

Safety net for homeowners

It will come as no surprise to hear that house prices suffered their biggest fall on record in 2008.

Falling house prices and high unemployment have seen mortgage arrears and mortgage repossessions as bad – or worse – than the 1990s. The figures for home owners with three months arrears are up 24% from last year. According to the FSA about 2.9% of home owners are behind with their repayments.

The Government has announced some initiatives to try and help people stay in their homes during these trying times. These include a cut in the waiting time from 39 weeks to 13 weeks for financial help with interest payments; not-for-profit Housing Associations buying homes and renting them back to the home owner; legally compelling lenders to only use repossession as a last resort; and by allowing those whose income has fallen unexpectedly to defer part of their payment for up to two years.

This incentive provides a guarantee allowing

homeowners made redundant or who have a significant loss of income to defer payment of a proportion of their mortgage interest for up to two years – available for mortgages up to £400,000. The unpaid interest will be added on to the mortgage debt and repaid over the rest of the term of the mortgage – hopefully when the homeowner has found another job. Some lenders have already signed up to the scheme which sees the Treasury underwrite the additional risk to the lender. However the finer details of the scheme have yet to be worked out and it is feared that only a small number of home owners will qualify. Another disadvantage is that this will see the equity in the home reduce and if prices continue to fall could leave home owners in negative equity.

Whilst it is too early to talk of 'recovery', there is a more positive outlook with improved buyer confidence due to lower house prices, lower interest rates and government initiatives.

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Wright Hassall to the rescue!

Wright Hassall and the housing association Orbit Group have joined forces to complete the first deal under a £200m government scheme – saving a vulnerable family from repossession.

Orbit and Wright Hassall worked together to buy a house in Norfolk from a family who could no longer pay their mortgage.

Under the mortgage rescue scheme, housing associations receive funding to help purchase the house and pay off the mortgage providing that the family remains at the property as tenants.

It is hoped that similar buyouts will avoid 6,000 repossessions across England.

Jenny Birch, of the Orbit Group, said: "The purpose of this scheme is to prevent the most

vulnerable families from losing everything they have because of debt.

"We are obviously thrilled to be involved in the first deal and we hope there are many other transactions that follow suit and prevent people from losing their homes."

The scheme is aimed at families who would be eligible for homelessness assistance, and is not available to those in negative equity.

Ruth Harries, of Wright Hassall said: "In this type of situation, communication and speed are both essential - and we've had those with Orbit.

"The result is literally life-changing for the family and we're proud to have played a part in this first deal."

Free advice for all your personal legal issues

Between Monday 11 May and Saturday 16 May, you are invited to book an hour's free consultation with one of our specialist private client lawyers.

We will be able to answer your queries across a wide range of matters including tax planning for the future to boundary disputes, and from divorce and separation to personal injury.

Appointments will be available between 9am and 6.30pm Monday to Friday and between 10.00am and 4.00pm on Saturday. For more information or to book an appointment, please ring Simone Bartha on 01926 880779 or email simone.bartha@wrighthassall.co.uk. Visit our website www.wrighthassall.co.uk for further details.

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Can divorce settlements be renegotiated in light of the credit crunch?

Thus far, the answer is no. The Court of Appeal has recently rejected an attempt by fund manager, Brian Myerson, to reduce the divorce settlement awarded to his former wife due to significant losses suffered by him in the credit crunch.

Brian and Ingrid Myerson married in December 1982 and have 3 children. Mr Myerson founded Principle Capital Investment Trust four years ago and at the time of the parties divorcing last year, his shares in the company were worth £15 million and formed a substantial part of the couple's total assets of £25.8 million. It was agreed between Mr and Mrs Myerson at the Financial Dispute Resolution appointment in February last year that he would keep his shares and that his wife would be paid £9.5 million over 4 years as well as receiving their beach property in South Africa worth £1.5 million. This represented 43% of the total matrimonial assets at that time.

Unfortunately, Mr Myerson's company suffered significantly in the economic downturn. At the time of the divorce, his shares were worth £2.99 each but they are now only worth 27.5 pence per share. According to Mr Myerson, this means that his ex-wife will receive 105% of the

assets, leaving him £500,000 out of pocket.

It was argued on behalf of Mr Myerson that the assumptions upon which the consent order was made have been undermined due to "the unforeseeable and unforeseen combination of forces at play within the global economy" and that his position could well worsen over the coming months.



Lisa-Marie Darby discusses the recent Myerson case and highlights the potential impact of the credit crunch when agreeing division of assets.

The three judges of the Court of Appeal have, however, unanimously dismissed the case, ruling that they could not justify changing the settlement due to "the natural processes of price fluctuation, whether in houses, shares or any other property, and however dramatic".

