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Spring / Summer 2017

Brexit Update – Living in the UK

On the 29th of March 2017, the United Kingdom triggered Article 50, giving formal notice to the European Union that the UK will leave the EU. It is estimated that some three million European Economic Area nationals presently reside in the UK. To date, the Government has maintained that any right of residence to be conferred on EEA citizens are the subject of negotiation. A raft of articles have been written about what is likely to happen but the question should, perhaps, not be what is likely but rather what can be done now with the current law and regulations we have.

Who is affected? If you are an EEA national living in the UK it is prudent to at least address how your current status will be affected. Presently EEA nationals may travel, study, work and live in the UK without the need for a visa. A visa is essentially permission to enter or remain in the UK; obtained from a British Embassy or Consulate, if applying from abroad or the Home Office, if applying from the UK. Leaving aside the myriad of possible changes to come, the most pertinent issue for most is whether they can permanently stay in the UK once the UK has left the EU.

An EEA national will automatically acquire Permanent Residence in the UK if he satisfies certain qualifying requirements. Put simply, he needs to show that he has been continuously living in the UK a minimum of five years during which he has either been working, studying or been self-sufficient. He can aggregate such activities so an EEA national may have been studying and then working provided he has been continuously doing so for five years.

There are a number of caveats here; for example, a student or self-sufficient person will require comprehensive health insurance to qualify. In some cases, the EEA national may apply before completion of five years. It should also be noted that being conferred Permanent Residence automatically because you think you satisfy all the requirements is quite different from being able to prove it, something many have found to be monumentally difficult. The practical step to take is to apply for a Residence card.

A Residence card will serve as evidence of Permanent Residence but is not mandatory. However, given the current political climate prudence dictates that an EEA national who intends to continue with his residence in the UK should apply for one. The evidence required to prove continuous residence varies and will depend on the activity of the EEA national. As stated, some may require comprehensive health insurance whereas others not. In cases where the EEA's qualifying activity is employment, then P60s and payslips will be crucial. Permanent Residence can be lost where the EEA national has been away from the UK for more than two years. It can also be taken away where serious criminality is involved.

A Residence card may be sufficient to preserve an EEA national's right to remain in the UK but for those who wish to acquire a greater degree of permanency it would be advisable to take the further step and apply for naturalisation and subsequently a British passport. Beware that some countries do not allow dual nationality so before embarking on this step consider whether this could result in loss of your current nationality.

As of the 12th of November 2015 EEA nationals are required to submit a Residence card along with other

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Tougher Laws on Dress Codes

Nicola Thorps was dismissed from her office job last year for refusing to wear high heels. She started a petition which gathered over 150,000 signatures, resulting in a parliamentary enquiry being launched into discriminatory dress codes. During the enquiry arguments were presented on health and equality concerns surrounding the long term usage of high heeled shoes and other dress code issues. A report on workplace dress codes has now been published and it calls on the Government to take action to improve the effectiveness of existing protections available under the Equality Act.

The following three recommendations have been put forward:

- the Government should review this area of Law and ask Parliament to amend it, if necessary, to make it more effective;
- more substantial remedies for Employment Tribunals to award against employers who breach the Law;
- detailed guidance and awareness campaigns targeted at employers, workers and students.

The petition was debated in Parliament and rejected. A government spokesperson said that the law was 'adequate' in a formal response to the petition. Further, that "The Government Equalities Office will be producing guidance on dress codes in the workplace as a specific response to the Thorp petition and the issues it raised."

Unmarried Partners' Rights to Pension

A recent ruling by the UK Supreme Court has found that an unmarried cohabitee has the right to receive pension payments from her late partner's pension. The decision follows an application by Denise Brewster for Judicial Review (Northern Ireland) [2017] UKSC 8. Ms Brewster had been in a relationship with her unmarried partner for a significant period of time.

