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Atherton Godfrey
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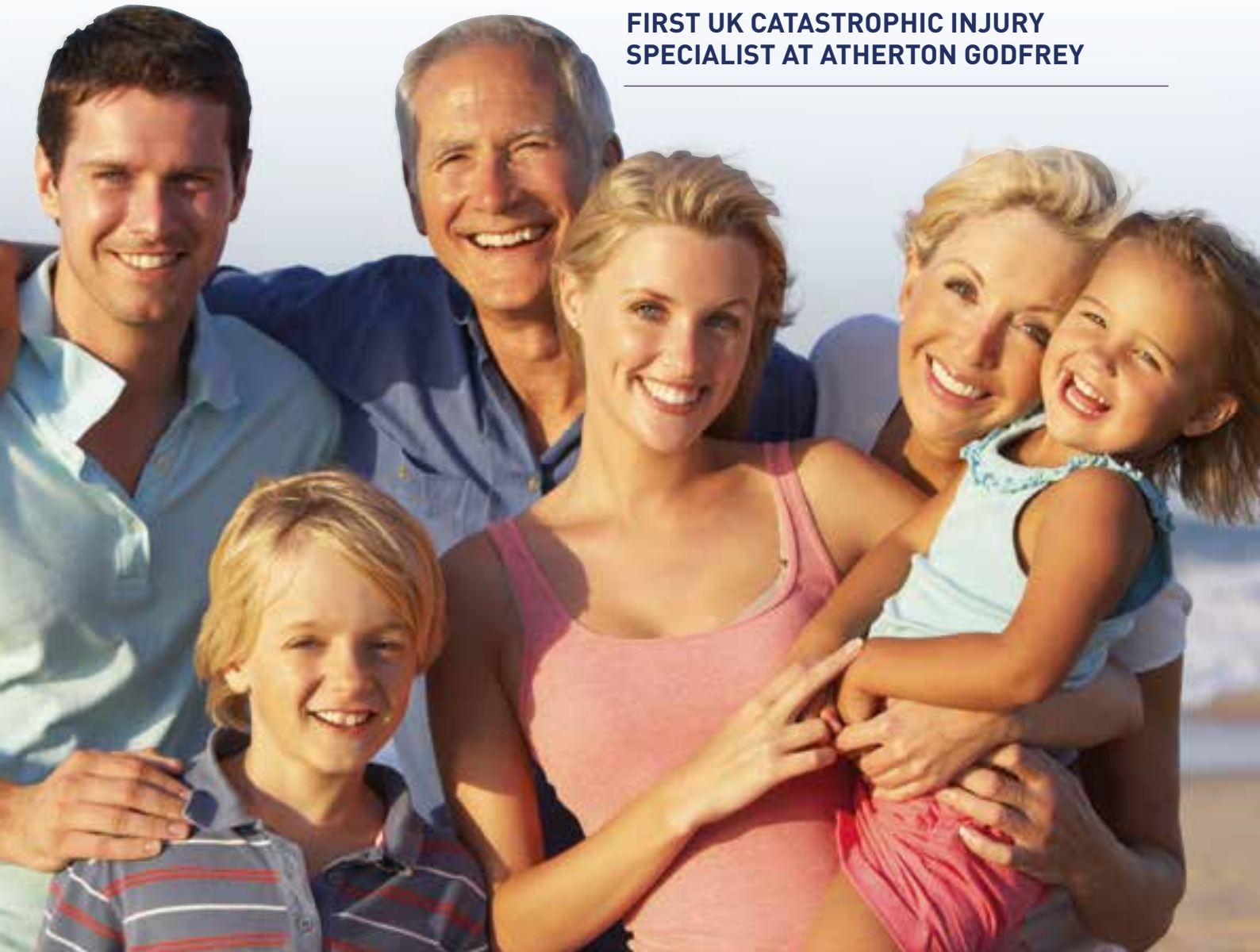
LEGAL voice

COMPENSATION FOR HOLIDAY ACCIDENTS

DIVORCE LAW 'CRISIS'

FIRST UK CATASTROPHIC INJURY SPECIALIST AT ATHERTON GODFREY



Hello

Welcome to the latest issue of Legal Voice.

