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NEWSLETTER

About our Newsletter

Welcome to our Legal Updates Newsletter Summer 2026

Here we will showcase articles written by our team giving you the latest legal insights on a range of areas. From selling a home with solar panels to bringing dogs to work, we've got a varied range of features on show this time to keep you informed.

QualitySolicitors
Parkinson Wright

HOW ARE HEALTH NEEDS CONSIDERED IN A FINANCIAL SETTLEMENT AFTER DIVORCE?

Divorce or dissolution of a civil partnership is rarely straightforward, but where one party or a child has significant health needs the legal and financial issues can become particularly complex. Health conditions, whether physical or mental, may affect a person's ability to work, their future financial security, the need for ongoing care, and the overall fairness of a financial settlement.

'The law recognises that health can play an important role when the court determines how financial resources should be divided in a divorce,' says Samantha Hulse, Partner and Head of Family Law at QualitySolicitors Parkinson Wright. 'A person who has health difficulties may require greater financial provision, particularly if their ability to earn an income is reduced or if they require ongoing treatment, care or support.'

At the same time, proving the extent of health needs and demonstrating how they affect financial circumstances often requires careful preparation as well as clear evidence and experienced legal guidance.

In this article we examine how health is considered in financial proceedings on divorce, the role of medical evidence, the potential impact on spousal maintenance and pensions, and the additional considerations where a child has health needs.

What does the law say about health in divorce?

The legislation governing financial settlements sets out the factors the court must consider when deciding how financial resources should be divided in a divorce.

One of those factors is the age of each party and the duration of the marriage, but critically the court must also consider 'any physical or mental disability of either of the parties to the marriage.

This means that a person's health condition is directly relevant when the court assesses what constitutes a fair financial outcome.

Health issues often intersect with several other factors that are also relevant for a court to consider. For example, a disability or chronic condition may affect earning capacity, increase financial needs, or require long-term care costs.

The court's primary objective is to achieve fairness, and health conditions can significantly influence what fairness requires. For example, a person who cannot return to work due to illness may require ongoing financial support, while someone with substantial medical costs may require a greater share of capital resources.

Each case is considered individually, and the court will carefully assess how health issues affect both current and future financial needs.

What medical evidence is required?

Where health is relied upon as a factor in financial proceedings, medical evidence is usually essential. Courts will not simply accept general statements about ill health without supporting documentation. Instead, detailed evidence is often needed to demonstrate the severity of the condition, the prognosis and impact. This typically will involve having a formal report produced by either a GP or a treating consultant. If future care needs are to be considered, that will involve obtaining a very detailed report from a care consultant who can provide an indication as to the likely future care needs, and their costs.

Providing clear medical evidence allows the court to make informed decisions about financial needs and future provision.

The impact on spousal maintenance

Health needs can have a significant impact on spousal maintenance (the ongoing financial support paid by one spouse to the other following divorce).

Spousal maintenance is not automatic. The court will consider whether it is appropriate based on the financial circumstances of the parties and the factors set out in the legislation.

However, where a spouse has health problems that affect their ability to support themselves financially, maintenance may be more likely.

If a medical condition prevents a person from working or limits the type or amount of work they can do, their earning capacity may be significantly reduced. In such circumstances, the court may determine that ongoing maintenance payments are necessary to meet that person's financial needs.

Health issues may also affect the duration of maintenance. In some cases, maintenance may be ordered for a fixed period while the receiving spouse adjusts to financial independence. However, if a serious health condition prevents a realistic return to work, the court may consider longer-term maintenance.

Maintenance payments may also reflect additional financial needs associated with health conditions, including:

- ✔ medication;
- ✔ therapy or treatment;
- ✔ adaptations to housing; and
- ✔ professional care support.

The aim is to ensure that the financially weaker party can meet their reasonable needs following divorce.

The impact on pensions

Pensions are often one of the most valuable assets in a marriage after the family home, and they play a crucial role in long-term financial security.

"COURTS WILL NOT SIMPLY ACCEPT GENERAL STATEMENTS ABOUT ILL HEALTH WITHOUT SUPPORTING DOCUMENTATION"

Health needs can influence how pensions are treated during divorce in several ways.

The court has the power to make a pension sharing order, which transfers a percentage of one spouse's pension into a separate pension for the other. Where one party has health issues affecting their future earning capacity, the court may decide that a greater share of pension assets is necessary to ensure financial security in retirement.
A spouse suffering from ill health may need to retire earlier than anticipated, reducing their ability to build further pension provision.

Some pension schemes may offer enhanced benefits or early access in cases of serious ill health. Where this applies, specialist advice may be required to assess the true value of the pension.

Pension issues can be complex, particularly where health considerations are involved, and expert financial advice is often needed to ensure that settlements properly reflect long-term needs.

What if a child has health needs?

Where a child of the family has health issues or disabilities, this can significantly influence financial arrangements on divorce.

Children with health conditions may require specialist medical treatment, mobility aids or equipment, or specialist schooling or care. These costs can be substantial, and the court will take them into account when determining financial provision.

A child with health needs may also require specific living arrangements, such as adapted accommodation or proximity to specialist medical facilities. This may influence how the family home is dealt with or whether additional housing provision is required.

Further, where one parent provides significant care for a child with additional needs, their ability to work may be affected. This will be taken into account when considering the division of assets, and future spousal maintenance.

In some circumstances, the court may also consider applications under Schedule 1 of the Children Act 1989 to provide additional financial support for a child's needs.

Conclusion

Health issues can play a critical role in financial settlements following divorce. Whether the issue concerns the health of one spouse or the health needs of a child, the court must carefully consider how medical conditions affect financial needs, earning capacity and long-term security. Clear medical evidence is essential.

Because these cases often involve complex medical and financial factors, obtaining experienced legal advice at an early stage can make a significant difference. A carefully prepared case ensures that health needs are properly understood and appropriately reflected in the final outcome.

How we can help

If you are going through a divorce or dissolution of a civil partnership where health issues are a concern, seeking specialist legal advice can help ensure that your interests, and those of your family, are fully protected.

