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Flexibility at Work

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Employees with parental responsibilities often have difficulty juggling the commitments of full time employment with the demands of parenting and may seek to change their working arrangements in order to achieve a better work life balance. Those returning to work following a period of maternity, paternity or adoption leave may, for example, want to return on a part time basis. What legal rights do employees have to seek flexible working arrangements?

Eligible employees with a minimum of 26 weeks' service who have parental responsibilities in relation to a child under the age of 17 (or under 18 if the child is disabled), or who have caring responsibilities for an adult dependant, have the right to make a request for flexible working.

Under the relevant flexible working legislation, there is a specified procedure for making such requests, with defined timescales for both the employee making the request and the employer responding to the request. The request, which must be in writing, can be in relation to the hours or times of work or the place of work (for example, the employee may request to work from home).

Many employers will include information about the procedure for making a flexible working request in their employee handbook. If the request is accepted, it will mean that the employee's contract of employment is permanently changed and they will have no right to revert to their previous working pattern unless the employer agrees to a trial period for the new arrangement.

It is important to remember that the statutory right is only to make a request for flexible working arrangements and the employer is not obliged to agree to the request. Provided the correct procedure is followed for considering the request properly, the employer can refuse to agree to it if it has legitimate business reasons for doing so. The grounds for refusing an application are set out in the legislation and are very broad in scope. They include: the burden of additional costs, the inability to meet customer demand and detrimental impact on quality or performance.

Even if an employee is not eligible for making a statutory flexible working request or if the employer has a legitimate business reason for turning down a request in accordance with the statutory procedure, a refusal to allow flexible working arrangements may be challenged by the employee on the grounds that it is discriminatory.

It has been established by the courts that to require a female employee to work full time can amount to indirect sex discrimination, if the employer cannot "objectively justify" its reasons for doing so. This is on the basis that statistically, a greater proportion of women than men have primary childcare responsibilities and therefore a requirement to work full time has a disproportionate impact on them.

Similarly, if female employees are permitted to return to work part time after a period of maternity leave, it may be discriminatory if a man's request for flexible working is refused.

A discrimination claim is potentially more costly than a claim brought under the flexible working legislation and it means that employers should



be very cautious before refusing such a request and must give it full consideration.

For further information on flexible working or any other employment-related matter, please contact a member of Steeles Law's employment team on 01603 598000 or employment@steeleslaw.co.uk.

It's all Academic

What an academy school means for your child's education

Academy schools are becoming more and more prevalent throughout the country. Nationally, a large number of schools of all kinds have already converted to academy status and many others have registered their interest in doing so. It seems likely that many more will convert in due course.

A school that has converted into an Academy is essentially a state-funded school but one that receives its funding centrally rather than locally. It may enjoy various freedoms. In general, these may include the ability to employ its staff on its own terms and conditions and rates of pay, some freedom around the delivery of the curriculum, the ability to purchase goods and services it requires from wherever it considers it will get the best deal, amongst others.

If your child's school is considering conversion, it will have to consult with parents and others. This may be through meetings, online information, letters home or otherwise. During this process parents generally have the opportunity to ask questions and express their views.

Whether you agree with academies philosophically or not, under the present government for the foreseeable future they will continue to proliferate. If you have children at school there is a reasonable chance that at some stage they will find themselves in an academy.

The process of converting a school to academy status is complex. Steeles Law has been instructed on a number of conversions for schools of varying sizes and types.

Richard Bailey, a Partner in the Company Commercial team has considerable academy conversion experience.

For more information about schools converting to become academies, the following website may be of interest: www.education.gov.uk/schools/leadership/typesofschools/academies

Post Code Lottery

Getting your choice of school

The new school year is now well underway. For many however, the onerous task of prospecting for that most precious gem – a high performing school – has just got underway. With all the current proposed overhauls of the secondary education system being instigated by the Government, the desire to seek out spots in consistently high-performing schools across the board is understandably growing.

Often, the biggest hurdle to clear in achieving this is living in the “catchment area” of their chosen educational establishment. The mythical boundary line that has the power to decide your fate. In the absence of a sibling already present at the school, or the school in question being a particular faith school, a phrase that all humanities teachers would love to hear - geography becomes king. This of course is less to do with classifying igneous rocks and meandering ox-bow lakes, that the archetypal year 8 geography lesson consisted of for most of us and instead is about how close you live to your school of choice. Moving house is a drastic step to take for such a situation but as statistics show, one that is often taken. New research conducted by Lloyds TSB demonstrates that house prices in the postal districts of the top 30 state schools in England were on average £33,631 (12%) higher than other properties in similar locations. This is almost three times the average annual private school fee of £11,422. Overall, the typical price of a home in the postal districts of England’s best state schools is £303,902. This is almost a third higher than the average house price across England of £236,321.

