willans

Willans LLP | solicitors

Your life & the law

Newsletter for private clients

Issue 1 | 2019

Receive the latest news and regular updates | Visit **willans.co.uk/mail_prefs**

Welcome

We're pleased to bring you our new newsletter, written for private clients and friends of Willans. We hope you enjoy this round-up of topical legal updates and news, covering legal issues that might affect you as an individual and your family.

If we can help you with any of the legal issues covered in this newsletter, we'd be delighted to hear from you.

Bridget Redmond managing partner

Upcoming events

We have a variety of events planned for the next few months and beyond.

Upcoming events range from drop-in will clinics in Winchcombe (where you can have a no-obligation chat with our lawyers about planning for the future over coffee and cake), through to a candlelit carol concert at Cheltenham College this Christmas, in aid of our charity of the year, Maggie's.

Take a look at our newly-designed website (**willans.co.uk/events**) to find out what's coming up. ■

Latest news from Willans

Pictured (L-R) Jonathan Eager, Sharon Giles, Michelle Vandekleut, Bridget Redmond

We've welcomed some new faces to the firm, and are celebrating a senior promotion.

Experienced collaborative family lawyer **Sharon Giles** joins as a partner in our family law team. Sharon has been ranked in prestigious independent guide *The Legal 500* for her skilled approach, and is a member of Resolution family law - a professional organisation committed to the constructive resolution of family disputes.

Chartered legal executive **Jonathan Eager**, who has 25 years' experience in the field and is also rated in *The Legal 500*, has been recently promoted to senior associate, in recognition of his outstanding work.

To our dispute resolution team, we are delighted to welcome litigation executive **Michelle Vandekleut**. She joins us after 11 years at a leading regional firm. ■

Probate fees: the 'stealth' tax

An update

After this issue of *Your Life & the Law* was published, we are pleased to say that after much debate and challenge, the government has decided not to introduce the controversial plans to increase probate fees.

Before this most recent proposal was introduced, a previous plan to increase probate fees was put forward in early 2016. Again, after much debate, this was also eventually dropped prior to the 2017 General Election. As such, it is unlikely that this will be the last we hear of any proposals to increase probate fees, albeit perhaps in a different guise.

If you wish to keep up to date with any news like this or about this issue in particular, please do join our mailing list or contact us directly.

Jennifer Cockett
Solicitor
Wills, trusts & probate

Jennifer helps clients with issues such as the preparation of wills, trusts, estate administration, inheritance tax planning and lasting powers of attorney.

If you were reading the news back at the beginning of the year; you may have seen articles about the proposed increase in probate fees which was initially supposed to have come in in April 2019. This date was pushed back for various reasons and we are still none the wiser as to when they will come in.

As it stands, and given the current uncertainty in British politics, we still do not know when this increase will actually be introduced, if at all. However, we do know that if and when the order passes, there will be a grace period of 21 days before the fees actually come in.

Value of estate	Probate fees
Up to £50,000 *or exempt from requiring a grant of representation*	£0
£50,000 - £300,000	£250
£300,000 - £500,000	£750
£500,000 - £1,000,000	£2,000
£1,000,000 - £1,600,000	£4,000
£1,600,000 - £2,000,000	£5,000
Over £2,000,000	£6,000

The new rules could mean that some estates will pay up to £6,000 to obtain a grant of representation.

Currently, probate fees are charged at a flat rate of £155 for professional applications and £215 for personal applications. The new fees will be calculated on a sliding scale, depending on the size of the estate involved, and in some cases could mean a fee increase of 3,771%.

As these fees are required to be paid upfront, what is not clear is how personal representatives are expected to pay these fees before any of the assets have been able to be encashed. It may be that executors will have to fund these expenses themselves and then reclaim their costs after the grant has been obtained and assets liquidated, or even that loans will have to be taken out.

Alongside all of the above, the probate registry is currently undergoing a number of changes internally, such as new computer systems producing new style grants and the impending closure of a number of probate registries.

This, as well as an increased number of applications being submitted so far this year, has also resulted in significant delays in the length of time it takes for a grant to be issued. Whereas in the past you could be fairly sure you would receive the grant back in 3-4 weeks, it has been taking up to 2-3 months in some cases for grants to be obtained once the application has been sent to the probate registry.