If you would like advice about financial arrangements on divorce, including cases involving health needs or disability, our family law team is here to help. Contact **Samantha Hulse** or a member of the family law team on **01905 721600** or email **worcester@parkinsonwright.co.uk**

SELLING A PROPERTY WITH SOLAR PANELS

Solar panels play a key role in the move to greener energy with the Government proposing all new build properties should have them by 2027. Moreover, the attraction of lower energy bills means solar panels have already proven popular with many homeowners. For some though, the panels have proven less desirable when they have come to sell due to off-putting commercial arrangements with the power company.

'If you have solar panels, then this is definitely something to consider when you come to sell,' says Emily Burton, a Conveyancer in the residential property team with QualitySolicitors Parkinson Wright. 'For some, solar panels will be a positive. For others, their presence may prove more challenging. It all depends on the facts and the terms of any agreement covering them. Selling a home with solar panels can sometimes be tricky, but a good conveyancer can guide you through any issues.'

Emily explains some of those issues and offers some advice.

First, establish who owns the solar panels

A lot of issues sellers experience arise because they do not own the solar panels. Instead, a third party (usually a solar power company) owns them. The homeowner grants the company a lease of their roof space onto which the company can install and maintain their panels, sometimes on the promise of free or cheaper electricity. If this is your situation, there should be a lease agreement.
That agreement will typically restrict what you can and cannot do with your property as well as what happens to the electricity generated.

When your home changes hands, your buyer will be bound by its terms. So, they will need to be satisfied with the arrangement. And if those terms are unusual or onerous, this can cause problems.

If you own the panels yourself then things are usually more straightforward, although there will still be additional factors to consider.

It is important therefore to establish ownership early on and the terms of any agreement. You should have a copy of any lease agreement. If you do not, your solicitor should be able to obtain one from the Land Registry or through third party enquiries.

Problems that may arise with solar panel leases

If your solar panels are leased, the lease agreement will also need to be transferred when you sell. Effectively, your buyer will be stepping into your shoes and will be bound by the terms you, or your predecessor, agreed with the solar panel company. This could include a requirement for that company's consent to the transfer, or even for you to pay an exit fee. If so, you should factor in additional time or costs for this.

Even if there is no issue with the actual transfer, other terms may be unacceptable to your buyer. For example, the lease may prevent you repairing the roof without the company's agreement, or may contain an option for the company to renew beyond the original term. This can cause problems with mortgage lenders too, some of whom will not lend where there is a solar panel lease. Most will lend but have stipulations about what they will and will not accept. For example, a lender may require the ability to end the lease if they repossess the property. In a worst-case scenario, a solar panel lease can make a property unmortgageable which will limit its appeal to cash buyers.

Occasionally, you may find the original solar power company no longer exists, for example because it has become insolvent. It may then be unclear who can give any necessary consents under the lease or who is responsible for the panels' maintenance and repair. The buyer will want this resolved before proceeding. While there will usually be a successor company, tracing them can be tricky. This will also take time which can stretch the patience of buyers, sometimes to breaking point. So, it is important to think ahead.

Information needed if you own the solar panels

As with any major addition to your property, the buyer will need to know any necessary consents are in place. While planning permission is not usually required, you may need consent if your property is listed or in a conservation area. Your conveyancer will also need to check whether consent is required under the terms of any lease or your title deeds.

Panels can put a strain on roof timbers, and your buyer may have concerns about the structural integrity of the building. They may also want reassurance on the quality of the

installation. So, you should also provide details of any survey, reports, or warranties you have. Unlike gas installations, there is no legal requirement for solar panels or their installers to be certified. However, showing your panels are covered by the Microgeneration Certificate Scheme can give reassurance that they are fit for purpose. Certification is also a requirement for certain incentive schemes such as the Smart Export Guarantee.

Confirm the arrangements for any tariffs

Whether you own the panels or not, your buyer will want to know what happens to the electricity generated. After all, for many the main attraction of solar panels is their potential to save energy costs.

If you do not own the solar panels, the lease agreement is likely to determine entitlement to these benefits. You, or your conveyancer, should check the provisions early on so everyone is clear on this. If you own the panels, then you may well have the benefit of any payments or free electricity, for example, under the Feed-in or Export Tariff Schemes or the Smart Export Guarantee Scheme, and you should provide details of these and copies of your energy bills.

Access to these schemes can be a positive when it comes to selling. However, you, or your conveyancer, will also need to ensure the benefit passes to your buyer. You will need to factor this process and the additional time involved into your plans.

A final word, and how we can help

Even if you own the solar panels, their presence is likely to make selling your home a little more complicated. Gathering the relevant information and discussing matters with your conveyancer early on will help ensure your transaction runs smoothly.

If you do not own the panels, then the issues may be more complicated. This makes it even more important to discuss your plans with your professional advisors in advance, ideally even before marketing your home. This will allow them to identify any issues and explore potential solutions, such as negotiating the variation of a lease term or finding a successor company where the original energy company no longer exists, as well as to manage your buyer's expectations.

Our conveyancers at QualitySolicitors Parkinson Wright are experienced in conveyancing all types of properties, including those with solar panels, and would welcome the opportunity to help you make your next house move.

For further information, please contact **Emily Burton** or a member of the residential property team on **01905 721600** or email **worcester@parkinsonwright.co.uk**

"IF YOU DO NOT OWN THE SOLAR PANELS, THE LEASE AGREEMENT IS LIKELY TO DETERMINE ENTITLEMENT TO THESE BENEFITS. YOU, OR YOUR CONVEYANCER, SHOULD CHECK THE PROVISIONS EARLY ON SO EVERYONE IS CLEAR ON THIS."

DEVELOPING A SITE - BEWARE OF LEGAL OBSTACLES

The key to a successful development is choosing the right site. Even when you think you have found the perfect place at the right price, there are plenty of things that could get in the way and make your development more expensive or even impossible. Some are obvious if you know what to look for. Others will only come to light from formal searches and a title investigation. A good commercial property lawyer will spot any pitfalls and advise you on the best way to get round them.

