

## Grandmother wins legal battle over care of her grandson

A grandmother has won a legal battle to ensure that her four-year-old grandson lives with her rather than with his father.

In reaching its decision, the Supreme Court ruled that a child's welfare must take precedence over the interests

of the biological parents. The boy's parents had separated before he was born and he had lived all his life with his grandmother. His mother had left the grandmother's home shortly after the birth. The grandmother was granted a residence order in 2006. Two years

later, the father applied for a residence order which was eventually granted by the High Court. The judge referred to earlier landmark cases which had established that in the "ordinary way" it would be in a child's best interest to be reared by his parents.



The judge then ruled that the level of care the father could provide was good enough and so it did not matter whether or not the grandmother could provide something better. That decision was later upheld by the Court of Appeal. However, the Supreme Court has now ruled in favour of the grandmother. It held that while in the "ordinary way" children tended to thrive best with their parents, many disputes did not follow the ordinary way. This was such a case.

In giving the court's ruling, Lord Kerr said: "The court's quest is to determine what is in the best interests of the child. He has lived virtually all of his young life with his grandmother. He has formed a strong bond with her. There is reason to apprehend that, if that bond is broken, his current stability will be threatened."

Each case must be taken on its individual merits, of course, but this ruling will help to strengthen claims by grandparents to care for their grandchildren in certain circumstances.

Please contact us if you would like more information about family issues.

## Commercial and residential conveyancing

These are troubled times for the property market and in common with most high street practices, we have experienced a downturn in the number of transactions the firm has been handling.

However, we remain buoyant and we are encouraged to see the green shoots of recovery are now appearing. We are pleased to report an increased level of activity and we remain committed to helping our Clients through the process of moving home or their place of business. We are always willing to discuss your needs even if you are undecided about moving home just at the moment.

Our Property Department includes 3 Partners of the Practice who are ably assisted by an experienced Legal Executive and highly talented support staff. We strive to provide a friendly and professional service to guide Clients through what can be a stressful time of their lives.

Our Commercial Property Department can guide you through all aspects



*Martin Cox, new Senior Partner*

of buying or selling business premises and we can advise on all complex commercial property transactions. We are also happy to discuss any letting requirements you may have and are able to recommend the services of local experts to provide an Energy Performance Certificate for you.

We enjoy a close working relationship with all of the Estate Agents in Lichfield and the surrounding areas, and we feel that we are now in a strong position to deal with the demands of a recovering market.

We are also pleased to announce that with effect from 1<sup>st</sup> May 2010 Martin Cox will be the firm's new Senior Partner following the retirement of Robin Heslop as a Partner in the Firm.

Martin will continue the firm's policy of providing a quality legal service for all of our Clients. Our former Senior Partner Robin Heslop will continue his work with the practice in his new role as Consultant.

## Man injured by careless 'horseplay' awarded £1.8m

A man who suffered spinal injuries when his friend jumped on his back has been awarded £1.8m compensation.

The incident happened after the two men had been to a pub together. They left after drinking two pints of beer each.

As they walked along, the man was knocked to the ground with considerable force when his friend

suddenly jumped on his back without warning. He suffered several fractures to his spine.

He underwent surgery followed by physiotherapy but was left with reduced mobility and manual dexterity and was unable to live an independent life. His injuries meant he was unable to continue his career in audio design and production or take up any other form of employment.

The man, who was 41 at the time of the incident, took legal action saying that his friend's foolhardy act of horseplay was unnecessary and created a foreseeable risk of injury. The friend admitted liability. Compensation totalling £1.8m was agreed in an out-of-court settlement.

Please contact us if you would like more information about pursuing a personal injury claim.



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# New regulations on trusts come into effect

The regulations relating to trusts are being streamlined.

The Perpetuities and Accumulations Act 2009, effective from 6<sup>th</sup> April this year, is based on recommendations put forward by the Law Commission to modernise rules which it believed had become outdated.

The Act abolishes the 21-year limit during which private trusts can accumulate interest without having to distribute it to beneficiaries.

The Commission had argued that there was no good reason for restricting a settler's ability to direct or allow for



the accumulation of income. In fact, such restrictions could create problems by obliging trustees to distribute income once the 21-year limit had been reached. This meant money could be given to beneficiaries who were too young to receive

it or incapable of dealing with it properly because of health or other issues.

It's thought the changes will make it more attractive to set up trusts because people can have more confidence that money will not be settled on beneficiaries when they are too young or if they are incapable of dealing with it.

Charitable trusts will still be subject to the 21-year limit, however, to ensure that income is spent for the public benefit rather than be allowed to accumulate indefinitely.

Please contact us for more information about trusts.

## £30,000 compensation for injury to feelings

People who are discriminated against in the workplace can now be awarded up to £30,000 compensation for injury to their feelings.

This is in addition to any other awards made in relation to their claim such as for loss of earnings or victimisation.

The figures that can be awarded depending on the seriousness of the claim are laid down in new guidelines produced by the Employment Appeal Tribunal. The limit for the lower band is increased from £5,000 to £6,000, the middle band rises from £15,000 to £18,000 and the upper band increases from £25,000 to £30,000.

The lower band covers less serious cases,

perhaps involving a single incident. The other two bands cover more serious and persistent abuse. The amount awarded in any given case is at the discretion of the tribunal.

Anyone who is subjected to unlawful discrimination in the workplace is entitled to make a claim for compensation.

Please contact us if you would like more information.



## Court of Protection aims to make things simpler

The Court of Protection is planning to simplify its rules and procedures to make them easier for people to understand.

There have been several complaints about the Court since it was set up under the Mental Capacity Act 2005. Now its president, Sir Mark Potter, has set up a committee to review the Court's rules and procedures.

Sir Mark said: "The Court of Protection has faced a number of difficulties in its first two years and Court users have complained that Court procedure is too formal,

particularly in relation to straightforward financial matters which are not contentious.

"My aim is to create a set of rules, practice directions and forms that are clear and simple for lay and professional users to understand.

"Where possible, the committee should simplify the handling of routine property and affairs cases which constitute the majority of applications to Court, for example, by slimming down some of the procedures." Despite the problems faced

by the Court during this initial period, it still provides a way to get decisions made on behalf of people who have lost the capacity to make decisions for themselves.

This can be very helpful when such a person had not already granted someone authority to manage their affairs by registering a Lasting Power of Attorney.

The Court can help with various issues including property, financial affairs and health.

Please contact us if you would like more information.

Please contact us if you would like more information about the issues raised in this newsletter or if you need advice on any other legal matters.

Our newsletters are designed to highlight legal developments. They should not be taken as a comprehensive analysis of the law. Clients should always obtain professional advice before making decisions on legal matters.