

# Your life & the law

Newsletter for private clients

**willans**

Willans LLP | solicitors

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We're purr-oud to introduce our new charity of the year



Our firm is delighted to support Gloucestershire Animal Welfare Association, which runs Cheltenham Animal Shelter (CAS), as our charity of the year.

CAS looks after and rehomes more than 600 unwanted and abandoned cats, dogs and small animals every year at a cost of around £650,000. Receiving no government funding, the charity relies on donations from the public and the generosity of local businesses and grant-making trusts.

Like our Facebook page to follow updates on our charity efforts and to find out ways to support our fundraising initiatives. ■

## Welcome

We hope you and your families are keeping well during this tricky time. From a landmark change to the Wills Act, through to the Stamp Duty holiday and steps towards the introduction of the no-fault divorce, this quarter has been a particularly interesting one from a legal point of view, coronavirus aside.

We hope you enjoy the read and find some helpful pointers inside this issue. If there are any issues we can assist you with, please do get in touch.

**Bridget Redmond** managing partner

## A whole host of new faces at Willans

We are delighted to share the news that **Suzanne O'Riordan** is now a partner in our residential property team, and, bucking the national recruitment trend, we are pleased to appoint five new legal experts.

Solicitor **Tom O'Riordan** and private client executive **Sian Devereux-Renny** join our wills, trusts & probate team, expanding one of the largest private client teams in the county.

Solicitors **James Melvin-Bath** and **Jessica Whooley** are appointed to our litigation & dispute resolution team, and conveyancing specialist **Jade Blackwell** joins our residential property team as a legal executive.

Managing partner **Bridget Redmond** commented: "Our people are our greatest asset and we are very proud to attract high-calibre lawyers who share the approachable, straightforward ethos of the firm.

"Despite the pandemic and recession, many areas of the business are experiencing increased client demand. We are pleased to welcome five talented new faces; I'm confident that each will help us continue to deliver the responsive, approachable and quality service that our clients appreciate."

The recruitment news comes as two of the firm's partners are noted in the latest edition of *Chambers High Net Worth* - an independent legal guide for high-net-worth individuals - for the second year running. Litigation & dispute resolution partner **Paul Gordon** and wills, trusts & probate partner **Simon Cook** have both been recommended in the prestigious guide. ■



## The Stamp Duty Holiday: How does it work, and what does it mean for you?

Until March next year, those purchasing property under £500,000 will not have to pay Stamp Duty Land Tax. Conveyancer **Héloïse Brittain** explores what this may mean for buyers.

**T**he Government's newly-introduced Stamp Duty Land Tax (SDLT) holiday runs until 31st March 2021, and removes the standard rate of SDLT for transactions under £500,000 in England. Transactions over this amount will have to pay SDLT on the additional sum.

It has been implemented to kick-start the property market after COVID-19 put a halt to the majority of transactions. But what are the implications of this for 'typical' buyers?

### Landlords or companies

Purchases of second homes or company purchases still attract a surcharge of 3% of the purchase price, but no longer the standard rate of SDLT which was also payable.

For example, an investor buyer purchasing a property for £250,000 will now pay £7,500 SDLT (3%); previously they would have had a liability of £10,000.

This saving will likely encourage landlords and companies to take advantage of the relief and develop their portfolios, especially as many sellers will see an investor or company as a more attractive buyer - they are unlikely to be part of a chain and more likely to have the funds without needing a mortgage.

### First time buyers

First-time buyers have benefited from not being required to pay stamp duty for purchases of their home for up to £300,000 to try and help them on to the property ladder.

The SDLT holiday means that many more now benefit from this relief - potentially pricing

these first-time buyers out of the market. Some buyers now feel they have more money to spend on the property as they do not have to set aside budget to pay SDLT.

Some lenders have also increased the amount of deposit needed to 15%. In addition, Help to Buy ISAs are being phased out - but Help to Buy equity loans are only filling this gap for new build properties. Thus, the dream of owning a home may be slipping further away - or at least being pushed back to April 2021.

### People already on the property ladder

People already on the ladder are likely to benefit far more than first-time buyers because they otherwise would have had to pay SDLT.

Assuming someone was replacing their main residence and buying for £499,000 - previously they would have paid £14,950 in SDLT but now this will be zero.

This may mean many are more willing to move. If these people are upsizing, it may open in the market more smaller homes which typically appeal to first time buyers. Potentially, if they can find the funds and beat off the investor purchaser, there may be a chance for first time buyers to get on to the ladder.

Overall, the SDLT holiday will inevitably result in movement in the housing market, but who will benefit the most remains to be seen. ■

### Héloïse Brittain

heloise.brittain@willans.co.uk



### Héloïse Brittain

Conveyancer

Residential property

A graduate member of the Chartered Institute of Legal Executives, Héloïse deals with the full range of residential property matters for clients, from sales & purchases to re-mortgaging.

“...the dream of owning a home may be slipping further away – or at least being pushed back to April 2021.”



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regular updates, visit [willans.co.uk/subscribe](https://www.willans.co.uk/subscribe)



## Common pitfalls for residential landlords (and how to avoid them)

Residential property has never been a more popular investment, but it's not always an easy one. Solicitor **James Melvin-Bath** gives an overview of how landlords can avoid some common issues.