The Judgment brought Northern Ireland in line with England, Wales and Scotland with respect to the entitlement of a surviving cohabitee to access their partner's pension and puts them in the same position as a married person. Interestingly many unmarried partners may not have been aware of this entitlement and therefore may not have pursued a claim under similar circumstances. The decision not only addresses the previous imbalance with respect to pension rights of unmarried partners' in Northern Ireland but also serves to raise awareness of the rights of unmarried partners throughout the UK.

Our Languages

Our practitioners' legal skills are complimented by their commitment to strive for and achieve the highest possible standard. As part of our dedication to our multinational clients, we can assist in the following languages: Tagalog (Filipino), Hindi, Punjabi, Urdu, Arabic, French, German, Italian and Sinhalese

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Is Long Term Stress a Disability?

The case of **Herry v Dudley Metropolitan Council** has answered this question. The Employment Appeals Tribunal had decided in this case that long term stress is not a disability for the purposes of the Equality Act. Mr Herry was employed as a Teacher and Youth Worker and had brought multiple claims for race and disability discrimination. He had been advised by his Union and others that there was no reasonable prospect of success. The Employment Appeal Tribunal judgment agreed with the Employment Tribunal that stress was not a disability. They particularly stated that "*unhappiness with a decision or a colleague, or a tendency to nurse grievances or a refusal to compromise are not of themselves mental impairments*".

It is clear that the Employment Appeals Tribunal has made a distinction between mental impairment and a reaction to life events. This is not to say that long term stress can never be a disability but in this case the Employment Tribunal found that the Claimant's stress was largely a result of unhappiness and what he perceived to be unfair treatment. It was further held that there was little evidence that the stress he suffered affected his ability to carry out normal activities.

Cases to Look Out For

- **Paulley v First Group PLC** – The Supreme Court looked at the reasonable adjustments a bus company is required to make to accommodate wheelchair users and whether drivers can request other users such as mothers with a pushchair to vacate the disabled space or wait for the next bus. This is not directly an Employment case but the impact will still be relevant to Human Resources.

  The Supreme Court unanimously allowed Mr Paulley's appeal, albeit only to a limited extent. Lord Neuberger gives the lead judgment (with which Lord Reed agrees) allowing the appeal but only to the extent that FirstGroup's policy requiring a driver to simply request a non-wheelchair user to vacate the space without taking any further steps was unjustified. Where a non-wheelchair user initially refuses to vacate the allocated space for wheelchair users the driver should take further reasonable steps to encourage them to vacate that space. For example not continuing to drive the bus until the space is vacated or assisting the person with folding their pushchair so they can occupy another space.
- **Chesterton Global v Nurmohamed** – The Court of Appeal will provide clarification on whether the protected disclosure of a relatively small group can amount to a Public Disclosure.
- **R (on the application of Unison) v Lord Chancellor** – The Supreme Court will hear Unison's claim that the Employment Tribunal's fees regimes is indirectly discriminatory.

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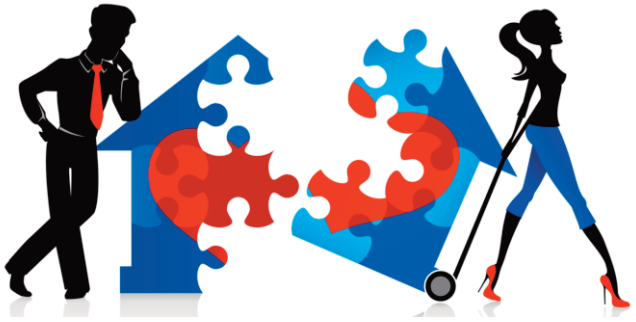
Family – What's mine is yours and what's yours is mine?



In the matter of **Armstrong** v **Onyearu** [2017] EWCA Civ 268, a trustee in bankruptcy tried to give effect to the above common saying at nuptials. Mr Onyearu, a married man, was a solicitor who took out a loan facility to meet the solicitor's practice liabilities. The parties owned their family home which they occupied with their six children. Mr Onyearu's practice fell into difficulties and he was later declared bankrupt. The trustee in bankruptcy sought to enforce the loan against the matrimonial home. The matter came before the Court of Appeal as it raised an important point of principle.

