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Grandmother wins legal battle over the 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 residence and contact 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, not what might constitute a second best but supposedly adequate alternative.

"He has lived virtually all of his young life with his grandmother. He has naturally 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 Patrick Troy if you would like more information about this or any aspect of family law.

Home loans at highest level for nearly two years

The number of home loans being granted is at its highest level for nearly two years, according to the Council of Mortgage Lenders (CML).

The CML says there were 55,000 loans granted for house purchase in October – that's an increase of 43% on October 2008 and the highest level since December 2007.

Separate figures issued by the Halifax show that house prices rose by 4.2% between January and November last year.

The figures show growing confidence in the housing market although there is still some way to go before we see the levels of a few years ago.

One negative development could be the ending of the Stamp Duty holiday. In 2008, the Government increased the threshold at which the duty becomes payable from £125,000 to £175,000. That threshold reverted back to £125,000 on 1st January.

A survey by the Royal Institution of Chartered Surveyors suggests that most of its members believe the lower threshold will have little impact, although, of course, that remains to be seen.

Whatever happens, the market is likely to remain highly competitive and sellers will need to ensure they have all the correct procedures in place to market their property.

For example, they must provide a Home Information Pack (HIP) for potential buyers as soon as a property is put on the market. The HIP must have an index and include various documents such as an Energy Performance Certificate - which grades the property's energy efficiency - the terms of sale, proof of title and boundaries from the Land Registry, and the results of local searches.

Sellers must also include a Property Information Questionnaire covering areas such as the property's service charges, flood risk information, structural damage, gas and electricity safety and parking arrangements.

Please contact Christopher Jackson or Ian Armstrong if you would like more information about HIPs or any aspect of buying and selling a property.

Council workers win age discrimination appeal

Sixteen council employees who lost out on continuous service awards because they were too young when the scheme closed have won the right to bring age discrimination claims.

The 16 were all employed by the London Borough of Barking and Dagenham. The authority ran a scheme which rewarded staff with incremental payments if they had given 25 years service and were over the age of 55. The scheme was withdrawn on 1st April 2007.

Employees who were already receiving the increments were allowed to keep them as a form of pay protection. Employees under the age of 55 before the scheme closed failed to qualify.

The 16 employees who missed out said this breached age discrimination regulations which came into force six months earlier on 1st October 2006. The employment tribunal ruled against them but that decision has now been overturned by the Employment Appeal Tribunal.

It held that the 16 employees had been discriminated against and sent the case back for a revised hearing before a different tribunal.

New Act will modernise rules relating to trusts

A new Act to update the law relating to trusts has received the Royal Assent and is due to come into effect this year.

The Perpetuities and Accumulations Act 2009 will modernise the rules which restrict how long an owner can control the future ownership of property (perpetuities) and how long trustees can add income to capital (accumulations).

The Act is based on recommendations put forward by the Law Commission in a report published in 1998. The Commission was concerned that the rules on both perpetuities and accumulations had become outdated and confusing. For example, there were different methods for calculating the perpetuity periods. These included using "lives in being" under common law and periods of up to 80 years under legislation passed in 1964.

The Commission also believed there was no good reason for restricting a settler's ability to direct or allow for the accumulation of income. However, it said there should be a different approach to charitable trusts to ensure that income would at some point be spent for the public benefit rather than be allowed to accumulate indefinitely.

The new Act addresses both these issues. It removes restrictions on accumulations except for charities, which will be subject to a 21-year limit or the life of the settlor. It also simplifies the rules relating to perpetuities by introducing a single 125-year period.

The changes will not affect pre-existing trusts or wills. However, if the trustees of an existing trust that uses lives in being to determine the perpetuity period are unsure whether the period has ended, they may be able to opt in to the provisions of the Act.

The Act has clarified certain matters but the rules relating to trusts remains complex and legal advice should always be sought before making any important decisions. Please contact Christopher Jackson if you would like more information.

Woman receives compensation after walking into glass panel

A woman who was injured when she walked into a glass panel at a hairdressing salon has received £3,000 in compensation.

The panel was used as a windbreaker and was placed two feet to the left of the chair where the woman was sitting. It had a green logo on it about five feet eight inches from the floor.

After having her hair cut, the woman walked to her left and collided with the panel having failed to notice it was there. Her nose swelled up and she continued to experience nasal pain for 18 months after the incident.

She took legal action on the basis that the salon owner was negligent in failing to keep her safe while on the premises and by failing to provide adequate signs to alert her to the presence of the panel.

The salon disputed liability but the judge found that it had failed to keep the woman reasonably safe because the panel had not been properly highlighted.

Damages of £3,000 were agreed in an out-of-court settlement.

Anyone who suffers an injury as a result of someone else's negligence is entitled to claim compensation. Please contact Martin Crossley if you would like more information.