It is believed that Mr Myerson will now take his appeal to the House of Lords, in the hope that they will be more sympathetic to the situation in which he now finds himself.

It appears that the Court of Appeal may well have been attempting to avoid a huge surge in the number of cases before them which would no doubt have happened had Mr Myerson been successful. Will the House of Lords feel the same? Only time will tell but the courts have historically been keen to ensure that there is as much finality as possible with such orders and are certainly busy enough already without having to deal with cases retrospectively. It therefore seems that Mr Myerson has an uphill struggle ahead of him.

In the meantime, however, it is clear that couples should proceed with extreme caution in the current climate when attempting to agree the division of their assets. They should try to spread the risk by sharing assets proportionately, particularly in a clean break case. But does this also mean that those couples who have negotiated settlements over the last year or two on the basis of a property valuation which has now dropped significantly will also be prevented from applying back to the Court?

It is clearly more important than ever that separating couples each obtain expert advice before entering into an agreement which could leave them struggling financially in the future.

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WH Regency Run 2009 success

The Regency Run, sponsored by Wright Hassall, has smashed the £100,000 barrier.

The 10km run attracted 2,200 runners – the largest field in its five year history. The money raised by entry fees and sponsorship will now be divided between worthy causes in the area.

The winner of the event, for the second year running, was Ryan Kenny who set a new record time of 31.53.

There was also a new women's record set by Kenyan international Joyce Kirui. The 34 year old finished in 34.48.

Wright Hassall won the corporate cup with the four fastest runners finishing

in under 49 minutes.

The run attracted hundreds of spectators along the course route, which finished at Mill



Gardens in Willes Road.

Russell Hall, from organisers Leamington Round Table said: "The race has grown in

popularity each year and we were full again. It was great to see so many people running and also out on the street supporting those taking part."

Jane Senior, of Wright Hassall, said: "The event has become a real fixture on the calendar for competitive and non-competitive runners and it is great to see so many people putting in so much effort."

Pictured left: some of the Wright Hassall runners at the start of the race.

The true costs of clinical claims

The news that the NHS is facing a “£700m negligence bill” is a shocking and worrying statistic. As with many headlines, it is attention-grabbing but does not explain the true situation.



The advent of ‘no-win, no-fee’ agreements has led to an increase in clinical negligence claims. Jeanette Whyman reports.

In the last 20 years, claims against hospitals and GPs have increased due to increased awareness amongst people generally of their rights and the ability to access the law. The advent

equally only for those claims which will be successful. The NHS does not pay the claimant’s costs of claims which fail.

Last year saw the Court of Appeal hand down the Thompsonstone judgment. This affects the costs of care and will pay those who need care now and in the future, the correct amount for their needs.

More than half of the payments made by the NHS are for maternity cases – that is babies who are damaged at birth and will need life long support. These are extremely costly cases which is why the Thompsonstone judgment has had such an impact.

Each year, each NHS Trust pays a premium to cover the costs of its potential liabilities. This works in the same way as any insurance premium so that the fewer the number of successful cases, the less



of ‘no-win, no-fee’ agreements has meant many more are now able to bring claims. In addition, there has been increasing specialisation by solicitors handling clinical claims. Because the solicitor only gets paid if the claim wins, (hence no-win, no-fee) only those claims which the solicitor feels are very likely to win, are taken on. Therefore the claims which succeed attract a success fee which has in turn increased the legal fees of the claim.

The government, in its aim to ensure that all have the ability to get legal advice if it is appropriate, has created a legal system in which the cases which are pursued have merit but are costly especially if defended unnecessarily.

This has served to increase legal costs but

the premium paid. Having said this, the amount set aside covers all cases not just those that might succeed so it is likely the true cost will not be as high as £700m as not all cases will succeed.

If a patient has suffered because of the negligence of a doctor or nurse, it is only right that they be compensated. Such compensation will cover not only their pain and suffering but any care which they may need to cope with the problems caused. Whether it is right that this be funded by the NHS, arguably to the detriment of the service it provides, is a different and very political question.

Should you need any advice on clinical negligence please contact Jeanette Whyman.

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In brief...

New Express Wills service

We are offering an ‘Express Wills’ service aimed at individuals or couples who want to leave their assets to family members but who do not require tax planning or other specialist advice.

The fee for a single will is £50 +VAT and, for a double will, £75 + VAT. There are no hidden fees or storage costs. To obtain an Express Will pack contact 01926 884689 or email expresswills@wrighthassall.co.uk.