Have you seen our website? Take a look - **www.athertongodfrey.co.uk**

We are in the middle of the holiday season, and whilst I really hope yours is going well – the majority do of course – if you are one of the unfortunate ones whose holiday is spoiled by an accident, read the article in this issue of Legal Voice – you might find that you are entitled to claim compensation, even if the accident was overseas.

The big story of the year is, of course, Prince Harry's marriage to Megan Markle. A great day for a great couple. Harry didn't sign a prenuptial agreement, but there are many reasons why others should. Read on to find out more. Still on family law, there is other news, including some important findings from the Supreme Court that could have an impact on the future of marriage, civil partnership and divorce law.

There is much more in this new issue, including John McQuater becoming the first Law Society catastrophic injury specialist – congratulations John, Doncaster council's latest way of bringing and end to rogue landlord tactics and why Solicitors for the Elderly says we are heading for an 'incapacity crisis'.

I hope you enjoy reading this issue of Legal Voice.

Don Bird

Don Bird
Senior Partner

Family

Divorce 'crisis' after Supreme Court forces woman to stay married

There are widespread calls for Parliament to urgently look at reforming current divorce law to introduce a form of no-fault divorce following the Supreme Court's failure to support Tini Owens' desire to divorce her husband.

The Supreme Court's judgment came as a surprise to everyone, including most of the legal profession, and of course a big disappointment to Mrs Owens who says that her 40 year marriage has been 'loveless'.

The case has been extremely high profile since the original family law judge refused Mrs Owens' divorce petition in 2015.

Mr and Mrs Owens, now aged 80 and 68 respectively, married in 1978. They have two grown up children and are both wealthy after Mrs Owens supported her husband whilst he built up the family business. Mrs Owens left the family home, which is a mansion in Gloucestershire, in February 2015. She filed for divorce later that year, citing unreasonable behaviour and saying that she could not live with her husband any more. She made several allegations against her husband, including that he prioritised work over home life, treated her without love and affection, was moody and argumentative, disparaged her in front of others and she felt unhappy, unappreciated, upset and often embarrassed.

Mr Owens denied the allegations, suggesting that the reason she had petitioned for the divorce was that his wife wanted to carry on with an affair that she was having at the time, and that the man with whom she was having the affair was adversely influencing her. He said that he and his wife had learned to 'rub along'. Defended divorces are actually very rare. In 2016, of the 114,000 divorce petitions raised, only 800 were defended. Surprisingly the Owens' divorce was denied.

Mrs Owens appealed, but the Court of Appeal also denied the divorce. She was allowed to appeal to the Supreme Court. The appeal was heard in May this year and on 25th July, the Supreme Court also denied the divorce, although reluctantly. Judges said that they could do nothing but apply current law, even though they were uneasy with their decision. President of the Supreme Court, Lady Hale, said that, whilst it is for Parliament to change the law, and not courts, she found the case troubling. She was critical of

the original trial, saying it had not been "set up or conducted in a way which would enable the full flavour of his (Mr Owens') conduct to be properly evaluated".

Family law organisation, Resolution, which intervened in the case, is now calling upon government to reform family law in England and Wales. Nigel Shepherd, past chair and a campaigner for no-fault divorce, said that the Supreme Court's action "confirms there is now a divorce crisis in England and Wales, and the government needs to take urgent action to address it".

Don Bird, head of family law at Atherton Godfrey says "The result is extremely disappointing and means that thousands of divorcing couples will continue to have to attach blame to their divorce petitions, even when it is not necessarily fair to blame one party or the other, as they see it as the quickest way of getting out of an unhappy marriage. I hope that today's ruling proves to be the catalyst that we need to move toward reforming family law, bringing it up to date and introducing a way of divorcing without attaching blame."

Is the way open for heterosexual couples to enter into civil partnerships?

Recently, the Supreme Court found that a couple's rights under the European Convention on Human Rights have been breached by not allowing them to enter into a civil partnership.

Same sex couples currently have a choice in how they formalise their relationships. Under the Marriage (Same Sex couples) Act 2013 (MSSCA), same sex couples can get married. They can also enter into a civil partnership under the Civil Partnerships Act 2004 (CPA). The latter is not available to different sex couples. Heterosexual couple Rebecca Steinfeld and Charles Keidan have argued that this discriminatory.

Rebecca and Charles have a long term relationship and two children. They want to formalise their relationship, but not with marriage, which they see as historically patriarchal. They say they have an equal relationship and that they want to raise their children 'as equal partners' and feel that a civil partnership sets the best example of this.