'It is vital to pay attention to detail when evaluating a potential development site,' warns Douglas Godwin, Partner and Head of Commercial and Rural Services with QualitySolicitors Parkinson Wright. 'The earlier you do this, the better. This will give you the chance to negotiate a release or possibly reduce your bid if you think it will cost extra to deal with obstacles to development.'

Douglas identifies some key risks.

Rights of way

The first thing to look out for are signs that someone may have a right of way, over any part of the site, which could prevent you building in a way that interferes with them. Roadways, paths and gates that lead from one piece of land to another by crossing your site should come under scrutiny. Your solicitor will check the title documents for any formally granted rights of way and will also ask the seller if they are aware of anyone using the land as an access route, as part of the pre-contract enquiry process.

Not all rights of way will be formally documented and a particular risk is where people (individuals or the general public) have been using a route informally and without permission for a long time. If this sort of use continues for more than 20 years, a legal right of way may arise. Landowners often try to prevent this by erecting signs

stating that land is private and that no access is allowed, but these do not always work.
If your solicitor thinks there are enforceable rights of way over the site, they may be able to negotiate a release or agree a diversion but you will probably have to offer a financial incentive to those with rights.

Pipes and cables

Another key issue for development is to check for pipes and cables crossing the site. These could prevent you building on parts of the plot or force you to carry out work in specific ways that may cost more. Overhead cables will be obvious but it can be harder to spot any which run underground. Your solicitor can carry out a utilities search for things owned by public utility providers. If there are any, you will have to comply with statutory rules preventing you building in a way that would obstruct access or cause damage or interference. There may also be health and safety issues in relation to any high voltage electricity cables. There could be privately owned pipes underground with something similar to a right of way allowing neighbouring landowners to use them for drainage.
Like rights of way, you may be able to agree a diversion or release in return for payment.

Rights of light

Rights of light could be an issue if your development is close to existing buildings and might reduce the amount of light to any windows in them. This is a complex area of law, so if you think there could be a problem you should ask your solicitor for detailed advice. Again, the usual solution is to pay for a release but this is not always possible. Do not be tempted to go ahead in the hope that nobody will complain. The courts have sometimes ordered developers to take down completed buildings that infringed rights of light and are likely to be tougher if they think you have not acted fairly.

Restrictive covenants

One of the things your solicitor will look out for when they review the title documents for your proposed site is any restrictions on how the land may be used. These could impose a complete ban on specific uses or they might limit the number and type of buildings you could erect. Sometimes they will prevent a particular use or type of development unless you get consent from a named person.
The extent to which restrictive covenants could get in the way of development plans depends in part on how old they are and how likely it is that there is anyone still around who has the benefit and is likely to enforce. For older covenants, insurance can be a useful solution but it really depends on the specific circumstances, so this is another issue you should discuss with your solicitor.

"ANOTHER KEY ISSUE FOR DEVELOPMENT IS TO CHECK FOR PIPES AND CABLES CROSSING THE SITE. THESE COULD PREVENT YOU BUILDING ON PARTS OF THE PLOT OR FORCE YOU TO CARRY OUT WORK IN SPECIFIC WAYS THAT MAY COST MORE."

"A RANSOM STRIP IS A SECTION OF LAND CARVED OUT OF A PLOT BEING SOLD AND RETAINED BY THE SELLER."

Ransom strips

Ransom strips can be one of the hardest problems to spot, but they can completely scupper an otherwise successful development. A ransom strip is a section of land carved out of a plot being sold and retained by the seller. It will usually be quite small, which can make it hard to spot, and will often be chosen strategically to give its owner leverage over whoever wants to develop the larger site. This might be to extract a fee or possibly to get a better bargaining position over an issue like rights of way. A Worcestershire newspaper recently reported on a concrete barrier erected on a ransom strip in the middle of a newly built housing estate, effectively cutting the development in half and caused great inconvenience to some homeowners. The best way to spot a ransom strip is to look carefully at all the title plans and compare them with any plans drawn up for your proposed development, checking for any gaps. Your solicitor will be able to help with this but you may also need to involve a surveyor.

How we can help

Not all obstacles will be obvious from a site visit, so you need an experienced property lawyer to help unearth any issues in the title or in search results. We are here to explain anything we discover and help you find practical commercial solutions, so your development can go ahead.

For further information, please contact **Douglas Godwin** or a member of the commercial property team on **01905 721600** or email **worcester@parkinsonwright.co.uk**

WHAT DECISIONS ARE NOT ALLOWED UNDER A LASTING POWER OF ATTORNEY

A lasting power of attorney (LPA) is a valuable legal document that allows you to appoint trusted people (your attorneys) to make decisions on your behalf if you lose mental capacity, perhaps through an accident or ill health.

'Many people assume an LPA gives unlimited powers but, in reality, there are important legal limits to what your attorneys can and cannot do,' says Cherilyn Ford, Wills and Later Life Advisor in the private client team at QualitySolicitors Parkinson Wright. 'LPAs can offer huge peace of mind, but understanding what your attorneys can and cannot do helps families avoid misunderstandings later. A well drafted LPA, with clear instructions and good communication, will ensure attorneys can act confidently and always in your best interests.'

Cherilyn explains what an LPA does not cover, how attorneys must act, and the safeguards that exist to protect you.

What is covered by a lasting power of attorney?

LPAs come in two forms: the LPA for property and financial affairs and the LPA for health and welfare, each with distinct roles and activation points:

The LPA for property and financial affairs allows your attorneys to manage your money, pay bills, access bank accounts, deal with investments, or sell property. Crucially, you can choose whether this LPA is used straight away (even while you still have mental capacity) or only in the event

that you lose capacity. Most people choose immediate use to make life easier for family or to receive help with financial administration.

The LPA for health and welfare is more tightly controlled. It only comes into effect when you lack mental capacity to make a particular decision. Under this LPA, attorneys can make decisions about your daily care, medical treatment, social activities, and where you should live. Importantly, the document also asks you to decide whether your attorneys should have authority to make decisions about life-sustaining treatment. You can choose to give them the final say or keep that decision with the medical team. This section of the document can significantly affect how decisions are made in emergency situations, which is why clarity is essential.

