appeal against the decision. Certainly, a ruling of the Employment Appeal Tribunal, bringing clarity on this issue, would be welcome.

Meanwhile, employers are advised to review their own SPL policies. Where the treatment of men and women is different, can this be objectively justified if challenged?

**Contact us for individual advice on this issue.**

## TAX ADVANTAGES OF MARRIAGE

David Wright, Director at Woodgate Financial Planning says, 'probably the least significant tax benefit of marriage is the marriage allowance. This enables one spouse to transfer to the other one tenth of the benefit of their personal allowance (£1,150 in 2017/18). The tax saving is 20% of the allowance, i.e. £230. To qualify, the transferor must be a basic rate taxpayer with income between £11,500 and £45,000 and the recipient should of course be a basic rate taxpayer.

When it comes to capital gains tax, each spouse is taxed separately and there is no CGT on transfers between them. So there may be scope to transfer an investment which is pregnant with gains to the spouse with an unused allowance. However, capital gains tax will be payable on the sale of a second home by a married couple, with a top rate of 28%. Unmarried, on the other hand, can each have a

'principal private residence' which is exempt from CGT. In addition, the purchase of a second home by a married couple will attract the 3% additional stamp duty levy on second homes which applies to purchases over £40,000. This would not apply to unmarried couples each buying one property.

The biggest tax advantage of marriage relates to inheritance tax, and this factor alone lies behind the marriages of many cohabiting couples. Transfers between spouses who are domiciled in the UK are free of inheritance tax, whereas for unmarried couples, tax would be payable at 40% on the value of an estate over £325,000.'

**Please contact David Wright for further information regarding this article or wealth planning generally.**



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