

# Your Life

**Volume 10** Edition 2  
The truth behind myths



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# Consumer Rights

## We right some of the wrongs

As the Christmas period draws closer and we start purchasing gifts for friends and loved ones, Ian Robotham, an Associate in our Dispute Resolution Team, looks at consumer rights to correct some of the more common wrongly-held beliefs of the average consumer.

### ***"I cannot return sale items"***

Where an item is not of satisfactory quality (i.e. has a defect), is not fit for purpose, or is not as described, it is deemed as faulty and you will usually be entitled to a repair, replacement or refund. This applies to most (but not all) items you buy in a shop, including items purchased on sale.

### ***"I can always return faulty goods"***

Whilst you do have a legal right to return goods that you discover are faulty, you cannot return faulty items if the fault is made known to you by the trader at the time you buy the item. However, you can return the faulty item if you subsequently discover a different fault to that previously identified to you.

### ***"I can always return an item to a shop if I change my mind"***

If the item has been purchased in a shop and is not faulty, I'm afraid you have no legal right to return it. However, often a shop will agree to exchange or refund a non-faulty item upon proof of purchase. You should always check a trader's returns policy to check if an item can be returned if you change your mind.

### ***"I need a receipt to return items to a shop"***

It is likely that you will need to provide

proof of purchase to return an item. However, whilst a receipt is definitely the preferred (and recommended) way in which to do this, it is not the only way. The trader's packaging, a bank statement confirming the purchase or even witness testimony have been known to be sufficient as proof of purchase. Again, always check the trader's returns policy.

### ***"I can always return an item I purchased online if I change my mind within seven days"***

As a general rule, items purchased 'at a distance' (i.e. purchased over the telephone, by mail order or via online shopping) can be returned within seven days if you change your mind about the purchase. This is known as a 'cooling off' period which entitles you to cancel your order. However, there are some items which cannot be returned, even within the seven day cooling off period, these include perishable goods (i.e. food or flowers), newspapers/magazines, personalised or made to order goods and CD's, DVD's or computer software where a security seal has been broken. A seven day 'cooling off' period is also applicable for items purchased on your doorstep from a salesman if the value of the items exceeds £35 although, again, there are some exceptions to this.

Ian Robotham comments:-

"Your specific consumer rights vary depending on the type of goods purchased, the nature of the sale and specifics of the particular issue that has arisen. In light of this, it is important that you do not delay in dealing with any issue. When buying from a shop, always familiarise yourself with the returns policy and retain your receipt to evidence proof of



purchase. Where you have purchased 'at a distance' and change your mind, be sure that you can cancel the items you have purchased and promptly confirm the cancellation in writing.

**If you would like any further advice as to your legal rights, please feel free to contact Ian Robotham in our Dispute Resolution Team.**

# Common Law Spouse: Fact or Fiction?

Increasingly more couples are living together without formalising their relationship. Emma Alfieri, Legal Executive in our Family Law Team comments "many people do not realise that there is no such thing as 'common law marriage' in England and Wales. As such, there is no protection for a (financially) vulnerable party".

When it comes to divorce or dissolution the law is very clear, however this is not the case when cohabiting couples' relationships breakdown. In our Family Law Team we are seeing an increase in the number of cohabiting clients who find themselves surprised by their own situation.

Problems arise where one party moves in to the other party's solely owned home and they separate some time later. If the ownership was not updated, then the non-owning party is not entitled to a share of the house. Difficulties also arise if the non-owning party has contributed towards the property, for example by paying for an extension or other home improvements. A claim may be able to be made under trust law however this can be complex.

When couples purchase a property in their joint names, they should decide how they would like to own that property and if, for example, one party contributes more to the purchase price than the other party then this can and should be recorded.

Couples can and should consider having a cohabitation agreement drawn up to confirm the parties intentions at the outset.

Another interesting point which follows this myth, is that many cohabiting couples think that they are automatically entitled to their partner's estate should they die without leaving a Will. This is not the case. Furthermore many couples think that if children are involved, that they have the same rights as if they were married. This is also not the case. If children are involved then an application can be made under Schedule 1 of the Children Act 1989 for financial provision.

The Law Commission recently published a report containing a recommendation to change the law in respect of cohabiting couples. However, in September 2011 the coalition Government announced that they had considered the report and confirmed that they do not intend to take forward the recommendations for reform in this parliamentary term.

**If you would like further advice in respect of cohabitation, please feel free to contact either Emma Alfieri or Amanda Owens in our Family Law Team.**

# “I Don’t Need A Will, My Spouse Will Get It All – Won’t They?”

Not necessarily. Contrary to popular belief, the spouse of a deceased person does not automatically inherit all of their spouse’s money and property.

