poole alcock SOLICITORS

INSIGHT

SEPT/OCT 2021

Welcome to the September/October edition of Poole Alcock Insight

This issue contains articles on:

GET 10% OFF OUR SERVICES WHEN YOU QUOTE "INSIGHT10"

OUTSTANDING CUSTOMER SERVICE

We are hugely proud to have been recognised for delivering outstanding customer service to our clients, making the shortlist of The ESTAS – the biggest award scheme in the UK residential property industry. We have been nominated for Best Conveyancer for four of our offices: Alsager, Congleton, Nantwich and Sandbach; and Best Conveyancing Group.

On 22nd October we will be travelling to London for the awards ceremony, which will be presented by the UK's favourite property expert Phil Spencer, of TV's Location Location Location, in front of 1,000 of the UK's top property professionals. It would be a huge honour to win an award in either of these categories, but simply being nominated is such an achievement.

The ESTAS honours the best agents, conveyancers and mortgage advisors in the UK. Their customer service awards are unique because nominees are selected purely on reviews submitted to the ESTAS customer review platform. The ESTAS reviews are completed by customers at the end of the home moving experience and verified by ESTAS to make sure they are genuine. The shortlist has been calculated following the evaluation of 60,000 client reviews.

Phil Spencer said: "The ESTAS Awards are based on real feedback, from real clients experiencing real service so they provide genuine proof of the service levels that a firm is delivering to clients. Now more than ever high-quality customer service is crucial if home movers are going to realise their dream of getting the property they set their hearts on."

The nomination is a reflection of Poole Alcock's 'Committed to Excellence' pledge, through which we put into practice our core values. This has resulted in independent feedback showing that over 90% of our clients would recommend us.

OUR 'COMMITTED TO EXCELLENCE' PROMISE TO YOU:

We promise to you, our client, that:

1. We will always rigorously assess what you need when we first speak to you about your case. We will look at the wider picture and cater for any individual requirements you may have.

2. We will explain, without unnecessary jargon, your options, our advice, timescales and what is likely to happen in your case.

3. We will be transparent on costs; there will be no surprises.

4. We will always treat you with respect and courtesy. We will call you when promised and will not keep you waiting if you come to see us.

5. Where possible, we will speak with you instead of sending lengthy emails or letters to you.

6. There will be no delays in your case caused by us.

7. Any concerns or complaints will be taken seriously and acted upon promptly.

8. We will ask you, as your case progresses, how we are doing.

If you value excellent customer service, we would be delighted to act on your behalf.

Please call us on 0800 470 0335

WHAT NOW FOR STAMP DUTY?

WRITTEN BY

CHERRY RIDDLESDIN,
PARTNER - HEAD OF RESIDENTIAL CONVEYANCING

Cherry Riddlesdin is a Partner and the Head of the Residential Conveyancing Department at Poole Alcock. Cherry originally joined Poole Alcock in 2005 and qualified in 2007. After spending some time with another prominent law firm, she returned to Poole Alcock in 2014. She is focused on achieving each client's objective, and has a practical, proactive approach.

IF YOU ARE PLANNING A MOVE, OR A REMORTGAGE, PLEASE GET IN TOUCH WITH CHERRY

She and her team would be delighted to help you.

cherry.riddlesdin@poolealcock.co.uk

0800 389 7093

The Stamp Duty holiday which has been in place since last summer finally comes to an end on 30th September 2021.

The holiday certainly appears to have achieved its objective of ensuring that the property industry, which is at the heart of the UK's economy, got back on its feet as quickly as possible after the initial national lockdown of 2020, which for a time saw many house-moves put on ice. The market has been incredibly buoyant, with house prices increasing by over 13% during the past year (according to Nationwide Building Society), and agents noting that their main problem at the moment is simply finding enough houses to satisfy the increased buyer demand.

