

PERSONAL LAW PERSPECTIVES

NEWSLETTER NOVEMBER 2020



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HELLO,

I am delighted to welcome you to the first edition of our new client newsletter – Personal Law Perspectives. As a valued client or contact of our firm, I hope you enjoy this publication.



PAUL HARVEY
MANAGING PARTNER

Each quarter, members of our teams from across our offices will look at some important topics that impact our daily lives, whether that's now or at some point in the future, and they will provide some high-level guidance and opinions. If you need further detail or information, our teams are always here to support you.

2020 has been an extremely challenging year for everyone, and we believe that staying close to our communities and sharing some of our knowledge and experience is an important part of keeping us all connected.

PROPERTY MARKET FOCUS

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2020 has been a turbulent year in every aspect of our lives, and the UK property market has not avoided this turbulence.

At the turn of the year it looked like some of the political and economic uncertainty surrounding Brexit was starting to clear, with early signs that the property market in London and the South East was beginning to turn a corner. However, the coronavirus pandemic and the national lockdown brought the property market to a virtual standstill from March to July, with most deals either pausing or collapsing completely.

Once lockdown measures were eased and the stamp duty holiday was announced, the floodgates opened. Other factors, including lockdown focussing people's attention to their

housing needs and, ironically perhaps, lockdown giving many people an opportunity to save more for a deposit, widened those floodgates further.

I don't recall a swing in the residential property market like this in my career – the market outside of central London is incredibly busy with demand far outstripping supply. The key trend we are seeing is the significant exodus from central London, with city dwellers looking for properties across the commuter belt

with green space and a home office.

The outlook going forward is certainly difficult to predict, with experts divided on a whether 2021 will see houses prices continue to rise or start to fall post-Brexit and when the stamp duty holiday ends.

With no crystal balls available and the path of both the pandemic and Brexit uncertain, unfortunately the only prediction is that the next 6 months are going to be fascinating to watch.



TAKING CONTROL

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It is increasingly common for flat owners to want to take control of the management of their building, usually following differences with the freeholder or their managing agent.

This is often achieved by the flat owners exercising the right to "collective enfranchisement", which allows the tenant to force the landlord to sell the freehold to them at a price calculated according to a statutory formula.

But this is not the only option available – there is also the Right to Manage ("RTM"). This is the right for flat owners to take over the management of their block from their landlord (and their agents) without having to incur the cost of buying the freehold. It will also enable the flat owners or, more usually, a managing agent appointed by the flat owners, to deal with the maintenance of the block, administer and collect the service charges and

(in consultation with the landlord) deal with any requests from flat owners for alterations to their flat.

The advantage of RTM over buying the freehold is that the costs are significantly reduced because the flat owners do not have to pay the purchase price. The process is also much simpler.

However, there are some disadvantages. The RTM does not include the right to extend the individual leases of flats, and it does not allow the flat owners to make changes to the freehold, for example by selling off part of the land, or by granting rights over it such as a right of way. In an RTM application those rights remain with the landlord.

The key consideration is what the flat owners are looking for. If it is to take control of the management and maintenance of the block then exercising the RTM may be the best option. If the flat owners want to be able to exercise the rights of a freeholder, for example by extending their leases, then buying the freehold using the collective enfranchisement process may be more appropriate.

Our specialist leasehold enfranchisement team are experienced in helping clients understand the options and guiding them through each process.

ARRANGING CARE FOR A RELATIVE



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Care Options

Assessing and considering care options for a relative can be a confusing and daunting process. Often, important decisions involving arrangements for care need to be made at a time of crisis such as following a hospital admission or when their relative's needs require additional care in order to have their needs met in a safe environment. Other times, care can be planned well in advance to ensure a smooth and positive transition. Family members often require practical advice and support in identifying the options especially when the requirement is for care for those with complex needs or specific acute health conditions.

There are numerous options for care and support, however, which option is right depends on the individual's specific needs. For example, when arranging care for an elderly or disabled relative, the options usually fall within three categories:

- Home care, sometimes known as 'domiciliary care'. This is an arrangement where the individual remains living in their own home with support from a care agency.
- Live-in-care. This arrangement involves the carers living with the individual in order to meet their needs, usually on a 24-hour basis.
- In a care home. This includes either residential care or nursing care.

For those individuals who wish to retain some independence, the options may also include;

- Independent living or assisted living schemes.
- Social housing with extra support.
- Shared lives schemes.

The choice of care provision will largely be led by the person's needs, health, age and their current situation. It is also important to consider what may be needed in the future and whether the care can be maintained.

For example, if you are choosing a care home for a relative with low-level needs, such as early onset dementia, you will want to ensure that the care home can meet the person's needs as the condition advances. Equally, when arranging care to be provided in a person's own home, the risk of social isolation should be taken in to account particularly if they are unable to see friends and family as and when they want or not able to access the community due to their vulnerability.

