

Sample Q&A

Question 1:

We're a web design company. Last year we wrote a website for someone which included designing a logo and a brand. The website was launched, and he subsequently decided he didn't want the site and didn't like it so refused to pay. He then got someone else to write the site, but they used the logos and design that we created. We've recently won a court case against him to pay us for the work we did and we're currently waiting for payment from him. He has until the 10th Feb to pay otherwise it will go to a judgement.

Our question is, we want to send a cease and desist notice to the web designer who wrote his new site that uses our designs for him to remove the site until such time as the monies have been paid and ownership of those designs transfer to him. Are there any legal considerations we need to take into account for this? Are there solicitors who would do this for a sensible fee, or is there particular wording we should use to cover ourselves? Are we even legally able to ask for this to happen.

Our answer:

This question concerns ownership of the logo and design prepared by your company and which has been used by another designer. We do not have a copy of the terms and conditions of the contract with this customer but would expect it to contain a term, implied or otherwise, that intellectual property rights do not pass until payment has been made. Providing this is the case and if the customer makes the payment now ordered by the court it would seem that on payment they obtain rights over the logo and design. They may then, but not before, use it on their new design and pass it to the new designer for incorporation into the site he prepares.

You are quite correct therefore in that use of their design is not permissible until payment has been made. The unlawful use can be prevented by order of the court or compensated by an award of damages. On general principles a court will only make what would be a prohibitive injunction where the unlawful act is incapable of being dealt with by an award of damages and where harm is shown as being suffered by the applicant.

It seems that neither of these criteria are satisfied here. I do not believe therefore that this is a case where an order preventing use of the design would succeed especially in a situation where

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payment is expected and capable of being enforced. A cease and desist notice would therefore not be enforceable.

Although I cannot recommend attempts to prevent the use of the design at this time there can be little doubt that you are entitled to payment for its use. You own the design and logo and it has been used to commercial advantage by other designers without your permission. I have no doubt that the use was innocent by the other designers who were led to believe that it was owned by their customer. As this was not the case they will be liable for a charge for its use but can doubtless pass this on to their customer.

I have absolutely no idea of what a proper charge for the use of the design over the period would be. Probably this can only be subject to negotiation. My advice here however can only be for you to send a bill to these other web designers with a continuing weekly charge until payment for the design is made. If not paid you may enforce payment through the courts.

Question 2:

I split with my ex in 2016, we had a son who is now 9. My ex took me to court for contact which was then to be reviewed. He didn't turn up to the second hearing but was granted a reasonable contact order. From that day he didn't have our son overnight and only saw him when he could be bothered. Due to being messed around I requested one weeks' notice to see him.

I had another son to consider and i was pregnant too. He said he would not do that so i told him not to bother coming then so he didn't. That was the 1st March 2017. Since then, 18months ago, he went to my son's school to demand to see him then came knocking on my door later and scared our son. I told him to leave unless he could be civil. He wouldn't leave so police were called.

Thing is he has now put into court for a child arrangement order stating i moved without telling him which i did not. Court date is July 30th and i am terrified they will just let him straight back into my son's life. I would be happy with a contact centre initially until my son is happy. He isn't a nice man, we split due to violence but if my son wants a relationship then he should be allowed. My son also has adhd and Tourette and suffers with extreme anxiety. if i leave him to go out he is hysterical. I really don't want after 4yrs for his dad to cause upset and ending with my son suffering.

*Is the court likely to grant instant access where his dad just takes him?
Should I prepare a statement from his psychologist to say it needs to be slowly and gradual?
Help. Thank you.*

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Our Answer:

I am asked to advise you as the primary carer of your 9 year old son where contact with his father has been far from happy. Such contact as there has been shows a lack of commitment by the father to an extent of showing that he will place his own interests over those of the child. The consequence is an absence of bonding to the extent of the child being scared of his father having witnessed at least one unpleasant incident. Concerns as to this are heightened by reason of the child's health issues.

