



GRANT SAW

SOLICITORS LLP

Incorporating Lawbridge Solicitors

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Your quarterly bulletin on legal news and views from Grant Saw Solicitors LLP

Legal UPDATE

Regret Your Financial Folly? We Can Help Undo the Damage

Desperate people can behave irrationally but, with the right legal advice, it is sometimes possible to undo the financial consequences of their folly. This exact scenario happened in the case of a woman who transferred £600,000 to a builder in the forlorn hope of keeping the money out of her husband's hands should her marriage end in divorce.

The woman had recently inherited a substantial sum of money from her father. Her marriage was in difficulties and she was feeling depressed and anxious when she got talking to the builder, who had quoted to construct an extension to her home. He advised her that her husband would get half of her money if they divorced and that she should transfer as much as possible to her family and friends.

He offered his assistance and she transferred the money to him after receiving his assurance that he would repay it on demand. On his advice, and in order to further disguise the nature of the payment, she signed a share transfer which made it look like the money was an investment in his company. The shares she acquired were all but worthless and the company was subsequently wound up.

She later reconciled with her husband and launched proceedings against the builder after he refused to repay the money. In ruling on the matter, a judge noted that she had taken no professional advice as to the wisdom or otherwise of transferring the money, or the value of the company. Had there been a divorce, her amateurish attempt to keep the money out of her husband's reach would almost certainly have failed.



The judge found that both she and the builder had acted dishonestly. There was an oral agreement between them that he would hold the money to her order. It was not a gift and she had at all times retained beneficial ownership of the money, which he held on trust for her. The share transfer was a sham.

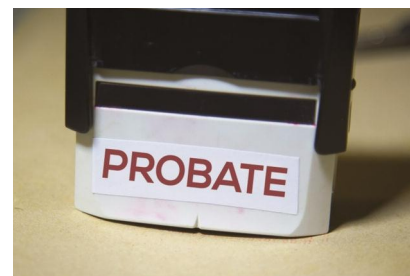
The woman's dishonesty was not such as to disqualify her from obtaining relief. Such an outcome would be disproportionate and would lead to the builder receiving a wholly unmerited windfall. It would also achieve the dishonest objective of placing the money outside the matrimonial assets in the event of a divorce. In the circumstances, the builder was ordered to repay the money forthwith, or to pay the woman equitable compensation in the same amount.

If you get into circumstances similar to these, consult us for advice without delay.

Probate Delays

The installation of new software designed to speed up the granting of probate has had the opposite effect because of teething problems. The average time needed for probate to be

granted by the Probate Registry has increased from about ten days to six weeks or more, and in some cases the grant of probate can take up to three months.



Court of Appeal Backs Pension for Cohabitant

Cohabitation carries risks, especially where things like home ownership, inheritance, Inheritance Tax and pensions are concerned.

When an RAF employee died suddenly, his partner of 15 years was left with the unenviable additional problem that under the rules of the Armed Forces occupational pension scheme she was not entitled to dependant's benefits because he and his wife had never divorced.

The scheme rules do include provision for unmarried partners of its members. However, this does not apply if the member was married at the time of death. In that case, the benefits will go to the spouse.

The man's wife did not expect to receive any benefits and was not in any way financially dependent on him: the couple had been estranged for 17 years.

It took a trip to the Court of Appeal to obtain a ruling that such schemes should look beyond mere prescriptive rules to whether or not it can be demonstrated that there is a 'substantial, exclusive and financially dependent relationship in practice'.

If you are concerned about your position as a cohabitant, contact us for advice. Most of the potential issues can easily be avoided if the correct action is taken.

Vulnerable Witnesses Could Be Given Greater Protection in Civil Courts

Responses to a report from the Civil Justice Council (CJC) setting out proposed measures to better support and protect vulnerable witnesses and parties within civil proceedings are due to be considered following public consultation.

The CJC wants to ensure 'a sufficiently proactive and consistent approach to enabling the proper participation in civil litigation of those who are, or may

become through involvement in the process, vulnerable'. Its report considers vulnerable parties and witnesses in all types of civil litigation.

According to the report, while no data exists specifying the number of vulnerable parties or witnesses who appear before the civil courts across the full range of jurisdictions and types of case, 25 per cent of claimants who answered a civil court user survey

considered themselves to have a physical or mental condition.

Recommendations within the report include enhancing the training of civil judges in relation to issues of vulnerability and ensuring all staff from Her Majesty's Courts and Tribunals Service who handle civil cases are given adequate training to help them identify, communicate with and assist vulnerable court users.

Planning Building Work? Get Legal Advice



When a property development involving a building that is listed or in a conservation area is undertaken, it is reasonable for the contractor employed to do the work to assume that the employer has used due diligence to obtain the necessary planning consents.

In a recent case, a contractor was retained to undertake extensive works to a building, including the construction of a basement-level swimming pool. The building is in a conservation area and the works involved an element of demolition of the existing building, which in turn meant that Conservation Area Consent (CAC) needed to be sought.

Although the various planning permissions were obtained, no application for CAC was made and the local council in due course sent a letter requiring that works be discontinued and

stating that the continuation of the demolition and building work would constitute a criminal offence.

Obtaining the CAC so that the work could continue took more than a year and the contractor applied for damages to compensate it for its losses as a result of the delay. The owner of the building denied that the delay was his fault, because he held that CAC was not in fact necessary for the building project.

The first question that arose was whether the employer had used 'all due diligence' to obtain all the required permissions, as the contract bound him to do.