However, recently we have seen an improvement in these times and hopefully the probate registry are slowly catching up with the backlog of applications

If you need any help applying for probate, or you would like to know more about the proposed fees, please contact a member of our wills, trusts & probate team. ■

Jennifer Cockett
jennifer.cockett@willans.co.uk

Rachel Sugden
Associate, solicitor
Wills, trusts & probate

Rachel is a member of the Society of Trust & Estate Practitioners (STEP) and helps clients, including business owners, with complex estate and tax planning, lifetime trusts and the administration of estates.

Could your business operate without you?

It is important that every business has a crisis plan in place to make sure that the business can operate without key individuals if needs be. This should amount to a review of its constitutional structure but also of the personal affairs of the individuals involved.

In family businesses in particular, it is not uncommon for the founding members to remain involved in the running of the business into their later years. Something that is rarely considered is the potential for a lack of capacity or even unexpected death of key individuals.

Most people assume that their partners could manage without them or that their family could take their place if they became unable to fulfil their role for any reason. This may not necessarily be the case: business accounts may be frozen leaving your partners unable to operate the simple every-day tasks of paying bills and salaries. It may be months before the account can be accessed, by which time it is possible that the business will have suffered irreparable damage.

Therefore, it is vital that all business people put in place lasting powers of attorney for their business interests and select sensible and competent attorneys to take the reins. In fact, in some industries a business partner who fails to put such provision in place may be non-compliant with their professional regulations.

It is also important to make sure that the provisions of your will are sensible and suitable to the needs of both the business and your family. The correct combination of cross-option agreements and insurance policies can offer business partners the comfort of retaining control of the business following the death of a partner whilst also ensuring that the cash benefit of that interest ends up in the hands of the bereaved family.

These documents need to be drafted carefully to ensure that any available inheritance tax relief is not inadvertently lost in the process. ■

Rachel Sugden
rachel.sugden@willans.co.uk

Sharon Giles
Partner
Divorce & family law

Head of the family law team, Sharon specialises in complex financial matters often involving business interests, significant pension resources and/or properties and investments owned abroad.

What will happen to the 'no-fault' bill?

Just as we were on the brink of major divorce law reforms, and an already long overdue end to the blame game that many couples currently have to play to satisfy the UK courts that their marriage has come to an end, Parliament was prorogued, so it looked like we may have to start all over again.

As it currently stands one party must blame the other for the marriage breakdown if they wish to petition for a divorce within the first 2 years' of separation. At a time when emotions are high enough this legal requirement does little to help with easing family conflict, and the need to apportion blame often makes an already difficult situation far worse.

Following a public consultation, and the much publicised case of Mr and Mrs Owens, a new law moving towards a 'no-fault divorce' was proposed a few months ago. At the time of writing, the decision to prorogue has been ruled as unlawful so hopefully the Divorce, Dissolution and Separation Bill will remain high on the reconvened Parliament's agenda.

The government's proposals* for changes to the law include:

- retaining the irretrievable breakdown of a marriage as the sole ground for divorce
- replacing the requirement to provide evidence of a 'fact' around behaviour or separation with a requirement to provide a statement of irretrievable breakdown
- retaining the two-stage legal process currently referred to as decree nisi and decree absolute
- creating the option of a joint application for divorce, alongside retaining the option for one party to initiate the process
- removing the ability to contest a divorce
- introducing a minimum timeframe of 6 months, from petition stage to final divorce (20 weeks from petition stage to decree nisi; 6 weeks from decree nisi to decree absolute).

As members of Resolution, a national professional organisation for family lawyers and professionals who strive for a non-confrontational and constructive approach, we will continue support a Bill which brings an end to the 'blame game'. It is a much-needed change to the law and for couples with children will help to reduce parental conflict and the wider damage to family life that a high octane divorce can cause.

As 200,000 people divorce each year in England and Wales, an overwhelming 79% of the public support measures that would remove blame from the divorce process, with 71% believing change is urgently needed to reduce the negative impact on children. ■

Sharon Giles
sharon.giles@willans.co.uk

*Source: Gov.uk

Inheritance Act claims: time is of the essence!

You can make a will leaving your estate to whoever you like. However, if you leave out a relative or dependent, they may still be able to claim 'reasonable financial provision' from your estate, under the *Inheritance (Provision for Family and Dependents) Act 1975* (the 'Act').