They launched a legal challenge to what they saw as the inequality of the CPA in 2014, after already trying to hold a ceremony in Chelsea Town Hall and being turned away.

The challenge was heard in the High Court in 2016 and it failed. It failed again in the Court of Appeal in 2017, but the couple were given permission to take their appeal to the Supreme Court.
The Supreme Court judges unanimously supported Rebecca and Charles and said that the government should have eliminated the inequality caused by the CPA by abolishing it when the MSSCA came into force in 2013, or extended the CPA to apply to different sex couples immediately.

Whilst the judgment does not mean government is obliged to change the law, it is hoped that it will be more encouraged to do so.

Don Bird, senior partner and head of Atherton Godfrey's family law team says "This is a significant step forward for those who have long argued that the inability of couples of the opposite sex to enter into a civil partnership was an unfair anomaly, creating injustice in the system. It is pleasing to see that the Supreme Court agree and we hope that government will now act quickly to remedy this."

Victims of domestic violence to be spared trauma of cross-examination by abuser

As part of new government proposals on how victims of domestic abuse should be treated in court, survivors should no longer have to come face to face with their abuser in court proceedings.

"It is a matter of urgency that the government prioritises the implementation of the ban on this abhorrent practice, be it through the Courts Bill or the Domestic Violence and Abuse Bill," Katie Ghose, chief executive of Women's Aid said. "Survivors must be able to safely access justice, in both the criminal and family courts, in their escape from domestic abuse."

Former home secretary, Amber Rudd, said the government is looking at enabling survivors of abuse to give evidence behind a screen or via video link, as can currently happen in rape and modern slavery cases. Also, with two women being killed by a current or former partner each week in England and Wales, Ms Rudd's promise that the government is committed to ensuring that no one who needs a place at a refuge is turned away, has been welcomed.

Recent relaxation of legal aid evidence requirements, such as the scrapping of the five year time limit for evidence and widening the range of people from whom evidence can be gained, means that more people will be able to access the financial help they need pursue their abusers.

If you are the victim of domestic abuse and are the subject of ongoing family court proceedings, our family law experts can help. We may also be able to help if you have previously been denied legal aid due to lack of evidence. Please contact our specialist family law team now.

Harry decides against a prenuptial agreement

Photo: Samir Hussein / WireImage

Like his mother, father and brother, Prince William, before him, Prince Harry decided against signing a prenuptial agreement to protect his estimated £30 million pound fortune in the event of a future separation from Meghan Markle. He believes, like many, that he has married for life.

Unfortunately, life doesn't always turn out as we expect, and we can be left vulnerable in the future if we have assets that we wish to protect – and don't. It is fair to say that prenuptial agreements are not right for everyone, and some say they are the preserve of the rich. However, they can be particularly useful for modern day couples who are on their second or third marriage, for example, or those who are looking to protect a business or inheritance.

A prenuptial agreement (sometimes called a prenup or premarital agreement) or pre-civil partnership agreement, is an agreement made before getting married or entering into a civil partnership. It sets out how the couple want their assets to be dealt with in the event their marriage or civil partnership breaks down.

Although prenuptial agreements are not automatically enforceable in law at present, courts are giving increasing weight to them, provided they meet a number of requirements, which include both parties having given full financial disclosure and having taken separate legal advice. Also, they must have been drawn up and signed in advance of the marriage or civil partnership - preferably at least one month before.

Atherton Godfrey's specialist family lawyers can draw up your prenuptial agreement, ensuring that is as strong as possible and has the best chance of being accepted should the need come. We can also offer confidential advice in advance of making an agreement.

Personal Injury

First catastrophic injury specialist in UK

John McQuater, partner and head of Atherton Godfrey's litigation team, has become the Law Society's first catastrophic injury accredited practitioner.

Catastrophic injuries are life changing and can include birth injury or trauma, spinal cord injury, traumatic brain injury, amputation, psychiatric injury or severe burns. Due to the nature of the injuries and the devastating impact on people's lives, claims attract high levels of compensation, often in excess of £500,000, and can involve periodical payments being made over a lifetime.

The complex award structure makes it crucial that the solicitor has the expertise to understand medical terminology and is able to correctly value the claim so that it includes the loss of past and future earnings, the cost of care and rehabilitation, and any equipment or adaptations that may be needed to the home.