I think it will not be necessary for me to tell you that the paramount concern of a court in Children Act application such as here is the child's welfare. Welfare both long and short term. The conflict here may be between the two. Long term a relationship or at least knowledge of the father will be in the child's best interest especially if with age the father becomes a more responsible person and intent on forging a relationship with his son. This has to be set against the possible present disruption and upset that will be caused.

If this father applies to enforce contact it is most unlikely to be refused out of hand. The court is likely to give him the opportunity to prove his commitment and to demonstrate that coming back into his son's life will be to the boy's advantage. What will not happen however is what you fear most of instant access and him being able to just call and take your son. The reintroduction of contact will have to be gradual and carefully managed. I would expect this to involve CAFCASS and for the judge to order a CAFCASS officer to monitor the initial contact sessions and report back to the court. In all probability contact will be ordered to take place at a contact centre for a number of sessions before the matter is returned to court for a further hearing.

I am presuming that the father has made an application on the existing contact order which will explain the delay in fixing a hearing date. Even though the April hearing will not strictly be a conciliation appointment it is probable that mediation will be encouraged. With this father's history of not maintaining the contact he was offered and the totally unconscionable matter of attendance at the boy's school he will not be seen in a good light. You must be seen as the opposite and show yourself as being the responsible and caring parent by accepting that notwithstanding this man's failings he is her son's natural father and as such a person who her son is entitled to know. You should not object to the principal of contact. There is little or no prospect of an outright denial of contact so you should consider carefully the safeguards which can be put in place to protect your son and subject to these agree to a number of supervised contact visits.

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Finally, you ask whether you should obtain a report from a psychologist. This will not be possible at this time and medical evidence will only be admissible with the leave and if ordered by the court.

Question 3:

I am wondering if you could advise me on my legal rights in joint ownership of a property with my former partner - the case is as follows:

I bought a property in 2003 with my then partner although I paid all the legal and conveyancing fees. We also got a homebuy loan due to my job as a keyworker towards a deposit (£26,000). We lived in the flat for a year, during which time we both paid half of the mortgage. We then decided to rent the flat out for a year, during which time we separated.

In 2005, we decided that I would return to live in the flat as it has been mainly through my effort and means that we bought the flat. Our verbal agreement was that I would eventually pay him 'whatever is fair' when I am able to take a mortgage in my name, considering our contributions. However, when I moved back, my former partner said that he had lost his job and accommodation after our separation and that he didn't have anywhere to go. He asked if I could let him stay for a couple of months until he resolves his difficulties, to which I agreed as I didn't want him to suffer destitution.

When he moved in, he said he would 'sign over the flat' to me if I let him stay. He also said that he would pay me £500 a month but he said this could be seen as rent. This amount wasn't enough to pay for the mortgage and service charges so I ended up paying more than he did towards repayment of the mortgage. He finally moved out about seven months later, although he only said he would need to stay for 2/3 months.

When he left, he didn't leave any contact details so I have not been in touch with him since 2007, except once when I was trying to get a mortgage but was unsuccessful. I continued to pay the mortgage and service charges, which amounted to roughly £116,000 whilst his contribution was about £9000.

As the running costs were getting to high for me, I decided to sell the flat early this year. As his name was on the title deeds, I managed to contact him through his mother as I needed him to sign the papers. He agreed to do this and didn't mention what his expectations were. The flat is now under offer with about £87,000 equity. I proposed to give him £3500 according to our understanding that any payment of share of equity would be based on a fair share according to our contributions. I based this calculation on the percentage of our contributions and what we would each get back as a result.

He refused this offer and is insisting that we have an equal share of the equity regardless of the payments we each made. He is not referring or acknowledging our understanding at the time. I'd like to add that I never put anything in writings because I thought it would be too

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opportunistic from me to insist on him giving up his rights at a time which was very traumatic for him.

I tried to get a mortgage on two occasions but this was refused by the lenders. I had some financial difficulties in maintaining the payment, which resulted in defaults being registered against me.

However, I recently found out that my ex-partner had been maintaining fraudulent applications from 2005 - 2008, which implicated me and my credit scoring. He had made a number of loan applications and even a mortgage, which are showing as 'joint applications' on my credit report although I wasn't aware of these.