Some people have been concerned that the end of the stamp duty holiday would result in a delayed crash to the market but early indications don't seem to suggest that this will be the case. New instructions at Poole Alcock have actually increased since the return to schools and offices at the start of September, even though there is little prospect that these transactions will complete before the end of the tax holiday.

The last three months of the year are traditionally the busiest for agents and conveyancers as home-movers rush to get into their new property in time for Christmas, and it may be that this Christmas rush will keep the market at the current upbeat levels.

So what are duty rates now?

Any purchase that completes after 30th September 2021 will be subject to 'normal' SDLT rates*:

£0-£125,000	0%	No stamp duty is payable on the first £125,000
£125,001-£250,000	2%	2% stamp duty is payable on the portion between £125,001 and £250,000
£250,001-£925,000	5%	5% stamp duty is payable on the portion between £250,001 and £925,000
£925,001-£1.5 million	10%	10% stamp duty is payable on the portion between £925,001 and £1.5 million
Above £1.5 million	12%	12% stamp duty is payable on everything above £1.5 million

*These are the SDLT rates for properties in England. Welsh properties are subject to Land Transaction Tax (LTT) which has slightly different rates. Further stamp duty premiums may be payable in certain circumstances, such as where the purchase is a second property, or where the purchaser is a non-UK national

Is there any way to reduce my SDLT liability?

There are certain reliefs and exemptions that apply in some circumstances.

For instance, First Time Buyers will still be able to purchase properties up to the value of £300,000 free of SDLT. And for purchases up to £500,000, they will only pay 5% on the portion of the purchase price which falls over £300,000. In order to claim this relief all of the purchasers must be First Time Buyers; and to qualify as a 'first time buyer' you must never have previously held any interest in a property (whether this was purchased, inherited, or gifted to you).

Some properties may also be able to qualify for Multiple Dwelling Relief (MDR). This is a relief which applies where the property you are purchasing is made up of 2 or more 'dwellings'. So if your property has a separate 'granny flat' make sure you speak with your conveyancer to make them aware, the internal layout of the property is not always obvious from the legal documents we receive.

In order for a dwelling to be considered 'separate' from the main dwelling, it must be capable of independent living, so it must have its own kitchen, living areas, bathroom etc.

MDR reduces the SDLT liability by allowing you to divide the total purchase price by the number of dwellings, and then calculate the SDLT against the average price of each dwelling, subject to always paying at least 1% of the purchase price. So a £500,000 property with a separate annexe which would normally attract SDLT of £15,000, would now only need to pay £5,000 (£500,000 divided by 2 dwellings, meaning the calculation is made against the SDLT rate for £250,000 for each dwelling).

Stamp Duty is a personal liability and you are responsible for ensuring that your conveyancer is aware of any circumstance which may affect your liability. They can then ensure that the tax return sent to HMRC on completion of your purchase is accurate.

If you have any questions about Stamp Duty, or Welsh Land Transaction Tax, please get in touch on **0800 470 0335**

RECENT TESTIMONIALS:

"Excellent service"

Broadwell Finance Ltd

"Super quick response times and turnaround with documents etc. So impressed and will definitely use again"

Charlie Griffin

"From the first day to the last day of the process, dealing with Poole Alcock was a fantastic experience... The communication, professionalism was first class at every stage, and Kate and the team certainly went above and beyond to ensure the process went through as quickly and smoothly as possible. We really cannot thank you enough, and would recommend to anyone, thank you"

Adam Dennis

"Absolutely outstanding from James Williams, conveyancing solicitor... James took hold of our purchase and drove it home within 4.5 weeks from acceptance to completion. Great communication, got on with the job, no hassle. My new go to solicitor. Thanks again!"

