

# LEGAL BULLETIN

## Funding care in later life

**U**nder the changes proposed in the Care Act 2014, which received the Royal Assent in May and which is expected to come into effect in 2015 or 2016, the funding of elderly care will change significantly.



One of the perceived benefits under the new system is that care costs are to be subject to a 'lifetime cap', initially to be set at £72,000. This is not as beneficial as it may seem, however, because the cap does not include the 'board and lodging' element of the care costs, which currently normally exceeds £1,000 per month. Furthermore, the legislation provides that these costs may be varied in line with average earnings.

Provisional figures (based on estimated values as at April 2016) suggest that care costs will be fully met by the elderly person where assets (which will include the value of any property owned) exceed £118,500, or £23,250 if no property is owned.

Where the person being cared for has assets with a value of less than £14,250, their care costs will be fully met by the state unless they have sufficient income to pay them.

Where a property is owned but cannot be sold, the council will, if necessary, take a legal charge over it, so that when it is eventually sold, the council's costs will be recouped.

The Government has launched a consultation seeking views on draft regulations and guidance on the care and support reforms. This is open until 15 August 2014 and can be found on the Government website at [www.gov.uk](http://www.gov.uk).

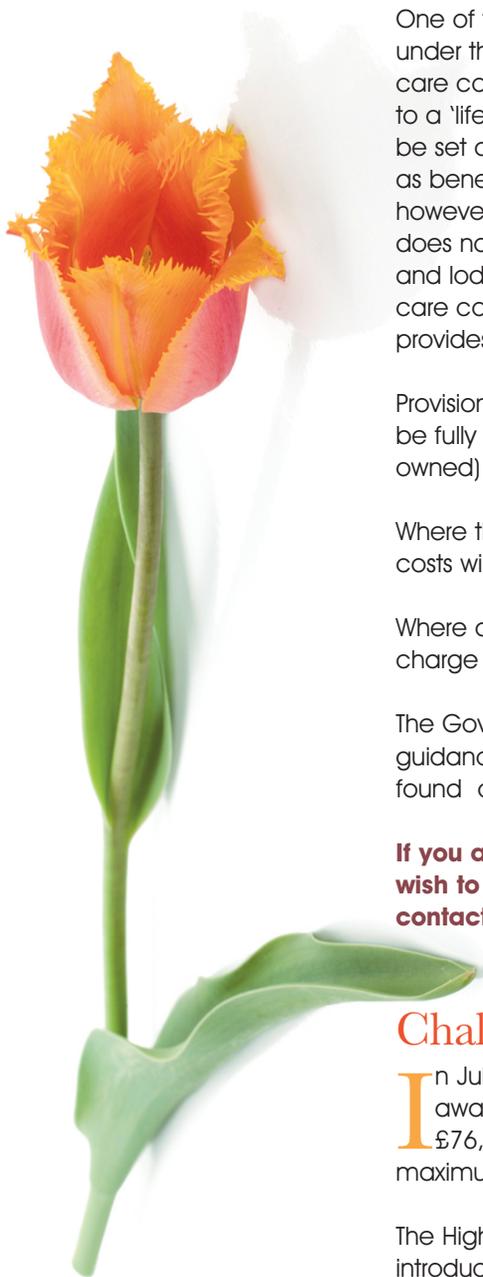
**If you are concerned about financing care in later life for yourself or a relative, or wish to ensure that your estate passes to those you choose, rather than to the state, contact us for advice on the appropriate steps to take.**

## Challenge to the unfair dismissal cap fails

**I**n July 2013, a 12 months' pay cap was placed on the unfair dismissal compensatory award if this amount is less than the statutory maximum or overall cap – currently £76,574. Where the employee's annual salary exceeds the limit, the statutory maximum applies.

The High Court has dismissed an application for a judicial review of the decision to introduce a cap, made on the basis that it disproportionately affects older people who are more likely to have difficulty finding another job and could also be deterred from bringing a claim.

An appeal against the Court's decision is likely.



## Court cures 'Clerical error' in £6.9 million Will

The High Court has come to the aid of a family whose grief at the death of a gifted entrepreneur in a motorbike crash was compounded by the discovery of a 'clerical error' in his £6.9 million will.

His intention was to establish, by means of his will, a discretionary family trust. However, the will contained a simple error, which meant a visit to court was necessary to have it rectified.

**To make sure your will is 'right first time', contact us.**

## Divorcee refused 'Second bite of the cherry'

Separated couples should fix their eyes firmly on the future when signing divorce agreements, as was demonstrated in a recent case in which a former soldier, whose ex-wife had 'spent her share' after their split, fought off her bid for a slice of his military pension.

The High Court found that the couple had struck a binding deal when their 20-year marriage ended in 2008. Although the ex-wife had since descended into 'straitened financial circumstances', she was not entitled to 'a second bite of the cherry'.

When the couple separated, the ex-wife had received the family home but waived any right to maintenance. Her ex-husband retained his armed forces pension and had since met all his financial obligations to their three



children. He lived with his new partner and baby in New Zealand and earned £66,000 a year. His ex-wife tried to re-open negotiations on the divorce settlement, focusing her attention on her ex-husband's pension, which would be worth up to £600,000 in the UK.

However, he responded that their assets had been divided 'more or less equally' at the time of their divorce and he

could not be blamed if she had 'spent her share and needed more'. Blocking the ex-wife's case, the Court found that the professionally drafted separation agreement had been 'full, fair and final'. She had received appropriate legal advice before signing it and the consequences had been carefully explained to her.

Her claim for more was 'very lacking in merit' and her plea that she had signed the deal under pressure was not established. The grounds put forward by the ex-wife had 'virtually no prospect of success at all' and the agreement's terms of finality were 'indeed a knock-out blow' to her case.

**For advice on achieving a fair financial settlement in the event of a relationship breakdown, contact us.**

## Unclear wording on property access rights leads to Court of Appeal

Many court battles arise because of a lack of clarity in documentation which leaves an agreement capable of being interpreted in more than one way.

A recent case, which involved a landowner's access to his property, illustrates this point. The conveyance which transferred the property to him gave him the right to access his land at any point from his neighbour's land.

When his neighbour wished to build a fence with a single opening in it, the man went to court claiming that to do so would constitute an interference with his legal rights of access to his property as granted to him in the conveyance.

The argument went all the way to the Court of Appeal, which agreed that the wording of the conveyance was unclear and that, in the circumstances, a limitation on the landowner's ability to access his own land would constitute an 'actionable interference'.

**Appearing at the Court of Appeal is a very expensive way to settle a dispute and could have been avoided had the conveyance been more precisely worded. For advice on all aspects of property and land law, contact us.**



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