Furthermore, he could see that he used different versions of his name and birthday to make these applications. I am not aware if any of these were approved or not as I have had no contact with him.

Although I am aware we are equal owners under the current law, can you advise me if I could be entitled to more of the share of the equity considering the amounts we each contributed towards repayment of the mortgage? I am thinking of taking the case to court but I am not sure I have any chance to dispute his claim to half of the equity under the circumstances I explained above.

I understand this may cost a lot of money but I am prepared to take a chance as I feel it is really wrong for him to get such big returns while I am making a huge loss. Any advice or signposting you can provide would be much appreciated.

Our answer:

I was offered a job to start on the 20th May. The start date was postponed and still not been decided. They keep in touch with me but having given notice on my old job, I am not earning and in real danger of losing my home and I have 2 children. I keep being told that the board need to approve the car but the meeting they have every Monday never has a result. My suspicion is that the job hasn't had authority although it went through an agency. I can't claim unemployment as I gave notice on my old job and I'm not working the hours required for family credit. I have never been out of work and am at my wits end as to how the life I have built is to be destroyed through someone's lack of professionalism.

The facts as I am instructed are simple. You were offered a contract of employment which has not been forthcoming and as a result you find yourself in severe financial need. I have little supporting evidence, but the law is quite clear.

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A contract of employment is no different from any other kind of contract. Its formation requires the well-known elements of *offer*, *acceptance* and *consideration*. There seems to be no argument here other than that you were offered employment which was accepted. Consideration was provided by you giving up your previous employment. A legally binding contract was therefore formed. If as it would seem the contract has been breached by the employer you are entitled to damages equal to what she would have earned if work had been made available and the contract not breached.

My only difficulty in advising as above relates to any conditions or terms of the offer. Did it incorporate a start date? Was it conditional on any approvals or references? Was it in writing or verbal?

Subject to this I do however feel optimistic and am likely to advise that a letter of claim be sent to the employer. It is essential that you mitigate your loss by endeavouring to establish the position so that if no employment is available you may then look elsewhere. Your claim would then include all financial loss until other employment is obtained.

Question 4:

I would be grateful if you could tell me my legal position as regards the family home. My father died in 2012 and my mother in 2014 and both of their wills were made by a will making firm which has since been taken over by a group of solicitors. Unfortunately, the will of my father was not administered properly because both wills were made that their estate would be made into a trust but as this was not necessary after my father died my mother signed a form leaving the estate to her. We have been told that this was done before the three years was up and therefore is invalid and we have to pay inheritance tax. All the paperwork from my father's will has been lost or destroyed which includes the deeds of our house.

My question is that I have lived in the house since my father bought it in October 1968. We have all the paperwork for the sale and obtaining a mortgage but as the house has not changed hands it was not registered with the land registry until now and that is only a possessory one as the new solicitors will not admit they have lost them even though we have a signed copy to say the deeds were taken. There are four of us in the family and probate was given for my mother in November 2014 and I am being pressured by my family that the house must be sold. Do we all have to sign any documents before an estate agent can put the house up for sale, would it be legal for them to put it on the market just on one person's authority. I do not have another house to live in and the whole trauma has left me very depressed/suicidal, I was retired on health grounds which is why I have always lived in this house. Do my sisters have any rights to sell the house without my permission my parents wills left the estate to all of us.

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Our answer:

I am asked to advise on matters relating to the administration of your late parents' estates. Although I have some difficulty in fully understanding the situation it is clear that what should have been a perfectly straightforward winding up of your mother and father's estates and transfer of the house to those entitled this did not run smoothly. There are strong suggestions of negligence by the solicitors involved which may well be actionable and on which further advice should be taken. I shall here however just deal with the immediate problem which are causing you such distress.

Notwithstanding the uncertainty concerning the wills there can be little doubt that on the death of your mother the house passed to you and your sisters in equal shares. It may matter little whether or not the will was valid as this disposition of the estate would most probably also take place under the intestacy provisions. The legal position would therefore appear to be that the house is owned by you and your three sisters. I understand that one or more of these sisters now wish for the house to be sold.