Steve Evans

"Throughout the process of selling our property and buying our new home James Williams and his team at Poole Alcock in Nantwich were efficient, precise and always friendly and patient ... They always responded to e-mails and followed any instructions ... Mr Williams was reassuring when we asked about security and explained the many checks needed to avoid scammers, before the money was finally sent to the vendor's solicitor on completion day. We cannot fault the service that we received and are very grateful"

Peter

RECENT TESTIMONIALS:

"I would absolutely recommend Poole Alcock for conveyancing and will definitely continue to use them for legal services. Both James and Sophie were professional, yet friendly and explained things in a way that was easy to understand, which was fantastic for me as a 1st time buyer."

Bethany Hatton

"The team did a brilliant job trying to sort it as fast and smoothly as they can. They were friendly and patient when I had lots of questions and kept me in the loop throughout."

'D'

"The team provided an excellent service. Thank you all!"

Susan Cumisky

REVAMPING THE SOCIAL CARE SYSTEM

WRITTEN BY

VERITY MCKAY,
SOLICITOR - WILLS & PROBATE

Verity helps clients with drafting Wills, preparing Lasting Powers of Attorney, applications to the Court of Protection and the Administration of Estates (also known as Probate). She consistently gets fantastic feedback from clients for her level of knowledge and high standard of service, coupled with a sympathetic approach.

verity.mckay@poolealcock.co.uk
01270 653177

On the 8th September 2021, it was announced that the government planned to bring in extensive changes to the funding of adult social care in England.

What does it all mean?

A lot of our clients come to us with questions about how the cost of future care, for themselves or their loved ones, may impact them. Not everyone needs care as they get older – the hope is that we retain our independence. Some of us however may not be so fortunate, and might need some help with day to day activities, such as washing, dressing, taking medication or sorting meals.

Sometimes this help comes from our nearest and dearest – with our spouses, our children, or our nephews and nieces stepping up to the task to make sure we're OK.

Unfortunately, family members stepping up to provide care for loved ones isn't always an option. Perhaps the family aren't local, or aren't able to help you as much as you need them to. In that case a care company can be employed to

help out, whether in your own home, or by moving into a residential care or nursing home.

But the cost of care, whether in your own home or not, is increasingly high – and can eat away at people's hard earned life savings quite quickly. We are often asked about ways to either stop this, or to reduce the impact of this on the inheritance of future generations.

The recent announcement from the government has been in response to the national concern about how to pay for care, and more specifically when that care is funded by someone's hard earned savings.

What are the changes?

The aim (according to reports) is to reduce the amount people pay privately towards their care.

Currently this is uncapped. The only limits in place are how much cash you're allowed to keep. In summary, if you have less than £14,000, the Local Authority will fund your care, if you have between £14,000 and £23,250, you and the Local Authority will share that cost. If you have over £23,250, it's all on you.

Under the new plans you would only ever pay for your own care if you have over £20,000. The upper threshold is also being increased to £100,000. But perhaps the most significant change is that no one would have to pay more than £86,000 for their care over the course of their lifetime. However, within the plans at present, this cap does NOT include cost of accommodation; so the roof over your head, the food, heating and water, would all be on top of this.

The proposals would be paid for through an increase in National Insurance Contributions to help fund adult social care in England. The so called 'Health and Social Care Levy' would be taken directly from people's payslips from 2023.

The aim of this additional 'levy' is to provide a boost of funding for the Local Authorities in England to be spent within the care system.

What can we do to help?

Whether these changes go far enough to address some of the well-publicised strains on the social health and care system in England, is not a question we can answer. The increase in tax may affect some workers more detrimentally than others, and the benefit of the private spending cap will be felt more by those with more assets than those with smaller estates.

Understandably, these changes will affect everyone differently and it is important to consider your own personal circumstances both at present and how these might change in the future.

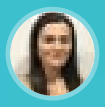
What will happen next?

These changes are currently just proposals, and similarly drastic changes to the care system have been announced before without ever actually happening. So whilst the news may be welcome to some (or disappointing to others!) the current system remains in place. We will continue to advise our clients on what is best for them on that basis until such time as the system does change. When (or if) that does happen, we are always happy to go over our clients' existing arrangements to ensure they are still fit for purpose, and to make any changes as necessary with your best interests at heart.

