Independent Financial Advice

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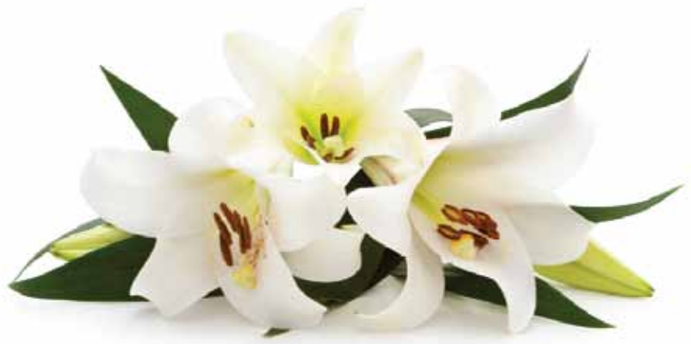
Embrace

news and advice from Birkett Long

Winter 2011/12

Life's inevitabilities!



The fact that you will need a funeral is one of life's inevitabilities. However, the cost of even the most basic funeral is out of reach for many people. Funeral costs have risen, on average, by 7.32% per annum over the last five years – this is higher than the current rate of inflation.

Funeral costs are expected to continue to rise substantially in the next few years due partly to the lack of available burial grounds and also professional fees rising faster than the rate of inflation. The average cost of a funeral in 2009 was £2,733; this is expected to rise to £5,540 by 2019. Therefore financial planning provision has become important to many people to protect against the rising costs of a funeral.

A funeral plan can be purchased to fix the cost of a cremation/funeral at today's prices. The costs covered usually include the provision of a coffin, hearse and limousine, the cost of funeral/cremation and Minister and officiant's fees. Many funeral plan providers include different options with flexible payment facilities.

A funeral plan has many other benefits including protecting the family from the burden of meeting funeral expenses. In addition the plan will be outside of the estate for Inheritance Tax purposes and is guaranteed to pay out even if the plan holder's assets are frozen at death.

If you would like more information on funeral plan provisions, or any other financial service advice please contact Paul Chilver on 01206 217614 or paul.chilver@birkettlong.co.uk.

Pensions legislation

From October this year new laws will require employers to automatically enrol eligible "jobholders" in a pension scheme. Eligible jobholders are aged between 16 and 74, normally work in the UK under a contract of employment and are paid qualifying earnings – the level of which will be reviewed annually.

Employers will be able to use an existing occupational pension scheme or personal pension scheme if it meets the requirements, but if not, they will have to enrol employees in NEST, a central scheme to be set up by the government. Implementation will be staged by number of employees and span about four years from 1 October 2012, although already there are delays – in November 2011 the Department for Work and Pensions announced that the implementation date for employers with less than 50 staff was being reviewed. Enrolment is automatic but jobholders will be free to opt out of either type of scheme once they have joined. While employees are active members of the scheme, employers will be required to pay a minimum level of pension contributions on their behalf.

For information about any aspect of employment law, contact Reggie Lloyd on 01206 217347 or email reggie.lloyd@birkettlong.co.uk.

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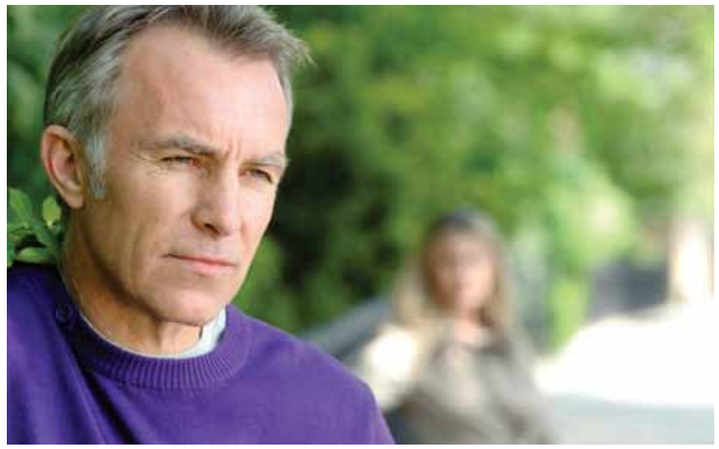
Family law

2012 - Time for a fresh start?



Many clients tell us that they are in unhappy marriages but they are waiting for the economy to recover before sorting out their financial affairs. However, David Cameron's New Year's message confirmed what we already know, money is tight and unemployment is a possibility for many:
"Of course I know that there will be many people who are worried about what else the year might bring. There are fears about jobs and paying the bills. The search for work has become difficult, particularly for young people. And rising prices have hit household budgets."

As it does not appear that the economy will fully recover for some time, should people consider moving forward now? What will the courts do when money is tight and buying two houses is not possible?