Despite giving broad authority in these areas, both types of LPA are governed by strict rules under the Mental Capacity Act 2005, requiring attorneys to involve you as far as possible and to act solely in your best interests.

Which decisions can never be made by your attorneys

Even with an LPA in place, there are clear legal boundaries to what attorneys are allowed to do.

Wills

They cannot make or change your will. Only you can sign a will, and only the Court of Protection can authorise a statutory will if you have lost mental capacity and one is needed. Attorneys cannot alter existing wills, update beneficiaries, or make decisions that attempt to mirror estate planning.

Marital status and voting

Attorneys cannot make decisions relating to marriage, civil partnership, or voting on behalf of the individual. These are deeply personal decisions and can only ever be made by the individual, regardless of capacity.

Which decisions cannot be made without consulting you?

Your attorneys cannot act contrary to the Mental Capacity Act or Code of Practice. Even well-meaning decisions can be unlawful if they fail to follow the proper process or ignore the principle that decisions must be made in the donor's best interests.

Health and welfare care

A health and welfare LPA only comes into effect when you are no longer able to make the relevant decision yourself. Capacity is decision-specific, so even if you need help with some major decisions, for example about medical treatment or where you live, you may still be able to make everyday choices such as what you eat or how you spend your time. In those situations, your wishes must still be followed.

Medical decisions often cause uncertainty. Some people assume attorneys automatically have the right to decide whether life-sustaining treatment should be given or refused. This is incorrect. Attorneys only have this authority if it is expressly granted in the LPA for health and welfare. Without this explicit permission, doctors, guided by the Mental Capacity Act, make the final decision in the patient's best interests.

Property and finances

A property and financial affairs LPA can be used sooner, if you have authorised this in the document but, even then, your attorneys must step back whenever you are capable of making your own decisions. Their role is to support you and not to substitute their judgement for yours while you still have capacity.

The Court of Protection's role

The Court of Protection exists to safeguard people who lack capacity. Its involvement may be required if a decision needs to go beyond the authority granted by an LPA.

Common examples include authorising significant gifts, approving a statutory will where the existing will is no longer suitable, and authorising a property sale or transaction where the attorney has a conflict of interest (for example, if the sale involves the attorney or a family member). In all these situations, you must apply to the Court of Protection for authorisation to proceed.

Court applications take significant time and involve providing detailed evidence. Having a solicitor guide you through the process can ensure the correct approach is taken and reduce the stress on families during what is often a difficult period.

They cannot act outside your instructions or restrictions. Many people include tailored preferences in their LPAs for example, requiring two attorneys to act jointly on a property sale or setting limits on investments. Attorneys must follow these restrictions without exception.

Which decisions cannot be made without approval by the Court of Protection

Gifts

Attorneys cannot make substantial gifts unless legally permitted. Large gifts, transfers of assets to family, or attempts to reduce inheritance tax without approval can amount to financial abuse, even if made with good intentions.

Attorneys may make small, customary gifts such as birthday or Christmas presents, but only if these are reasonable and affordable for you. Anything more substantial requires Court of Protection approval.

Families sometimes assume that making generous gifts or transferring property is permissible 'because it's what Mum would have wanted'. But the law takes a stricter view; without Court approval, such gifts may be unlawful, even if intended to be helpful.

For example, if your mother has lost capacity and her attorney decides to transfer £50,000 of her savings to a grandchild to 'help them buy their first home', this would normally be outside the attorney's powers. Even if the family believes she would have liked to help, the law treats this as a gift that requires Court of Protection approval.

Staying within the rules

In all cases, attorneys should keep detailed records, noting what was decided, why, and how the decision aligned with the donor's best interests. This protects both the donor and the attorney.

Being an attorney carries significant legal responsibility. The Mental Capacity Act 2005 and its Code of Practice provide a clear framework, setting out how decisions must be approached, including the requirement to:

- ✔ consider the donor's wishes and feelings;
- ✔ choose the option least restrictive of the donor's rights;
- ✔ consult relevant family members and professionals; and
- ✔ keep the donor involved wherever possible.

Failure to follow these principles can lead to investigation by the Office of the Public Guardian. In serious cases, attorneys may be removed, ordered to repay misused funds, or prohibited from acting again. Most issues arise not from deliberate wrongdoing, but from misunderstanding the limits of the role.

Good legal advice and a clear, a well-prepared LPA can prevent the vast majority of problems.

"FAILURE TO FOLLOW THESE PRINCIPLES CAN LEAD TO INVESTIGATION BY THE OFFICE OF THE PUBLIC GUARDIAN. IN SERIOUS CASES, ATTORNEYS MAY BE REMOVED, ORDERED TO REPAY MISUSED FUNDS, OR PROHIBITED FROM ACTING AGAIN."

How we can help

We support clients in drafting LPAs that reflect their wishes clearly and unambiguously. This includes setting out preferences, restrictions, guidance for attorneys, and instructions around life-sustaining treatment. A well drafted LPA not only protects you but also gives your attorneys the clarity they need to act confidently.

We also advise attorneys on their duties, help them navigate complex decisions, and assist families when issues arise - whether that involves concerns about gifting, decisions around care, disputes between attorneys, or potential Court of Protection involvement.

Our aim is always to provide clarity, reassurance and legally sound guidance, ensuring that decisions are made responsibly, sensitively and within the law.

For clear, practical advice about LPAs or support with attorney responsibilities, contact **Cherilyn Ford** or a member of our private client team on **01905 721600**.

SAFIA PALMER BUSTS FIVE COMMON PROBATE MYTHS

Obtaining probate is often seen as a straightforward administrative process, but it can be far more complex than many people expect. Common assumptions about how assets pass, what executors can do and how quickly matters progress, frequently lead to delays, disputes and unexpected costs.

'Many estates appear simple at first glance,' says Safia Palmer, Wills and Probate Advisor in the private client team at QualitySolicitors Parkinson Wright. 'However, once you look more closely at how assets are owned, how the will was drafted, and whether business or shareholdings are involved, complications can arise very quickly. Executors often do not realise the level of responsibility they are taking on.'

Safia highlights some of the most common probate myths - and explains what you need to be aware of.