The issue concerned the principle of "equity of exoneration". This is not as boring as it may first appear and is in fact an important doctrine especially in Family law. This case is also the first time since 1898 (Paget v Paget), that the Court of Appeal examines the principle. The rationale behind the principle is that a party, in the case of both Paget and Onyearu the wives, should not be responsible for someone else's debt. A sentiment that most people no doubt share. However, what if the non-debtor spouse benefitted directly or indirectly from the debt? This was the issue before the Court of Appeal. The Trustee in bankruptcy argued the Mrs Onyearu benefitted indirectly from the loan as she and her husband "operated as a family unit" and the loan enabled Mr Onyearu to meet his liabilities to creditors and thus continue to make payments towards the mortgage on the family home.

The Court of Appeal rejected the Trustee's argument and found in favour of Mrs Onyearu. The Court held that:

"English law has not regarded an indirect benefit to be itself sufficient to deny a right of exoneration to the surety.

The clear trend in the law has been to provide financial emancipation to women and to enable couples to keep their property and financial affairs separate to such extent as they desire… It is consistent with this trend that the law should continue to treat couples separately where one stands for the debt of the other, unless the circumstances or evidence show otherwise."

Lasting Power of Attorney

A Lasting Power of Attorney is a legal document which hands over the power to manage your affairs to another person who is known as your 'Attorney'. There are two kinds of LPAs that you can make. The first is known as a Property and Financial Affairs Lasting Power of Attorney. This allows your Attorney to manage your financial affairs and your property. The second is known as a Health and Welfare Lasting Power of Attorney under which your Attorney can make a decision about your health.

Entering into a LPA is an important decision and you must absolutely trust your appointed Attorney. A LPA is a valuable document particularly where there is a real prospect that you may lose your mental capacity or become unable to manage your finances. LPAs can benefit people in all walks of life. It is a misconception that they will only assist the elderly or infirm and most care homes would usually recommend that their residents have a LPA in place.

In order to be able to act under a LPA it must be registered with the Office of the Public Guardian.

Douglass Simon Solicitors are able to create, implement and register your Lasting Power of Attorney. Please contact us for further information.

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What Judges say...

I am grateful to your solicitors [Douglass Simon] for their carefully constructed bundle of documents, their focused and limited grounds, and their cogent argument. These features are, sadly, rare in the cases I see."

Upper Tribunal Judge Edward Jacobs

"The notice of appeal shows that the appellant submitted detailed grounds of appeal highlighting how the decision breached her article 8 private life ties... A wealth of documentary evidence was submitted with the grounds of appeal. It is clear from the refusal letter that the Secretary of State has not given any consideration to the statement of additional grounds and documentary evidence submitted by the appellant relating to the article 8 arguments. "

and

"(The above), renders the Secretary of State's decision unlawful and not in accordance with the law..."

First Tier Tribunal Judge Phull

"The Appellant's case is fully particularised in the Grounds of Appeal submitted by the Appellant's current Solicitors, Douglass Simon."

and

"I note from the Appellant's solicitors covering letter dated January 2013 (pages 38 – 55 of the Appellant's bundle) was not only lengthy and detailed but also referred to (in general terms) all of the documentary evidence...."

First-tier Tribunal Judge A. Khawar granting an Appeal based on the income threshold and subsisting relation under Appendix FM of the Immigration Rules

"...it is arguable that the Judge's reasoning is flawed for the reasons set out in the grounds [prepared by Douglass Simon Solicitors]

Upper Tribunal Judge Allen granting permission to appeal on a complicated asylum matter from the First-tier Tribunal

"...the decision is subjected to detailed analysis..."