Not everyone can claim, but if they are eligible, then what amounts to 'reasonable financial provision' is up to the court. The court will consider what is required for maintenance, and there will need to be a detailed assessment of the financial position of the person making a claim.

If you've been left out of a spouse's will, the test is more generous and one of the factors a court may consider is what would have been received if it were a divorce. This may be a lot more than what is required for 'maintenance'.

You have to issue a claim under the Act at the court within 6 months of the issue of the grant of probate. After this, a claim can only proceed after an application to the court for permission, which is not always granted.

Given this relatively short timeframe, lawyers are often instructed at a late stage. In the past, they have often agreed with the executors to an estate to enter into a 'standstill agreement' (essentially putting the 6 month period on pause) whilst the parties try to resolve the claim outside of the courts.

Lately, there have been occasions in which the legality of these standstill agreements has been challenged. Where this has happened, lawyers have been forced to issue court proceedings to protect their clients, and then apply for a 'stay' in the proceedings (again, a pause in the case). This meant that lawyers have had to prepare and issue the claim papers (at a cost to their clients) before fully exploring whether an out-of-court settlement could be achieved in the first instance.

Recently, in the case of *Cowan v Foreman (2019)* the Court of Appeal found that while the courts don't have to honour standstill agreements, they are unlikely to refuse permission for a late claim to be brought (provided all the potential parties have entered into a clear written agreement).

The moral of the story is, if you want to make a claim, you need to act quickly, so as not to prejudice your case. If you are a spouse, or a close family member or dependent of someone who has died but you have been left out of their will, please contact us for advice. ■

Paul Gordon
paul.gordon@willans.co.uk

Paul Gordon
Partner
Litigation & dispute resolution

Paul is a nationally-recognised litigation lawyer and heads our *Legal 500*-rated dispute resolution team.

He works with a wide range of businesses and individuals, with a special interest in inheritance & trust disputes.

Property fraud: don't be a victim

Suzanne O'Riordan
Senior associate, conveyancer
Residential property

Suzanne leads our residential property team. She has been a residential conveyancer since 1994 and has particular experience in matrimonial conveyancing.

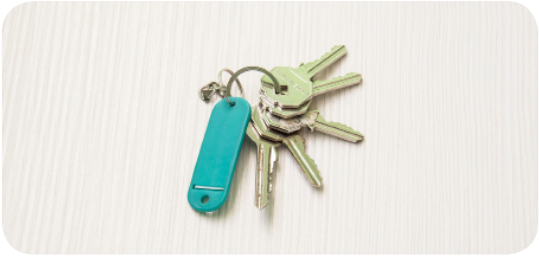
Property has always been an attractive target for fraudsters, and sadly, mortgage and property fraud is on the increase. As reported by the Home Owners' Alliance, £24.9 million was lost to this in 2017, up from £7.2 million in 2013.

Properties most vulnerable to fraud are those which are empty, tenanted or mortgage free. If you are away from your home for long periods of time, are currently in a care home or the property is let, your property may be at risk.

Fraudsters 'steal' property by impersonating the true owner and either mortgaging or selling the property and disappearing with the proceeds.

Key points to help prevent property fraud are to:

- **Make sure that you have registered the property's title** at the Land Registry, and that your contact details are up-to-date so they can contact you if they need to send a formal notice or advise you of changes to the register.
- **Use the Land Registry's free property alert service** specifically created to help owners of registered properties detect property fraud. Through this, the Land Registry will email you each time there is significant activity that may result in a change to the register of a property you are monitoring.



- **Make use of the form of restriction introduced by the Land Registry.** This is noted on the title register for the protection of absent owners. It is designed to help prevent forgery by requiring a conveyancer or solicitor to certify that they are satisfied that the person transferring or mortgaging the property is the same person as the true owner.

As standard practice, we apply for this restriction every time one of our clients uses our services to purchase a buy-to-let property. If you have one and are not sure if the restriction has been entered you can check with the Land Registry.

Please let us know if you would like a member of our residential property team to do this for you, and if necessary, to register a restriction. If you think you have been a victim of property fraud you should seek advice immediately by either contacting a conveyancer or the Land Registry. ■

Suzanne O'Riordan
suzanne.oriordan@willans.co.uk

Charitable legacies - what you need to know

At Willans, we recognise that there is a wide range of local and national charities that our clients support through their lifetimes, whether this is through regular donations or through volunteer work. We often see the continuation of this support after an individual's death, with many now choosing to leave a monetary legacy to their chosen charities under the terms of their will.