Local Authority Duties

The local authority should provide practical advice and support to families who are faced with making important decisions regarding how their relative's needs should be met. This includes considering what actions to take to prevent or delay care needs, providing or arranging services that maximise independence for those already with such needs (for example, the provision of formal care to meet a person's needs in their own home) or how to plan to meet the cost of future care needs. This information and advice is available to everyone, not just those who are in receipt of local authority funded care or support.

The local authority is also under a duty to arrange for a needs assessment for anyone appearing to have needs for care and support. The outcome of the assessment is to provide a full picture of the individual's needs so that a local authority can provide an appropriate response at the right time. Once an assessment has been completed and has identified that the individual has care needs, the local authority will have determined whether it will meet the person's needs. The next step once a person has been identified as having needs for care and support is to undertake a financial assessment to ascertain whether the local authority wishes to charge the person.

Paying for Care

Once it has been decided how the relative's care needs should be met and

an appropriate care provision has been sourced, consideration should be made as to how this will be paid for. This is perhaps the most important consideration after choosing the care provision as careful consideration will need to be made as to whether the chosen option can be viably funded in the long term.

There is a means-tested threshold for financial assistance from the local authority. If the person has more than £23,250 in income and assets (which includes savings and equity in any property that they may own) then they will not be eligible to receive any financial help from the local authority to pay for their care. In this situation they would be classed as a 'self-funder'. There are some exceptions where the value of the home is excluded from the means test.

Once the person's finances have been considered and assessed by the local authority, information will be given to help the individual understand what they may have to pay, when and why and how it relates to their individual circumstances.

There are several ways that care can be paid for:

- Through income and assets (for example, pension or housing wealth)
- A deferred payment agreement (this is like a loan from the local authority who will put a charge on the person's home)
- A financial product or
- A combination of the above

Local authorities should facilitate access to an independent source of information or advice where relevant.

It is often the case that friends and family are asked to step in to make financial arrangements for a family member as they have lost the mental capacity to do this themselves. Where possible, it is important that the family member has obtained the correct authority to do this, whether that is by way of a LPA or through a deputyship order which is made by the Court of Protection.

HOW DO I HELP MY GROWN-UP CHILDREN WITH THEIR DIVORCE?

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Watching anybody going through divorce is not for the faint-hearted, and when it's your own offspring it's hard just to stand by and do nothing.



But what should you do for the best?

Let's say you try to make it all go away for your beloved child, and you put your hand deep into your pocket to help out. Could your generosity back-fire? Well, possibly. Worst-case scenario, you might land yourself in court, either as a witness or as a third party to the proceedings, with arguments over the parties' future financial resources. Now, instead of helping, you're involved, and you may have weakened your offspring's financial claims.

So — what should you do?

Crucially, you will need advice from your own independent family solicitor (and not from the solicitor instructed by your child) — do nothing until you've taken that advice! Every case is different, and the risks/benefits of assisting, financially or otherwise, will vary enormously.

A quick summary of the sort of advice you might receive could be as follows:

1. Always remember that if parties divorce, courts tend to assume that gifts and loans from family are "soft" loans and not necessarily repayable, particularly where there is a lack of money to cover basic needs. Your generosity can be swallowed up into the overall settlement without so much as a thank you.

- 2. Maybe now is not the best time to be generous?** Perhaps defer it until after the case is resolved? Or if now is the best time, think carefully about whether it is intended to be a gift to both parties, or to your child alone — and if the latter, consider avoiding any risk of it being "mingled" with their family money. Maybe set up a trust?
- 3. Think about whether it should be a gift or a loan?** Perhaps you have more than one child and want to be fair to all of them? If so, perhaps a loan makes more sense. Make it as commercial an arrangement as possible, with clear written evidence and consistency in all communications. Instruct your solicitor to draw up a carefully worded loan agreement with clear repayment terms. Consider requiring monthly repayments, perhaps to commence immediately, to underline the nature of the arrangement as a loan, not a gift.
- 4. Security for loans** — Think about securing any loan against a property, reinforcing the nature of the agreement and creating solid evidence that repayment is expected, keeping your generosity away from their family assets.
- 5. Wills/Inheritance** — Think about making a new will. You may wish to set up a discretionary trust for your

divorcing offspring, rather than simply leave it to them.

- 6. School fees** — The "Bank of Mum and Dad" seems to lean more and more towards payment of school fees these days. This might be a good way to help the family overall, whilst keeping neutral and focussing on your grandchildren. How far would you want to go with this? You may well want to keep your contributions entirely voluntary. You may expect your child's spouse/their parents to contribute also, and limit your own contributions accordingly — perhaps providing your grandchildren with other benefits more visible to the children themselves?
- 7. Pre and Post Nuptial Agreements** — Almost all PNAs we do these days seem to be initiated not by the couple themselves, but by their parents. Whether the marriage is strong or struggling, such agreements are increasingly respected by divorce courts and it's always a good idea to create clarity, particularly where you are thinking about offering financial support.

And if that all sounds complex, remember — this is just a starter for ten. It's a complex area — so make sure you do your homework before writing out that cheque!

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