In fact, if you have children, your spouse is only entitled to your personal items, a fixed cash sum of £250,000 and a life interest in half of the rest of your money and property, under the Intestacy Rules.

Although any jointly-owned savings and investments will also pass to your spouse automatically, your home will only pass to them if you hold it as joint tenants rather than as tenants in common. Most married couples do own their home as joint tenants - but it is never safe to assume this.

If your home is in your sole name, and is worth more than £250,000, your spouse will have to share ownership with your children – which could cause enormous problems if you have children from a previous relationship.

There have been tragic cases where widows have been forced to make a claim through the Courts against their own children, as the effect of the Intestacy Rules has left them without a home and sufficient income.

Even if you have no children, your spouse may still not ‘get it all’. If you have parents, brothers or sisters, nieces or nephews, your spouse will get a cash sum of £450,000, your personal items and half of the rest of your money and property outright, but your relatives will share the rest.

Having read this far, you might think you still do not need a Will as you own everything in joint names, or your money and property is not worth much – but you will need to consider what will happen in the future.

If you would like to make a Will or review your Will, please feel free to contact Karen Bacon in our Probate, Wills and Tax Team.

# “I Can Say What I Like Online it’s Nobody Else’s Business”

**Wrong!** - Social networking, which is a way of communicating with one another through websites such as Facebook, Twitter or an online blog, is a phenomenon which is here to stay - it is estimated that there are 25 billion pieces of content shared each month.

In recent months the use of such networking sites has hit the headlines. During the riots in August, Jordan Blackshaw used Facebook to urge his friends to prepare for a “smash down” the following day. Meanwhile, Perry Sutcliffe-Keenan used Facebook to arrange an event that he called “the Warrington Riots”, 47 people agreed to attend.

Neither of these individuals participated in any rioting, and in fact no rioting occurred as a result of their Facebook activities (in part because the police had been alerted beforehand). Despite this, Blackshaw and Sutcliffe-Keenan were each sentenced to four years’ imprisonment for inciting riots. Their appeals against these sentences have been denied.

This example illustrates that posting on Facebook (and other social networking sites) can have real and serious repercussions.

Last year Lord Judge warned us that “if it is not addressed, the misuse of the internet represents a threat to the jury system which depends, and rightly depends, on evidence provided in court which the defendant can hear and if necessary challenge.”

There has been a case where a juror used their mobile phone to post messages about how many of the jury thought the defendant was guilty. This culminated in them asking “Did he do it?” The Crown Court was alerted to this by someone who read the message. Judge Roger Dutton told the culprit they had defied “solemn directions” and the case ended without a conviction following a hung jury. However, the judge said that if the defendant had been convicted, their gossiping could have been grounds for a retrial and their possible imprisonment for contempt of court.

In June, Joanne Fraill used Facebook to communicate with one of the defendants in a 6 million pound drugs trial and was jailed for 8 months for exactly that - contempt of court.

An insurance company used Facebook to uncover that



17 people in a bus accident were exaggerating their injuries to claim more money from the insurance company.

Sending or posting an abusive message is an offence under section 1 of the Malicious Communications Act 1988 if it is indecent, grossly offensive, contains a threat or which is known or believed to be false if its purpose was to cause distress and anxiety.

It’s not just criminal proceedings but civil proceedings too.

Contrary to popular belief, even an employee can be disciplined, or even dismissed, for what they say on social networking sites such as Facebook and Twitter. There was a recent case where a pub manager in Liverpool was subjected to verbal abuse and physical threats from a customer in May 2010. Whilst the manager dealt with the situation professionally at the time, they later criticised the abusive customer by name on Facebook. The pub

manager’s comments were seen by the daughter of the abusive customer, who complained to the employer.

The manager did not mention their employer or the pub itself in the Facebook comments, but they were fairly dismissed for gross misconduct because their comments had damaged their employer’s reputation and had breached the employer’s email and internet policy.

The moral of this story is that whilst social networking is a great way of keeping in touch with friends and relatives, it could get you into trouble. People should remember that posting comments on social networking sites are in the public domain.

**If you have any questions relating to this subject, please feel free to contact one of our practitioners in either our Dispute Resolution or Employment Team.**

“I Don't Need a Power of Attorney, I've Still Got All My Marbles! I'll worry about it if it ever happens!”



**You wouldn't say the same thing about taking out car insurance and having a car accident so why say it about making a Power of Attorney.**

“Making a Power of Attorney is something I recommend to all my clients simply because neither they nor I can predict the future and know whether they will need Power of Attorney” says Lindsey Sharples an Associate in our Probate, Wills and Tax Team. “At the age of 29 I have one for that very reason. Also losing mental capacity can be something that happens very quickly – it is not always as a result of suffering from a degenerative illness and I want to make things as easy as possible for my family, if the worst does happen.”

