

# PERSONAL LAW PERSPECTIVES

NEWSLETTER MARCH 2021

## THE LEGACY OF COVID ON FLEXIBLE WORKING

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**The coronavirus pandemic has forced millions to leave the office and work from home, almost overnight.**

Make-shift desks have replaced the ergonomic workstations, and zoom calls and Teams meetings have become the standard workplace interaction for many. These new reactive measures were only intended to be temporary, and yet many businesses are now taking this opportunity to make flexible working a permanent feature.

Before the pandemic, it was reported that only around 5% of the workforce worked mainly from home. This in turn may explain the recent statistics from the Chartered Institute of Personal Development (CIPD) which confirmed that nearly half (46%) of employers didn't have any flexible working practices

and policies in place. Agile working arrangements include flexi-time, part-time working, compressed hours or job shares and of course home working.

COVID has shown us that working from home and/or outside of core hours does not always disrupt the efficiency of businesses in the way it was feared to. Many companies have survived and even thrived during the last year. COVID casualties are more likely to be businesses that we know are not able to operate with staff working remotely, for example in the hospitality and retail sector or who have simply failed to harness the technology which allows for home working.

### Do not get stuck in the past

There are undeniably benefits of returning to the office eventually; it's good for workplace morale, it increases collaboration and cohesion, it allows junior staff to learn from their more experienced colleagues and ask those small niggling questions they might be too nervous of committing to email.

But what the past year has shown us, and what the latest CIPD finding supports, is that businesses are going to need to carefully consider the way they deal with flexible working in the future. Any hard-line policy of only working from the office is unlikely to go down favourably with staff. Aside from having to deal with

any resulting disputes, whether internal (including Grievances) or external (Tribunal claims) this also has implications for staff recruitment and retention.

There is some research to suggest that those without access to flexible working are around twice as likely to be dissatisfied in their job, compared to those who do. Companies who insist on office only working therefore run a real risk of losing staff to competitors who allow a more mixed way of working.

Managers will also need to give renewed consideration to the impact of refusing a flexible working request given that many employees will now be able to demonstrate that working from home (for part of the time at least) does not have a detrimental impact on business performance.

### Champions of change

On the back of their findings, the CIPD have called for flexible working to be a day one right. At present, UK law states that employees can only request to work flexibly after 26 weeks of employment, with a limit of one request per 12-months.

### The CIPD say this needs to change and have launched their Flex for 1st campaign calling for:

- Employers to implement internal policies that allow their employees to request flexible working from day one of employment
- Employers to stipulate that jobs can be done flexibly in job adverts, attracting more candidates who are looking for flexible roles
- The government to make the right to request flexible working a right from day one for all employees, as well as revisiting the business reasons for rejection and the 12-month timeframe

The government have got a lot on their plates at the moment, but once this is over and furlough has finished, the legacy of what COVID meant for flexible working will remain and we do not expect the workplace to ever fully return to the way it was pre March 2020.



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**HELLO,**

Welcome to the second edition of **Personal Law Perspectives**.

I hope you and your families have stayed safe and healthy since our last edition back in November.



**PAUL HARVEY**  
MANAGING PARTNER

Like many of you will be, we are now looking ahead with fresh optimism as we plan for life after lockdown. For me, part of that is looking at the long-term impact of the pandemic and I believe that when we eventually reflect on this period, it will have been a time in which we have improved the service we provide to our clients, and how we operate as a business.

I hope you enjoy reading the features in this edition - they illustrate some of the ways in which our teams are here to support you through life during lockdown and beyond.

## UNMARRIED COUPLES: HOW DO YOU ACHIEVE FINANCIAL FAIRNESS WHEN A RELATIONSHIP BREAKS DOWN?

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When unmarried couples separate there can sometimes be a dispute over the house they owned and lived in.

Each may claim a share and usually, but not always, their percentage shares are agreed in advance when the house is bought. Where there is no such agreement, the law will look at the parties' intentions and individual contributions towards the purchase of the house as a possible starting point.

After separation it is not uncommon for one of the couple to remain in the house, with no change to the property's legal ownership or the mortgage arrangements. This can happen for a number of reasons. One, because it is a challenge to arrange a sale or move from the locality at short notice, and two (by far the most common) because it is problematic to arrange a re-mortgage to buy out the leaving party's share on only the remaining person's salary. In these circumstances the co-ownership of the property continues but the leaving party will often stop paying the mortgage. The remaining party will meet those payments and perhaps even "do up" the house as they continue to live there. The shelf life of this type of post separation arrangement varies couple to couple but inescapably ends with one person needing a release from the mortgage and off the title deeds.



If the former couple cannot agree on a sale of the house then either of them can apply to the court, who will order that it be sold. The question then arises who gets what share of the proceeds of sale. What happens about contributions, money towards the mortgage, or for alterations to the house that only one party has paid for after separation? How does the law determine a fair outcome between separated parties in these circumstances? Answer: by a process of what is known as "equitable accounting". In using this process, the court makes fair adjustments to each party's share to reflect post-separation contributions.

Three issues are usually considered during this accounting process: claims for occupational rent, mortgage payments and major improvements to a property.

### Occupational Rent

Section 12 the Trusts of Land and Appointment of Trustees Act 1996 gives cohabiting couples a legal right to live in their co-owned property. If one of the owners is excluded from living at the property then the party who remains there may become liable to pay a market rent for his/her occupation of the other's share of the property.

