

Spring Briefings 2018

Norwich | North Walsham | Fakenham

Presented by:

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Review of the Year

That was the year that was
2017!



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Neale Grearson

***Partner and Head of Family
Department***

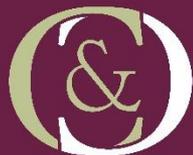


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The year of the Trump



- No Wall yet between USA & Mexico
- “I think one of the greatest of all terms I’ve come up with is fake” (7 October)
- “Nobody has better respect for intelligence than Donald Trump” (10 August)



The year of the Trump

- “There is a chance we could end up having a major, major conflict with North Korea (22 April)
- “Why would Kim Jong-un insult me by calling me ‘old’ when I would NEVER call him ‘short and fat’ (11 November)
- The President tweeted: "North Korea has not conducted a Missile Test since November 28, 2017 and has promised not to do so through our meetings. I believe they will honor that commitment!" (10 March 2018)

The US President tweeted the remarks after claiming a deal with the isolated regime could be a "very good one for the world".



Mr Trump is set to hold talks with the North Korean leader



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Norfolk Legal Economy

- Brexit!
- Mergers and acquisitions
- Competition
- Legal Aid
- Property Market
- Social Media and Marketing
- Clients' Expectations
- Fees
- General Data Protection Regulations
- The Future....



Clapham & Collinge State of the Union 2017

- No mention of Brexit!
- Development of firm
 - North Walsham
 - Planning Department
 - Charities Department
 - Court of Protection
- Working with other professionals
- Legal 500
- Corporate Social Responsibility



Caroline Eaton
Family Solicitor



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Family Law Updates

- How is the Law dealing with family life in 2018?
- Is it fit for purpose?



“No fault” Divorce

- Matrimonial Causes Act 1973
- One ground for divorce – irretrievable breakdown
- Five Facts;
 1. *Adultery*
 2. *“Unreasonable behaviour”*
 3. *Desertion (two years)*
 4. *Two years separation with consent*
 5. *Five years separation*



“No fault” Divorce

Modern Family Law



About Resolution

Resolution’s 6,500 members are family lawyers and other professionals committed to the constructive resolution of family disputes. Our members follow a Code of Practice that promotes a non-confrontational approach to family problems. Our members encourage solutions that consider the needs of the whole family - and in particular the best interests of children.



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“No fault” Divorce - The Case of Tini Owens

News • UK News • Divorce

Judge denied woman, 66, divorce from 'loveless' marriage saying her complaints were 'exaggerated' and 'scraping the barrel'

The “extraordinarily unusual” case of Hugh and Tini Owens has come before the most senior judges in the country

197 SHARES 5 COMMENTS BY STEVE ROBSON, BRIAN FARMER 12:52, 15 FEB 2017 UPDATED 12:57, 15 FEB 2017 NEWS



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The Facts



- Tini and Hugh Owens were married in 1978. They have 2 grown up children
- Tini became unhappy in the marriage
- In around 2012 she visited solicitors for advice on divorce. She said she and Hugh had been sleeping in separate rooms for years
- Tini had a “fling” in 2013 – *should this change anything?*
- Tini moved out of the family home – The Manor – to a neighbouring farmhouse in their Oxfordshire village in 2015
- Tini petitioned for divorce in May 2015



What Hugh did next

Because Tini's petition was issued within the first 2 years of separation, she could only rely on adultery or alleged "unreasonable behaviour". She could not rely on her own adultery.

Tini's particulars included;

- Hugh was "insensitive in his manner and tone"
- Criticised her in front of the housekeeper
- Snapped at her then ignored her over dinner
- Locked in a loveless marriage

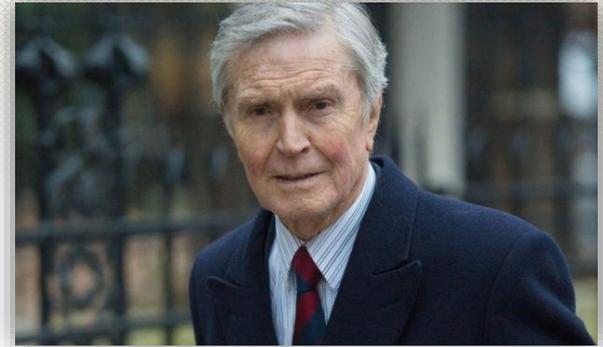
Her barrister said;

"The husband, in his attitude and his manner and the way he did and said things, treated her in a childlike and patronising way and thought that she ought to comply with his will".