A Lasting Power of Attorney allows you to appoint people you trust to manage your property and financial affairs and/or health and welfare decisions in the event that you cannot deal with these things yourself because you have lost the

capacity to do so.

To delay making a Lasting Power of Attorney until such time as you think you might need it can be a risky business. This is because to make a Lasting Power of Attorney you will need an independent third person (usually a professional person such as a solicitor or a doctor) to confirm that, in their opinion, you understand what you are signing and have the mental capacity to make the document. If you leave it too late your family members may have to resort to making an application to the Court of Protection for a Deputy to be appointed to deal with your affairs – a time consuming, stressful and very costly procedure which is best avoided if at all possible.

**For further information on making Lasting Powers of Attorney, please feel free to contact Lindsey Sharples in our Probate, Wills and Tax Team.**

## To Share or Not To Share

When two or more people purchase a property in their joint names, they need to make a decision regarding how they would like to hold the property, as essentially this determines how the home is dealt with following an owner's death. It is not always the case that the property will pass to the survivor.

There are two ways in which you can hold a property:-

### Joint Tenants

It is common for spouses to hold their property as Beneficial Joint Tenants. Where this is the case, on the death of one owner, the property will automatically pass to the survivor.

This is a simple and straightforward way of holding property. However should there be other considerations such as children from a previous marriage, or unequal contributions to the purchase price then Tenants in Common may be a more sensible way of holding the property.

### Tenants in Common

Each property owner will own a specified equal or unequal share in the property and when one owner dies, their share in the property will pass according to their Will or intestacy. This is useful for tax and estate planning reasons and where you wish to have more control over how your property is dealt with following your death.

This is particularly important, for instance, where an owner has been

married before with children and they may wish their interest to pass to their children rather than the surviving spouse. The shares and how the property is to be dealt with should be documented in a Trust Deed and a Will should be made.

It is important to note that rules regarding property ownership vary for couples who are unmarried.

Where a couple are unmarried, the property will automatically pass to the survivor if they own it as Joint Tenants. It is therefore essential for cohabitants to draw up a Will and Trust Deed to specify their shares in the property and how they would like this dealt with on their death.

**For further information about this matter, please feel free to contact Melissa Richards in our Real Estate Team.**



# “I Need a Written Employment Contract Before I Start Work”

It is widely believed that the only type of legally binding employment contract is one which is written.

However, this is not the case. Employment contracts can be created or amended by:

1. Oral agreement.  
For example, if you are promised by your employer that you would only have to work in southern England, then only working in southern England would become an oral term of the contract.
2. Conduct.  
For example, if you fulfilled your duties and are subsequently paid on a regular basis, this may create a legally binding employment contract despite there being nothing in written form.
3. Custom or practice.  
However for this to apply, the custom or practice must be reasonable, well known in the company, commonplace in the industry and must have been treated consistently as a contractual term in the past.

Even if a contract is created orally, by conduct or by custom or practice, an employer is still required to give a written statement setting out the basic terms and conditions within the first two months of your employment. This written statement should include terms such as the date the employment began, the required working hours, together with the amount and frequency of pay.

**If you have not been given a contract or terms and you would like more advice, please feel free to contact Sam Greenhalgh in our Employment Team.**

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## Bite Size News

**What is the most dangerous place to work?**

**Answer:** on a farm.

According to the Health and Safety Executive you have more chance of being involved in an accident on a farm than in the building trade or in a factory. They go on to say: “on average, between 40 and 50 workers are killed on British farms every year. That’s nearly one person per week”.

### Celebrations all-round

Lately there has been very little to celebrate, but this is not the case here at Steeles Law. We have recently expanded our Private Client Group.

We welcome Sally Yaxley, a Legal Executive to our Conveyancing Team. She has over seven years experience of residential conveyancing.

Lisa Glynne has joined our Probate, Wills and Tax Team as a Paralegal. Lisa has over 25 years experience working within the legal sector.

We congratulate Katy Kidd (née Levy) who has been made a Partner in our Disputes Team. Karen Bacon, who has been promoted to Legal Director within our Probate, Wills and Tax Team. Amanda Owens, Head of the Family Team, who has been promoted to an Associate, along with Ian Robotham in our Disputes Team.

Further celebrations see Angela Ireland, who works in our Probate, Wills and Tax Team, appointed as a member of the national association ‘Solicitors for the Elderly’, whilst Emma Alfieri, from our Family Team, qualifies as a Fellow of the Institute of Legal Executives.

Finally we would like to welcome back Melissa Richards from maternity leave to our Real Estate Team.


 **Steeles Law**  
Solicitors



**INVESTORS  
IN PEOPLE**



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