It is rare for a divorce case where the parties are not fighting over substantial assets or income to be reported in the legal press. However, on 7 December 2011 the High Court gave their decision in financial proceedings within divorce where there were "modest assets". The husband earned around £17,000 per annum net and the wife was a housewife. Their assets (including the house, a share of a property in Egypt, savings and debts) totalled £233,515. The County Court had allowed th e wife to stay in the house for two years after which time it was to be sold and the proceeds divided 70% to the wife and 30% to the husband. The County Court also ordered that the husband pay her maintenance of £500 per month for four years. The husband asked the High Court to review this decision.

The High Court made it clear that fairness does not necessarily mean that assets should be divided equally; the needs of both parties, not just the wife, must be considered. The County Court had not explained how their order would meet the husband's needs or why he should be left with less than half of the capital and have to pay substantial maintenance. The High Court agreed that the wife should receive 70% of the equity giving her resources of around £150,000 and leaving the husband with resources of around £35,000 in England and Egyptian property worth around £45,800. It said that the house should be sold and the husband should only continue to pay the mortgage until the sale, at which point his obligation to pay maintenance to his wife would also end. The Judge said that equal division was not fair because of the parties' different incomes, the needs of the two children who were in education, and the wife having owned a property at the start of the relationship. The Judge said that this outcome made it difficult for the wife to buy anything other than a very small flat in her area and that the husband would not even be able to buy that without a large mortgage.

This case highlights the fact that the Court cannot stretch the family's finances and is left with stark choices when there is insufficient capital to rehouse both parties.

Legal bills resulting from a fight through the courts only serve to decrease the money available to the parties. The need for careful planning and realistic advice at the outset is plain. At Birkett Long we have the experience to give realistic advice about possible outcomes from the outset. Contact Emma Brunning on 01245 453846 or emma.brunning@birkettlong.co.uk.

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Wills, Trusts & Tax

Landmark case reaffirms importance of Lasting Powers of Attorney for Health and Welfare

People often feel that in making provision for future events they are somehow tempting fate.

No-one wants to dwell on what lies ahead and particularly the possibility of illness and eventual death. Some of us will nonetheless make a will. Some of us might make a Lasting Power of Attorney (LPA) to ensure that our property and affairs can be dealt with should our mental capacity become impaired. Considerably fewer of us will make a LPA in respect of our health and welfare. Yet most people would agree that where they live, how they are cared for and perhaps, most fundamentally, whether life sustaining treatment should be maintained or withdrawn, are significantly more important to them than what happens when they are dead or how their money is managed.

Rarely has this issue been brought into more painful focus than in the recent case of M and Others v NHS Primary Healthcare Trust [2011]. M was 43 years old in 2003 and about to depart on a skiing holiday with her partner when she suffered viral encephalitis, leaving her with extensive and irreparable brain damage. Since that day she has been immobile and entirely dependant on others. Unlike other recent cases where the patient concerned was said to be in a 'persistent vegetative state', it was established that M was 'minimally conscious.' Since April 2003, M has been fed and hydrated via a gastrostomy tube and it had been agreed by doctors that there was no realistic prospect of any improvement in her condition. M's family applied to the court for an order that life sustaining treatment be withdrawn and that she should be allowed to die.

M's family told the court that M had made her wishes known to them over the years, in particular through comments she had made in respect of other family members and the well reported case of Tony Bland, who was injured in the Hillsborough disaster. They maintained that she would not have wished to live in her condition.

The Judge recognised that the law allows people to make such wishes formally known by making an 'advance direction'. He noted that the court would have found such a direction as binding and gave considerable weight to the fact that M had not made one. He concluded that her comments were informal only and, whilst he would take them into account, they were not decisive. Ultimately he concluded that the preservation of life was paramount and life sustaining treatment should be maintained.

Everyone will have a different reaction to the facts in this case. Some will believe that the right to life has been justifiably preserved; others will be horrified that a person, against wishes expressed by them prior to illness and despite the views of their family, must be kept alive in such a condition. Either way, one thing is clear from the judgement – the only way to ensure that your views, one way or another, are followed, is to make an express advanced declaration of those views or make a Lasting Power of Attorney.

The Lasting Power of Attorney for Health and Welfare allows your chosen representative (or attorney) to make important decisions about your personal and medical care, should a time come when you are unable to make them for yourself. The form provides an opportunity to elect that your attorney(s) can consent to the withdrawal of life sustaining treatment on your behalf. This presents a chance to discuss your views and gives you the peace of mind which comes from knowing that they will be followed.

The sad case of M comes with a further warning. You are never too young to make a LPA. Undoubtedly M had no idea at the age of 43 when preparing to depart for her holiday just what horror lay around the corner. Cases such as these are, thankfully, extremely rare, but our advice and the moral, if any, from M's story is to take steps now to ensure that provision is made for the future. That way, you can get on with enjoying the present.

