ISSUE #3

PERSONAL LAW
PERSPECTIVES

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Morrisons SOLICITORS

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HELLO,

I hope this might be the last introduction I write which mentions the pandemic and would like to take this opportunity to thank you all for your support, resilience, and patience during the last 18 months.

The pandemic has been hard on everyone, and I hope that our teams have continued to support you and provide the same level of service that we always strive to deliver.

PAUL HARVEY
MANAGING PARTNER

I am proud of how our teams have responded and adapted to the situation and I am optimistic as I believe that in many ways we will emerge from this period stronger as a business.

Our offices are now fully reopened, and we look forward to being able to welcome you back. We are keeping some precautions in place, and we are always happy to provide you with a fully socially distanced visit if you would like us to – just let the team know.

I hope you find my colleagues' articles in this newsletter interesting, and we look forward to working with you, and hopefully seeing you again soon.

BIG CHANGES FOR SEPARATING COUPLES – NO FAULT DIVORCE IS COMING

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The Divorce, Dissolution and Separation Act 2020 ("DDSA 2020") brings about the biggest reform of divorce law in 50 years and is the result of long term lobbying by members of the legal profession for changes to the current system.

Currently, couples seeking a divorce in England and Wales must have been separated for a period of 2 years or one must blame the other for the marriage breakdown, citing either adultery or unreasonable behaviour. Even if both partners mutually agree that the relationship is over, if they do not wish to wait for two years before commencing the proceedings then it is necessary for the divorce proceedings to proceed with a petition which apportions blame.

For the majority of couples, the preparation of the divorce petition will be their first introduction to the legal process and for many years, family lawyers have raised concerns that a system which encourages an adversarial approach at the outset of proceedings can significantly undermine efforts to work towards amicable agreement in relation to financial matters and co-parenting arrangements in relation to any minor children.

The aim of the DDSA 2020 is to reduce conflict within the legal process of divorce and it is hoped that this in turn will empower partners to work together to find constructive solutions for the issues relating to finances and children arising from separation.

Current Regime

Under the current regime, one partner must petition for divorce and must rely on one of the following statutory facts within their petition:

1. Adultery
2. Behaviour
3. Desertion
4. Two years separation with consent
5. Five years separation without consent

Figures obtained by Resolution (formerly Solicitors Family Law Association) suggest that in 2015, 60% of divorces in England and Wales were granted on the basis of adultery or unreasonable behaviour whereas in Scotland where the divorce law is different and there is scope to proceed on a no fault basis after a shorter period of time, only 6% of petitions were on the grounds of adultery or unreasonable behaviour.

Given that so many petitions rely on allegations of unreasonable behaviour, it is perhaps no surprise that the current system allows the Respondent spouse an opportunity to defend the divorce.

Under the current regime, divorce can therefore be a costly, stressful and time-consuming process and the aim of the new system is to offer a much more streamlined approach.

Key Changes

Under the new regime, no explanation or evidence of the reasons for the breakdown of the marriage is necessary and it will no longer be possible to raise allegations of bad behaviour.

The Court will not be required to look into the reasons for the irretrievable breakdown of the marriage and all that will be required is for one or both partners to provide a statement confirming that the marriage has irretrievably broken down.

The new system will remove the possibility of one partner contesting the divorce and the scope for proceedings to be challenged will be extremely limited thus, avoiding costly defended proceedings.

Under the new system, couples will be able to lodge a joint application for divorce where the decision to separate is mutual and there is a wish for cooperation.

It is hoped that this early instance of couples working together will lead to more couples electing for Alternative Dispute Resolution in relation to the issues that arise from separation rather than entering into Court proceedings.

The intention is to encourage joint applications where possible however in the event that a joint application is made and one partner then seeks to resile from the process, the application can be converted into a sole application and will proceed accordingly. The reluctant joint applicant cannot therefore block an application from progressing.

It is estimated that the process should take approximately 26 weeks from the filing of the initial petition. However this may be subject to delays while the financial matters are resolved as the court must be satisfied that appropriate financial provision has been made prior to the final divorce order.

Coupled with the recent guidance from the Judiciary that applications to court on financial matters and matters relating to children should be the last resort, this really is a wholesale shift in the culture of family law with the focus going forward being firmly on collaboration and co-operation.

When is No Fault Divorce being implemented?

The DDSA received royal assent in June 2020 and implementation is planned for 6 April 2022.

Our family law team frequently help clients embrace a collaborative approach to separating through exploring ADR options, backed by our longstanding expertise in litigation.

PROPERTY MARKET OVERVIEW

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The last year in the residential property market has been busier than at any other time in my career.

All those involved in the housing market, from solicitors to estate agents, and from mortgage companies to removal companies, have been at capacity for most of the last year.

So now that the Stamp Duty holiday is winding down and people return to their offices and back into cities, what does the future hold for the housing market?

It has been reported that June saw a small fall in national house prices, but I do not expect a large or sustained drop in values, or a significant slowing down of the market. The expected economic recovery and the basic fact that and demand is still outstripping supply means competition for properties should keep prices up. However, chains may be slowed down as the shortage of properties means sellers may have buyers, but they are often struggling to secure new homes to move to.

So, all in all, I suspect we will see a return to a similar market we had pre-pandemic, which was already strengthening following the Brexit deal and improving economic confidence.

But if the last 18 months has taught us anything, it's that the future remains as difficult to predict as ever.