John said:

"It's a traumatic time for everyone when someone has been involved in a catastrophic injury. This accreditation takes some of the stress away by giving those involved the confidence that their solicitor has a firm grasp of all issues and the expertise to help them obtain justice."

Holiday accidents – can you claim

It's that time of year again when many of us are off, or have been, on our holidays, expecting an enjoyable time. For the majority of the 30 million British people who travel the world each year, that is exactly what they get. However, holiday accidents are on the increase, with almost 4,000 people coming home each year ill or injured.

Making a claim for an accident or injury that has happened abroad can be difficult, as the claim has to be made in the country where the incident occurred. However, if you are injured, or become ill whilst on a package holiday, where you booked the flight and accommodation together, we can help you make a claim against the package provider under the Package Tours Regulations 1992. These claims are brought in the UK under English law and there is a proper assessment of the costs incurred, such as living expenses, loss of income, rehabilitation or adaptation costs and medical treatment.

Accidents and illnesses often occur overseas as health and safety standards can be much lower in foreign countries than they are in the UK and poor standards of maintenance or hygiene can often take the unsuspecting holidaymaker by surprise. If you take care and follow guidance given for the country you are visiting, you will probably have a very good holiday, but if you do have an accident, are injured or become ill, make sure you let the holiday firm know (via your representative if available), tell the hotel, and make sure it is recorded, and contact your insurance company for advice. Keep full details of the accident, including photographs, medical reports if you visit a medical professional, and any receipts. When you get home, contact our holiday claims solicitors, who have successfully claimed thousands of pounds in compensation for many British holiday makers, as soon as possible.

Accidents at work

Employers have a duty to ensure that the health, safety and general welfare of their workers are protected whilst at work. There are certain laws, such as the Health and Safety at Work Act 1974, which set out exactly what an employer must do. This Act imposes obligations on employers to ensure that their employees and others are not exposed to risks to their health or safety, as far as is reasonably practicable. It also obliges employers to comply with EU directives and authorises approved codes of practice in various trades.

Also, following the Wilsons & Clyde Coal Co. v English case in 1938, employers are also bound to exercise due care and skill in ensuring that they have competent staff, adequate plant and equipment, a safe system of work and safe premises.

According to the Health and Safety Executive, just over 600,000 non-fatal workplace accidents were self-reported by workers in the year 2016/2017. The majority of these were slipping and tripping accidents (29%) and lifting and handling accidents (22%). The HSE also reports that there are around 72,000 non-fatal injuries reported each year in the human health and social work activities sector. 25% of these are caused by lifting and handling.

If you have an accident at work, you can make a compensation claim for your injuries and any losses that result from those injuries, such as loss of earnings and medical treatment or physiotherapy. Your employer will be liable for the accident, and therefore to pay you compensation, if it can be proved that the injury was reasonably foreseeable, or it happened as a direct consequence of a breach of your employer's obligations. Your employer is also liable for the actions of all members of staff. Therefore, you can still pursue your employer for compensation if it can be established that an employee who is responsible for your accident or injury was acting in the course of their employment.

Many people who have accidents at work think that they cannot continue to work for their employer if they want to make a compensation claim. This is not true. Remember, your employer will have insurance against such accidents and, in most cases, it will be this insurer who makes the compensation payment. If you are still working for the employer where your accident occurred, you can make a claim and your employer cannot dismiss you, or prejudice you in any way. There are laws that protect you from this.

What should you do if you have been injured at work?

1. Make sure the accident is reported in the accident book and make a note of the details and date of your accident.
2. If you can, take photographs of the accident scene and your injuries.
3. Take note of any witnesses to the accident.
4. Make an appointment to see your GP or visit the hospital and make sure you give a full and detailed description of how you sustained the injuries.
5. If you are unable to work due to your injuries, make sure that you send sick notes to your employer on time and follow any procedures for reporting absences.
6. Keep any correspondence you have with your employer about the accident.
7. Keep any receipts for painkillers, travel or other expenses incurred because of your accident.

Call Atherton Godfrey to discuss making a compensation claim for your work place accident or injury and any losses resulting from it.

£30,000 for care assistant who suffered injury at work

Atherton Godfrey's associate solicitor, Maria Houghton, won £30,000 for a woman who worked in the care industry.

