

AUTUMN 2014

NEWSLETTER No. 12

WELCOME TO OUR LATEST NEWSLETTER



Macmillan Coffee Morning

We again took part in the World's Biggest Coffee Morning in September raising the sum of £305.00. Thank you to all of those who participated.

CONGRATULATIONS TO CRYSTAL

We would like to congratulate Crystal Clark who has been made a Fellow of the Chartered Institute of Legal Executives. A great achievement and one that would have seen her become one of the youngest qualified Fellows if she had not taken time out for maternity leave. Congratulations Crystal.

OPERATION CHRISTMAS CHILD – Shoebox Appeal.

Operation Christmas Child is the World's largest children's Christmas project. Gift filled shoeboxes are sent to children all over the World who would otherwise receive nothing at all. Last year, nearly 1 million shoeboxes left the UK for countries such as Ukraine, Belarus, Azerbaijan and Kosovo. There are 15 different receiving countries.

Here at Mackarness & Lunt, we are a drop-off point for receiving gift filled boxes. Last year, we received over 450 boxes for onward transport. One of our members of staff took part in a distribution trip to Belarus in December 2011 and has been accepted to take part in another trip this year. Let us try and beat the 450 total we received last year – why not pop in for your ready-wrapped empty shoebox and leaflet. Drop-off dates for your box are 1st to 18th November.

Further details are available at www.operationchristmaschild.org.uk or e-mail our staff member Delia Cann at deliacann@macklunt.co.uk.

DOMESTIC VIOLENCE – help available

The charity Refuge and ITV's Loose Women have released the results of a YouGov survey showing that over one in three British women have experienced domestic violence, almost 2/5ths of the victims tell no one, 35% of women state that they would not want anyone to know and nearly ¼ state that they would not know how to assist a victim in any event. Two thirds of women have stated they believe abuse is as a result of the partner losing their temper.

Any domestic violence is clearly unacceptable. Often victims feel trapped and isolated not knowing what their options are to escape such a situation. This is fortunately an area of law that has

developed to allow the Courts and indeed the police to have a greater degree of power to deal with offenders.

If you know somebody who has experienced or is experiencing domestic violence and does not know where to turn, we can provide advice about the assistance and protection that can be provided by the police and the Court. Civil Injunctions including a Non Molestation Order are available to keep the offender away from the victim. There is also an Occupation Order to remove the offender from the property in which they are living in with the victim. This allows the victim a period of time to resolve any property ownership issues that may arise from jointly owned property.

All matters are obviously dealt with sensitively and in complete confidence.

ARE YOU THINKING OF APPLYING FOR A MORTGAGE?

Applying [for a mortgage](#) has recently got [tougher due to strict new rules being introduced for lenders and mortgage advisers](#).

[The reforms, stemming from regulation known as the Mortgage Market Review \(MMR\), have been introduced to curb lenders giving mortgages to people who may struggle to repay them.](#)

Some of the [major changes](#) are explained below:

[1. An affordability assessment is now carried out by your lender. Previously you only needed to declare how much you earn for your lender to calculate the size of the mortgage they were willing to give. The affordability assessment includes you giving details of essential expenses, such as utilities, food and council tax and cost of living, such as clothes, childcare and other debt repayments.](#)

[Lenders will consider this information to determine how much they are willing to lend you. It's possible you can't borrow as much as you could in the past.](#)

[2. Your application must be supported by evidence such as three of your last payslips in order to prove how much you earn if you are employed by a company. If you're self employed, you will need to provide three years' worth of HMRC tax returns. It's no longer possible for the self employed to 'self certify' their income.](#)

[3. Lenders now have to take account of possible future fluctuations in the interest rate when deciding how much to lend you. As interest rates are at a historic low of 0.5%, it's important to consider the effect of any fluctuations to make sure you can afford your repayments if interest rates increase.](#)

[4. If the term of your mortgage ends after you retire, your lender will have to make sure you'll be able to afford repayments on the income that you receive from your pension, or any other source of income you have in retirement.](#)

[5. It is now a requirement for you to take full mortgage advice. This can be from an independent mortgage broker, or from an adviser in a bank or building society.](#)

[We have noticed that in some cases the new mortgage rules are leading to delays with mortgages being approved and issued. As such it would be our advice to make contact with a mortgage professional \[sooner rather than later\]\(#\) if you will require mortgage finance for your purchase.](#)

VEHICLE TAX CHANGES

From 1st October 2014 there is no longer a requirement to display a paper tax disc on a vehicle windscreen. In the event you have a tax disc with any remaining period to run it is possible for the tax disc to be removed from the vehicle windscreen and destroyed as it is no longer required to be displayed. Customers with a Northern Ireland address will still be required to display their disc.

