

# the Brief

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Issue 22

## Statutory Will Ordered When Existing Will in Doubt



by Shirah Real

An [unusual instance of the creation of a Statutory Will](#) was reported recently, when an application for a Statutory Will was granted to the daughter of a woman who had suffered a stroke. The applicant's two half-siblings were found to have forged an Enduring Power of Attorney for the woman and there was doubt over her mental capacity following the stroke, after which she created a new Will. Normally, where a Will is in existence, the courts will not impose a Statutory Will and in this case two previous

applications by the daughter had been rejected. However a third application was granted. The Court, having taken into consideration all the relevant circumstances, concluded that the creation of a Statutory Will would be in the woman's best interests.

It is clear that in this case the doubts surrounding the existing Will were so substantial that the normal reticence of the courts to get involved in such disputes was overcome. One of the conditions which must be satisfied for a Will to be valid is that the person making it must be of sound mind. With an ageing population, cases involving disputes over a testator's mental capacity are becoming more common – it is estimated that up to two million people in

the UK suffer from some form of dementia or brain injury.

Case law developments in this area and recent legislation in the form of the [Mental Capacity Act 2005](#) have led the Law Society and the British Medical Association to develop new guidelines to assist doctors and lawyers to assess mental capacity. It is a useful guide for anyone who has to care for or is responsible for someone whose **mental capacity is in doubt**

If you have had a Will prepared and would like a free of charge review please contact Shirah Real on 01276 681217 or e-mail: [shirah.real@brooks-partners.co.uk](mailto:shirah.real@brooks-partners.co.uk) or Nikki Miller at [nikki@brooks-partners.co.uk](mailto:nikki@brooks-partners.co.uk)

At Brooks & Partners, we feel 'best practice' is vital in all areas of our business and we were delighted to be awarded with accreditation from The Law Society as a member of their 'Conveyancing Quality Scheme'.

You are probably aware that when selling or buying a house you can now buy Conveyancing services from a number of different sources, some online but, can you be sure that you will be using a fully trained and qualified Lawyer who will provide you with the most professional and cost effective service. As selling and buying a house is typically one of the most stressful, not to say expensive, things you can do in life, try to ensure you make the right decision in choosing your Conveyancer. Be prepared to ask the right questions: are they qualified? Do they come via recommendation? do they know the area well?

The above are reasons why the CQS scheme is so important to us as it is proof that we are able to offer an outstanding service, both in terms of quality, professionalism and value for money (and, we should say, that Brooks & Partners are one of the few firms in the UK to have been awarded the accreditation).

By Michael Brooks

## Covenant Does Not Pass on with Title to Property

By Michael Brooks

A recent court decision demonstrates that where ownership of land changes, rights conferred by covenants over neighbouring land are not necessarily passed on to the new owners.

In this case, the former owners of a house had sold part of their garden for development. In order to protect their own position, the conveyance contained covenants restricting the use of the land which was being sold, specifically prohibiting the erection of any building on the land other than a single dwelling; requiring the dwelling to be

built in accordance with plans approved by the sellers and requiring the owners of the land not to make any later structural alterations without the approval of the sellers.

The land was sold and a house built on it. The buyers later sold the land on, and the new owner decided to demolish the existing house and replace it. The original sellers had died by this time, and the question arose as to whether the new owners were required to seek permission from the deceased's successor in title. The court ruled that the power to withhold consent applied

only to the original sellers and not their successors. Accordingly, the covenant stating their permission was necessary did not survive them. Nor did it create a perpetual restriction on development of the property.

It will always be the case that decisions on such matters will turn on the wording of the actual covenants. It follows that these need careful interpretation and legal advice. It is interesting to note that in another recent case, with similar circumstances, the courts reached a different conclusion.

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[www.brooks-partners.co.uk/blog/index.htm](http://www.brooks-partners.co.uk/blog/index.htm)

## Religious Discrimination Rulings

By Kate Middleton

Kate Middleton on  
Employment



In the Case of *Cherfi v G4S Security Services* the EAT has held that an employers refusal to allow a Muslim employee time off on a Friday to attend prayers in congregation at a mosque was justified.

The employee in question was a security guard who was contracted to work on a Friday. He had been offered an alternative Monday to Thursday shift pattern with the option of working Saturday or Sunday as an alternative but the employee refused to work at the

weekends. Instead he started taking sick leave, holiday and unauthorised leave on Fridays until this was no longer tolerated by his employer.

The employer had provided a prayer room on site and would have been subject to financial penalties if it failed to ensure adequate staffing on site. The need for employees to be on site had been objectively justified and the requirement was a proportionate means of achieving a legitimate aim. The employees claim for religious dis-

crimination therefore failed.

In a separate case, an employment Tribunal has held that a ban on prison officers carrying weapons did not discriminate against Sikh prison officers wishing to wear a ceremonial dagger (a kirpan). Whilst it put certain initiated Sikhs at a disadvantage the ban was a proportionate means of achieving a legitimate aim : namely the need for high levels of safety and security in prisons.

## IFAs Face Twin Negligence Claims

by Deborah Prance



Deborah Prance on  
Professional Negligence

Two divorcees who allege that the investment advice they received after their divorces was negligent have commenced proceedings against their financial advisers in a bid to recover their alleged losses.

Friends Megan Scotney and Clare Gallacher both received very substantial divorce settlements and each invested more than £300,000 with the same firm of independent financial advisers (IFAs).

The investments have lost value in the succeeding years and the two women have claimed that the firm

of advisers was both negligent and in breach of their contractual obligations.

In practice, such claims can be hard to substantiate. Typically, claims against IFAs hinge on one or more of three allegations. These are:

- that the IFAs concerned failed to undertake (and record) a proper 'fact-find' to understand their client's investment objectives, which rendered the investment strategy inappropriate for them;
- that they have failed to give (and record prop-

erly) the investment advice required; and/or

- that they did not act in accordance with the agreed strategy or the client's wishes

If you consider that you might have a claim against a professional, be it an IFA, Surveyor, Architect, Lawyer or otherwise and you wish to discuss the position please contact Deborah on 01276 681217 or e-mail:

[deborah.prance@brooks-partners.co.uk](mailto:deborah.prance@brooks-partners.co.uk)

The Latest winner of our client feedback questionnaire prize draw is Ms H Jones who said that Shirah Real and Nicolle Avis were very efficient and that she would recommend our services. Thank you, your vouchers are on their way.

Don't forget to return your feedback sheet to be included in the draw!!

### Disclaimer

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### DID YOU KNOW....

Brooks & Partners offer a wide variety of services including:

- Family matters
- Litigation
- Professional Negligence
- Employment issues
- Commercial & Residential Property

We are running a "Summer Sizzler" offer for July and August—a 10% discount will be offered on all new instructions for Wills and Residential Property work.

Remember—we are happy to provide M & S vouchers to clients who recommend friends, family and colleagues.

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