Legacies left to a registered UK charity in your will are much appreciated by charities. They pass free of inheritance tax, having the benefit of the full legacy amount passing to that chosen charity and maximizing the impact of your support.

In fact, as government funding in this respect is often unavailable or extremely limited, many charities rely heavily on donations and legacy payments under individuals' wills as their main source of income.

Many individuals choose to nominate a specific purpose for the legacy, or a wish of how the monies should be used. Although stipulating a use for the legacy is possible, care should be taken when drafting such a condition. It is important to ensure that this is not too restrictive on the charity, but that the funds will still be used in accordance with your wishes.

Our wills, trusts and probate team have vast experience in drafting charitable legacies. We work closely with many local and national charities regarding the wording of legacies, ensuring that your legacy supports the work of that charity in the areas you most wish to benefit.

When it comes to tax planning for your own estate, leaving a charitable legacy under your will can also offer many benefits. It reduces the value of your estate chargeable to inheritance tax, and (if the necessary criteria are met) can also reduce the rate of any inheritance tax payable on assets passing to non-exempt beneficiaries (such as friends and families) from 40% to 36%.

If you haven't yet made a will or would like to review your will with our specialist team, or simply wish to discuss the effect of including charitable legacies within your will, please contact a member of our wills, trusts & probate team. ■

Laura Stone
laura.stone@willans.co.uk

Laura Stone
Solicitor
Wills, trusts & probate

A solicitor in our *Legal 500*-rated wills, trusts & probate team, Laura helps a wide range of clients, including the elderly and vulnerable, high net worth individuals, executors and attorneys, families and legacy officers.

Willans' green update

Office manager **Rob Nunn** explains more about Willans' environmental initiatives.

Going 'paperlite'

At Willans we are committed to going paperlite by the end of this year.

This means the secure scanning of millions of pages of documents to store electronically, drastically reducing the amount of paper we use on a daily basis.

Using forest-friendly paper

It's not just a case of reducing the amount of paper we use, it's also important to ensure that we use the right paper. By purchasing paper stocks from an FSC certified supplier we are guaranteeing that the paper comes from a well-managed forest.

Choosing responsible suppliers

Environmentally-sound practices are a key focus when putting out tenders for services. Our stationery supplier, Commercial, uses hydrogen fuelled vans, FSC and EU Ecolabel products and run green initiatives with their staff on a regular basis.

Our own 'Green Team'

An in-house 'Green Team' works hard to implement initiatives such as reducing single use plastics by moving to glass bottles, improving recycling facilities and using smart technologies to improve energy usage. ■

Your digital legacy: what happens to your assets after you die?

Simon Cook
Partner
Wills, trusts & probate

With 25 years' experience, department head Simon specialises in complex estate and tax planning, lifetime trusts and vulnerable beneficiaries, and the creation and administration of personal injury trusts.

Most people have heard of cryptocurrencies such as Bitcoin and and would recognise those as a digital asset. However, what about social media, email accounts, digital music, online accounts for banks and stores, and photo-sharing accounts?

What constitutes a digital asset is different for everybody, but a broad definition could be personal property owned by an individual that is stored in digital form. It is an asset that is online or electronic, and the format can be images, multimedia or textual content files.

Assets can then be divided into four groups of value:

- **Financial** (such as bank accounts, shopping accounts and online trading accounts).
- **Sentimental** (such as personal letters, emails, texts, photos and videos).
- **Intellectual** (such as domain names, websites, blogs and digital art).
- **Social** (such as social media accounts and gaming accounts).

A PWC report has previously valued the UK value of digital assets at £25 billion and almost everybody will have a digital asset in one form or another.

Facebook

When you die, friends and family can 'memorialise' your Facebook account.

Memorialised accounts have the word 'remembering' next to your name on your profile and your content shared by you stays on your Facebook page as well as being visible to the audience it was shared with. No one can log into the memorialised account and dependent on the privacy settings, friends can share memories on your timeline.

A legacy contact is someone who you can choose prior to your death to look after your account if it is memorialised. The legacy contact can accept requests on behalf of the account, change the profile picture and cover photo and pin tribute posts to the profile. If the legacy contact creates an area for tributes, then they can decide who can see and post these tributes.