Alternatively download the form from: www.wrighthassall.co.uk/services/wtt_express_wills

Cash delivery for Zöe’s Place

WH raised almost £3,300 for Zöe’s Place, a charity which will run the Midlands’ only baby hospice from a soon-to-be built centre in Coventry.

Colette Perkins, of Zöe’s Place, said: “Wright Hassall’s staff have raised a huge amount for us and we’re extremely grateful. It’s also helped raise awareness of the cause.

“The centre will hopefully be ready for April 2010. When it’s open, the support will be for all families across the Midlands. We want to make lives better for children and their parents if we can.” www.zoesplacemidlands.org.uk

Myton Hospice is WH’s charity for 2009.

First Change to Intestacy Rules since 1993

From 1/2/09 the amount payable to a surviving spouse or civil partner of a person who dies without making a will (known as dying intestate) has been increased to £250,000 if the deceased had children and £450,000 if the deceased had no children.

Inheritance Tax threshold increase

The Inheritance Tax threshold (or ‘nil rate band’) for the tax year 2009/2010 is £325,000 rising to £350,000 for the tax year 2010/2011

For more information visit our website: www.wrighthassall.co.uk

Stressed out

In the current credit crunch stress levels at work seem to be on the rise leading many to question whether a civil claim can be made where levels of stress have had a detrimental effect on health.

For many years it has, in principle, been possible to make a civil claim where stress levels have led to a recognised psychiatric injury, but such claims are far from straightforward and not easy to win. As a result, some people have attempted to make civil claims by way of the Protection from Harassment Act 1997, as an alternative to a 'normal' personal injury claim.

The Act was passed to combat stalking but the wording of the Act does allow civil claims to be made for, amongst other things, any anxiety caused by the harassment.

Where a person pursues a course of conduct which amounts to harassment and which he knows, or should know, amounts to harassment then a civil claim may be made. A 'course of conduct' requires behaviour on at least two occasions but the Act, unhelpfully, does not define the type of



behaviour which amounts to harassment.

In the case of *Conn v Sunderland City Council* the court imposed a very high threshold for deciding whether certain behaviour amounted to harassment and in *Hammond v International Network UK Limited* the court decided that for a civil claim under the Act to succeed the behaviour had to be of a criminal nature, which might even warrant a custodial sentence.

From the various court decisions it appears

clear that, for a civil claim to succeed, the behaviour must be very serious indeed and behaviour which is simply bad tempered and unpleasant is unlikely to be sufficient.

When assessing whether a person's behaviour constitutes harassment the courts will look not only at the behaviour itself but also at the environment in which it occurs. What might constitute harassment on a hospital ward, for example, might not constitute harassment on a factory floor.

The most recent attempt by the courts to apply the Act to a civil claim came in the case of *Ferguson v British Gas Trading Limited* when, in February this year, the Court of Appeal held that repeatedly threatening to cut off a gas supply, to start legal proceedings and to make a report to credit rating agencies might amount to harassment. We will need to await the result of the eventual trial to see whether the behaviour did amount to harassment.

For more information on this developing area of law contact adam.brain@wrightthassall.co.uk.

Personal Injury Trusts and protection of means tested benefits

What is a Personal Injury (PI) trust?

At present, if you receive compensation for a personal injury, the amount will be taken into account if you are assessed for means-tested benefits such as income support, housing benefit, council tax benefit and job seekers allowance. As a general rule, if you have over £6,000 (or £10,000 if you are a permanent resident in a care home) of compensation the level of income is reduced; and if you have over £16,000 you normally lose all entitlement to income support.

One way of protecting both your compensation money and any benefit entitlements is to transfer the money into a Personal Injury Trust. If you do this, you can receive both income and capital and the fund is not taken into consideration when assessing you for benefits.

How can a PI Trust preserve my benefits?

A Personal Injury Trust can help to protect your money not only now but also in the future if you have to go into residential care at some point. If you were to give your compensation money away (to your children for instance), the tax authorities would treat this 'gift' as a "deprivation of capital". In other words, you are assumed to be giving away your assets for the sole purpose of becoming eligible for benefits. Consequently, for means-tested benefits you are still treated as owning those assets. However, a gift to a Personal Injury Trust is not treated as an intentional deprivation of assets.

What about trustees?

You normally need to have two people acting as trustees. Although it is possible for you to be

one of them, it can be advisable to have two trustees, other than yourself, such as adult members of your family. A partner in our firm can also be one of the trustees. You will need to open a bank account for the trust into which the compensation monies can be paid.

What about tax?

There are no particular income tax, capital gains tax or inheritance tax advantages of Personal Injury Trusts and any income generated by, or capital released from, the fund would be taxed in the normal way.

Contact us for guidance on how to set up a Personal Injury Trust:

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