The question turned on what constitutes 'demolition', and the judge stated that 'for there to be "demolition" of a building it is not necessary that every part of it is removed; works involving the removal of so much of the old building as to clear a site for its redevelopment can amount to demolition'.

In a lengthy judgment that described some of the expert evidence as 'absurd', the judge ruled that the property was subject to demolition, that CAC was required and that the contractor was entitled to damages.

If you live in a property in a conservation area or which is listed, taking legal advice is essential before you become committed to building works.

Inveterate Trespasser Rightly Jailed for Contempt, Court of Appeal Rules

A case in which a householder repeatedly lost his liberty, and ultimately his home, due to his defiance of court orders showed how important it is to accept judicial decisions and move on.

The man claimed to enjoy an unrestricted right of way on foot over part of the garden of an adjoining property that was owned by a social housing provider. His arguments to that effect were rejected by a judge, but he refused to accept that outcome and engaged in numerous acts of trespass.

Court orders requiring him to keep off his neighbour's land had no effect and he had been repeatedly sentenced to jail terms of increasing length for contempt of court. In an attempt to recover its substantial costs of the proceedings, the social housing provider eventually obtained a possession order against him. However, he had refused to leave his home and had continued to trespass as before.

In dismissing his challenge to his most recent, 14-month, prison sentence, the Court of Appeal noted that his relentless



acts of trespass had caused alarm and distress to the social housing provider's tenants. Given his lack of remorse and the absence of any sign of him changing his ways, the Court found that there was nothing excessive about his punishment, which could be viewed as lenient. The Court warned him that, if his defiance continued, he could look forward to further loss of liberty.

If other people are making unauthorised use of land you own, contact us for advice.

Missing Persons – Steps to Take



Surprisingly, nearly 250,000 people go missing in the UK every year. Leaving aside the heartache and worry this causes, until recent changes in the law it also created an

appalling position for family members trying to deal with the affairs of the person who had disappeared, as they had to be declared legally dead before any action could be taken – a procedure that took years.

Matters have been much simplified by the introduction of guardianship orders, which allow the finances and property of a missing person to be managed. They can be applied for at the High Court. They are available when a person is missing from home and:

- is missing for at least 90 days;
- is in prison abroad and cannot communicate;
- has been taken hostage or kidnapped; or
- you do not know where they are, or they cannot contact you to convey their decisions.

You can apply for the order if you are the missing person's:

- husband, wife or civil partner;
- parent;
- child;
- brother or sister; or
- guardian already and are renewing the order.

You can also apply if you can give the court evidence that you have a 'sufficient interest' in the person's finances or property. These applications will be considered on the facts in each case, but would, for example, include the person's long-term partner.

A guardianship order costs £528 if you apply through the Chancery Division of the High Court or £245 if you apply through the Family Division. A security bond may also be payable. The Court may allow this to be paid from the person's funds.

When guardianship has been granted, a £200 set-up fee and an annual 'supervision fee' of £320 are payable.

For more information and advice on the use of guardianship orders, contact us.

LPA – Bank Practice

A lasting power of attorney (LPA) is a document that may be used so that the finances or other issues of a person who cannot deal with them themselves may be attended to by a trusted third party – normally a solicitor or a family member.

When an LPA is presented to a bank or other financial institution, it appears to have become normal practice that it must be certified and dated by a solicitor or notary on each page of the document.

For advice on creating an LPA and the procedures to follow to implement one, contact us.

No Going Back on Gift Freely Made

A recent case decided by the Scottish courts shows the wisdom of not making irrevocable decisions that you may later come to regret.

It involved a woman who gifted her house to her daughter and son-in-law, retaining a tenancy for life over the property. The couple had lived with her, selling their own house when the son-in-law lost his job. The gift of the title to the property was made about a year later and the new ownership was registered at the Land Registry.

As so often happens in such arrangements, the woman and the couple fell out. Three years after the transfer, she moved

out of the house and went to live with another daughter. She then wished to recover the title to the house.

Her argument was that the couple had used undue influence to persuade her to make the gift. However, in the absence of compelling evidence of this, the Court of Session rejected the claim.

If you are considering such an arrangement or wish to make a significant gift to a member of your family, it is always wise to take independent legal advice.

Don't Wait Until You're Old and Frail to Make a Will

The older you are when you make or change your will, the greater the risk that your loved ones will become embroiled in dispute after you are gone. The point was proved by a case in which the onset of dementia very nearly thwarted a retired nurse's wish to divide her estate equally between her four children.

The woman was in her 80s and in frail health when she signed her final will, by which she bequeathed her estate—which was worth up to £900,000—in equal parts to her children. The document was very different from an earlier will which had made individual and very unequal provision for each of the children and which had included one of her eight grandchildren as a substantial beneficiary.

Following her death, her children formed themselves into opposing camps, with two of them challenging the final will on the basis that, due to dementia, their mother had lacked

the mental capacity required to validly execute it. They asked the High Court to pronounce in favour of the earlier will.

The Court found that the woman had not appreciated the true value of her estate when she signed the final will. However, her dementia was at that stage only mild and she was of sound mind. She had taken advice from an experienced solicitor, who was able to assess her mental capacity, and had the compelling motive of correcting what she had realised was the unequal effect of the earlier will. The final will was a true reflection of her wishes and its validity was upheld.

For advice relating to inheritance law, contact us.

Contact us if you would like advice on any of the issues raised in this bulletin or on any other legal matter.



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