Hugh defended the proceedings



Hugh's Defence



- “I am somebody who teases his wife”
- “I do it all the time. I know she doesn’t always appreciate it.” he added: “I have got a very loud voice. I talk in this way all the time”.
- **“We still have a few years left to enjoy”**

What his barrister said:

“At the moment, as the law stands, unhappiness, discontent, disillusionment are not facts which a petitioner can rely upon as facts which prove irretrievable breakdown.”



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The Court's Decision

The Court in the first instance refused to allow the divorce.

The Judge said Tini's allegations against Hugh were "**exaggerated**" and "**minor altercations of a kind to be expected in a marriage**", he said, adding that the case was "**an exercise in scraping the barrel**".

The Judge described Hugh as '**old school**' and had said Tini was '**more sensitive than most wives**'.

Tini appealed the decision.



Court of Appeal – March 2017

Tini's appeal was refused....

She must stay married to Hugh until 2020 when she will be able to petition for divorce on the basis of 5 years separation, which does not require Hugh's consent.

Sir James Munby said the job of appeal judges was to 'apply the law'. He said they would examine legislation laid down by Parliament and told lawyers:

'It is not a ground for divorce if you find yourself in a wretchedly unhappy marriage – people may say it should be.'



“No fault” Divorce – What does this all mean?

- Is Tini’s costly and determined fight for a divorce “evidence” that the marriage has broken down irretrievably?
- Tini will have to remain married to Hugh for the next 2 years – before being able to amend her petition to the basis of 5 years separation. Is this “right”?
- The divorce started in 2015 and the appeal was heard in 2017. Should Hugh provide his consent for an amended petition on the basis of 2 years separation with consent?

And it’s not the end of the story for Tini and Hugh....



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"No fault" Divorce

Richard Adams
Specialist family lawyer with expertise in LGBT family and relationship issues

THE BLOG

Why Won't The Government Act On No Fault Divorce?

27/03/2017 14:03 BST | Updated 27/03/2017 14:03 BST



Divorce reform

The case for no-fault divorce

It is time to introduce no-fault divorce in England and Wales



TIMES CAMPAIGN

Britain's top judge Baroness Hale calls for no-fault divorce laws



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Cohabitation & “Common Law Husband and Wife”



- Cohabiting couple families were the fastest growing family type between 1996 and 2016, with the numbers more than doubling
- 1996 – there were 1.5 million couples living together
- 2015 – this had risen to 3.3 million

** <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2016>



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Cohabitation & “Common Law Husband and Wife”

When do cohabitees acquire financial rights from each other?

- When they own property together?
- When they have children?
- After a certain number of years?

When do cohabitees become Common Law husband and wife?



Cohabitation & “Common Law Husband and Wife”



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Cohabitation & Common Law Husband and Wife

- Should Cohabitees get financial rights?
- If so, when?
- Why not just get married?
- What is the Law doing about it?



The Case of Denise Brewster

UK supreme court backs woman's right to receive late partner's pension

Ruling marks significant extension of unmarried cohabitants' rights and could affect millions of families



Denise Brewster was denied payments from her late long-term partner's occupational pension. Photograph: John Astory/PA



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The Facts

- A Northern Irish case
- Denise Brewster was in a relationship Lenny McMullan for 10 years
- They were engaged on Christmas Eve 2009, but Lenny died suddenly in the early hours of Boxing Day.
- Lenny had worked for the Northern Ireland public transport service, Translink, and had been paying into his pension for 15 years.
- Had Denise and Lenny been married, Denise would have automatically shared the pension he had built up.
- Denise, as a cohabitee, would only eligible for survivor's allowances if Lenny had nominated her on a form. Lenny had not got round to doing this.
- Denise claimed this was discrimination.



The Decision

- The case went all the way to the UK Supreme Court for a final decision
- Five Supreme Court justices unanimously ruled she is entitled to receive payments under the pension scheme, saying that the nomination form was "unlawful discrimination"
- The Judge in first instance said it was "irrational and disproportionate to impose a disqualifying hurdle of this kind"



Extending Civil Partnerships to straight couples?

