

Newsletter

Edition 5

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Family Mediation-ending the “blame game”

Did you know that the average duration of marriage among opposite-sex couples who divorced in 2018 was 12.5 years? This represents many years investment and some unravelling of arrangements over property, finances and the children.

We are at the time of year when separating couples decide to take formal steps to try to move on. It is always best to have an experienced, supportive family solicitor to do your divorce but even if you go ahead with the divorce online there are other issues with significant legal consequences to sort out.

When relationships break down, families face a lot of challenges. Among these are practical considerations such as “What arrangements will be best for any children?” and “What will happen with finances?” Professional family mediators act as neutral third parties to help ex-partners have conversations about these issues. Survey results just published show that this is a highly successful way of helping couples resolve disputes, with mediation successful in over 70% of cases.

If you own a property, business, pension or there are other finances mediation can help you to resolve these issues in a less adversarial way. Rather than blaming each other to try to get the right result at court and have a decision imposed on you, in mediation you can agree on what should happen together.

If you have arrangements to make about children mediation can be used to make plans and often helps improve communication. It is well established that hostility and conflict between parents can impact on children and interfere with their life chances.

Family mediation is mainstream practice in the family justice system and our solicitor mediators have the relevant background specialism to assist clients.

Over the last couple of years family mediation has been made more accessible. Mediation is likely to be most effective when people speak face to face and in person, however, in situations when people cannot or decide not to come together in the same place to mediate it is possible now to use online video mediation. This is especially helpful if the separating couple live some distance apart.



It is quicker and much cheaper than court proceedings.

If you wish to have more information about **family mediation**, please contact our family solicitor mediator **Tracey Parsons** on **01305 250560** or **tracey.parsons@battens.co.uk**

What happens to your digital assets when you die?

Increasingly we are moving our lives online. More and more the things that are of value to us are being stored digitally. Photographs and videos are stored on the cloud, we stream music and videos through the internet and we use our phones to make payments. However, there are very few of us that have made any preparations for what will happen to our digital assets when we die.

The term "digital asset" is one that is becoming more common. Whilst there is no legal definition of what a digital asset is, it is generally taken to include any asset that is stored on a digital platform. This would include everything from email accounts, social media accounts, photographs and other digital assets such as crypto currencies. Whilst many of us may do our banking online, it's important to remember that a digital asset is not the same as a physical asset (our money in the bank) that we only access digitally (via our online banking apps). (As mentioned later, it may be sensible to include any details of these assets in records that you may prepare in the future).



Sentimental Digital Assets

Most of us will own sentimental digital assets, often without even realising it. Any information, such as emails or photos, that are stored electronically, whether online in the cloud or physically on a computer, are digital assets.

Financial Digital Assets

In recent years, crypto currencies have increased in popularity. A crypto currency is a digital currency that uses cryptography to secure the asset in attempt to prevent it from being counterfeited. The most commonly known crypto currency is Bitcoin.

One of the reasons that Bitcoin is so popular is due to the fact that users do not need to identify themselves when sending Bitcoin to another user or when they are requesting a transfer from another user. When transferring Bitcoin, users will be checked to see that they have sufficient Bitcoin to make the transfer, but currently, anonymity is guaranteed.

When estate planning, crypto currencies can be particularly difficult assets to deal with. Specifically for Bitcoin, as it is not held in an individual's name, it can be very difficult to deal with on death. The way that Bitcoin is held requires a user to access their Bitcoin

via unique keys. If the keys are lost then the Bitcoin is effectively lost the same way as physical cash can be lost. It therefore might be sensible to consider either recording your unique keys somewhere secure for the future, or to consider moving your assets away from crypto currencies in the future when estate planning.

How to protect your Digital Assets

Whilst it is easy to store our sentimental assets digitally, in order to make sure that they can be passed on to loved ones, it might be sensible to make sure that they are backed up and stored on a hard drive or memory stick so that loved ones can access the assets simply by accessing the hard drive or memory stick.

Another option would be to share and pass on your log on details to your loved ones. This could be done in a letter of wishes that accompanies your Will. Whilst this might sound easy, it is important to note that this can breach some end user agreements. For example, the iCloud's end user agreement states that "Unless otherwise required by law you agree that your Account is non-transferrable and that any rights to your AppleID and Content within your Account terminate upon your death." What this means is that even if you pass on your log on details, or make a Will stating that your iCloud will pass to certain individual(s), Apple may still require a court order in order to make sure you are not in breach of the end user agreement.

