



# For Life

WHAT HAPPENS WHEN THINGS GO WRONG?

## Asset stripping divorces?



Mr Justice Mostyn recently referred to the ‘eye-watering total’ of legal fees that a couple had spent in their divorce and related financial proceedings - some £920,000 - almost a third of their overall assets.

Similar cases have been reported, one in particular amounted to a massive £2.7 million! These are much larger sums than most people’s entire assets, and will no doubt give concerns about legal fees in divorce. These concerns, together with the recent changes in those eligible for legal aid, has led to a rise in “DIY” divorces where people try to deal with their divorce online or simply file the paperwork at court themselves. These approaches may make savings but you should proceed with caution as sometimes things can go wrong!

There are four types of potential claims that each party has against the other:

property, lump sums, spousal maintenance and pensions. Whilst the filing of an undefended divorce is relatively straightforward, people seldom realise that potential financial claims do not end upon Decree Absolute but remain open until an order of the court is made. We are seeing an increase in enquiries from those who divorced without specialist legal advice and did not deal with the related financial issues, leaving open the potential for financial claims. Such claims could threaten post-divorce assets (e.g. house, savings or pensions) as they remain part of the matrimonial “pot” and the court could order you to share them with your

ex-spouse. It is therefore much better to deal with the financial issues at the time of divorce. That is not to say that there has to be a big, expensive court battle. Matters can often be dealt with by agreement; this is something we can help you with and it is always our aim. While obtaining specialist legal advice will not be the cheapest option it could cost you a lot less should things go wrong in the future.

Our family lawyers are members of Resolution - an organisation of family lawyers committed to dealing with matters in a constructive, non-confrontational and cost effective way. We appreciate that costs may be a concern so we invoice regularly and provide cost updates. We also keep in mind cost benefit and risk - costs must be proportionate to what you are likely to achieve. Contact us for a free 15 minute telephone consultation.



Sarah Campbell  
01245 453843  
sarah.campbell@birkettlong.co.uk

# Where there's a will does there have to be a w

All disputes, by their very nature, have the capacity to take their toll emotionally and financially, but disputes over wills are often the most bitterly fought. Only last year it was revealed that the family of Peter Ustinov was still embroiled in a bitter feud over his estate, some nine years after he passed away. In America, the dispute over the estate of Anna Nicole Smith's 89 year old husband has raged for nearly five times the length of their relationship.

The tremors of a family feud can ripple on through generations, long after a final result has been achieved and, in some cases, such as in the case of Ms Smith, after the protagonists themselves have passed away.

When Lord Phillips of Worth Matravers was Lord Chief Justice of England and Wales, he said: "It is madness to incur the considerable expense of litigation - in England usually disproportionate to the amount at stake - without making a determined attempt to reach an amicable settlement. The idea that there is only one just result of every dispute, which only the court can deliver is, I believe, often illusory... Parties should be given strong encouragement to attempt mediation before resorting to litigation."

Amanda Smallcombe, who runs our specialist contested trust and probate team, is a member of the Association of Contentious Trust and Probate Specialists (ACTAPS). ACTAPS is a professional association of solicitors, barristers and legal executives who specialise in this area. The association is committed to promoting, through their code, the resolution of disputes without the need for court proceedings by encouraging the use of mediation at an early stage.

Amanda says "Lord Phillips' statement is echoed through our own experiences of acting in contested probate disputes. Indeed we have successfully used mediation in a number of recent matters to resolve disputes which, at the outset, it seemed would be impossible for our clients to retreat from."

Mediation is a confidential process. It involves an independent third party, a mediator, who is usually legally qualified in the area to which the dispute relates. They come fresh to the facts of the dispute and are able to facilitate the parties in reaching an agreement by bringing their own perspective to the case and by narrowing the issues. Each mediation is different. The parties can



## Bare essentials

### Legal facts you can't do without

#### Losing your job

If you have lost your job or are in the process of losing it, you should take steps to understand your rights. You may be protected against unfair dismissal, wrongful dismissal or unlawful discrimination, or be entitled to a redundancy payment or other contractual rights conferred by your employment contract.

In most cases of dismissal, employees need to have two years' continuous service in order to claim unfair dismissal. Exceptions to that rule can be made on the grounds of age, disability, pregnancy and maternity, race/religion/sexual discrimination and other factors such as gender re-assignment.

In some instances, employees can claim for automatic unfair dismissal regardless of their length of service, such as:

- asserting a statutory right
- health and safety reasons
- reasons connected with working time regulations
- making a protected disclosure in connection with jury service, study leave or training requests, and others.

If you think you may have a claim for unfair dismissal, you may have course to a tribunal. Contact us for further advice.

Reggie Lloyd  
01206 217347  
reggie.lloyd@birkettlong.co.uk

# War?

meet in one room, or stay apart, with the mediator travelling between two rooms.