Another option is to have your account permanently deleted once you pass away.

Twitter

The only option on Twitter in the event of your death is to have the account deactivated.

Google

Google allows you to set up an inactive account manager. You decide upon a length of time for the account to be inactive and after that period expires your nominated person will have access to your account.

Also, you can choose to set your Google account to auto-delete itself 3 months after contacting your nominated person, allowing time for the person to transfer your data before deletion and stop others from using your account.

Apple iCloud

Apple's Terms of Use state that your account is non-transferable and that any rights to your Apple ID or content within your account terminate upon your death.

Upon receipt of a death certificate your account may be terminated and all content within your account deleted.

You may wish to consider backing up all your photos and data to a hard drive on a regular basis.

As you can see, digital assets are important matters to consider; the law is always lagging behind in this ever-changing space. If you would like any advice on planning for what happens to any kind of asset after your death, please contact us. ■

Simon Cook
simon.cook@willans.co.uk

A guide to domicile elections

Hannah Wall
Associate, solicitor
Wills, trusts & probate

Hannah helps clients with a wide range of matters. She is particularly experienced in the administration of complex estates, frequently with a cross-border element such as non-UK assets or a foreign domicile issue.

If you are UK-domiciled (broadly meaning the UK is your permanent home), you have to pay inheritance tax (IHT) on worldwide assets. If you are not UK-domiciled, you only have to pay IHT on UK-situated assets.

Generally, transfers between spouses (during life or on death) are exempt from IHT. However, a limited spouse-exemption of £325,000 applies in relation to transfers from a UK-domiciled individual to a non-UK domiciled spouse.

Since 2013, a non-UK domiciled spouse can make an election to be treated as UK domiciled for IHT purposes. This results in an unlimited IHT spouse-exemption, in terms of assets received from the UK-domiciled spouse.

However, it's not all good news - a disadvantage of making an election is that the worldwide assets of the elector will be subject to IHT rather than just those situated in the UK.

When can an election be made? An election can be made by a non-UK domiciled individual during the lifetime of their UK-domiciled spouse (or following the latter's death, as long as the spouse was domiciled in the UK for the seven years ending with the date of death). Normally, elections must be made within two years of death.

Should an election be made? The decision to make an election and from what date requires consideration and the following factors may be relevant:

- The size of the individuals' estates
- the value of the non-domiciled spouse's overseas assets
- the availability of any IHT relief and/or exemption
- whether the non-domiciled spouse has received chargeable gifts from their spouse within the last seven years, and
- the residence plans of the couple.

When does the election take effect? The elector will be treated as domiciled in the UK from the date in the Notice of Election submitted to HMRC. This date must be:

- 6 April 2013 or later, and
- within the seven year period ending with the date the election is made for a lifetime election, or within the seven year period ending on the date of the UK-domiciled spouse's death for a death election.

The elector and their UK domiciled spouse must be married on the effective date of the election.

When does the election cease to take effect? An election is irrevocable as long as the elector remains UK tax resident.

An election automatically lapses if the elector is non-UK resident for four successive tax years, beginning any time after the election has been made. The election will simply fall away after the end of the fourth year of non-residence and from this date, the individual's non-UK assets will again fall outside the scope of IHT.

If the elector is not UK-resident when the election is made, they must ensure that they become UK-resident within four tax years in order to preserve the effect of the election.

An individual can re-elect to be treated as UK-domiciled after an election has lapsed.

All in all, the election to be treated as UK-domiciled for IHT purposes is a very useful estate planning tool.

It is advisable to take legal guidance when considering whether or not to make the election, in order to ensure that it does not result in adverse IHT consequences. ■

Hannah Wall
hannah.wall@willans.co.uk

Introducing our charity of the year: Maggie's

The firm's Charity Committee has been busy planning events over the next 12 months to raise funds for the firm's charity of the year - Maggie's Cheltenham Centre.

Our Charity Committee recently visited the Maggie's Centre on College Baths Road, Cheltenham, to learn more about the essential services the charity provides across Gloucestershire in supporting individuals with cancer, alongside their family and friends.