Currently the law has not kept pace with how quickly digital assets have become mainstream assets. Until the law has caught up with digital assets, for now it would be prudent for individuals to make sure that they keep an inventory of their digital assets and update this regularly so that it reflects the digital assets that they own. What is particularly vital is to make sure that you keep a record of the log on details for your digital platforms so that that your loved ones can access these accounts on your death. Any such inventories and records should be kept in a separate document from your Will. This makes sure that they stay secure as your Will may become a public document during the probate process.

The challenge that your loved ones and executors will face is making sure that when they access your accounts, this is done legally. This will largely be a case of seeing how the law develops in this area and then reacting, when appropriate, so that your estate is as prepared as it can be.



For more information, please contact **Harry Bacon** on harry.bacon@battens.co.uk or **01935 846149** to discuss any concerns you may have or to discuss possible planning.

Bankruptcy: Is it really worth it

Bankruptcy is seldom considered but it should be as it can prove extremely useful in a debt collector's arsenal.

Bankruptcy can take time, can be expensive and success is not always guaranteed that you will receive payment. Having said that, it can be incredibly effective if used properly by considering, amongst other things, the extensive powers that a Trustee appointed in the bankruptcy has, as a Trustee can:

1. Interview the debtor to obtain information
2. Obtain information, documents from lending institutions, HMRC, insurers, the debtor's legal representatives, accountants and even family members
3. Deal with all of the debtor's property to include assets which are outside the jurisdiction
4. Set aside transactions previously entered into, for example 'gifts' to family members but only if made within a 5 year period or alternatively without a time limit if the transaction was to deliberately avoid making payment to creditors
5. Obtain Warrants seeking to search out and seize assets, obtain Warrants of Arrest or alternatively embark upon Contempt of Court proceedings if the debtor does not co-operate by failing to disclose his assets or conceal them
6. Publicly examine the debtor under Oath and if it can be established that transparency has not been promoted then the debtor could run the risk of being incarcerated
7. Have the debtor's post re-directed to the Trustee's office
8. Confiscate the debtor's passport to prevent absconding

In addition to the above, creditors should also consider bankruptcy when:

1. The debtor is asset rich but cash poor and where an Order for Sale is obtained but could fail due to their personal circumstances or alternatively the amount owed versus the amount of equity within the property scenario

2. The debtor can pay but refuses to do so and where there are limited assets which can be seized and sold
3. Concealment of assets has taken place
4. The need to avoid bankruptcy due to employment, being a director of a company or trading as a partnership, or to preserve the debtor's credit rating
5. The debtor has the ability to raise funds from family or friends to settle the bankruptcy and a good example of this is where wealthy parents wish to avoid their child from being made bankrupt
6. The debtor does not want the Trustee delving into his/her activities especially when creditors believe that fraud has occurred. If a debtor has defrauded his creditors, in all likelihood, he/she would have taken the time to protect his/her wealth

Bankruptcy is not always the way forward as the return for creditors can be minimal especially when there are other avenues of enforcement which can be explored in an attempt to obtain payment and for a fraction of the cost. However, since the introduction of The Insolvency (England & Wales) Rules 2016 the process has been streamlined resulting, amongst other things, in a Trustee's fees becoming more transparent.

For the very best results, creditors should "know their debtor" to ensure that the bankruptcy route is the best option for them, to co-operate with the Trustee (particularly in relation to fees), pool knowledge and share information all in an attempt to obtain payment.

As Trustees have different fortes and skill sets, creditors should instruct the one best suited to their needs.



For more information, please contact **Angie Loveless** on **angie.loveless@battens.co.uk** **01305 250560** or the **Dispute Resolution Team** to discuss any queries you may have or to discuss debt recovery in general.

Free Personal Injury, Industrial Disease and Medical Negligence Clinics

Our specialist lawyers will be on hand to advise you in person in our offices 9am -1pm on the following locations on the following dates:

Dorchester office;
Savernake House, 42 High West St, DT1 1UU
23rd January 2020
19th March 2020

Castle Cary office;
Francis House, Fore St, BA7 7BQ
4th February 2020
31st March 2020

Yeovil office;
Mansion House, Princes St, BA20 1EP
5th March 2020

Sherborne office;
The Bank House, Long St, DT9 3BU
20th February 2020
2nd March 2020

No appointment necessary. Please call our team on **0800 6528411** for more information.

Public Rights of Way

If you are a landowner /occupier of land with a public right of way crossing it, you must be fully aware of your duty of care to the general public.

It may be difficult to establish what duty of care one person owes to another and will often depend on the individual case. With that in mind, it is advisable to make sure that you have public liability insurance in place in order to provide protection should an incident occur on your landholding.

