

Couples at war urged to give peace a chance



The festive season can become a nightmare for the children of divorced or separated couples but it doesn't have to be like that. Co-operation and early planning are key to a happy Christmas for all says Lisa-Marie Darby.

Traditionally Christmas is considered to be a time for families to be together and therefore it can be heartbreaking for those who are in the midst of divorce or separation, particularly for the children. Here are some suggestions to help you to have a harmonious festive season:

- Plan arrangements as early as you can when it comes to Christmas contact with your children. If you leave everything to the last minute, it will make negotiations between you more pressured and an application to the Court more likely.
- Do not ask your children to decide where they would prefer to spend their Christmas holidays. You may believe you are being fair but it places your children in the awkward position of effectively having to choose which of their parents they most value. This is both unfair and probably distressing. It is the responsibility of the adults to make these decisions, even when it is hard to do so.
- Consider the long term rather than just focusing on this Christmas. Both of you will want your children to be with you on the first Christmas Day after separation, but there will be many others in the future and the fairest approach is often to alternate from one year to the next or even to share Christmas Day if possible.
- Ensure that handover times for contact are pre-arranged and make sure that you abide by them in an effort to avoid any last minute arguments. Agree

between the two of you in advance who should be responsible for drop-off and collection, so that there is no confusion on Christmas Day.

- Do not enter into competition with your former spouse or partner when buying gifts for your children. If matters have remained fairly amicable, you may be able to continue giving joint presents but, if not, a certain amount of discussion will ensure that there is no duplication when presents are opened around the tree.
- Use extra Christmas contact time for visiting extended family. When couples break-up, their children can often miss out on close relationships with



grandparents, aunts, uncles and cousins in the normal routine of contact arrangements. Christmas is the perfect time to rekindle these valuable relationships. It is important for children to understand that their place in the family as a whole is secure at a time when they are likely to be experiencing significant upheaval and disruption in their lives.

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From left: Richard Grindle, Warwickshire County Chairman RABI; Paul Rice, Toni Ward, Tara King and John Rouse, all Wright Hassall.

WH collect the booty

Wright Hassall has been giving some welly to its latest fundraising attempt. Staff at WH tried their hands at welly wanging to help raise funds for the Royal Agricultural Benevolence Institution (RABI), which supports farming families, and the firm's charity of the year, Zöe's Place Baby Hospice.

Welly wanging is believed to have originated in Yorkshire and requires a participant to throw a welly from a standing position as far as possible within boundary lines.

In a closely-fought competition at the company headquarters in Olympus Avenue, John Rouse sealed victory with an excellent 30-yard throw.

The event raised £208.15 which will be split between the two charities.

Paul Rice, of Wright Hassall and chair of the Warwickshire branch of the National Farmers' Union, said: "Welly wanging is a good, old fashioned competition and the staff here really got into the spirit of the event."

Common sense approach to compensation

If recent reports are to be believed, the US-style 'compensation culture' is spreading across the UK. However, two recent cases show an entirely different trend.

In the first case 'Trustees of the Portsmouth Youth Activities Committee (a charity) v Poppleton', Gary Poppleton fell off a wall and landed head first onto shock-absorbent matting at an indoor climbing centre. As a result he has tetraplegia and sued the activity centre for failing to supervise him and warn him of the risks of the activity. The judge said that adults who engage in activities that have an element of unavoidable risk will not be compensated when the risk materialises and they are hurt. On this basis Gary Poppleton received no compensation for his injuries.

Following hot on the heels of this decision is the case of 11-year-old Samuel Harris who was playing on a bouncy castle when he was hit on the head by an older and taller boy who was doing a somersault. Samuel suffered a fractured skull and now requires round the clock care from his mother. His mother sued Mr and Mrs Perry who had hired the bouncy castle, for failing to keep a permanent lookout for the children playing on it. The judge initially found that the Perrys were liable for Samuel's injuries but this judgment was overturned. The Appeal Court judge said that it was impossible to prevent all risks when children



Adam Brain reports on two recent cases where the courts have taken a common sense approach to compensation claims.

were playing together and that minor injuries happen all the time. He said that it would be impractical for parents to keep children under constant supervision and stated that it was not in the public interest for the law to impose a duty on them to do so.

The Compensation Act 2006 has also poured water on the flames of the 'compensation culture' by tightly regulating claims management companies who are now required to be authorised by the Ministry of Justice. The Act also has an effect on schools and others who organise trips and other 'desirable activities'. Judges now have to consider the effect of imposing a standard of care that is too high if it would have the effect of stopping schools from organising the trip.

In the area of clinical negligence the NHS Litigation Authority (NHS LA) handles cases on behalf of NHS bodies such as hospitals. Its Chief

Executive has criticised patients' lawyers for fuelling the 'compensation culture' by charging too much. However, statistics show that the number of cases rose by less than one per cent in the last year with fewer than 50 clinical negligence claims a year being contested in court. Clinical negligence claims have now become more complex and much of the work, such as paying for an expert report, is paid for in advance of any claim being issued. Eligibility for legal aid is limited and only cases involving children, or those deemed to be in the public interest, are funded. This, combined with the fact that few solicitors hold a government contract to provide legal aid, means that many patients fund their case on a 'no win - no fee' basis.