**W**hether you became a landlord for a capital return on the property, to provide some ancillary income, or incidentally due to a change in circumstances, it is vital that you meet your obligations and ensure your tenancy is correctly set up.

For large and small-scale residential landlords, some of the most common issues that I come across are created at the commencement of the tenancy agreement. These include:

- Issues over the protection of the deposit;
- Unclear tenancy agreement terms;
- Incorrectly executed guarantor agreements;
- Failure to provide legally required information to tenants.

Whilst the above may not sound substantial, failure to correctly deal with tenancy agreements when they are set up are some of the most common barriers to recovering possession of your property when things go wrong. For example, if you fail to correctly provide certain information to your tenant at, or before, the commencement of the tenancy you may be permanently prevented from recovering possession by serving a section 21 notice on no fault grounds.

On this basis, it is vital that residential landlords get the relevant legal advice and guidance before entering into a residential tenancy agreement. Fundamentally, you should start the tenancy with a correctly-drafted tenancy agreement, take advice on what other requirements you must comply with and ensure compliance from the outset.

### What happens if things go wrong?

Sadly it happens; tenants fail to pay the rent, they cause damage to properties and they often refuse to leave. So what can you do in these circumstances?

Following the impact of coronavirus, the options available to landlords have become even more prescribed and the fast and efficient process for repossession on the basis

of rent arrears is now subject to an extended notice period. To reduce the impact on you as a landlord, you can:

- Make sure your tenancy was set up correctly and that you complied with all landlord requirements at the start. If you didn't, or are unsure, you must get legal advice before proceeding to try and resolve any dispute with your tenant (certain breaches of your obligations may give rise to a counterclaim from the tenant).
- Make sure you have good records of when rental payments have been received. All landlords should keep a full list of what payments were due, when were they paid and a clear running total of any arrears.
- Make sure your property is well-maintained and that any safety or performance certificates are up-to-date and valid. Counterclaims by tenants on the basis of disrepair are increasingly common; they can be costly to resolve and can delay the recovery of possession.
- If you decide to give your tenant notice to give up possession, take legal advice on the form and contents of that notice. Whilst the form of notice may seem straightforward, issues with basic errors can bring into question the validity of the notice and result in the failure of your claim for possession.
- Be ready to issue the claim and make sure you have the relevant dates recorded. I have seen claims fail where they have been issued either too soon or too late, or where a landlord has made errors in preparing the claim form or other documents in the course of the claim. Possession proceedings are very prescribed and it is vital any claim is correctly drafted to avoid issues.
- The process for seeking possession of a residential property has been substantially altered to deal with the impacts of coronavirus. These changes continue to be updated. If you are unaware and fail to comply with the changes, it may prevent your claim from proceeding.

As specialists in landlord and tenant matters, we ensure that we keep abreast of all of the latest and upcoming changes in the law (including the present changes due to coronavirus).

If you have any questions about your residential letting, are seeking possession or need advice on the impacts of coronavirus on landlords, please do get in touch. ■



**James Melvin-Bath**  
Solicitor-advocate

Litigation & dispute resolution

A solicitor-advocate in our *Legal 500*-rated dispute resolution team, James helps private and commercial clients to resolve disputes.

He specialises in landlord and tenant, contentious probate and commercial matters.

**James Melvin-Bath**  
[james.melvin-bath@willans.co.uk](mailto:james.melvin-bath@willans.co.uk)





**Simon Cook**

Partner

Wills, trusts & probate

Partner and head of the wills, trusts & probate team, Simon has 25 years' experience in the field.

He is rated in independent national legal guides *The Legal 500* and *Chambers High Net Worth*.

## Wills Act to allow video witnessing: a much-needed update, or risky business?



Image credit: chrisdorney - stock.adobe.com

Changes to the Wills Act are set to allow video witnessing of wills in some circumstances. But while bringing the law up-to-date with today's lifestyle is no bad thing, hastily-made changes may carry unwanted risks, explains partner **Simon Cook**.

**T**he core legislation for the signing of wills has been with us for some time - known as the Wills Act 1837.

There have been many calls for this legislation to be updated to reflect the modern world and developments in technology. In a world affected by COVID-19, these calls have only become more vocal.

The requirements for signing a will are set out in section 9 of the Wills Act 1837. This says that no will shall be valid unless:

- It is in writing, and signed by the testator (the person making the will), or by some other person in his presence and by his direction; and,
- It appears that the testator intended by his signature to give effect to the will; and
- The signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- Each witness either-
  - i) attests and signs the will; or
  - ii) acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness), but no form of attestation shall be necessary.

The recent lockdown period and the ongoing need for social distancing has made the signing of wills challenging, particularly for vulnerable people. However, we have managed to deal with the signing of *all* wills during this period, whilst following the terms of the Wills Act 1837. Yes, we have been creative at times, but we have coped.

“...There have been will signings in hallways, on patio tables in gardens, in car boots and through dining room windows..”