Maria's client worked as an assistant at a care home in London and was injured when a patient fell heavily onto her right hand side. Following the accident, she suffered a frozen shoulder and was in severe pain. She had to take six weeks' sick leave before returning to work wearing a shoulder support. A risk assessment was carried out and she was told to work as part of a pair with someone and to tell them if she couldn't cope with people who needed more physical support.

Our client then suffered a further accident, about nine months after the first one, when another patient pulled on her shoulder. She was given morphine for the pain following this accident and told that she had impingement syndrome and had torn her rota cuff. When she returned to work, she was transferred to lighter duties as a receptionist and had to take a pay cut.

Our client worried about her future due to her inability to do the care work in which she has experience, her lack of transferable skills and her sickness record created by these two accidents. She contacted Atherton Godfrey to see if she could claim compensation for her accident. Maria pursued the care home, which disputed liability. However, once Maria had issued court proceedings, the care home decided to negotiate and Marie was able to secure a settlement figure of £30,000 before the case went to court.

Medical Negligence

Delay in cancer treatment putting patients at risk

Figures provided by the government recently show that people's lives are potentially being put at risk due to delays in providing cancer treatment.

Official targets in England are for 85% of patients to begin treatment within 62 days of suspicion of a cancer diagnosis, whilst in the rest of UK the target is 95% of patients. Unfortunately, nowhere in the UK has achieved these targets in the last two years. More than one in six patients are waiting longer than the 62 day target to start potentially lifesaving treatment.

Delayed treatment can affect the chance of recovery and can also cause unnecessary distress and worry for cancer sufferers and their families.

Reasons given for the delays are:

- an increase in the number of patients with cancer
- increasing pressure on the NHS caused by lack of beds and staff shortages

Macmillan Cancer Support has described the situation as extremely dispiriting and a government spokesman has said that the delays are not acceptable.
It is unclear how many people may have lost their lives or had their chances of recovery affected as a result of delays in treatment.

If you feel that you, or a family member, have suffered as a result of delays in providing treatment and would like advice about the possibility of making a claim, please contact our experienced medical negligence team now.

Property

Fines for rogue landlords in Doncaster

Doncaster council is to introduce fines of up to £30,000 as an alternative to prosecution for landlords who are found to be managing their properties badly.

4.5 million households live in private rented accommodation in England. The majority of landlords are good and provide decent, well maintained homes, but there is a small minority of rogue, criminal landlords, and these are the ones that Doncaster council, and other local authorities across the country, wish to tackle.

The ability to raise the fines actually became law in April 2017, when the Housing and Planning Act 2016 came into force, giving local authorities the power to issue the penalties to private landlords who disregard their health and safety obligations. In some cases, landlords may find themselves with multiple £30,000 fines, as penalties can be issued for individual properties under a range of offences, including overcrowding, breach of banning orders, non compliance with improvement orders and regulations relating to houses in multiple occupation (HMOs) and selective licensing. Letting agents can also be prosecuted for some offences, including failing to obtain a licence for a licensable property.

The local housing authority can retain the money it receives from these fines, as long as it is used in relation to enforcement activities in the private rented sector.

Tracie Croft, specialist in landlord law at Atherton Godfrey, commented "Whilst these problems are more likely to crop up with landlords who are new to the buy-to-let sector, it is very important that all landlords do not underestimate the powers the council has under these regulations. Previously, the council would have had to apply to the court and a judge would have ruled on an order; giving the landlord the opportunity to defend himself. However, private landlords are now operating in a very different world where the local authority can issue the civil penalty and act without court approval."

Stop Press

John McQuater has been shortlisted for two awards in this year's Yorkshire Legal Awards: 'Partner of the Year' and 'Yorkshire Lawyer of the Year'. Winners to be announce in October.

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Drop in the value of 'Bank of Mum and Dad'

Despite research by Legal and General (L&G) showing that the number of children who will get a loan from their parents to buy their home will increase to 27% in 2018 – up from 25% last year – the actual amount loaned will actually drop 17% from £21,600 last year to £16,900 this year.

Around 317,000 parents (3% increase on last year) are likely to contribute around £5.7 billion (down from £6.5 billion last year) to their children's homes this year, with the under 35's being the biggest beneficiaries. One in four children are likely to get financial assistance from their parents, but when it comes to the under 35s, this is one in three. Interestingly, around 20% of home buyers aged 45 – 55 are also receiving help from their parents.