When you hear people complaining that we live in a 'nanny state' it is good to know that the law recognises that we should be allowed to take risks. Recent cases have dispelled the myth that we are in the grip of a US style 'compensation culture' as judges are balancing the standard of care against the need to take a common sense approach.

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Grandparents provide most tax efficient way of easing the burden of s

It is a point of irritation that school fees are paid out of net income rather than gross earnings. The income tax system does not make it easy for professional advisers to find tax efficient ways of paying school fees and at the moment, higher rate income tax payers effectively have to earn an additional 40% to ensure that there are sufficient funds to pay them.

In an ideal world, financial provision for school fees would have been made when the child was born or shortly thereafter. Sadly, other financial commitments tend to subsume such good intentions and, often, we only start to consider the issue once the children are about to start school.

High earners could use Venture Capital Trusts (VCTs) and Enterprise Investment Schemes (EIS) to reduce their income tax liability from which school and further education fees can be paid. However this again requires advanced planning and a view has to be taken on the inherent investment risk.

Another solution is the use of trusts. Unfortunately, under trust law, there are no tax advantages for parents setting up trusts for younger children, although there are tax benefits when the children turn 18 thus helping for further education.

By contrast, grandparents funding school fees via a trust can be extremely tax efficient. Such a trust can be used to pay the grandchildren's school fees and

distributions can carry a tax credit and utilise the children's individual income tax allowances to recover tax paid on any income (other than dividend income).

Alternatively, a direct contribution to school fees also confers some tax advantages for grandparents. The earlier a

grandparent can make a gift, the better as, under IHT rules, any gifts made within seven years of death will be included as part of the estate for tax purposes. Therefore grandparents ought to consider making gifts as early as possible to start their seven year clock ticking. Payments can be made into the trust to fund future school fees before the children start school. The grandparents can remain as trustees and have direct control over the funds. The use of a trust also allows funds to be set aside so that if a grandparent dies, there are sufficient funds to pay fees after their death rather than risk the funding coming to an abrupt halt.



Divorce makes fair play difficult

In the past 12 months, decisions in a number of important divorce cases have meant, at times, it is difficult to see which way the wind is blowing when guiding clients through the storm of divorce. Here are two recent cases that demonstrate the Court's approach in common situations that we face.

Pre-acquired assets

The first case asked the Court to consider how a couple should deal with assets that had been obtained prior to a marriage. The facts were that a Kosovo refugee arrived in the UK in 1988 without any assets. He met his wife who had inherited a substantial amount of money that was used to buy property, including the family home, in her own name. Although the husband by the time of separation had built up a substantial car wash business the wife's argument was that all of the capital had been introduced from the assets that she pre-owned and these assets had not grown during the marriage. The case went as high as the Court of Appeal. The Judges underlined that in a divorce the guiding principle is the "yardstick of equality". It underlined essential fairness in achieving the equal division of assets for the majority of divorce cases. However, the Court declared that one possible reason for departing from the equality is the situation where the assets were made up of an inheritance as an example of pre-acquired assets. These can be placed in a



Peter Lowe considers how difficult it can be to reach a fair financial settlement when it comes to divorce.

separate category from those acquired during the course of the marriage, especially if basic needs have already been met. As such a Court can go some way towards protecting those assets when deciding a fair settlement.

Setting aside an Order

The second case addressed the question of how a spouse could have a financial Order set aside once the certainty of an agreement had been reached. The Court has always been reluctant to set aside an Order and it can only be done on a very narrow set of circumstances. This is often where there is deception or a fundamental change in parties' circumstances. The principles, set down in a case known as *Barder*, are:

- The subsequent events must have invalidated the basis upon which the Order was made.
- The events must have occurred within a relatively short time of the original Order.
- The application to set aside must be made promptly.
- The granting of the application must not

prejudice others, such as a property purchaser.

Sadly in *Barder* the wife took her own life and those of the children changing the whole basis upon which the financial Order was made. This year the case of *Dixon v. Marchant* addressed the same point. The parties were divorced in 1993 and the husband paid maintenance of £15,000 per annum. Twelve years later he informed his ex-wife that he was looking to retire and his income would be reduced. He asked for details of her financial position and whether she was cohabiting as it had been understood that the wife had been in a relationship since 1993. An agreement was reached to pay off the wife's remaining maintenance entitlement for a lump sum of £125,000. The payment was made in January 2006 and the wife stated that she was not cohabiting and would not do so nor remarry.

By November 2006 the wife had re-married. The ex-husband made an application to have the Order set aside, as he had been deceived. The Court upheld the wife's position and said that re-marriage was not a *Barder* condition. The Court of Appeal backed the first Judge's decision.

With the regular decisions in the Family Court taking hold, whilst divorce in itself can be fairly amicable and cheap when it comes to financial proceedings, the factors that need to be considered require extra help to ensure that the consequences are just.