Although not all cases are suitable for mediation, those that are often end not only with a settlement of the core dispute, but also with a greater understanding from both parties as to the other's position. This has the potential to allow the parties closure, feeling that they have fulfilled a need to have their grievances heard. For inheritance disputes, given that they are often deeply personal, this can be of significant personal benefit.

Of course, not all disputes can be settled. If litigation is required then it is often still possible to conduct it in a less hostile and therefore more cost effective way. Our team is committed to achieving these goals. In our view, dealing with disputes sensibly and with sympathy to the emotional issues involved, whether there is a will or not, there needn't be a war!

For a free 15 minute telephone consultation to discuss your own situation, contact Jenny Bruce.



Jenny Bruce  
01206 217377  
jenny.bruce@birkettlong.co.uk

## Meet the team

### Amanda Smallcombe

Amanda is a partner and head of the firm's contested trust and probate team. She is a full member of the Association of Contentious Probate and Trusts Specialists, having completed the ACTAPS diploma. Adrian Livesley, the firm's managing partner, and Amanda are two of only a handful of lawyers in the region who are members of this Association.

Amanda joined Birkett Long in October 2000 as a member of the litigation team and became a partner on 1 June 2011.

As a specialist in contested probate and will disputes she has made a guest appearance on the BBC's 'Inside Out' programme.

“ I am writing to send my thanks for the way that Amanda Smallcombe and yourself handled the dispute regarding my late father's will. The service that I received was outstanding. The process was handled with a great deal of compassion and the advice given was above and beyond what the majority of solicitors would have given. ”  
*A client recommendation*



Amanda Smallcombe  
01206 217395  
amanda.smallcombe@birkettlong.co.uk



# under the spotlight

## Oops, ouch!

It is a common misconception that if a member of the public has an accident due to a pot hole or defective pavement then the Local Highway Authority must automatically be responsible.

The liability of Highway Authorities is governed by the Highways Act 1980, Section 41, which says that Highway Authorities are under a duty to maintain the highway. There is a special defence available provided by Section 58 of the Act. This defence says that if the Highway Authority can prove that it has taken such care as in all the circumstances is reasonably required to ensure that the part of the highway where the accident occurred was not dangerous for traffic, then it will not be liable to pay compensation for damage or injury.

When considering the issue of whether the highway is dangerous, the court must look at the character of the highway and the traffic that was expected to use it, the standard of maintenance appropriate for a highway of that character, the state of repair in which a reasonable person would expect to find the highway and whether the Highway Authority knew, or could reasonably be expected to know, about the condition of the highway. It also considers what warning notice had been given or displayed by the Highway Authority.

It does not follow, therefore, that roads or pavements have to be as level as a bowling

green nor that every defect will make the Highway Authority liable.

To conclude, Highway Authorities can escape liability for injuries and damage caused by accidents, providing they can demonstrate that they have a policy for maintenance of roads and pavements involving a regular system of inspections, and that they do repair damage identified in those inspections.

There is a code of practice for highway and maintenance management but the courts have emphasised recently that this is not mandatory, and is for guidance purposes only. It says that provided the local authority has its own policy for highway maintenance and can demonstrate that it has adhered to that policy, this would give a good defence to an action for somebody injured by a defect or a pot hole.



Nadina Edmondson  
01245 453827  
nadina.edmondson@birkettlong.co.uk

### BIRKETT LONG LLP

PHOENIX HOUSE  
CHRISTOPHER MARTIN ROAD  
BASILDON SS14 3EX  
T 01268 244144

ESSEX HOUSE, 42 CROUCH STREET  
COLCHESTER CO3 3HH  
T 01206 217300

NUMBER ONE, LEGG STREET  
CHELMSFORD CM1 1JS  
T 01245 453800

E LEGALNEWS@BIRKETTLONG.CO.UK  
WWW.BIRKETTLONG.CO.UK

Birkett Long LLP is authorised and regulated by the Solicitors Regulation Authority (Number: 488404)  
Birkett Long LLP is authorised and regulated by the Financial Conduct Authority (Number: 481245)  
Your home may be repossessed if you do not keep up repayments on your mortgage.

Whilst every care and attention has been taken to ensure the accuracy of this publication, the information is intended for general guidance only. Reference should be made to the appropriate adviser on any specific matters.

© Birkett Long LLP 2014 We hope you find this newsletter of interest, but if you would prefer not to receive it or wish to receive a copy via email, please contact the Business Development and Marketing Team on 01206 217334.

Reference: NEWS/FORLIFE17/2014



## Forthcoming events

### Coming up in 2015

A free investment seminar on 3 and 5 February. Contact us for details and venues early in the New Year.

**For more information on any of our events please visit [www.birkettlong.co.uk/events](http://www.birkettlong.co.uk/events) or email [seminars@birkettlong.co.uk](mailto:seminars@birkettlong.co.uk)**