Willans' staff will be raising funds with a variety of events, including dress-down days, 'bake-offs' and a candlelit carol concert at Cheltenham College Chapel this December. Numerous individuals at the firm are also participating in sporting events such as the Cheltenham Half Marathon and London Marathon 2020. ■

Are you a trustee? Know your obligations

Susie Jones
Private client executive

Wills, trusts & probate

Susie helps clients with a wide range of matters including wills, powers of attorney, trusts, estates, inheritance tax planning, and Court of Protection applications.

The last few years have seen a dramatic increase in trust regulation and the penalties for non-compliance can be onerous, requiring great care by trustees. Here's a quick recap of current regulation:

- **Trust Registration Service (TRS)** Trustees are responsible for reporting and paying tax on behalf of a trust. In April 2017, HMRC withdrew the former process for reporting trust tax liabilities and introduced the new TRS in its place. All trusts (and certain complex estates) with UK tax liabilities (income tax, capital gains tax, inheritance tax, stamp duty land tax, land and buildings transaction tax and stamp duty reserve tax) must now register with the TRS before 5 October following the tax year in which a liability arises.

Trustees will need to provide information about the trust and its 'beneficial owners'. These include the settlor (even if deceased), trustees, all other natural or legal persons exercising control over the trust (e.g. protectors), beneficiaries and any individual referred to as a potential beneficiary in a document from the settlor relating to the trust. Trustees also need to ensure that the register is kept up to date.

- **Legal Entity Identifier (LEI)** Since 3 January 2018, all legal entities invested in capital markets are required to obtain a unique reference code (or LEI) in order to trade. 'Legal entities' include trust funds directly invested in stocks and shares here in the UK and/or in foreign markets. Applying for an LEI is a straightforward process, but without it, any future transactions cannot be processed. This may interfere with your trust's investment strategies. Bare trusts have been excluded from the requirement to obtain an LEI, but all other trusts will be obliged to obtain one if they are parties to financial transactions.

- **Global reporting requirements** The Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS) implement new global reporting standards allowing tax authorities to access financial data relating to their residents' investments overseas. These impose the requirements for certain trustees to register trusts for international reporting purposes. Registration itself is not limited to trusts with a foreign element and so it is vital that all trustees consider whether registration is required to avoid hefty penalties.

Whilst many trusts will not currently fall under the scope of these regulations, the nature of a trust and the assets it holds can change over time. Therefore, trustees must be careful to carry out thorough due diligence of all parties to the trust and maintain and update their records to ensure they are complying with their obligations.

Depending on the complexity of the trust, the trustees should also consider preparing annual Trust Accounts to provide to the beneficiaries to demonstrate how the trust is being run. The trustees should also attend an annual meeting to consider whether or not to exercise their powers under the trust instrument, and if so, how. These meetings should also be minuted for future reference.

Putting a trust in place can be relatively straightforward in comparison to the obligations on the trustees in actually running the trust. Therefore, careful consideration should be given to your choice of trustees. If you need assistance with any of the issues mentioned above, please contact us. ■

Susie Jones
susie.jones@willans.co.uk

Contact

For advice on any of the issues covered in *Your Life & the Law* or any other area of law, please contact these people in the first instance.

Corporate & commercial

Chris Wills	chris.wills@willans.co.uk
Paul Symes-Thompson	paul.symes-thompson@willans.co.uk

Employment law

Matthew Clayton	matthew.clayton@willans.co.uk

Litigation & dispute resolution/ property litigation

Paul Gordon	paul.gordon@willans.co.uk
Nick Cox	nick.cox@willans.co.uk

Rural business, agriculture & estates

Robin Beckley	robin.beckley@willans.co.uk

Charities & not-for-profit

Nigel Whittaker	nigel.whittaker@willans.co.uk

Commercial property & construction

Nigel Whittaker	nigel.whittaker@willans.co.uk
Alasdair Garbutt	alasdair.garbutt@willans.co.uk

Residential property

Suzanne O'Riordan	suzanne.oriordan@willans.co.uk
Robert Draper	robert.draper@willans.co.uk

Divorce & family law

Sharon Giles	sharon.giles@willans.co.uk
Jonathan Eager	jonathan.eager@willans.co.uk

Wills, trusts & probate

Simon Cook	simon.cook@willans.co.uk

Willans LLP | solicitors
28 Imperial Square
Cheltenham
Gloucestershire
GL50 1RH

01242 514000
law@willans.co.uk
www.willans.co.uk