Designated Judge of the First-tier Tribunal Digney on an application for permission to appeal to the Upper Tribunal on a complicated asylum matter

Free Legal Surgeries

For over 20 years Douglass Simon Solicitors have been active in assisting those who are unable to afford legal advice. As our way of giving back to the community we provide initial advice absolutely free at our legal surgeries:

Earls Court Office:
Every Tuesday from 5pm to 7pm, conducted by Mr Haroon Khan. These sessions are by appointment only. Please call our Earls Court Office on 020 7373 4429 to book an appointment.

Richmond office:
Commencing from June 2017, on the last Sunday of the month from 2pm to 4pm, conducted by Ms Lira Simon Cabatbat. These sessions are on a first come, first served basis and no appointment is necessary.

Fixed fee initial consultation:
We also offer £60.00 fixed fee initial consultations at our Richmond and Earls Court offices during normal office hours (Monday to Fridays from 9am to 5:30pm). These consultations are by appointment only. Please call our Richmond Office on 020 3375 0555 or our Earls Court Office on 020 7373 4429.

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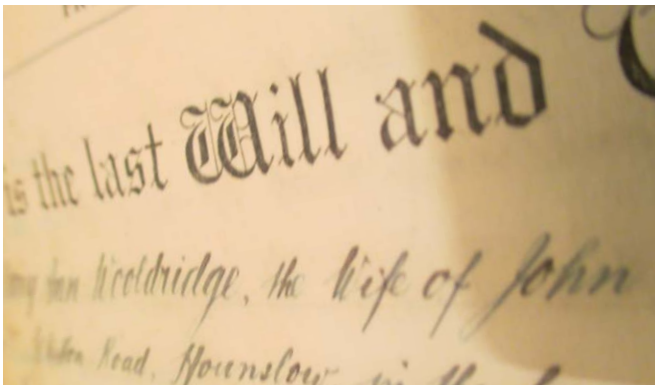
Probate – Inheritance Tax

Changes to inheritance tax (IHT) have brought huge savings for people with expensive properties. Married couples will be able to pass on assets worth up to one million pounds, including a family home, without paying any IHT. From April 2020, those qualifying partners who own property worth up to one million will be able to leave it to their children or grand children completely free of inheritance tax. The Government has raised the inheritance tax threshold from £325,000 per person to £500,000. This would appear to be in line with the current property market as many individuals and home owners have seen the value of their property dramatically increase in recent years, particularly in London.

The current rules, which have been in place since 2009, state that 40% tax must be paid on an Estate which is above the current threshold of £325,000 per person. Married couples and civil partners are entitled double the allowance by passing on assets to their children or other relations up to £650,000 before any tax is chargeable.

The changes stipulated by the government will add a



"family home allowance", eventually worth £175,000 per person to the existing £325,000 tax free allowance from 6th April 2017. This allowance will increase to £100,000 in 2017-2018, £125,000 in 2018-2019, £150,000 in 2019-2020 and £175,000 in 2020-2021. This will allow individuals to pass on assets worth up to £500,000 including their family home without paying any IHT. For married couples and civil partners, the total is therefore £1,000,000.

The above changes come as a sigh of relief to many individuals who have experienced their properties amplify in value over the last few years.

Brexit update – Living in the UK continued

documents with their application for naturalisation. Failure to submit a Residence card will result in refusal of the application. The current Home Office fee, for naturalisation, is £1282.00 which will not be refunded in the event of refusal. It therefore pays to be careful.

To succeed the EEA national must prove that he has been living in the UK a minimum of five years of which the last 12 months must be free from restrictions. The reality is that most EEA nationals will need to complete a minimum of six years' residence before they can apply for naturalisation. Applications for naturalisation and later a British passport are considered under the British Nationality Act 1981 not EU Regulations, so an EEA national will be required to satisfy the same requirements as those who are non EEA nationals. Naturalisation is a separate procedure altogether and is considered in detail on our website. Once naturalised the EEA national may then apply for a British Passport. For most EEA nationals this means dual nationality, allowing the national to live in the UK and still retain his EU rights in other EU contries. Some would say the best of both worlds, others would say making the best of an otherwise worrisome world.

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