It is important that both you, as landowner / occupier, and the general public are aware of where rights of way and permissive paths exist and to show a mutual respect to one another when using these paths. Make sure that you are aware of what type of path(s) and rights exist over your landholding such as footpaths, bridleways, restricted byways, byways or permissive paths. Each individual type of path has its own requirements. For example, a footpath crossing a field must be a minimum of 1m in width whereas a bridleway which is routed around a field edge / headland must be a minimum of 1.5m wide.

The Highway Authority or your local Council has a duty to assert and protect the rights of the public to use and enjoy the Public Rights of Way Network and make sure the requirements of legislation are met by you and the general public.

Public rights

Members of the general public do not have automatic and unfettered rights to walk over agricultural and other private landholdings. They do, however, have rights of access to certain areas of land under the Countryside and Rights of Way Act 2000. This right is commonly known as the 'right to roam' or 'freedom to roam'. There is a right to roam over certain areas of land. If your landholding is shown on the access maps maintained by Natural England as 'open country', for example moors, heath and downs, registered common land, or dedicated land then the public have unfettered rights to walk over that land.

Landowner / occupiers responsibilities

It is an offence under the Highways Act 1980 to obstruct or encroach upon public rights of way. Rights of way must be kept free from obstruction and encroachment. This includes barbed wire, locked gates and machinery. Temporary electric fencing should not be placed across a path nor close enough at the side of a path so as to be dangerous to people or animals using the path. An electric fence across a path is an obstruction, however in some cases an insulated handle acting as a safe crossing point and adequate warning notices may be acceptable.

Stiles and gates must be maintained in a safe condition and to a standard of repair required to prevent unreasonable interference with the path users. If you need to replace a stile / gate it is worth checking with the Highway Authority as you may be able to make a claim for the cost of any replacement work. Some authorities provide materials, or others may carry out the work themselves. Where a stile needs replacing, always consider with the Highway Authority whether to do this with a gate or preferably a gap, so that it will be less of an impediment to people with mobility problems. You must seek the local Highway Authority's permission before installing any new structure on a public right of way. Unauthorised structures are obstructions and may be removed by the Highway Authority at the landowner's expense.

If you add new ditches or widen existing ones (having secured any necessary permissions, including from the Highway Authority)

you must provide adequate bridges for public rights of way users.

Cultivation and Spraying

It is important for landowners /occupiers to comply with the law relating to reinstating paths after ploughing, and not allow any crop (other than grass) to grow on a Right of Way. A landowner / occupier must not cultivate public rights of ways or bridleways that follow a field edge. If for whatever reason a landowner / occupier cultivates a public right of way or bridleway which crosses a field, it must remain apparent on the ground and is not obstructed by crops. It must be restored to at least the minimum width within 14 days of first being cultivated for that crop; or 24 hours of any subsequent cultivation, unless a longer period has been agreed in advance in writing by the Highway Authority.

If you have to spray land which is crossed by a public right of way, use pesticides approved for such use and follow the product instructions. Where a public right of way crosses or runs alongside a field, you can provide an informal alternative route that the public can use for this period if you wish, but this does not close the public right of way. If the public are still using the public right of way, despite warning notices, you must stop spraying temporarily.

Livestock on land crossed by a public right of way

Bulls may not be kept in a field crossed by a right of way, unless the bull is less than 10 months of age, or is of a recognised beef breed and accompanied by cows or heifers. It is important that warning notices relating to a bull are displayed only when it is actually present in a field.

Horses may be kept loose in fields crossed by public rights of way, as long as they are not known to be dangerous.

It is an offence under that Wildlife and Countryside Act 1981 and the Animals Act 1971, to keep any animal that is known to be aggressive or dangerous in a field crossed by a Right of Way. An individual injured by any animal whilst using a Public Right of Way can sue the owner for personal injury.

Misleading Signs

Rights of Way must be clearly identifiable. If is an offence under section 132A of the Highways Act 1980 to deliberately mis-informs a path user to the effect of discouraging use of a public right of way is an offence e.g. Leaving a 'Bull in Field' sign up if the bull has been removed.

Overhanging Vegetation

It may be worth noting that trees and hedges that grow alongside a right of way are the responsibility of the landowner / occupier under section 154 of the Highways Act 1980. Where a hedge, tree or shrub overhangs any public path so as to endanger or obstruct the passage of pedestrians or horse riders, your local Council may request its removal within 14 days.

Cross Compliance requirements

Finally, don't forget to see GAEC (Good Agricultural and Environmental Conditions) 7b: Public Rights of Way in the guide to cross compliance in England 2020 for the requirements which must be met. Failure to do so may result in your scheme payments being reduced.



For more information please contact
Tracy Neal in the **Agriculture and Rural Property Team** on **01935 846076** or **tracy.neal@battens.co.uk**