As a joint owner and indeed occupant of the house it cannot be sold without your agreement. You asks whether all must agree before instructing sale agents and although not legally necessary this indeed would be the case. An agent is unlikely to accept instructions involving the expense of finding a purchaser if a sale cannot proceed by reason of lack of agreement between the owners.

A sale cannot proceed without your agreement, but the law does entitle your sisters to take their inheritance and to do so is likely to necessitate the property to be sold. Unfortunately, therefore it will be open to the sisters to apply to the court under the Trusts of Land and Appointment of Trustees Act for an order that the house be sold. On such an application the court will consider the wishes of the majority owners. If the majority wish for a sale that will be ordered. The court will however have power to postpone a sale and in considering this will take note of the length of time which Carol has lived in the property and her housing needs. I would expect an order for sale to be made but that it would be postponed for a reasonable period to enable you to find alternative accommodation.

A further reason for postponing a sale might be the difficulties over the title of the property. A property with possessory title is not worth as much as one with title absolute. This difficulty needs to be resolved and further consideration given to the failings which appear to lie at the door of the solicitors instructed by the family.

I do not think that there is anything else I can usefully add on the present information before me. There are however clearly other unresolved issues which need attention and if I can assist with these you should let me know.

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Question 5:

I am fairly sure that i am about to be dismissed from my job for using a power tool that it would appear, I was not allowed to use, there wasn't any information on the board were the tool was kept explaining that only certain personnel could use it, but to be honest, nobody had told me I could use it, I just assumed it was ok to. Up to now nothing has been said to me about the incident (now 4 days ago) this only leads me to think that I'm going to be given an instant dismissal without a disciplinary hearing. If this is the case, I'm resigned to the fact there's not a lot I can do about it. I realise I've messed up bad.

However, the point i need advice on is this : My Manager saw me using the tool and said nothing (walked straight past me, then came back to see who it was using the tool), He made no attempt to stop me, ask me what i was doing and make me aware of my mistake, by doing this and bearing in mind he is responsible for my health and safety in the workplace, is He himself guilty of any offence.

In all honesty I don't know how I can prove he did this because I don't think there were any other witnesses and it would be his word against mine, unless of course He admits to seeing the incident taking place.

With regards to the tool I was using, I do have 20 years' experience of operating one in a former job.

Our answer:

I shall need further information as to the nature and length of your employment before advising conclusively but it would seem on the facts provided that any dismissal will be unfair.

It appears that use of a particular power tool was restricted to certain employees of whom you were not one. In all probability the reason was that special training was required. You had experience of this tool although whether this satisfied the training requirement within health and safety regulations I cannot say.

No clear restriction on the use of this tool was displayed where it was kept. You had not been specifically told that he could not use it and presumed that it was available for general use.

Circumstances justifying summary dismissal have been well-defined over the years by tribunal's hearing unfair dismissal claims. Summary dismissal is only justified for exceptional misconduct of a gross nature. The circumstances here cannot possibly fall into that category and there can be little doubt that were you to be dismissed without notice such would be both unlawful and unfair and leave the employer open to you making an unfair dismissal claim.

It seems quite clear that any dismissal, summary or otherwise would be unfair. I do not know whether you have the length of service (two years) to claim damages if you have been unfairly

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dismissed but the facts here do positively not justify a dismissal. Dismissal should be the last resort and only follow a full investigation by the employer. I would have some difficulty in accepting that anything above a reprimand was appropriate here and certainly any disciplinary action over this must be unfair.

You specifically asks whether your manager has committed any offence by not immediately stopping Gordon from using the tool. I cannot see that any actionable offence arises from this although it is most certainly evidence that the use of the tool was not considered a serious matter. I would urge you to emphasise this point should the need arise rather than alleging any wrongdoing by the manager. To suggest that the manager committed an offence is to accept that the use of the tool represented such danger as must be immediately prevented.

My hope is that your fears are without justification. Certainly, a dismissal without a full and thorough investigation and the opportunity to explain matters would be unfair under the Employment Acts.