If you do have any concerns about the impact of paying for care in the future, then please get in touch. We'd be happy to have a chat about what can be done to help mitigate any impact of care costs. Whether that's changes to your Will, making Lasting Powers of Attorney, or checking over any existing arrangements, we're happy to help.

Contact 0800 470 0335 to speak to a member of our team.

DISPUTED PROBATE? TIME IS TICKING



WRITTEN BY

ANNA KUCKOVA,
TRAINEE SOLICITOR - LITIGATION

Anna Kuckova is a trainee solicitor with the Firm and is currently enjoying her time in our Litigation Department.

Anna has had exposure to a variety of different cases and has enjoyed liaising with clients and strengthening her skills, gaining experience from not only our in-house team but also from barristers who specialize in certain areas of work, including those relating to Contested Probate matters. Here Anna explores an area that has been relevant to one of her recent cases regarding an application for provision from a deceased's estate.

Anna.Kuckova@poolealcock.co.uk
01625 380146

If you are thinking about making a claim under section 1 of the Inheritance (Provision for Family and Dependants) Act 1975, it is important to act expeditiously as time limits for bringing a claim apply.

When we lose our loved ones, we often go through a heartbreaking period of grief during which legalities such as inheritance and administration of the deceased's estate are often the last thing we tend to think about. Unfortunately, one of the legal issues that many clients face is the time limits that apply in bringing a claim under section 1 of the 1975 Act. Once Grant of Probate or Letters of Administration are issued by the court, there is a time limit of six months where a party may bring a claim without having to ask for the court's permission. Whether a dispute arises from the terms set out in the deceased's Last Will or from the rules applying to intestacy, clients often approach us seeking advice and assistance when the six months' limitation is due to expire or, in some cases, after the expiry.

Missed the 6 month deadline? It is not the end of the world. However...

Unlike in contractual claims where if the limitation deadline is missed the right to make a claim is simply lost, in claims under section 1 of the 1975 Act the court may exercise its powers granted by virtue of section 4 of the Act and permit a claimant to make a claim and apply for an order after the expiry of the six months period. However, this power is discretionary and in order to convince the court that an application should be permitted, the claimant has to present to court, proper grounds for the lateness of the claim.

As such, despite the operation of section 4, litigation lawyers strongly advise claimants to avoid being in this position by applying certain protective tactics.

Issuing proceedings...at least protectively

The most obvious and low risk tactic often recommended by litigation lawyers is to issue a claim at the court before the six months limitation expires. This is because once the claim is validly issued (and subsequently served on a defendant within the timescales) it will eliminate any limitation defence which may be brought by the defending party. Nevertheless, compliance with the requirements of the relevant Pre-Action Protocol will still be expected. Therefore, if the time scales do not afford sufficient time for pre-action correspondence and negotiations, a claim should be issued protectively, providing that it will be served on the defending party at the later date.

Entering into a Standstill Agreement

Issuing proceedings under section 1 of the 1975 Act is, however, a costly decision which may involve thousands of pounds. In addition to spending money on legal fees in respect of seeking advice on merits of the claim and drafting the proceedings, claimants also have to pay a court fee upon issuing a claim which will not be refunded if, for any reason, a claimant ceases from pursuing a claim further and decides not to serve proceedings on a defending party. Claimants, naturally, want to ensure that they have proper grounds for making a claim under section 1 of the 1975 Act before spending such amount of money.

But what if the claimant's decision depends on awaiting results of evidence collation such as a request and review of medical records of the deceased?

In such circumstances, parties may consider entering into a written Standstill Agreement for extension or suspension of time mutually agreed between the parties. During the

operation of the Standstill Agreement, parties would be able to focus on Pre-Action Protocol requirements without having to be overly cautious about limitation.