GETTING ONTO THE PROPERTY LADDER WITH THE HELP OF MUM AND DAD

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How do I help my children to get onto the property ladder?

Many parents are keen to help their child or children get onto the property ladder and don't want them to have to wait for their inheritance.

Recent studies have shown that parental lending accounts for up to 25% of all mortgages to first time borrowers.

The first thing to remember is that under the mortgage affordability rules the loan must be disclosed to the mortgage lender. This means that the loan will be treated as a debt owing which could affect your child's credit scoring and present a problem in raising a mortgage.

What are the options and what do you need to consider?

The safest way for parents to protect their investment is of course to put their names on the proprietorship register or to buy the property in trust for their child. However, parents rarely want the complication of co-owning a property with their child and his or her partner and of course there are also capital gains and inheritance tax implications to consider.

Your child should also be encouraged to consider the legal ramifications of being in a relationship and their relationship potentially going wrong.

So, co-habiting couples may consider entering into a living together agreement in order to set out the basis on which they are going to co-habit and in particular what contributions they will each make to the household, their respective if any interests in the property and how the initial deposit from mum and dad will be treated.

By contrast married couples have a whole range of financial obligations and responsibilities between them irrespective of whether a property is solely owned or jointly owned.

If the couple are intending on getting married they may even go as far as considering a pre-nuptial agreement to reflect and record the advancement of money from parents and to state that the money should not be shared in the event that the marriage breaks down.

Whilst the parties may have stated their beneficial interests in a property by way of a declaration of trust this can, if appropriate, be overridden by the Courts depending on the financial needs of the parties and that of their children.

The couple might consider entering into a post-nuptial agreement to record the contributions brought into the marriage through financial assistance from a parent.

The reality is that at the time there will usually have been little discussion between parents and their child as to how the payment towards the deposit for the purchase of the family home should be treated. More often than not it was a gift or perhaps a gift with strings attached. And more often than not there is nothing in writing and there are no terms attached making it very difficult for parents to argue that they are seeking repayment of their money.

If parents don't intend an outright gift of money then they might consider

setting up a formal trust agreement or loan agreement.

If the money is to be an outright gift then the simplest and most cost-effective way of protecting a co-habiting couple's respective interests in a property is for them to hold the property as tenants in common opposed to joint tenants and to make a declaration of trust as to their respective beneficial interests in the property.

Why is it important to take professional advice?

Not only is it imperative that parents and their children should have a very clear understanding from the outset of whether the money is a loan or a gift but it also goes without say that parents should consider the potential inheritance tax implications and children should be advised to make a Will.

Both parties would be well advised to take proper legal advice.

There are legal solutions which will help to protect family money and also to avoid any disputes on termination of a relationship irrespective of whether a couple are co-habiting or married.

COVID, FLEXIBILITY AND THE COMPETITION

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There has been a lot of doom and gloom with all things covid related, but the good news is that the vaccination roll out appears to be working and although "freedom day" was pushed back, it's fair to say that life is slowly returning to some sort of normal.

A lot has changed since March 2020, particularly in respect of the way we have worked since the pandemic first hit. There is a lot of debate and discussion as to what working patterns are going to be post-recovery and various sources suggest that the government may legislate to facilitate more home working in the future.

Countries like Ireland have already taken steps to formalise a new way of working. Deputy head of government Leo Varadkar has announced plans to introduce a new law allowing employees to request the right to work from home. While this is similar to a flexible working request in the UK – i.e. the statutory right for employees to apply for flexible working if they've working continuously for the same employer for the last 26 weeks – Ireland appears to go beyond the UK entitlement by introducing a new code of practice for home workers which includes giving them the right to disconnect completely from work outside of their normal hours without being penalised.

The risk of resistance

Home working seems to have worked well during the pandemic – we've adapted, lots of companies survived, some thrived, and many people are enjoying spending more time at home with children or avoiding an irritating commute. It's certainly true that less travel has a positive impact on the environment. But it doesn't work for everyone and some employers are insisting that the old way of working is to be returned to once restrictions are lifted for good. Is this going to work?

Consider for a moment what was reported to happen at Apple recently. It is understood that CEO Tim Cook's plans for a widespread return to the office were met with uproar amongst staff. The policy requiring staff to be in the office for three days a week has gone against the notion of flexible working and has already forced some employees to quit, according to a recent BBC report.

This poses a real risk for employers who take a harder line with demanding a return to the office. If their competitors permit and promote greater employee choice, where working from home is the norm, then companies may be faced with some of their most talented employees leaving to work for a rival business.

Potential pitfalls

Undoubtedly there is merit in staff working together under one roof, sharing ideas and driving innovation. There could also be practical difficulties in hybrid working arrangements and these shouldn't be underestimated. Pitfalls may include enforcing certain days where all staff are required to attend the office as this could penalise part time workers who aren't able to move their days around. Statistics show that women are more likely to work part time because they tend to take on more childcare responsibilities, so employers will need to watch out for any provision, criterion or practice which would be unfavourable to any particular group of people.

Ultimately, it's too soon to tell how effective hybrid working arrangements are going to be. The concept had started before Covid, so perhaps the pandemic has accelerated this working pattern and forced it onto businesses who previously would have rejected anything other than office work. Ultimately, the most important thing for businesses is to remain competitive, but in order to do so they are going to have to listen to what staff want and try to balance these needs with those of the business. If they don't, then its highly like staff will look for companies who are willing to be more flexible and it sounds like they won't be hard to find.

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