

Latest News



The Department for Schools and Families launched its green paper on 20 January 2010 setting out a wide range of measures to support all families with a view to preventing and resolving marriage and relationship breakdown,

providing support to fathers and grandparents, looking at balancing employment with bringing up children, and to give more targeted support to families in need where appropriate.

The green paper's aim is to produce a new package of measures to support modern families to include improving flexible working for parents and family friendly employment rights. Ministers have recently announced plans to enable fathers to take more time off with their new child.

It is proposed there will be a comprehensive review of the family justice system to look at alternative ways for family conflicts to be dealt with out of court, with a proposal to offer separating parents more mediation support to prevent and reduce disputes. The paper says that "currently between 5-10% of separating parents seek help through the courts". The family lawyers organisation, Resolution, which aims to minimise conflict in divorce and parenting disputes has welcomed this review of family law though believes it is not wide ranging enough. Resolution would like the review to look at other options available like collaborative law and arbitration as well as mediation, as they believe that families should have access to a wide range of options and be able to choose the best option for them to achieve the outcome that is right for their family.

The forthcoming election promises to put questions of the family at the forefront of the political debate. David Cameron has set out Tory plans to provide tax breaks for married couples; Labour is proposing that if parents split up grandparents will not have to go to court to apply for contact with grandchildren. At present it is estimated that one million grandchildren are denied contact with their grandparents as a result of divorce, separation, family feud or adoption. Research carried out by the Children's Society suggests that children are more likely to be damaged by the occurrence of family arguments than whether their parents are married or cohabiting.

The Family Team at Birketts are all members of Resolution and subscribe to a view that family law disputes should be dealt with in a constructive way designed to preserve peoples dignity and to encourage agreement whilst recognising that one size doesn't fit all and that all options must be considered to allow for creative solutions to the legal, emotional and practical problems of family breakdown.

Legal Update

Celebrity chef cooks up legal challenge

Celebrity chef Marco Pierre White recently won a landmark ruling allowing him to proceed with action against his former wife's solicitors over the interception and seizure of his personal papers. The action is expected to come to trial later this year and, if successful, it could stop partners endeavouring to look into their spouses finances if they believe full disclosure has not been provided. At present, under the widely used Hildebrand Practice, a spouse is permitted to locate any documents readily accessible without breaking open a locked filing cabinet or safe. Therefore, any document that had been left lying around can be copied and used in financial proceedings. However the Court of Appeal has now ruled that Mr White can pursue his action against his former wife's solicitors after she intercepted mail belonging to him. His earlier claim for damages against the law firm were dismissed.

Family solicitors will be looking at what the next court hearing will determine as the whole issue of disclosure within divorce proceedings is coming under scrutiny. As family lawyers, we need the court to provide clear guidance so that clients can be advised properly. As stated above, at present a document that is left lying around can be copied, given to your solicitor and used in financial proceedings following on from divorce. If in the future this leads to a claim of professional misconduct on behalf of those involved and could lead to possible claims for damages, clarification of the law is required so that clients can be told what they can and cannot do.

Grandparents success

The first reported family law case of the new Supreme Court in October 2009 was noticeable as a child's grandmother was granted a residence order, overruling an earlier decision of the Court of Appeal which had

held that the child should live with his father. The facts of the case were that from when the child was born he had lived with his maternal grandmother who subsequently acquired a residence order by consent. Some two years later the child's father applied for residence and was initially refused. He then appealed this decision and was successful. The grandmother then appealed this decision to the Supreme Court. The decision was noticeable in that where there is a dispute over residence, the child's welfare takes precedence over the interests of the biological parent. The principle message coming from the case is that there is no presumption in favour of a biological parent, the paramount consideration is what is best for the welfare of the child.

Divorce trend 2010

It has recently been reported in the media that a major retailer has launched a new "divorce gift list service". However, according to the Office for National Statistics the divorce rate in England and Wales has fallen to the lowest rate for twenty-nine years. This raises a number of interesting questions, has the rate decreased because people are staying married or are fewer people getting married in the first place? The Office of National Statistics has this month released provisional figures indicating that, although the number of marriages has remained stable compared with 2007, marriage rates are currently at the lowest since 1895. This corresponds with a rise in the number of unmarried adults indicating that the number of couples living together outside of marriage is increasing.

Mediation and collaborative law can be an attractive method of resolving disputes to allow couples to avoid court proceedings as a way of resolving any dispute between them.

Modernising inheritance law

The Law Commission is currently looking at reviewing the law of intestacy and family provision on death. Each year many people die without a Will leaving their property to be distributed according to legal rules going back to 1925. In some instances, even if a will has not been made, if reasonable provision was not made for certain family members and



dependants then a challenge could be made to the Will.

In its new consultation paper, The Law Commission will be looking at reforming the current rules to safeguard the position of bereaved spouses while taking account of the concerns of children and other relatives of the deceased. The Law Commission will propose that if the deceased did not leave children or other descendants, that the surviving spouse should automatically inherit the estate of the deceased, even if there is no will. The commission also wants to extend the intestacy rules to unmarried partners who have lived together for some time or who have a child together. As the law currently stands those in such a position may have to actually make a claim to court to claim reasonable provision from their partner's estate which is not only costly but carries an emotional cost at an already difficult time. Other areas highlighted for potential reform include:

- Trusts for children on intestacy and the effect of adoption on a child's entitlement.
- Family provision claims by adult children.
- The distinction made in intestacy rules between four brothers and sisters and half brothers and sisters.
- The criteria to be met by dependents applying for family provision claims where the deceased did not have his or her permanent home in England and Wales.

The Law Commission's consultation will end in February 2010 and a report and draft bill are expected in late 2011.

The family team at Birketts are highly experienced professionals in all aspects of family law and if you wish to speak to a Birketts family law expert about any of the issues raised in this article then please contact our Cambridge office (01223 326600), Ipswich office (01473 232300) or our Norwich office (01603 232300) and ask to speak to a member of the Family Department.

The content of this article is for general information only. As always, specific professional advice should be taken on each individual matter.

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