Myth 1 – 'Everything passes automatically'

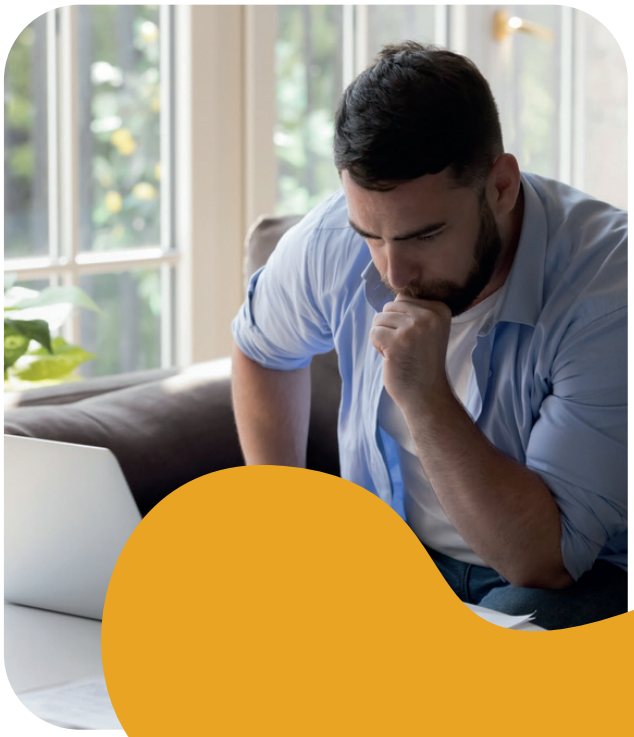
You may assume that when someone dies, their assets automatically pass to their spouse, partner or chosen beneficiaries without much formality. In reality, it depends entirely on how those assets were owned.

For example, if property was owned as joint tenants it will pass automatically to the surviving owner. However, if it was owned as tenants in common, the share forms part of the estate and passes under the will (or the intestacy rules if there is no will).

Company assets do not belong to the shareholder personally.

Bank accounts, investments, digital assets and overseas property can all require different processes before they can be accessed.

Assets held in trust may fall outside the estate altogether.



Myth 2 – 'Executors can just sell assets'

If you have been appointed as an executor, you may think your role is simply to gather the assets, sell what needs to be sold and distribute the financial proceeds. In reality, your powers are not unlimited. While there is not usually a strict legal duty to consult family members about personal possessions, particularly sentimental items, it is often sensible to do so where possible to avoid unnecessary disputes.

As an executor, you must act in accordance with the will and in the best interests of the beneficiaries. You owe fiduciary duties, meaning you must act honestly, in good faith, and solely for the benefit of the beneficiaries, rather than for your own personal interests, and you must exercise reasonable care and skill when dealing with the estate.

Before selling assets, you may need to:

- ✔ obtain formal valuations, particularly for property or business interests;
- ✔ consider inheritance tax, capital gains tax and income tax implications;
- ✔ review company documents if shares are involved;
- ✔ obtain consent from co-owners, directors or other shareholders, where applicable; and
- ✔ ensure that sufficient funds are retained to meet liabilities.

Being an executor carries personal responsibility. If you sell assets without proper authority or at an undervalue, you could potentially be personally liable. Equally, delaying action without good reason can also create risk.

Taking legal advice can help you strike the right balance and ensure you fulfil your duties correctly.

Myth 3 – 'Shares are easy to deal with'

Not all shares are the same, and if you are dealing with shares as part of an estate, the process may be more complex than you expect.

Publicly listed shares are usually more straightforward to value and transfer once probate has been granted, although they still require liaison with registrars and completion of stock transfer documentation.

Private company shares, however, often come with restrictions. Articles of association or shareholders' agreements may:

- ✔ restrict who shares can be transferred to;
- ✔ require directors' approval;

"BEING AN EXECUTOR CARRIES PERSONAL RESPONSIBILITY. IF YOU SELL ASSETS WITHOUT PROPER AUTHORITY OR AT AN UNDERVALUE, YOU COULD POTENTIALLY BE PERSONALLY LIABLE."

- ✔ give existing shareholders pre-emption rights;
- ✔ trigger compulsory buy-back provisions on death; or
- ✔ specify valuation mechanisms that must be followed precisely.

There may also be important inheritance tax considerations, particularly where Business Property Relief is relevant.

Failing to review the company's governing documents at an early stage can cause significant delay and even a dispute. If you are acting as an executor, it is important to understand both the legal and tax position before taking action.

Myth 4 – 'Businesses continue as normal'

If the person who has died owned or ran a business, you may expect it to carry on without interruption. In reality, a death can disrupt a business overnight.

You may find that bank accounts are frozen, signing authority is unclear, or key decisions cannot be made until probate is granted. If the person was a sole trader, the business may technically cease on death unless appropriate steps are taken.

Staff, suppliers and customers may be affected if there is uncertainty about who has authority to act.

Without prior planning, a business can quickly lose value. Taking legal advice early can help stabilise the situation, protect ongoing trading and preserve the estate's assets.

Myth 5 – 'Probate is just paperwork'

From the outside, probate can appear to be a matter of completing forms. In practice, if you are an executor, you are taking on significant legal and tax responsibilities.

You may need to:

- ✔ identify and value all assets and liabilities;
- ✔ complete inheritance tax reporting and arrange payment of any tax due;
- ✔ deal with income tax and capital gains tax arising during the administration period;
- ✔ settle debts and any claims against the estate;
- ✔ prepare estate accounts; and
- ✔ distribute the estate correctly and fairly.

If you distribute assets before settling tax liabilities or potential claims, you could be personally responsible for any shortfall.

Why the wording of the will matters to you

If you are dealing with an estate, it is important to interpret the will correctly to avoid misunderstandings. The exact wording of the will can have a major impact on how the estate is administered and who benefits.

For example, if a will leaves 'my shares in X Ltd' but those shares were sold or restructured before death, the gift may fail altogether. Ambiguous drafting can create uncertainty between beneficiaries and lead to disputes.

The distinction between specific gifts and a share of the residue can also affect tax treatment and entitlement.

The risk of a dispute

Probate disputes are more common than many people realise.