Wills, Estates and Planning for Later Life

Is inheritance tax payable on holiday lets?

Investments in land, where property is rented out, don't generally qualify for business property relief, but if the property is held by an individual and it is classed as a business asset, inheritance tax might be reduced. A recent case has suggested that those owning holiday lets may, in some circumstances, be able to claim inheritance tax relief.

Mrs Graham died in 2012 and at the time of her death owned Carnwethers, an old farmhouse on the Isles of Scilly. The property was Mrs Graham's home but also contained a number of self - catering holiday lets.

Mrs Graham's executors successfully argued that the provision of services by Mrs Graham and her family meant that they were a trading business and therefore inheritance tax should not be payable on the value of the property. The services provided included tea, biscuits, and sometimes cake, on arrival, help and advice for guests about the local area, help with organising events and the provision of home-made marmalade.

It was concluded that the business was not one that consisted wholly or mainly of holding investments and therefore was not chargeable to inheritance tax.

Each case will depend on its facts and it is essential to get expert advice to ensure the maximum value from your estate passes to your intended beneficiaries. Whilst the provision of home-made marmalade might be taken into account, it is unlikely to be the only point on which the case is decided and all the elements of a business need to be considered.

Appointing a professional executor doesn't have to cost the earth!

Recent newspaper articles have highlighted extortionate charges made by some organisations, in particular banks, when they act as executors in a deceased's will. In some cases banks charge an administration fee of £1,500 plus 2.5% of the value of the estate. So for an estate worth £200,000 this would be £6,500.

Calculating fees by reference to the value of the estate does not reflect the amount of work undertaken by the executors. For example, the £200,000 could all be invested in one bank account and so the amount of work required by the executors is very little.

There are estates where the appointment of a professional executor is appropriate. For example, an individual may have no relatives or friends who they think would be willing, or able, to take on the role, the estate may have complex tax issues and the testator may be concerned that these are dealt with competently, or there may be family dynamics which mean a professional executor, who is impartial and has no emotional involvement in the estate, is the best option.

Will writing is not regulated, which means that a will can be written by anyone who can then appoint themselves as an executor. However, if you instruct Atherton Godfrey as executors, we are regulated by the Solicitors Regulation Authority and are bound to act in the client's best interests. Our professional code means that we must always give clients sufficient information about the appointment of ourselves as executors and the related costs. We must also make clients aware that if a lay person is appointed as executor, they can engage the services of a professional to help with the administration of the estate.

Perhaps most importantly, our costs must be fair and reasonable. Where we act as executors, our costs are not calculated on a percentage basis. We only charge, on a time basis, for the work we undertake.

Are we heading for an 'incapacity crisis'

A new study published by Solicitors for the Elderly has suggested that the UK is heading for an 'incapacity crisis'.

The number of people diagnosed with dementia in the UK is around 540,000. Including those not already diagnosed, this number is closer to 850,000. This has increased by more than 50% since 2005. It is estimated that there are over 12.9 million British residents over the age of 65 and vulnerable to developing future incapacity.

This has raised concerns that millions of people in the UK will not have appointed anyone to look after their affairs or health and welfare when they become incapable. Setting up a lasting power of attorney (LPA) is the only way that you can make sure that you have a say in who is appointed to look after your financial and medical affairs when you no longer can.

A property and affairs LPA gives your attorney the ability to make decisions about your finances, such as banking, pensions etc. and property, such as selling your house.

A health and welfare LPA allows them to make decisions about things such as your day to day care, medical treatment and where you live. Both LPAs require registration with the Office of the Public Guardian (OPG) before they can be used, but, whilst the property and affairs LPA can be acted upon whilst the donor still has capacity, the health and welfare LPA cannot – the donor must have lost capacity.

Despite the increase in people suffering from dementia, less than one million health and welfare LPAs have been registered with the OPG, which suggests that the majority of individuals at risk of dementia have not made proper arrangements for their future care.

Solicitors for the Elderly says that 'Nothing offers more protection than putting a health and welfare lasting power of attorney in place.'

If you want to set up an LPA, or just want a confidential discussion about LPAs and attorneys, contact our friendly experts now. We'll be happy to meet you and discuss your options.

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SOLICITORS

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