However, clients should be reminded that because of the operation of section 4 of the 1975 Act, the courts may still exercise their discretion for permitting claims and applications for orders if submitted after the six months' time limit, regardless of the existence of a Standstill Agreement. As such, Standstill Agreements in disputed probate matters should contain a provision which not only prevents the other party from raising a limitation defence but also from raising any objections against the court exercising its discretion under section 4 of the Act to offer as much protection as possible to the Claimant.

To conclude...

If it is thought that a claim may be brought under the 1975 Act (which will be the subject of a separate article), action should be taken as soon as possible. Steps should be taken to discuss the matter with the other side prior to any issue of the Grant of Probate or Letters of Administration so as to avoid any limitation concerns. However, it is important to note that once the Grant of Probate or Letters of Administrations are issued, claimants only have 6 months to issue their claim and therefore should be reactive and seek legal advice as soon as possible if they have not done so already, so as to avoid any risk associated with not being allowed to bring a claim.

If, however, limitation becomes an issue, claimants should consider issuing court proceedings (at least protectively) in order to protect their position.

If, for any reason, a claimant is not in a position to issue proceedings within the required time scales, parties should consider entering into Standstill Agreement which will afford as much protection as possible to the claimant, albeit it is no guarantee that a court will permit the commencement of a claim after the 6 month time-limit.

Whilst it is relatively unlikely that the court would dismiss an application for an order on the grounds of limitation where parties entered into a Standstill Agreement for the suspension of time, claimants should consider this risk when deciding to enter into a Standstill Agreement instead of issuing a claim.

If you have any queries regarding mounting a claim for provision from the estate of a loved one, please do not hesitate to contact our Litigation Department on **0800 470 0335**

INTRODUCING HYBRID WORKING

WRITTEN BY

JAMIE RISELEY,
EMPLOYMENT SOLICITOR

I'm an Employment Law Solicitor at Poole Alcock LLP. My role involves advising businesses and private individuals about all aspects of HR and employment law.

jamie.riseley@poolealcock.co.uk
0800 389 7093

If you intend to make hybrid working a long-term plan for your business, having a plan is vital to ensure that any potential issues that might arise are given due consideration.

Yes it is true that many people have been working from home for the last 18 months but we also need to remember that this was a forced situation in response to unprecedented circumstances. Consumers, Customers or Clients, Staff and Managers are all likely to have much different views and expectations in light of the easing of restrictions and now things are starting to move more freely.

This said, it is anticipated that home working and hybrid working ('hybrid workers' are those who spend part of their time at their workplace and part of their time working from another location, such as their home) is likely to remain, with many individuals wanting to retain some flexibility with such arrangements for at least part of the working week. It's important that businesses keep up with this momentum as they run the risk of losing key members of staff if they don't.

Contractual Considerations

As a business, you'll need to give careful consideration to the contractual implications of hybrid working arrangements. This will ultimately depend on whether you are intending the arrangements to be permanent or temporary.

Where employees make a formal request for hybrid working through the statutory flexible working scheme (and this request is granted), this will amount to a formal permanent change to an individuals' terms and conditions of employment.

Where an employer wishes to introduce hybrid working arrangements to staff, they should only do so after following the correct procedure to minimise litigation

risk. By way of an example, a change to working location may be imposed on staff when an employer decides to give up or reduce their workspace. Some employees may not agree with such an attempt to unilaterally vary their employment contract. This would potentially be a breach of contract and could also lead to a claim of constructive dismissal or unfair dismissal by the employee.

You should always communicate and consult with employees on any proposed changes. Also consider whether there can be a compromise so that an agreement can be reached. Only at the very last resort should an Employer consider the 'fire and rehire' measures that have made their way around the media headlines. It's important that the correct process is followed, as a failure to do so could leave the organisation exposed to costly and time intensive Employment Tribunal claims. Should you require any support or assistance with this process then please do not hesitate to get in touch.