If you are an executor, beneficiaries may question your decisions or request detailed information.

If you are a beneficiary, you may feel concerned about delay or fairness. In some cases, individuals may bring claims under the Inheritance (Provision for Family and Dependants) Act 1975 if they believe reasonable financial provision has not been made.

Disagreements can escalate quickly, particularly where businesses or high-value assets are involved.

Clear advice and transparent administration can significantly reduce the risk of conflict.

How we can help

We regularly advise executors and families dealing with estates that involve business interests, private company shares and complex assets.

We can help you by:

- ✔ advising you on your duties and potential personal liability as an executor;
- ✔ interpreting wills and company documents to avoid costly mistakes;
- ✔ assisting with valuations, tax reporting and compliance requirements;
- ✔ advising on Business Property Relief and inheritance tax issues;
- ✔ helping you resolve disputes or reduce the risk of claims; and
- ✔ guiding you through probate clearly and efficiently.

Our aim is to help you administer the estate confidently, protect yourself from unnecessary risk, and ensure that matters are handled in accordance with the law and the deceased person's wishes.

For advice on probate or estate administration, please contact **Safia Palmer** or a member of our private client team on **01905 721600** or via email **worcester@parkinsonwright.co.uk**

BRINGING DOGS TO WORK; AN EMPLOYER'S GUIDE

Assistance dogs, such as guide dogs, play a crucial role in helping disabled individuals live independently and employers will usually be legally required to accommodate them in the workplace. But what is the position if an employee asks to bring a dog to work for emotional support?

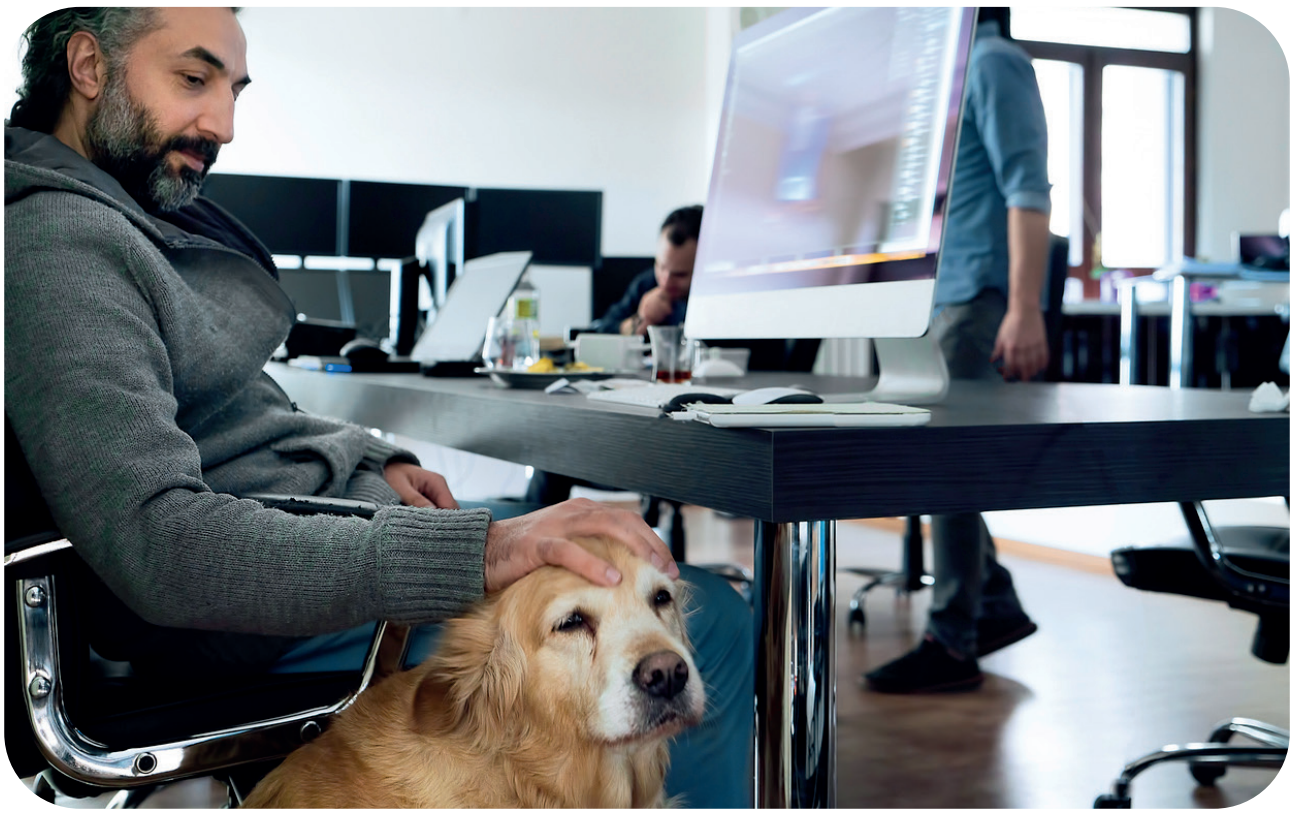
'Even if a dog is not a trained assistance dog, in some cases the employee could have a legal right to bring their dog to work if it helps them to manage a mental health condition,' according to Jonathan Lewis, a Solicitor in the employment team with QualitySolicitors Parkinson Wright. 'However, there will be a number of steps to go through to establish this right.'

It is important to understand how to support the employee in bringing their assistance dog to work; the difference between an assistance dog and an emotional support dog; and when employers may have to allow an emotional support dog at work.

Jonathan outlines these issues and gives tips for employers considering allowing any employee to bring their dog to work.

What is an assistance dog?

Assistance dogs are highly trained working animals who assist people in managing a medical condition or disability. Perhaps the most well-known are guide dogs for visually impaired people, but assistance dogs are trained to support people in a range of ways, such as alerting a person to an oncoming medical episode. Most, but not all, assistance dogs are accredited with an organisation that is registered with Assistance Dogs UK.