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UK England N. Ireland Scotland Alba Wales Cymru Local News

Heterosexual couple take civil partnership case to Supreme Court

© 22 August 2017

f t Share



Rebecca Steinfeld and Charles Keidan lost their case for heterosexual civil partnerships in the Court of Appeal in February 2017

News > UK > Home News

Government to review civil partnerships in proposed marriage shake-up

Home Office to consult on extending civil partnerships to straight couples or scrapping them altogether

Chris Baynes | Saturday 3 February 2018 00:10 GMT | 29 comments

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Financial Rights for Cohabiting Couples

Cohabiting vs marriage: Six ways your rights differ

1. If one cohabiting partner dies without leaving a will, the surviving partner will not automatically inherit anything - unless the couple jointly own property. A married partner would inherit all or some of the estate
2. An unmarried partner who stays at home to care for children cannot make any claims in their own right for property, maintenance or pension-sharing
3. Cohabiting partners cannot access their partner's bank account if they die - whereas married couples may be allowed to withdraw the balance providing the amount is small
4. An unmarried couple can separate without going to court, but married couples need to go to a court and get divorced to end the marriage formally
5. Cohabiting couples are not legally obliged to support each other financially, but married partners have a legal duty to support each other
6. If you are the unmarried partner of a tenant, you have no rights to stay in the accommodation if you are asked to leave - but each married partner has the right to live in the "matrimonial home"

Source: Citizens Advice



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Financial Rights for Cohabiting Couples

1. Enter into a Cohabitation Agreement
2. Consider how you jointly own property. Do you need a Declaration of Trust?
3. Nominate under your pension
4. Make a Will



Jennifer Nash

***Wills, Trusts and Probate
Solicitor***



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Agenda

- BLENDED FAMILIES - The legal challenges of blended families and protecting your loved ones
- INHERITANCE TAX - have you updated your Will?
- LASTING POWERS OF ATTORNEY – why have they been in the news? Top tips to ensure they are safe, effective and legally robust.



Blended Families



- What is a blended family?
- What challenges do they face when it comes to Wills and estate planning?
- Key issue - how to provide a secure lifestyle for the survivor of you while also protecting your assets for your own children, or wider family.



Inheritance – Intestacy Rules

- Unless you have a Will in place, you have very limited control of what happens to your assets on death.
- Administration of Estates Act 1925 sets out who will benefit from your estate – ‘intestacy rules’.
- This is a one size fits all approach which cannot cater for the vast differences in modern family living arrangements – certainly not for a blended family.
- The rules have very different outcomes for married and unmarried couples



Inheritance – married and unmarried couples

Assets you have some control of:-

- Joint bank accounts – pass by survivorship
- Property owned as ‘joint tenants’ – becoming less common
- Life insurance policies & pensions – nominations

Assets you have no control of:-

- Bank and Building Society accounts in your sole name
- Other savings/investments in your sole name
- Property owned as ‘tenants in common’ – becoming more common



Inheritance – Intestacy Rules

- **No provision for unmarried or cohabiting couples**
- **No provision to divide the remaining assets between both sides of the family**
- **No protection from remarriage or care fees**



Making a Will – what challenges do blended families face?

Often, a couple will want to ensure their spouse is sufficiently looked after for the remainder of their life, but ensure that their own children are the ultimate beneficiaries of their estate.

How does the first to die protect their share of the assets from:-

- Remarriage
- Fall outs with the children
- Care fees



Making a Will – example

Meet Roger &
Mirka....



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Making a Will – not so clever planning

Option 1 – simple mirror Wills

Roger and Mirka could leave everything to each other outright – no strings attached. When the second of them dies, their Wills gift everything left equally to Leo and Chloe.

Option 2 - life interest trusts

Roger and Mirka make Wills containing life interest trusts.

They select certain assets (eg their respective shares in the house), or all assets in their sole name their share of any asset held as tenants in common. When the first of them dies, that person's selected assets go in to the trust to be protected.



Making a Will – key points

1. Make a Will
2. Review your Will
3. Plan for the future
4. Take legal advice to explore the options available to you



Inheritance Tax – the headlines

The screenshot shows the BBC News website interface. At the top, there is a navigation bar with 'BBC' and 'Sign in' on the left, and 'News', 'Sport', 'Weather', 'iPlayer', 'TV', and 'Radio' on the right. Below this is a red 'NEWS' header. A secondary navigation bar includes 'Home', 'UK', 'World', 'Business', 'Politics', 'Tech', 'Science', 'Health', and 'Family & Education'. A third bar shows regional options: 'UK', 'England', 'N. Ireland', 'Scotland', 'Alba', 'Wales', 'Cymru', and 'Local News'. The main article title is 'Inheritance tax to be scrapped on homes worth up to £1m', dated '4 July 2015'. Below the title are social media sharing icons for Facebook, Twitter, Facebook Messenger, Email, and a general 'Share' button. The article features a photograph of George Osborne, Chancellor of the Exchequer, in a dark suit and blue tie, looking slightly to the right. A small 'PA' logo is visible in the bottom right corner of the photo. Below the photo, a caption reads: 'George Osborne promised to make the change during the election campaign'. At the bottom of the article preview, a short summary states: 'Chancellor George Osborne's Budget is to confirm the end of inheritance tax on family homes worth up to £1m.'