The leaving party will need to show that he/she has been excluded from living at the property. Certain scenarios will count automatically, for instance, where one is forced to leave due to violence. However, even where someone has left for a reason which is not obvious, the court is clear that this does not prevent it from enquiring into whether there should be some accounting process to achieve fairness anyway. Importantly, it will consider the presence of children in the property when coming to a decision.

### Mortgage payments made after the other party has left

A party who has made payments under a repayment mortgage will have increased the value of the house. The law deems that the non-contributing party should not be entitled to take advantage of those payments and, perhaps, the consequent rise in value of the property to which he/she has played no part.

How the court will deal with interest only mortgage payments has been more controversial, but it did not rule out that a claim for occupational rent could be counteracted by the claiming of interest by a mortgage paying co-owner.

### The treatment of improvements made to the property

Under this heading the law is looking at structural changes, such as extensions, loft conversions and major fittings or renovations. Case law is clear that valuing such claims is achieved by taking the lower of (a) the cost of doing the work; and (b) the increase in value of the property. The law will expect the non-paying owner to contribute to the lower of those two values in the same percentage as his/her share of the property. This will come from his share of the proceeds of sale.

When these equitable accounting rules apply is highly fact dependent. There is no hard and fast set of rules. Again, the aim of equitable accounting is to achieve financial fairness between co-owners. It is always worth investigating where the line of fairness should be drawn and pre-empting these issues. Always seek legal help to agree the orderly uncoupling of the relationship if the house cannot be sold immediately.

## YOUR LIFE AND YOUR LEGACY

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Recently I embarked on a thorough clean and tidy of our kitchen cupboards. I discovered some items that should have been consumed long ago.

It can be easy to overlook these items, by which point they are of no use to us anymore.

The same can be said for your Will or Power of Attorney – they can have a limited 'shelf life'. So it is important to dust off and review these documents occasionally to make sure that, when the time comes, they carry out your wishes as intended.

### Caring for new arrivals

It is especially important for parents to ensure that they each have a valid Will in place. This should specify who they would wish to care for their child should they die before the child reaches the age of 18. It should also specify who will look after the child's inheritance so that

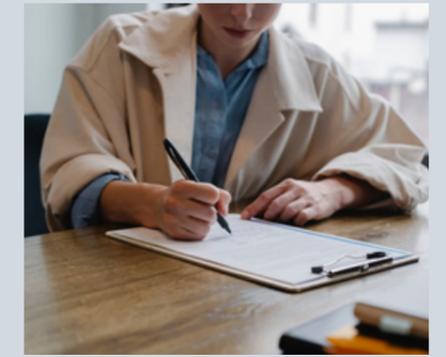
the child's educational and other needs are taken care of. Guidance must also be given on the appropriate age at which the child will become entitled to receive their inheritance and assume full control of the funds. This will vary depending upon, for example, the size of the estate and the individual circumstances and needs of the child.

### Don't forget the grandchildren

It is not just parents who should revisit or draw up a Will. Grandparents should also check what provision (if any) has been made in existing Wills for current or future grandchildren. Does the Will expressly state that the share of their estate which was intended for a child who has predeceased them should pass instead to that child's own child or children? And at what age should their grandchildren inherit?

### Powers of Attorney and capacity

A Will ensures your wishes are carried out after your death. A Power of Attorney safeguards against the possibility of losing control of your affairs because you have lost mental capacity during your lifetime. It is easy to assume that loss of capacity is something that typically affects us in later life, but capacity can be lost at any age due to an accident or an illness. Anyone aged 18 or over can make a Lasting Power of Attorney provided they have the requisite mental capacity to do so. There are two types: one for property and finances, and the other for health and welfare-based



decisions. The same person can be appointed under both types of Lasting Power of Attorney, but need not be.

It is of course prudent to ensure that elderly relatives have a valid Lasting Power of Attorney to cover any future loss of capacity, particularly those who rely upon others for day to day help with their affairs, or who are approaching the stage when the need for more help is foreseeable.

### Can an out of date Power of Attorney create more issues than it solves?

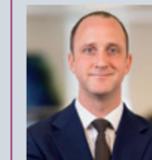
Absolutely. For instance, are the individuals who you appointed to act as your Attorneys still the individuals who you would want to take responsibility for your finances or your health? Are they still able to do this, or have they lost capacity themselves, or died? If so, a replacement Lasting Power of Attorney will need to be drawn up.



## PROPERTY MARKET OVERVIEW

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In our November edition, I said that the next 6 months would be fascinating to watch, and they have been.

Despite a second national lockdown, the effects of the ongoing stamp duty holiday and people continuing to move out of central London have kept the residential property market in our region very busy and house prices have stayed strong.

Has Brexit made any difference? Very difficult to say as the impact of Brexit on the property market and the wider economy may have been masked by the both the pandemic and the stamp duty holiday – only time will tell on that.

So following the Chancellor's announcement of an extension to the

stamp duty holiday in the March Budget, I fully expect the market to remain busy over the spring and summer of 2021, especially if the UK Government's road plan out of lockdown goes as planned and the economy starts to recover as we all hope.

Beyond that, only once the UK Government's support packages finish and businesses return to some form of normality will the full impact of the pandemic and Brexit be fully revealed.