Assistance dogs in the workplace

It is highly likely that an individual with an assistance dog is protected by the Equality Act 2010. This could mean that an inflexible 'no dogs at work' policy is unlawful discrimination if it prevents a job candidate or employee bringing their assistance dog to work. The employer would need to consider if it would be a reasonable adjustment to allow the assistance dog to accompany the individual. We can advise you on this, as this may involve checking if other colleagues have allergies or a fear of dogs. It will be necessary to seek to accommodate everyone's needs, as well as carrying out a risk assessment.

Should we allow dogs at work anyway?

Dog ownership has increased in the UK over recent years. To help recruitment and retention, employers may wish to allow any employee to bring their dog to work, particularly as employees may be reluctant to leave their dog at home all day.

However, employers may need to bear in mind that multiple dogs in the workplace is likely to need careful management and other employees may want to bring another type of pet.

Before going down this route, it would be sensible to put in place a policy. This would make it clear which animals are allowed, on what terms, and when the employer may decide to withdraw this option, for instance if colleagues reported being disturbed by a noisy dog. It could also explain who would be prioritised – most appropriately those with a relevant disability – if there were more requests than could be accommodated. The policy should set out the responsibilities of the dog owner and the employer, and allow the employer to set limits on the number of days per week, for example if the number of animals in the workplace is getting unmanageable.

If the employee is allowed to bring their assistance dog to work, there are a number of measures to put in place to ensure this arrangement works well for the employee, the animal and colleagues. Most of these should be made in consultation with the employee and some may also be reasonable adjustments in themselves:

- ✔ implementing any requirements arising from a risk assessment, such as restrictions on the area to which the dog can go in the workplace;
- ✔ giving the employee extra breaks from work or a different working pattern to allow them to take the dog out to meet its toileting (spending) needs;
- ✔ ensuring there is a suitable space for the animal close enough to the employee's desk and somewhere for the dog's water;
- ✔ being clear on the responsibilities of the employee in relation to the dog, for instance ensuring the dog wears its tabard or harness to indicate when it is working; and
- ✔ being clear on the employer's responsibilities, for example, informing colleagues about appropriate behaviour around the dog, such as only petting the dog with the employee's permission and not distracting the dog when it is on duty. In doing this, the employer should be careful about confidentiality and protecting personal information about the employee's health or disability.

What is an emotional support dog?

Assistance dogs can include specially trained dogs who support a disabled individual with a psychiatric condition, such as by reminding the individual to take medication. These dogs are usually trained by a charity. By contrast, an emotional support dog is not trained specifically as an assistance or service animal.

"IF THE EMPLOYEE HAS A CONDITION THAT AMOUNTS TO A DISABILITY UNDER THE DEFINITION IN THE EQUALITY ACT 2010, IT MAY BE A REASONABLE ADJUSTMENT TO ALLOW THE REQUEST."

Do we have to allow emotional support dogs at work?

An employee may wish to have their dog at work as psychological support, such as to ease anxiety. In some cases, the employer may need to allow this. It is possible to register emotional support animals with an online company and an employee may present you with an official-looking registration card when requesting the dog is allowed to accompany them. However, this is not conclusive.

If the employee has a condition that amounts to a disability under the definition in the Equality Act 2010, it may be a reasonable adjustment to allow the request. We can advise you on this, including reviewing any relevant medical evidence and making a referral for occupational health advice.

If the request is allowed, the employer will need to work through similar considerations as for an assistance dog. Additional considerations include ensuring that the dog is well trained and not a disruption or nuisance to colleagues.

How we can help

We give clear and practical advice on making reasonable adjustments involving an assistance dog or an emotional support animal. We can also provide you with a suitable and clear policy, if you wish to allow employees to bring animals to work.

For further information, please contact **Jonathan Lewis** in the employment team on **01905 721600** or email **worcester@parkinsonwright.co.uk**

PUBLIC RIGHTS OF WAY: WHAT ARE YOUR LEGAL RESPONSIBILITIES?

Public rights of way are an essential part of our landscape, connecting communities, supporting recreation, and preserving access to the countryside. In this article, we explain how public rights of way are protected by law and discuss the responsibilities of landowners and users. Understanding your legal position is key to managing access appropriately, addressing concerns, and navigating any potential disputes.

What is a public right of way?

Public rights of way are legally protected routes that allow people to cross land, whether on foot, horseback, or by other permitted means.

A right of way becomes legally protected once it is recorded on a local highway authority's Definitive Map and Statement. Once a right of way is on this document it is a legally recognised path that must remain open and accessible.

There are four main types of public rights of way in England and Wales:

- ✔ Footpaths – designated for pedestrians only. These are the most common type and include many rural and urban walking routes.
- ✔ Bridleways – open to pedestrians, horse riders, and cyclists.
- ✔ Restricted byways – allow non-motorised traffic, including pedestrians, cyclists, horse riders, and vehicles such as horse-drawn carriages.
- ✔ Byways open to all traffic (BOATs) – available to all users, including motor vehicles, though they are often unsurfaced and used mainly by walkers and riders.

Under Section 31 of the Highways Act 1980, a route can also become a public right of way through presumed dedication, often known as the 20-year rule, which we discuss later in this article.

What is a public footpath?

Under Section 66(1) of the Highways Act 1980, a footpath is defined as a highway over which the public has a right of way on foot only. In England and Wales, all legally recognised public footpaths are shown on the Definitive Map and Statement maintained by each local highway authority.

Once a path is added to the Definitive Map, it is considered a public highway and must be kept free from obstruction and made reasonably passable for walkers.

Public footpaths are also normally marked on Ordnance Survey maps, helping walkers navigate the countryside legally and confidently.

It is important to distinguish public footpaths from other types of paths:

> "ONCE A PATH IS ADDED TO THE DEFINITIVE MAP, IT IS CONSIDERED A PUBLIC HIGHWAY AND MUST BE KEPT FREE FROM OBSTRUCTION AND MADE REASONABLY PASSABLE FOR WALKERS."

- ✔ **Public footpaths** are legally protected rights of way that must remain open and accessible. They give anyone the right to walk the route at any time, regardless of land ownership.
- ✔ **Permissive paths** are routes where a landowner voluntarily allows public access but retains the right to close or restrict access at any time. These are not recorded on the Definitive Map and do not carry the same legal protections.
- ✔ **Private paths** are intended for use only by the landowner or with express permission. There is no public right of access and using them without consent may constitute trespass.