However, to drive a vehicle on the road you will still be required to purchase vehicle tax (unless you are exempt or declaring the vehicle as SORN) and the DVLA will still send you a renewal reminder when your tax is due to expire.

If you now purchase a vehicle the vehicle tax will no longer be transferable with the vehicle. You will need to purchase your own vehicle tax before the vehicle can be driven. In the same way, if you sell a vehicle, any remaining vehicle tax will not be transferred to the new owner. Once you have notified the DVLA of the sale you will automatically receive a refund for any full calendar months left on the vehicle tax. Previously, a separate application for a refund of vehicle tax had to be made along with notifying the DVLA of a sale of a vehicle. This will no longer be required as the DVLA will automatically issue a refund in those circumstances.

It is also possible to make payment via direct debit for your vehicle tax on an annual, six monthly or monthly basis. This is provided that an MOT remains valid for the vehicle at all times and valid insurance should also continue to be in place. For more details visit www.gov.uk for the latest information.

LASTING POWERS OF ATTORNEY

Controversial proposals to create a fully online process for creating Lasting Powers of Attorney (LPA) has been put on hold by the government.

In a formal response the Ministry of Justice said it is 'confident that a fully digital LPA will provide benefits' but that 'a number of points' need to be resolved first.

In its response to the consultation, the Law Society called for the retention of face-to-face contact and 'wet signatures'.

The Office of the Public Guardian will publish a redesigned LPA application form by early next year. The form will be shorter, use simpler language and will be more easily accessible to individuals when making a LPA.

However a key proposal in the consultation, to combine forms for health and welfare and property and finance, has also been abandoned, the response says. The Law Society had warned that a 'hybrid LPA form' could confuse users and lead to mistakes.

REGISTRATION of LASTING POWERS OF ATTORNEY

The Court of Protection has ruled that a Lasting Power of Attorney (LPA) is legally created only when it is registered by the Public Guardian, not when it is executed by the donor. The decision – made in the complex case of *N & S v E & M* (2014 EWCOP 27) – was important because it established a LPA executed by a donor took precedence over a 'Living Will' (an Advance Decision to refuse medical treatment) that she had signed on the same day.

It is therefore important to check that your Lasting Power of Attorney has been registered and also any Living Will (Advance Decision) has not been inadvertently revoked.

INTESTACY RULE CHANGE

New provisions in the Inheritance and Trustees' Powers Act 2014 – which came into force on the 1st October – changes the way a person's estate is divided if they die without a valid Will.

If the deceased person has a spouse or civil partner but no children, their surviving partner will inherit everything. Currently the other person has to share the estate with the deceased's surviving parents or siblings.

If the deceased person has children, the surviving spouse will receive the statutory legacy of £250,000 plus the deceased's personal belongings (as well as half the estate).

The new rules raise the issue of what happens in cases of separation or estrangement.

The changes to the intestacy rules serve as a reminder of the importance of having a Will. Dying without a valid Will not only means your final wishes may go unheeded, but a financial and emotional mess is left for your loved ones to sort out. This need not be your final legacy.

The new intestacy laws also alter the position of adopted children to ensure they do not lose any potential claim to inheritance, and expand the definition of who can make a claim to an estate to include a person 'treated as a child of the family'.

The statutory legacy will now rise, at least every five years, in line with the consumer prices index.

Do all of these changes to the intestacy rules mean it is not going to be worth making a Will?

Absolutely not! The intestacy rules even with these new revisions are still far from perfect and for many families can have disastrous results. Every family is different and assuming that a set of standardised rules will be sufficient to make sure their individual needs will be properly catered for is unwise. Avoid relying on the intestacy rules and you will avoid leaving your family in difficulty.

DIGITAL LEGACY

Clients are advised to manage their digital legacy as part of their estate planning process - largely due to the explosion in online shopping, banking and particularly social media.

Dealing with the online presence left behind when someone passes away can prove a tricky and time-consuming process if proper planning is not put in place.

Most people now have on-line accounts for email, shopping, banking or social media. We can store all of our photos on online sites, and all of our documents in digital storage facilities. We can create an online bank account which leaves no paper trail.