It is clearly an expensive risk and one that families will have to consider long and hard against the benefits of the school in question. However, this risk also carries with it other long term benefits, in addition to the hope of watching your young offspring’s burgeoning academic career – it provides the perfect set of stabilisers in this tumultuous rollercoaster that is the UK property market in the current economic climate. New research by Strutt & Parker demonstrates that houses within the catchment area of those higher ranking schools defy the trends and maintain, if not add, value. Due to the demand for school places, there is also less of a risk of a long, tortuous wait for a buyer that so often hangs like Coleridge’s metaphorical albatross around the necks of families longing to move home. Such is the clamour to gain the school places, that the properties are snapped up in a flash.

So whilst it may seem like a high price to pay for what is supposedly a free education, if financial stability is what you are seeking, it appears that the initial outlay may be a small price to pay for the strong investment, both in your property and your children.

Equal Parenting

Shared residence and care of children

Agreeing the division of care of children between separated parents is a common problem.

Currently, separated parents are encouraged to make their own arrangements regarding their children’s care. However, where an agreement cannot be reached, either parent may make an application to the Court for a Contact or Residence Order under the Children Act 1989.

A Contact Order deals with the frequency of contact between the child and the non-resident parent, whereas a Residence Order addresses with whom the child will live.

Sometimes there can be a Shared Residence Order, which means that the child has two homes - one with each parent. The Courts are growing more willing to make shared residence orders but only in appropriate cases where both parents can make the arrangement workable.

A shared residence order does not mean that the child will live one week with one parent and the next week with the other parent or 3.5 days each week with each parent. The time the child spends with each parent can still vary. For example in a 14 day cycle, 5 of 14 nights could be spent with the father and the remaining time with the mother, or of course the other way round. This will very much depend on the circumstances including work patterns and location of the parents’ homes and the child’s school.

In order for a shared residence order to work it is essential that both parents want the arrangement to be a success. There are lots of considerations to be taken into account, such as who will take the children to and from school, who will wash the school uniforms and sports kits, who will help with homework and also the handover of such things.

Under the current law, unequal time can determine child maintenance payments through the Child Support Agency however,



this is likely to change after the government’s recent announcement of proposed child maintenance reform.

The current system of dealing with Contact and Residence orders is also under review as in July (2012), the government issued a consultation paper on its proposed changes to the Children Act 1989 and it has been recommended that there is a move away from loaded terms such as “residence” and “contact” in favour of “child arrangements” orders.

It is hoped that this will encourage parents to concentrate on the best arrangements for their children, rather than simply who has a residence order and who gets contact with their children.

The government wishes to introduce statutory encouragement for “shared parenting” arrangements to ensure that “parents who are able and willing to play a

positive role in their child’s care...have the opportunity to do so.”

The government has been at pains to stress that in its view “shared parenting” should not be taken to imply an equal or near equal division of time and that it is simply trying to promote meaningful relationships with both parents wherever practical.

Further details are awaited and will follow on our website at www.steeleslaw.co.uk

If you require any assistance with matters concerning children, separation, divorce or any other family related matter, please contact Steeles Law’s friendly family team, who will be pleased to assist.

Trusts and School Fees

Can I afford to send my children to private school?



The Independent Schools Council provides information on average school fees. They show that if you choose to educate your child privately the costs from the age of 5 to 18 could be as much as £110,000 per child.

This figure does not cover boarding fees, which are considerably more expensive and of course prices rise annually. For many families this cost is prohibitive.

If your family has a good income, costs could be paid out of this. Maybe you have close relatives who might want to contribute to the cost of fees. Perhaps you are grandparents wanting to provide for your grandchildren's education.

If you are, you might not want to hand over money to children in the hope that it will go to pay for school fees or benefit grandchildren.

Many people are not aware that an individual is able to give money away to be held by someone else for the benefit of others. The money is held in "trust". Trusts date back to medieval times and allowed real estate and other assets to be owned by a third person who had legal but not absolute right to the assets, thus allowing the person on whose behalf the asset was owned (the beneficial owner) rights over the asset so held.

The idea of trusts grew from this. Anyone can create a trust in their lifetime or by Will after they die. They can be useful vehicles for those wishing to help pay for school fees but without making an outright gift to parents or children.