M News ▶ UK News ▶ Inheritance tax

Inheritance tax: George Osborne to end death tax on family homes worth up to £1 million

The Chancellor is preparing to confirm that a new allowance enabling parents to pass on the main family home to their children tax-free after their death will come into effect from April 2017



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Inheritance Tax – the reality

The new rules in effect since April 2017 could mean that, potentially, you may be able to pass £1m of assets to your children, or other descendants (grandchildren, step children, etc).

If.....

..... you meet that criteria, then you could leave the magic £1m worth of your combined assets to your children or other 'direct descendants'.



Inheritance Tax – the new relief



Key message – review your Wills!

If necessary, update them.



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Inheritance Tax – the future

The Chancellor has made a request to the Office of Tax Simplification for a review on IHT.

Phil says.....

‘I would be most interested to hear any proposals you may have for simplification, to ensure that the system is fit for purpose and makes the experience of those who interact with it as smooth as possible.’

‘It could also look at how current gift rules interact with the wider IHT system, and whether the current framework causes any distortions to taxpayers’ decisions surrounding transfers, investment and other relevant transactions.’

They are due to provide a report in Autumn 2018 with their findings.

Make sure you follow our social media platforms to keep up to date with recent developments.



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Lasting Powers of Attorney

A lasting power of attorney (LPA) is a legal document that allows you appoint one or more people (known as 'attorneys') to help you make decisions or to make decisions on your behalf.

This gives you more control over what happens to you if you have an accident or an illness and can't make your own decisions (you 'lack mental capacity').

There are two types of LPA:-

1. Property & Financial Affairs
2. Health & Welfare

Lasting Powers of Attorney are very important documents and their value should not be underestimated.



Lasting Powers of Attorney

Lasting Powers of Attorney hit the headlines in summer 2017 when a retired senior Court of Protection Judge claimed he would never sign an LPA due to the serious risk of abuse.

He claims the alternative to LPAs – a Deputyship Order – has been ‘demonised’ by people who oppose the fees.



Denzil Lush
Source: APIL



Lasting Powers of Attorney - risks

- What are the risks of making an LPA?
- Does anyone supervise Attorneys?
- When do these risks arise?



LPAs – when do these risks arise?

- Usually, when a person tries to make an LPA themselves, or with the assistance of a friend/family member without taking legal advice.
- Without legal advice, a vital safeguard in the process is missed.



LPAs – Safeguards

With legal advice:-

- We help you choose your attorneys carefully
- We provide information to your proposed attorneys about their duties before they sign the document – no excuses for abuse
- We assess capacity, understanding and undue influence
- We are a key point of contact for attorneys when they begin to act



LPA's – Should you have them in place?

- Yes – and make sure you take legal advice
- What is the alternative?
- What would your preference be?



Jade Tinney
Commercial Solicitor



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Commercial Law Updates

- GDPR
- MEES
- Disclosure of Director's personal details
- Brexit!



GDPR

1. What does it stand for?
2. How much do you know about it?
3. Is your business prepared?



1. General Data Protection Regulations

What does GDPR stand for?
See above!

What do the Regulations do?
They replace the existing Data Protection Act 1998.

When do they come into force?
25 May 2018.



2. General Data Protection Regulations

How much do you know about it?

- The aim is still the same – to protect EU citizens from privacy and data breaches in a world increasingly driven by personal data.
- In the UK it will be enforced by the Information Commissioner's Office.
- It applies to organisations across the globe, not just those within the EU.
- It expands on existing requirements and introduces new concepts.



General Data Protection Regulations

DPA	GDPR
Fair and lawful processing	Lawful, fairness and transparency
Specific purposes	Purpose limitation
Adequate, relevant and not excessive	Data minimisation
Accuracy	Accuracy
Retain only as long as necessary	Storage Limitation
Respect data subjects' rights	Integrity and confidentiality
Security	
Transfers outside of the EEA	



3. General Data Protection Regulations

Is your business prepared?