Question 6:

After working for the same company for 22 years I was made redundant as the company was closing down, as a result I decided to start my own company, I want to use "formally of previous company" so people know who I am as the company I worked for has a good reputation for manufacturing timber buildings, my former boss has since decided not to close the whole company, just the manufacturing department, so he no longer manufactures sheds and Summerhouses, which is what I will be doing,

He has advertised the fact that he has closed the manufacturing side of the company. He has told me that if I mention in any advertising or on my website that I previously worked for him or even mention the company name of that he has closed the manufacturing department down he will take legal action against me. I don't understand why he is doing this as I won't be taking business away from him, as he no longer manufactures timber buildings, I just wanted to know if I can use "formally of" and what the implications, if any, would be. I would like to know where I stand on mentioning that I was made redundant as a result of my former employer closing the manufacturing department?

Our answer:

The indisputable facts here are that you were employed for many years by a company manufacturing timber buildings but were made redundant when your employer discontinued this part of their operation. With the skills and experience obtained over some 22 years you are now carrying on shed and summer house manufacture by way of your own company. In so

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doing you intend to advertise your experience and good reputation. This has resulted in a threat of legal action from his previous employer.

Although I have no instructions as to the content of your previous employment contract I will assume that it did not contain any covenants in restraint of trade. It would have been open to the company to insert a term into your employment that you were not to carry out manufacture of timber buildings on your own account for a set period at the end of your employment. There would be serious doubts as to whether a term in such wide terms would be enforceable in the circumstances which have arisen however if the company chose not to incorporate such there can certainly be no restriction now enforceable.

It will doubtless be the case that intellectual property rights attach to the timber buildings manufactured by your former employer. You may not sell the buildings your former employer manufactured under their name and not of their design. You are not doing so however but selling them under the name of your new company albeit with the rider that you as principal previously worked for what I am presuming to be a well-known and respected business. This is a simple statement of fact, true and cannot in any way be unlawful. It is well-established that there can be no property in experience gained by an employer in the course of his employment. The property in the experience and reputation gained by you in your former employment belongs to you and you may use it as you will.

Question 7:

I have just sold a house that I had with my ex-partner. I agreed to take only £25,000 from the equity of £250,000. Although I haven't lived in the house for over 2 years I still paid £900 each month in mortgage payments. I fell behind with a few payments & my ex is now reneging on the amount we agreed on. What exactly would I be entitled to? Could I claim half the equity even though he has now put it into a new house? And does my falling behind with mortgage repayments have any bearing on what I am entitled to.

There was also a charging order on the property in respect of a credit card bill outstanding. This was also paid out of the funds from sale.

I was told that as his new property has been bought with the proceeds of sale that as an agreement had not been achieved prior to this I would have a resulting trust in his new property. Is this correct?

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Our answer:

You say you have sold this jointly owned house and I am presuming and indeed hoping that the sale proceeds after repayment of the mortgage and costs of sale are held by those acting in the conveyance and not distributed in their entirety to the parties.

You ask what you are entitled to. Your entitlement will be as shown on the title and here it is assumed as an equal share. You also asks the relevance of mortgage payments and if there is any it is minimal save possibly as evidence of what was agreed between her and her former partner.

The starting point of equal shares can with residential property be varied but only in exceptional circumstances and where there is clear evidence, either written or implied by conduct, of other agreement. This is very fact specific and without very detailed information on what was said and done it is not possible to advise further. I have asked that a copy of a guide I have written on the law relevant to the issues here be sent to Karen and then suggest that when she has read this we have a telephone conference and I will be happy to advise further and consider with her what should be done.

Question 8:

I am currently in the decree nisi stages of divorce. I have one son who i pay maintenance for and am quite happy to pay for. I jointly own the family house with my ex I have agreed that she can stay there and i will continue to pay half the mortgage until my son is 18 then the house goes up for sale or she can buy me out prior to this if she can afford to.

I am currently living alone in rented accommodation after moving out of the family home due to a breakdown of our marriage which up to now has all been very amicable.

My ex has now moved her new boyfriend into the house who is paying her cash to cover food & accommodation.