'I have mobility clauses in my employment contracts' I hear you say. Please do note that generally, Employment Judges, interpret these clauses very narrowly and implementing any change to terms and condition needs to be handled with caution. Generally, flexibility clauses in employment contracts cannot be relied on unless the alteration is construed as reasonable or a minor administrative change which is not detrimental to the employee.

It is possible for hybrid working (and indeed other forms of flexible working) to be implemented on an informal basis without a contractual change. As we move forward and learn to live with Covid-19, this non-contractual position may well be the better option for many businesses. For example, many clients or customers may want face to face contact again and you may then have to bring people back into the workplace to meet this business need. This of course would be problematic if all of your employees were entitled to work from home under their employment contract as a result of a formal change to their terms and conditions arising from a statutory flexible working request.

There will be a range of considerations for businesses in implementing hybrid or homeworking arrangements. How frequent will staff have to attend the office, if at all? How will this work in practice – will there be enough desks for each employee? Or have you downsized and are expecting staff to hot-desk? Consider cleaning and sanitation between uses, and if hot-desking then you really need to be prescriptive about the days of work to ensure there is sufficient space.

Staff who want to work from home under a hybrid working arrangement will want certainty about their situation. Whilst it is imperative that no-one is deterred or prevented from submitting a flexible working request, it may be beneficial to have an informal hybrid working policy that goes some way in providing this, whilst maintaining maximum flexibility for the organisation.

This would allow you to have an informal arrangement with employees allowing them to work from home on agreed days/times. As there would not be a formal change to the employment contract, the employer reserves discretion to vary or terminate the working arrangement and ask employees to return to the office if needed, if required at a later date or until such times that long term business decisions stipulate this to be the case.

Employers electing to operate hybrid working on a non-contractual, discretionary basis should be live to the fact that such arrangements might, depending on the nature and duration, become an implied 'custom and practice' contractual right. This might give rise to disputes with employees about their contractual positon so it's certainly something to consider.

In any event, employers should ensure that their policies, procedures and contractual provisions accurately reflect the reality of the working arrangements.

OTHER ISSUES TO CONSIDER

Employers implementing hybrid working arrangements will have a range of other issues to consider, these include:

- Reviewing existing practices, policies (i.e. flexible working, data protection, confidentiality and cyber security policies) to ensure they accurately reflect the reality of the employer/employee relationship and to plug any areas of risk for the organisation. It's important to remember that these procedures should apply to hybrid workers in the same way they would with any other staff. Inconsistencies are likely to lead to a dispute.

- Introducing new policies where necessary (i.e. hybrid or homeworking working). Consider how your organisation will deal with cost of travel to office with any new arrangements – set out and communicate these expectations early on to avoid disputes down the line. Also consider other costs associated with working from home, will there be a contribution to the costs for the internet or phone etc? Will there be a requirement that staff must live within a certain proximity to the office so that they are able to easily and readily attend the office when called upon? Or are they free to relocate to the country, for example? Or could they move abroad?

- Consideration should be given to the Equality Act 2010, and ensuring that any decisions about hybrid working are not discriminatory on the grounds of a particular protected characteristic. Where an employee has a disability for example, homeworking might be a reasonable adjustment but, in some circumstances, this could actually cause additional disadvantages. Therefore, any impact on a given individual and any impacts (particularly in the long term) on Equality and Diversity should be carefully considered by Employers.

- Consider how the training, supervision and management of staff will be handled with hybrid working arrangements in place. Will disciplinary or grievance investigation/hearing meetings be in person or virtual? How will the organisation address a dip in performance – must staff then return to the office, or will this still be manged remotely?

- Manage employee health, safety and welfare and avoid overworking – contrary to popular belief the biggest problem wasn't the lack of work or a propensity to sit and watch Netflix all day it was the ability to switch off. It was the sudden blurred boundaries between down time and work time – how will your business train managers to deal with the situation? Take note if emails are being sent late at night. Is there an issue with their workload or working arrangements etc.?