What is the difference between a footpath and a pavement?

As we have discussed above, a footpath is a type of public right of way which is officially recorded on the local highway's Definitive Map.

A pavement (also called a footway) is different. It is the pedestrian path running alongside a road that forms part of the public highway maintained by the local authority.

Unlike footpaths, pavements are not included on the Definitive Map because they arelegally considered part of the public highway (part of the road itself). Their legal status is already established and doesn't need to be separately recorded.

How are roads and rights of way defined in law?

In legal terms, a road is a type of highway, but not all highways are roads. Under Section 328(1) of the Highways Act 1980, a highway is defined as any route over which the public has a right to pass and repass—on foot, by bicycle, on horseback, or in a vehicle—depending on the route's classification.

A public road is a highway primarily intended for vehicles, such as motorways, A-roads, and residential streets. These are usually adopted and maintained by the local highway authority to meet safety standards for surfacing, drainage, and signage.

By contrast, public rights of way (including footpaths, bridleways, restricted byways, and byways open to all traffic) are also highways in law, but are mainly designed for non-vehicular access. For example, a public footpath is legally a highway, but only pedestrian access is allowed.

This distinction matters when determining what kind of access is permitted, who is responsible for maintenance, and how rights of way relate to public roads, especially in rural or mixed-use areas.

What are a landowner's responsibilities for footpaths across farmland?

A public footpath may cross privately owned farmland. This means the public has a legal right to walk the route at any time, and landowners cannot block, obstruct, or attempt to discourage access in any way.

Obstruction and access – Highways Act 1980, Sections 137 & 137A

It is a criminal offence to obstruct a public right of way. This includes:

- ✔ Locking or blocking gates across the path
- ✔ Erecting fences or other barriers
- ✔ Allowing vegetation or crops to obstruct the path
- ✔ Displaying misleading or intimidating signs

Landowners must not obstruct public rights of way, while local authorities have a duty under Section 130 of the Highways Act 1980 to protect public access.

Gates, stiles and maintenance – Highways Act 1980, Section 146

Stiles and gates on footpaths must:

- ✔ Be authorised by the local authority
- ✔ Be kept in safe condition by the landowner

Authorities may assist with maintenance or upgrade structures for better accessibility. Landowners are not permitted to install or modify stiles or gates without consent.

Livestock and public safety – Wildlife and Countryside Act 1981, Section 59 & Associated Regulations

Farmers may graze animals in fields crossed by public footpaths, but legal safety rules apply.

Under the Wildlife and Countryside Act 1981, Section 59 dairy bulls over 10 months old are prohibited from such fields. Beef bulls may be kept only if they are accompanied by cows or heifers and show no signs of aggression.

Landowners may be liable for injuries caused by livestock under the Animals Act 1971 and the Occupiers' Liability Act 1957, particularly if they knew an animal posed a risk. Additional safety advice is provided by the Health and Safety Executive (HSE), which recommends risk assessments, appropriate signage, and taking steps to prevent contact between aggressive animals and the public.

Waymarks, diversions and signage – Countryside and Rights of Way Act 2000, Sections 64 & 69

The Countryside and Rights of Way Act 2000 reinforces public access by making it an offence to interfere with official markers or alter public routes unlawfully.

- ✔ Landowners must not remove, deface, or obstruct waymarks (official signs or markers used to indicate a public right of way).
- ✔ Landowners must not divert, block, or reroute a public right of way on their own without approval from the local authority.
- ✔ Signs such as "Private – Keep Out" must not be placed on or near public footpaths, as they can mislead the public and may constitute an offence.

What are the responsibilities of the person using the right of way?

Anyone using a public right of way, including a pedestrian right of way such as a footpath, has a legal right to access the route, but also a responsibility to use it considerately and lawfully.

Walkers must stay on the marked path and avoid straying onto adjacent land, which may be private. Public access does not give permission to picnic, camp, cycle, or drive vehicles on a footpath unless the landowner has specifically allowed it.

Users should follow the Countryside Code, which advises people to:

- ✔ Respect property and farmland
- ✔ Close gates behind them
- ✔ Keep dogs under close control, especially near livestock
- ✔ Avoid littering or causing damage to crops and fencing.

If a path is blocked, damaged, or unsafe, users are encouraged to report the problem to the local authority, which is responsible for public rights of way maintenance and enforcement.

What is the 20-year rule for presumed rights of way?

Under Section 31(1) of the Highways Act 1980, a public right of way can be presumed to exist if the public has used a route "as of right", that is, openly, without force, secrecy, or permission, for a continuous period of 20 years.

To establish a presumed right of way, two key conditions must be met:

"IF THESE CRITERIA ARE MET, A MEMBER OF THE PUBLIC OR ORGANISATION CAN APPLY TO THE LOCAL AUTHORITY FOR A DEFINITIVE MAP MODIFICATION ORDER (DMMO) TO HAVE THE ROUTE FORMALLY RECORDED AS A PUBLIC RIGHT OF WAY."

- ✔ There is clear evidence of uninterrupted public use over 20 years
- ✔ The landowner has not taken steps to challenge or prevent that use during the period.

If these criteria are met, a member of the public or organisation can apply to the local authority for a Definitive Map Modification Order (DMMO) to have the route formally recorded as a public right of way.

If the application is disputed, the matter may be decided through a public inquiry or written representations overseen by the Planning Inspectorate.

Do you need legal advice on public rights of way?

Whether you are a landowner facing a claim over a public path, a developer navigating private access rights, or someone looking to assert a public right of way under the 20-year rule, our experienced team at Parkinson Wright Solicitors can help.

With over 40 years' experience in public rights of way, highways law, and property disputes, we regularly advise clients on interpreting deeds, resolving blocked access, and representing them at public inquiries involving Definitive Map Modification Orders.

Contact us on **01905 814 467** to speak to **Douglas Godwin**, Partner and Head of Rural Services or a member of our Commercial or Dispute Resolution team or email **worcester@parkinsonwright.co.uk**