In my view this changes things and i have a real problem with him living there while i pay half of the Mortgage, possibly for the next 6 yrs!

Can you advise me if there is anything i can do about this situation, it seems completely unfair that i continue to subsidise another man living in my house?

Our answer:

I am asked to advise Andy Davies in his matrimonial situation. Happily, matters have been fairly amicable, and Andy has been able to agree with his wife (W) what is often referred to as a 'Mesher Order'. This would in effect postpone Andy's entitlements to the matrimonial home until his son is of age or more usually completes full time education when the home will either be sold so that Andy may take his share or his wife acquire his share.

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Andy has in addition agreed to pay half of the mortgage until that time. Such is not usual and although quite possible would seem generous. I say this without any knowledge however of other family assets available or indeed the income and earning capacity of the parties. I shall accordingly proceed to advise on the presumption that there are no other assets of significant value other than the home and that both Andy and his wife are in employment with Andy the greater earner.

It is important that the agreement is made subject to an order of the court in order to be legally binding. This can well be by consent thereby incurring minimal cost. On making an order, even where agreed, the court must take account of what is fair and reasonable and also the factors in S25 Matrimonial Causes Act. The guidelines will be along each party suffering equally from the inevitable financial disadvantage resulting from the failure of the marriage.

There is a need for a roof to be provided over the head of the child and as W is agreed as the principle carer she must share it. Andy's housing needs must of necessity suffer as a consequence of the postponement of his entitlement to a share of the home. This position has however changed by the addition of a further source of income in the form of W's new partner and cohabitee. Any judge would find it quite unfair and refuse to make an order whereby Andy is obliged to either postpone his entitlement to the house or contribute towards maintaining it when another person is enjoying its occupation.

Andy must try and agree conditions to the proposed Mesher Order. A usual conditions would call for a sale and division of the sale proceeds following 6 months cohabitation. Should W be in a position to purchase Andy's share (with or without boyfriend) this would be substituted for a sale. An alternative, were Andy very properly to allow a further postponement in order not to disrupt his son's schooling and home life, would be that his obligation to contribute to the mortgage comes to an end after a period of cohabitation.

The agreement reached was generous. Not to include a provision for cohabitation over so. The situation has to be a return to the negotiating table in the absolute confidence that if necessary as a last resort no court is likely to order a postponement of Andy's entitlements with an obligation that he pay the mortgage during W's cohabitation.

If any points arise Andy should let me know. If assistance is required in preparing the essential consent order I am likewise available.

Question 9:

I separated from my ex-partner last Aug and moved out of the family home into rented accommodation and our 2 boys aged 5 & 8 live with me. My ex also moved out and refused to pay any of the mortgage and I couldn't afford to pay both the mortgage and my rent. I prepared

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the property to go on the market as there was approx £15K - £20K equity in it based on a sale price of £160K.

It was to be marketed at £170K. My ex refused to sign the paperwork and said he wanted the house to be repossessed. We have a repossession hearing on 11 Feb and I will attend. I would like to know whether I could ask the Judge to order a sale rather than it being repossessed? I have a lot of written evidence and it is obvious my ex is acting out of spite. If that's not possible, would it be worth me making an application for an order of sale now and then ask the Judge at the repossession hearing to adjourn it until I get an order of sale? There will be about £4500 - £5000 of arrears now and no arrangement is in place nor do I have the means of making a lump sum payment.

The solicitors acting for the lender suggested that I just hand the keys back ie voluntary possession however, my ex has to agree as well.

Our answer:

You ask whether a judge when considering whether to order possession might instead order that her former boyfriend and joint owner co-operate with a sale and order that the proper be sold by yourself. Unfortunately, this is not possible as a court dealing with an application by a mortgage lender for possession does not have power to hear issues between joint owners and disputes as to the exercise of their rights over the property. The court has a wide discretion but may only consider whether or not to make the possession order asked for by the mortgage lender and any conditions to apply.

That said it is clearly advantageous that Nicola should be allowed to sell the property and there can be no sensible argument against this by her former partner. I have no reason to believe that an order for sale would not be made if applied for.