So what happens to this online legacy when the owner of the account is no longer around to input their passwords?

Part of administering the deceased's estate involves gathering information about all of their assets and liabilities. If some of these are managed online, those responsible for the estate can only deal with them if they are aware of them. So creating a list at the time you make your Will could prove invaluable. You must be careful not to list passwords in the same place. However, the list has to be maintained, regularly reviewed, and stored in a secure location, so that it does not fall in to the wrong hands. We recommend a list is stored with your Will.

Dealing with individual companies that provide online accounts, can be dealt with by your Executor writing to them to cancel the service. This should cover most shopping and banking areas.

Other online accounts should of course be closed down, but may prove more difficult to do so. It is, of necessity, difficult to close an email account if it is not your own. However, it is important to deal with these quickly post death to avoid hacking and scamming – which in turn can lead to more distress. The bigger providers are obviously alert to the requirements and, broadly, will take action on sight of confirmation from the executors along with any supporting evidence.

However social media presents a raft of new questions. Maintain an online presence in the form of a memorial, or exercise the right to be forgotten? An online profile, such as a facebook page, can become a focus for tributes and sharing of memories. With a web of interlinked and shared history, past conversations with friends and family and photos shared by the profile holder and others, access to these reminders may be important to those nearest and dearest. There are instances where this has caused issues, largely because the person who had died has left no clear instruction as to what should happen to their online presence.

Top five tips:-

1. Keep safe records of where you have accounts – we are happy to store the information with your Will.
2. Always make a traditional Will to cover your physical assets such as bricks and mortar, cars and jewellery, and in that direct your Executors to manage your on-line presence in the way that you would like;
3. Choose your Executors carefully as they need to be able to action these sort of processes;
4. While you are still able, close down all redundant accounts yourself;
5. Keep all of this under review and up to date

FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

Who is affected?

- Any person who acts as a trustee.
- Any firm which is a *Foreign Financial Institution*.
- Any accountant or lawyer who is or has clients who are in these categories.

What is FATCA?

FATCA is part of a larger piece of legislation (*Hiring Incentives to Restore Employment Act*) introduced in the United States in 2010 to ensure that country's citizens are fully disclosing their worldwide income to the Internal Revenue Service (IRS). It has spawned a number of international agreements being adopted primarily in the Crown Dependencies and Overseas Territories, while the Organisation for Economic Cooperation and Development (OECD) is also working on an international disclosure process.

The key point to be clear about is that as a result of the UK-US intergovernmental agreement (IGA), the legislation is now part of UK law and the regulations issued under that section. There are consequences for default - both financial and reputational.

Myths about FATCA.

It does not apply to me. I am British

It does not apply to the Trust because there are no US connections

It does not apply to the Trust as the asset value is small

So, if you are a Trustee of a Trust or a Settlement and have not considered the impact of FATCA then contact us.

CHILD MAINTENANCE APPLICATION

New Government figures indicate that 3,700 fewer parents made an application to the Child Maintenance Service (CMS) in August than in May 2014. This is believed to be as parents are now choosing not to seek help from the new Government CMS because of charges introduced on 3rd June. These charges include an application fee of £20. An application is exempt if they are a victim of domestic violence and are under 19 years of age or are resident in Northern Ireland.

The CMS also make a charge for the use of the collect and pay service. The paying parent will pay a 20% fee on top of their regular child maintenance payment and the receiving parent will have 4% fees deducted from their regular child maintenance payment.

Therefore, bearing in mind the fees involved, the Government had hoped to encourage parents to make direct arrangements and had hoped for a reduction in the number of cases that need to be referred to the CMS for child maintenance payments. However, there is concern amongst critics that with current statistics indicating that only 2/5ths of the UK's 2 million single parent families are receiving child maintenance payments from the non-resident parent, the situation may deteriorate further in the event that individuals are put off from applying to the CMS due to the fees involved.

If you have any questions with regard to the Child Maintenance Service or agreeing child maintenance payments please do not hesitate to contact us.

Disclaimer

This newsletter has been prepared to highlight some key issues. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at October 2014 and may be affected by subsequent changes in the law. Additional information and updates are available from time to time on our [website](#).

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I would be interested in future newsletters

Name

Address or e-mail address.....

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If you do **NOT** wish to receive any further updates or communication from us, please notify Diane Anderson by [email](#) or phone on 01730 265111.