- Confirming contractual variations incorporating new contractual clauses into employment contracts where appropriate. Employers who make changes to particulars of employment are required to give workers a written statement confirming the details of that change. For example, if there is a contractual change to working location, this should be provided to employees in writing and within one month of the change taking place.

As always, please don't hesitate to get in touch if you wish to discuss implementing hybrid working arrangements or to discuss the above in greater detail.

FAMILY LAW UPDATE

WRITTEN BY

HELEN STOLLER,
PARTNER - DIVORCE & FAMILY LAW TEAM

If you need help to progress your case, to commence a new application, or to discuss any issues you are experiencing- do get in touch with me.

helen.stoller@poolealcock.co.uk
0800 389 7093

As we all eagerly await the major transition to 'no fault' divorce, expected in April next year, there are still lots of other changes afoot in the family law sphere and if you are contemplating starting a family law matter, it is worth talking these through with your solicitor and considering any impact on your case.

DIVORCE

As very clearly set out by my colleague Nicola in **our last issue** the Divorce, Dissolution and Separation Act 2020 (DDSA) will represent a real change to the divorce process, which has been long awaited by myself and many other practitioners.

In the meantime, we've had lots of other changes, no doubt preparing everyone for a seamless transition to a new way of working next year!

Move to online

From the 13th September all divorces must be submitted online and so you can expect to receive all of your court communications from your solicitor via email. Gone are the hard copy documents and instead your petition for divorce, Decree Nisi and final decree- Decree Absolute, will be electronically stamped and made available for download.

I have personally welcomed the shift to online and many of the teething troubles of the initial portal have been resolved. This includes enabling both petitioner and respondent who are represented by solicitors to progress the divorce through the online portal, as opposed to only an unrepresented respondent, as was the case until recently.

For the most part the process is clearer, more accessible and less susceptible to human error. There are the usual IT issues, but from my experience clients have welcomed the move to online. As a paperless process it also helps to reduce the impact on the environment, which has to be at

the forefront of modernisation and innovation in family law. So next year expect that if you are starting your divorce or dissolution under the DDSA, it will be entirely online and practitioners will be well versed in this way of working.

All paper applications that remain are being processed by Bury St Edmunds court and therefore if your divorce is already underway, you'll have received confirmation that your case is transferring to this divorce unit. This transition does appear to have caused some delays and I understand from my enquiries that there is somewhat of a backlog. I'm hopeful that now the online process is mandatory cases will progress, but check in with your solicitor if you have any questions.

Court fees

Also impacting divorces is the expected rise to court fees to bring the fees in line with historical inflation dating back to as long as August 2016. This is following a consultation in to a proposed rise conducted by the Ministry of Justice, where the majority of respondents did not think that an increase in court fees was justified in light of the impact of Covid-19.

We are told that the new fees will apply from 30th September. A divorce, dissolution or nullity application will increase from £550 to £593, so if you are thinking about starting proceedings, you may want to act now, before the increase in the court fee comes into force.

Court fees for applications to commence financial remedy proceedings will also increase from £255 to £275 and applications by consent will increase from £50 to £53.

Cost issues

Under the current fault-based system, in order to end your marriage or civil partnership, the petitioner must essentially 'blame' the respondent for the breakdown of the marriage. Unless you wait for 2 years and you both consent, or you wait 5 years when there is no consent.

This raises all sorts of issues, but one of the issues that is often contentious is the ability of the petitioner/ applicant to claim their costs of the divorce from the respondent. This is due to the premise that it the respondent's 'fault'.

A recent report by the Nuffield Foundation also looked at the issue of costs claimed by the petitioner/ applicant in divorce or dissolution proceedings and what approach may be taken in light of the changes brought about by the DDSA.