1. Nominate a GDPR lead or data processing officer (DPO)
2. Carry out a data mapping review
3. Update your customer facing privacy policies
4. Review and update all data-related policies and procedures
5. Clarify and document the legal basis that you are relying on for processing data
6. Check your marketing lists
7. Check your IT system can properly support compliance
8. Review all third-party supplier arrangements
9. Consider staff training and audits
10. Go through and double check everything



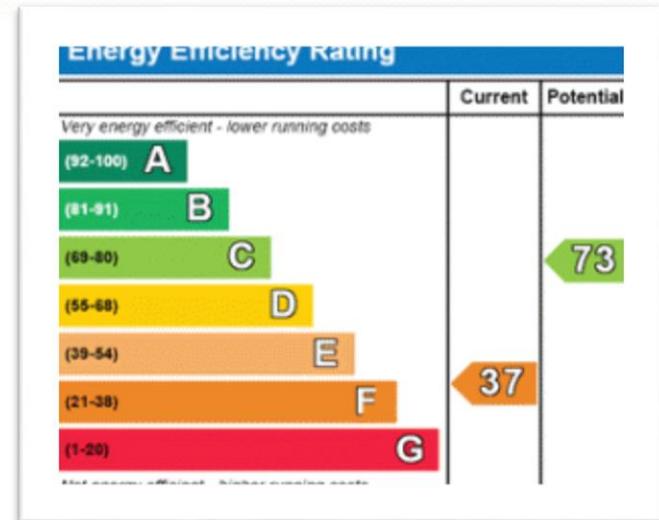
...what about Brexit?

- The UK will leave the EU less than a year after GDPR is introduced. Does this mean the law will change again?
- The UK government is in the process of drafting a new Data Protection Bill
 - It mainly repeats the requirements of GDPR, but this will take effect as domestic legislation
 - If you comply with GDPR, you should also comply with the new legislation



Minimum Energy Efficiency Standards

- All domestic and commercial buildings in the UK must have an Energy Performance Certificate when put on the market for sale or letting.
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 come into force from 1 April 2018.
- What will change?
 - It will be unlawful to let domestic or commercial premises with a rating lower than 'E'
 - Very important for landlords to upgrade to have marketable property and to avoid fines
- What are the key dates?



Minimum Energy Efficiency Standards

When do the Regulations apply?	When don't the Regulations apply?
The grant of new tenancies	To tenancies of less than six months in length
The extension or renewal of an existing tenancy	To tenancies of 99 years or more
The assignment of an existing tenancy	To properties which do not require an EPC, e.g. Listed Buildings, industrial sites etc.
An existing tenant subletting the same premises	Owner-occupied properties or those being sold, rather than let



Minimum Energy Efficiency Standards

- What effect will the Regulations have on landlords?
- Having to bear the cost of upgrading property to a compliant standard
- If a property has an EPC rating of below 'E', its marketability will be diminished
- The value of the property may also be adversely affected
- Landlords may struggle to see an increase in their rent during the rent review process
- Certain dilapidations may fall to the landlord, rather than the tenant
- And, worst of all, penalties...



Minimum Energy Efficiency Standards

If your property's EPC rating has fallen below 'E' or is at risk of doing so, the best way to protect yourself is to have an "[Energy Efficiency Plan](#)", which should include the following:

- Ensure all of your properties have a valid and up to date EPC to be aware of the extent of potential liability
- Assess the costs of making the improvements necessary to raise the EPC rating
- Be mindful that the rating need only be of an 'E' or above, but that the Government are very likely to increase this requirement in the future



Director's Personal Details

Did you know that?

1. company directors are twice as likely as general members of the public to be victims of identity theft and identity fraud?
2. 20% of all victims of identity fraud between 2012 and 2015 were company directors?

This is partly due to personal information about company directors being freely available as public record on the Companies House register, as well as directors having an online presence.



Director's Personal Details

Directors must provide both residential and services addresses to Companies House, but only the address for service is available on the public record.

This is not the case for pre-2003 records. To remove their residential address, a director must prove 'serious risk of violence or intimidation'



Director's Personal Details

So what is being done to help?

- The Companies (Disclosure of Address) (Amendment) Regulations 2018 will remove this requirement.
- The Regulations will also make the same amendments to members of Limited Liability Partnerships.



Brexit...

As far as we know...

- There will be no massive legal change on the date Brexit takes effect
- Much UK commercial law does not result from EU initiatives

What can you do to protect your business?

- Think about how Brexit could impact your business
- Decide what your priorities and principles are
- Ensure documents are drafted well and your intentions are clear



Brexit...

Future-proof all important documents

- English courts take a stricter approach to contractual interpretation
- Include express provisions to cater for possible adverse commercial effects
- Look out for language in legal documents which refer to “the EU”
- Consider writing an express clause into your contract providing for circumstances effected by Brexit

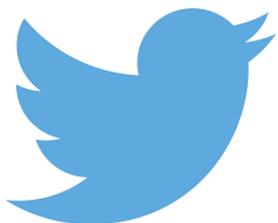


Thank you...

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