For further advice contact Vicky Raynes on 01206 217611 or email vicky.raynes@birkettlong.co.uk

Personal Injury Claims

Asbestos, the silent killer

Asbestos was widely used as a building material between the 1940s and 1970s due to its strength, flexibility and insulating properties. However, according to the Health & Safety Executive, asbestos exposure is now the greatest cause of work-related deaths, with mortality rates from mesothelioma (a type of lung cancer caused by asbestos exposure), expected to peak in 2016. By about 2050, approximately 91,000 deaths are predicted.

Mesothelioma is caused by the inhalation of asbestos fibres and leads to a rapid decline in health, intense pain and suffering for the victim, and life expectancy of between 6 to 12 months. However, the long incubation period means that exposure to asbestos could have occurred 30 or 40 years ago. One of the difficulties of pursuing a damages claim is that with the exposure occurring so many years ago, past employers may have gone out of business or be untraceable and relevant insurance policies can be difficult to track down.

The landmark case of Chandler v Cape Plc (2011) made legal history, when for the first time a parent manufacturing company was held jointly liable with its subsidiary to compensate a claimant. The claimant, Mr Chandler, was employed to stack and load bricks at Cape Building Products Limited, a subsidiary of the defendant company, Cape Plc, between 1952 and 1962. In the course of his job he was exposed to dust generated by the manufacture of asbestos products and he was diagnosed with asbestosis in 2007. However, by this time the subsidiary company had long since ceased to exist and there was no insurance policy in place to indemnify against claims for asbestosis.

The High Court considered whether the defendant parent company had a duty of care to the claimant, which involved applying a three stage test to ascertain whether the damage was reasonably foreseeable, if a relationship of proximity existed between the parties and whether it was fair, just and reasonable for the law to impose a duty. On the facts of the particular case, the defendant had actual knowledge of the claimant's working conditions and it would have been foreseeable that he could have contracted an asbestos related disease, as the dangers of asbestos were known at the time. There was a sufficient degree of proximity because the defendant retained overall responsibility for ensuring that its own employees and those of its subsidiary companies were protected from health and safety risks. The danger of a life threatening illness from asbestos exposure was known in the late 1950s and the court felt it was also fair, just and reasonable to impose a duty of care. The defendant was found jointly and severally liable with its subsidiary to pay the claimant provisional damages of £120,000.

Is this likely to lead to a flood of claims? The answer is that this is unlikely, because many asbestos and mesothelioma charities report that the victims of this harrowing disease are too ill and defeated to think about pursuing claims. However, for those victims or their relatives who do wish to pursue claims, this recent decision means that there is now a better chance of securing compensation for victims who have developed a horrific disease through no fault of their own.

The rise of fraudulent compensation claims

With the political spotlight on the so called "compensation culture" and numerous news stories appearing in the press about "crash for cash" road accident claims, the courts are showing a greater appetite for giving prison sentences to claimants making fraudulent or exaggerated claims.

The tide began to turn in July 2010 when, in a case called Barns v Seabrook and others 2010 EWCH 1849, the divisional Court held that one party to County Court proceedings was entitled to go to the divisional Court to apply for a Committal Order for Contempt of Court where there was evidence of fraud. There have been two other recent decisions which demonstrate the courts are getting tougher. In MIB v James Shikell and others (March 2011) the claimant was sentenced to 12 months in prison for Contempt of Court. He had sustained orthopaedic injuries and a possible head injury in an accident and submitted a £1.35m claim against the Motor Insurers' Bureau, claiming to be suffering from extreme fatigue, physical restrictions and reduced levels of concentration which prevented him from playing football. The insurance company who acted for the defendant obtained video footage of him taking part in a football game. The Judge said she was satisfied that the only reason for him telling lies about his physical abilities was to increase his award of damages. Mr Shikell's father also received a 12 month sentence as he assisted his son in providing supportive witness statements and had heard false reports made by his son.

In Neil v Loveday the defendant was granted permission to take legal action over a personal injury claim brought by Mr Loveday in which he had exaggerated the extent of the back injuries suffered. Mr Loveday had claimed damages amounting to a six figure sum which he said arose from a road traffic accident, alleging he could not work or drive, that he often had to use a wheelchair and had to be cared for by his wife. His wife gave a supporting witness statement. The insurance company obtained surveillance footage which showed Mr Loveday was far more active than he claimed and a settlement of £1,850 plus costs of £1,570 was reached. The insurance company applied to have him committed for Contempt of Court, which resulted in Mr Loveday receiving nine months in prison and Mrs Loveday a suspended sentence for supporting him.

It is hoped that these cases will deter those attempting to commit insurance fraud. The approach of the courts is to be welcomed by all those who are involved in personal injury claims.

For further advice contact Nadina Edmondson on 01245 453728 or email nadina.edmondson@birkettong.co.uk