The report's recommendations include:

- Costs should only be available because of one party conducting their case in a difficult way, perhaps causing delay, distress and unnecessary costs. This type of litigation misconduct would be tightly defined to exclude conduct before the proceedings or as a consequence of the proceedings. The costs would also only be claimed at conditional order stage (current Decree Nisi stage) and not at the outset in the initial application.

- Any costs award should be restricted to compensation for additional expenses arising directly from litigation misconduct, therefore excluding the costs of the issue fee and initial legal advice, which can currently form part of the costs claim.

- There should be increased focus on measures to prevent difficulties giving rise to litigation misconduct. These could include freezing or reducing the issue fee so that its financial significance is reduced, encouraging the voluntary sharing of application costs and ensuring that information for respondents is clear and accessible.

It is likely that it will become rare for there to be any type of order for costs in relation to the divorce proceedings, which could have a negative impact on the financial weaker party, who do not have the funds to start the proceedings.

The issue of costs, particularly in light of the increase in the court fee, will need to be kept under review given that one of the reasons for the overhaul of the divorce and dissolution process was to make it more accessible and avoid a situation where one party is trapped in a marriage.

DOMESTIC ABUSE ISSUES

Another eagerly awaited new law is the Domestic Abuse Act 2021 (DAA). A number of changes have been implemented since the 15th July and if you are appearing in court in relation to a family matter where there are allegations of domestic abuse you can expect that the court will, without any allegations being proven, default to providing the alleged victim with 'special measures' to enable them to engage in proceedings. This could include the use of screens, video links and secure waiting rooms.

In cases where the alleged perpetrator is not legally represented, if a hearing is required where the parties give oral evidence, such as a finding of fact hearing, or final hearing, then the alleged perpetrator will not be permitted to cross-examine the alleged victim directly.

If you are in this situation your legal team will need to give thought to any directions needed, such as the questions having to be prepared in advance and the Judge putting the questions.

There is still lots of work to be done in this regard and a consultation has been launched to seek views on a statutory definition of what domestic abuse is in order to assist with identifying when it is a feature of a relationship.

CHILDREN

If you are involved in Children Act proceedings through the court you will have involvement with CAFCASS (Children and Family Court Advisory and Support Service). CAFCASS carry out safeguarding checks at the start of every case, including speaking to the Local Authority and the police and they will also usually carry out a telephone meeting with the parents.

All of this information is used to assist the court in making a decision about what the next steps should be and what

the arrangements for the children should be in their best interests in the interim.

CAFCASS have a number of initiatives to assist parents and a wealth of information available on their website.

A new initiative designed to help parents is the 'Together with Children and Families' framework which was launched on the 6th September. This framework is intended to help set out the importance of developing relationships with families and children based on trust, listening, understanding, clear reasoning, respect and integrity.

I am hugely in support of anything that can be done to continually improve the work that is carried out with families during, what can be, extremely difficult to navigate court proceedings.

CAFCASS work with around 142,000 children a year and it is vital that these children's wishes and feelings, and lived experiences are conveyed to the court and the children are protected from risk of harm.

Cost issues

The court fee is also set to rise from £215 to £232 and so if you have an application ready to submit you may want to do this before the price increase at the end of the month. You, or your solicitor can submit your application on the online portal and I have found that the process is far quicker and more reliable.

MEDIATION

Due to court delays, lots of my clients are considering alternative methods of resolving their dispute.

To encourage the use of mediation the government has extended a scheme where separating couples can apply for a voucher for £500 to use for mediation services. The aim is to try and reach an amicable solution and not clog up the court system.

The scheme is administered by the Family Mediation Council (FMC) and if you think you would like to explore this, ask your solicitor to refer you to a suitable mediator for a MIAM (Mediation Information and Assessment Meeting) to discuss this further.

Family law is an area always striving for innovation and improvement and what comes with this is lots of change. If you would like to have a free consultation with our team of specialist family law practitioners, just make contact with our dedicated new enquiries department on 08001510516 and we will be happy to talk you through options and next steps.

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