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School fees

Every individual can give away £3,000 per annum which does not form part of their estate for Inheritance Tax purposes, even if they die within seven years. Therefore grandparents can utilise this annual exemption to reduce their own inheritance tax liability and help fund school fees, whether directly or via a trust.

Grandparents can also fund school fees from their annual income, presuming, of course, that they have sufficient excess income to do so. As payments out of income, these payments do not form part of the grandparent's estate for inheritance tax purposes as they avoid the seven year rule. However, evidence that these payments were made from income rather than capital should be recorded. Such records are relatively simple particularly if they are completed at the same time as the Income Tax return. In short, with the right advice, there are tax efficient ways of funding school fees – providing of course that grandparents are willing and able to be involved.

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Peace and goodwill

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- Do not make decisions that are important and potentially life changing in the heat of the moment. As we all know, Christmas is a stressful time of year so try not to rush into anything after being trapped in the house for too long or having enjoyed a little too much festive cheer.
- Try your best to relax and enjoy the time you have with the children, even if you are still missing your former spouse or partner. Couples often find it difficult when they try to recreate the Christmases they enjoyed when they were together so it may be preferable to embrace the change and enjoy celebrating in a different way. Your children may even welcome the change – who wouldn't like to celebrate Christmas twice every year?

Above all, be prepared to compromise. Divorce and separation regularly cause otherwise sensible and reasonable people to lose perspective and if you feel that this is happening, consult your matrimonial solicitor who will be able to talk through issues calmly and objectively. They should impress upon you the importance of being flexible and appreciating the other person's point of view which should then go a long way towards you and most importantly, your children, simply having a wonderful Christmas time.

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John aims to provide plenty of incentive



New recruit: John Dormer

Wright Hassall is hoping its newest employee will help to keep thousands of staff across the region happy.

Solicitor John Dormer has joined Wright Hassall as a partner specialising in employee incentives.

He will help businesses to put in place incentive plans to give employees benefits, including rights to acquire company shares or bonus schemes.

John, who has moved to the

Leamington-based firm from KPMG's Birmingham office, said that employee incentives can play a key role in recruiting, retaining and rewarding staff, which, in turn, contributes to the prosperity of a business.

"Wright Hassall has offered employee incentive services in the past but this is the first time a specialist in the field has been given a dedicated role," John said.

"There's certainly scope to make our

practice one of the best in the Midlands, because it's not an area that many firms truly specialise in.

"Quality incentive schemes can be the difference between retaining a hard-working, loyal workforce and continually having to replace quality staff.

"We help companies find a balance by linking employees' rewards to performance so that both the company's owners and their staff benefit."

When planning pays off

The last few months have seen turmoil in the financial sector accompanied by falling house prices, a cooling property market and pressure on retailers. But whilst the gloomy economic climate provides its own challenges, it also gives rise to significant planning opportunities.

Recent figures show the number of business insolvencies increasing. If a spouse, partner or any relative runs their own business, any inheritance they may receive can be protected through sensible will planning. By using some relatively straightforward



Careful estate planning in these turbulent, economic times could pay dividends. John Rouse advises a review of financial affairs.

planning any inheritance, death in service benefit, pension lump sum or insurance money can be protected from potential insolvency. There will also be an opportunity to pass funds to the beneficiaries as and when the threat of potential insolvency subsides.

With banking institutions trying to raise their cash deposits and only the first £50,000 in any one bank guaranteed by the Financial Services Authority, you should consider spreading your assets so that you are not caught out by this limit.

With stock markets currently at a low level,

there is investment potential for those happy to take on an element of risk. Whilst the credit crunch has forced us all to review our expenditure, you should avoid the temptation to stop pension contributions as these can provide significant opportunities.

Consideration should be given to where to invest your contributions given that, with the low share prices currently available, your investment pot could grow significantly until retirement. However there is no certainty we have hit the bottom of the market.

The property market has cooled considerably. Many investors will be waiting until the market hits the bottom (always difficult to predict) before they buy a new property. For those that do buy at the right time, a market upturn will produce significant opportunities for a considerable return on capital which, in turn, increases exposure to inheritance tax or capital gains tax. With sensible planning, an investment through a loan trust can keep any subsequent increase out of your estate for inheritance tax purposes. It will also give you the opportunity to spread any capital gain between a number of beneficiaries enabling you to utilise their individual annual allowances to minimise or eliminate any capital gains tax liability.

For those owning property or other assets, this is the perfect time to pass them on to children. Although the transfer of assets will often trigger a charge to capital gains tax, by transferring now, when asset values are low, the capital gains tax can be minimised. If assets are transferred when the markets begin to grow, the higher asset values will increase the potential tax liability.



The recession provides its own unique opportunity to carry out estate planning: although the "feel good factor" has diminished, this is a good time to review your estate and investments and decide if they need restructuring more tax efficiently. Now is also the time to transfer assets to children (and other family members) or into trust to take advantage of lower values for capital gains tax purposes.

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