The court has power to order a sale, but this will only be on application in the prescribed form. A court cannot order a sale of its own initiative. The power to order a sale and otherwise for the court to take over the position of a joint owner is provided by S14 Trusts of Land and Appointment of Trustees Act. The court can order a sale and make such sundry orders as required to facilitate the sale and deal with the situations. It is quite appropriate here and it is unfortunate that you did not apply in August last year. Hopefully it may not now be too late.

You should apply under S14 TOLATA for an order for sale immediately and without delay. The court will usually fix a hearing at around 6 weeks. Use your undoubted charm to persuade the listing officer at the court to list and get the application before the judge before or at the date fixed for the possession hearing.

Having made your application get into correspondence and negotiation with the solicitor for the mortgage lender. You must send them a copy of the application for an order for sale and ask them to agree an adjournment to allow the order to be made and time for you to sell. I have some optimism that this would be agreed by a responsible lender and ordered y the court

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if not. There is equity in the property and it will be possible to show that the lender's position will not be prejudiced by delaying sale. Nicola will be able to support this by a market valuation. If negotiations prove difficult Nicola will have to agree to pay the mortgage instalments until sale which would make a stay of possession near certain.

You must move fast, and I am hopeful that then situation can be salvaged. If I can help further let me know.

Question 10:

I lent my partner now ex £2000 in May last year and a further £300 in September. I found out he needed the money for legal costs as he was prosecuted for dangerous driving and now has a suspended prison sentence.

He agreed to pay me £300 a month. He did not make a payment in December then in January paid me £50 and agreed to pay £263 for 3 months and £261 in April on the understanding he is not named on any documents or financially responsible in the future. When he borrowed the money, he offered to pay me back with 5% interest. I have never pursued this, but the money was from my savings account and I did not want to prolong the arrangement or go into the next financial year.

He changed his phone number so I can only contact him via email and only about the money. So I emailed and said I would let £87 go if he made 2 payments of £350. He didn't respond so I emailed him and said ok we would have to go to his suggestion. He emailed me back saying I was guilty of harassment he had an injunction that I was not aware of and if I contact him again I will be arrested. I have heard nothing about this.

I realise I can submit a claim to the small claims court but should send him a final LBA offering him a date to pay the money or I will go to court. What I'm concerned about is if I email this will it be seen as harassment or is it necessary. I just want advice on my best course of action. I was thinking I would offer him the opportunity to pay 2 instalments of £393.50 as the total amount is £787 which although isn't a fortune is more than I can afford to lose.

Our answer:

The Protection from Harassment Act 1997 defines harassment and makes it a criminal and civil offence. The criminal offence does not carry a power of arrest. What is harassment will depend upon all the facts of the case but is usually considered anything which causes fear and distress.

By any stretching of the law requests for payment of a debt by a creditor not containing threats of unlawful actions cannot be considered harassment. Certainly, this would not be a criminal or matter for the police and is purely a civil matter.

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Even were an application under the PHA 1997 possible, it would not be dealt with without notice to Sarah so that she might have the opportunity to answer the allegations. Any order made would not be effective until served upon Sarah.

What is very clear here is that this gentleman is avoiding discussion over repayment and it can only follow that he has no intention of voluntarily honouring his obligation to someone who helped him at a time of need.

The first mistake Sarah made was lending money to someone she was in a relationship. Such is often fatal to the relationship and inevitably will not be repaid when the relationship ends. If she is minded in the future she might make a gift to a partner but should never loan money with an expectation of it being returned. She must not now make any further mistakes reliant upon thoughts of trust, honour of this person or that he will repay her without being made to do so. She must get this matter into court without further prevarication or contact with him other than a short letter (or email) before action.

This need simply say:- Dear X. I am sorry that it has not been possible to agree between us repayment of the money I loaned to you last year. I must now issue court proceedings for the sums loaned with interest as agreed and unless I receive full payment in £xxx within 7 days the claim will be issued and served upon you.

An address for issue of the claim must be provided. Service by email would be possible but a special application is necessary. The claim is quite suitable for issue under the money claim online scheme which Sarah can access at