The simplest type of trust is a bare trust or simple trust. Someone who sets up a bare trust can be certain that the assets (such as money, land or buildings) they set aside will go directly to the beneficiaries they intend. These assets are known as "trust property". Once the trust has been set up, the beneficiaries cannot be changed.

The assets are held in the name of a trustee - the person managing and making decisions about the trust. However, the trustee has no discretion over what income or capital to pass on to the beneficiary or beneficiaries.

Bare trusts are commonly used to transfer assets to minors. Trustees hold the assets on trust until the beneficiary is 18 in England and Wales or 16 in Scotland. At this point, beneficiaries can demand that the trustees transfer the trust fund to them.

If you are the parent of a school age child or children, the quality of the education that child or children receives will be very important to you. You might have considered moving into the catchment area of a good state school or perhaps there is a good local authority school in your reach.

If this is not the case, the alternative is to either support your child's learning yourself whilst they go through the local school or to pay for your child to receive private schooling.

The latter option is obviously going to be a huge drain on the purses of many families, especially if there is more than one child to educate.

The trustees can use assets, if cash, to pay for school fees. After the age of 18, the beneficiaries can use the money to pay their own school or university fees.

There are more complicated discretionary trusts. In a discretionary trust, the trustees are the legal owners of any assets - such as money, land or buildings - held in the trust.

These assets are known as "trust property". The trustees are responsible for running the trust for the benefit of the beneficiaries.

The trustees have "discretion" about whether, when, and how to use the trust's income. They may also have discretion about how to distribute the trust's capital.

Trustees may be able to decide:

- how much income and or capital is paid out, if any
- which beneficiary to make payments to

- how often the payments are made
- what, if any, conditions to impose on the recipients

Discretionary trusts are sometimes set up to put capital aside for:

- a future need that may not be known yet, for example a grandchild that may require more financial assistance than other beneficiaries at some point in their life
- beneficiaries who are perhaps not capable or responsible enough to deal with money by themselves

There may be tax (inheritance, capital gains tax and income tax) implications of setting up any trusts and these can be talked through with us to assess how effective trusts could be for your situation.

Here in the wills, tax and probate team at Steeles Law we can give you advice on trusts or Wills generally to suit your needs. Please contact us to arrange an appointment.



Myths and Facts for Schools

Myth: Teachers must not have physical contact with pupils.

Fact: Schools should not have a “no touch/contact” Policy. It is often necessary for a teacher to have physical contact with a child (e.g. when dealing with accidents or teaching musical instruments). In addition, teachers have a specific legal power to use reasonable force in order to prevent a pupil from committing an offence, causing personal injury or damage to the property of a person or prejudicing the maintenance of good order and discipline.

Myth: Changes to the National Curriculum are already coming into effect.

Fact: The new National Curriculum will be introduced from September 2014.

The Government has confirmed that the new National Curriculum will include English, mathematics, science and PE at all four key stages (i.e. from age 5 to 16). The review is considering which other subjects, if any, should be part of the new National Curriculum. Until the new National Curriculum is introduced, maintained schools are legally required to continue to follow the current National Curriculum.

Myth: The English Baccalaureate is a compulsory new qualification.

Fact: The English Baccalaureate (EBacc) is not a new qualification. It is an additional measure of school performance, which recognises attainment in a key set of academic subjects. The EBacc is not compulsory and schools remain free to offer the range of qualifications that are right for their pupils.

Myth: The Government is going to ban the practice of entering pupils early for GCSE examinations.

Fact: There are no plans to ban this option, as the Government recognises that teachers are best placed to decide when to enter pupils for examinations. However, teachers should be sure that early completion of GCSEs is right for individual pupils and may find the DfE’s research on this helpful. Please visit the DfE’s website at www.education.gov.uk for some frequently asked questions on the changes to GCSEs from 2012.

Myth: A written lesson plan must be produced for every lesson.

Fact: There is no statutory obligation to produce a written lesson plan for every lesson. Good planning is, of course, very important, but both the DfE and Ofsted are clear that lessons should not be planned in an overcomplicated or formulaic way. Where the quality of teaching is weak, it is important that schools can provide evidence to show that proper planning to address this is in place.

Myth: Academy status is just for secondary schools.

Fact: Academy status is for all schools. To aid primary schools that are interested in becoming Academies, the DfE is developing information for its website to help with the practicalities and looking at changes that would make conversion easier.

Source: Department for Education
For further guidance see www.education.gov.uk

For help and guidance on any of the topics covered in this edition of *Your Life*, please do not hesitate to contact our friendly legal teams.

We look forward to hearing from you.

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