There have been will signings in hallways, on patio tables in gardens, in car boots and through dining room windows. These have all taken place with necessary precautions such as gloves, masks and sanitiser being used.

Nonetheless, the Government has announced that, from September 2020, the video witnessing of wills shall be allowed, with the new rules being backdated to 31 January 2020.

There are particular requirements to be followed, and the testator could end up having to make three separate video calls with one or more of his witnesses before the will is fully signed. It is also recommended that these calls are recorded so that evidence can be produced later if the signing of the will is questioned.

The consideration of the Wills Act 1837 is welcomed so as to bring the law up to date, but there is always a danger when such matters are rushed and full consideration to the changes is not given.

There are concerns about the changes; can it be certain that the testator is signing the will without any coercion or undue influence, and what happens if the testator dies before the will is signed by both witnesses?

As mentioned above, we have managed to have wills signed without the need for video calls and I am confident that this will continue to be so. However, it is useful that, as a last resort, witnessing a will by way of a video call is available. ■

**Simon Cook**

simon.cook@willans.co.uk



Above: Simon signs a will from the boot of a car (prior to PPE requirements).

## Could video will signing lead to more validity challenges?

Will disputes expert **Jessica Whooley** expands on how the change to the Act could leave wills more vulnerable to be contested in future.

If a testator prepares a will shortly before their death, making significant changes to who is to benefit from their estate or excluding those who may usually expect to benefit, concerns could be raised that something untoward is going on.

Of course, there may be genuine reasons for such decisions. But at a virtual will signing, how can a solicitor be sure the testator is not being pressured?

A will writer will likely never know if an unscrupulous individual is present behind the camera. A scan of the room will only be evidence that nobody can be seen, not that the testator is truly alone.

Furthermore, in circumstances where a professional is not involved in the preparation of the will, how can a witness be sure the will which they have signed is the one the testator has signed? If the will is being signed at different times, then it is very possible a

third party could, when alleging helping the testator to send the will to the witnesses, swap the document to one which benefits them more favourably.

If the will were ever to be challenged, the witness may not be able to confidently confirm they signed the same document as the testator because inevitably, at some stage it will be out of the testator and witness' possession.

Our dispute resolution team has solicitors specialising in will validity claims. We are able to assist either in claims by those seeking to challenge the validity of a will or defend against such claims.

If you would like to discuss a potential claim and find out how we may be able to assist, then please contact us for an initial discussion. ■

**Jessica Whooley**

jessica.whooley@willans.co.uk



**Jessica Whooley**  
Solicitor

Litigation & dispute resolution

Jessica advises individuals and businesses on a wide range of disputes including inheritance & trust disputes, disputes over contracts and professional negligence.

Read more & get the latest legal updates at [willans.co.uk/insight/](https://www.willans.co.uk/insight/)

## It's not you...and it's not me, either!

A landmark change in the law looks set to minimise conflict in the divorce process, by removing the need to assign blame. Family law expert **Jonathan Eager** explains more.



At the end of June, the Divorce, Dissolution and Separation Bill received royal assent, paving the way for the first 'no fault' divorces.

The landmark change seeks to minimise conflict, at a time when emotions are likely to be running high. It means that couples who are separating will no longer need to assign blame to one of the parties in order to get a divorce.

Currently, divorces can only be granted in England or Wales within the first 2 years' of separation on the basis of a fault-based fact of either adultery or unreasonable behaviour

The need to assign blame (or even create blame, where there often is none) does little to encourage a conflict-free parting of ways, particularly where children are involved. Whilst couples wanting to avoid conflict can opt to postpone a formal separation for 2 years or more this delay in itself can cause unnecessary conflict and prolonged uncertainty for families.

The reform comes after 30 years of campaigning by constructive family justice group Resolution (of which our family lawyers are members) and is the first change to our divorce laws in more than 50 years.

Margaret Heathcote, Resolution's National Chair, commented: "Our members have been campaigning for change for years, in Westminster and in towns and cities across the country where they work.

"They're all committed to reducing conflict between separating couples, but our outdated

divorce laws have meant they've been working with one hand tied behind their backs."

Practical arrangements for the implementation of the Bill will take some time, and there are still a few technical details that campaigners wish to iron out. However, early indications suggest that a no-fault divorce will be an option for all separating couples from Autumn 2021.

If you would like advice on divorce or any family law issue, no matter how complex, we would be pleased to help, so get in touch. ■

**Jonathan Eager**  
jonathan.eager@willans.co.uk



**Jonathan Eager**  
Senior associate,  
chartered legal  
executive

Jonathan helps clients with all areas of family law, in a collaborative, client-focused way.

He is particularly experienced in working with high-net-worth individuals with complex financial assets.

He is recommended in independent legal guides *Chambers UK* and *The Legal 500 UK*.



### Don't miss the virtual SoGlos Gloucestershire Lifestyle Awards

The SoGlos Gloucestershire Lifestyle Awards 2020, of which we are the headline sponsor, is going virtual this year. On **Thursday 22 October**, all are invited to tune in via Facebook Live for a real-time reveal of the winners of the 23 categories.

Furthermore, a second round of voting runs until Monday 28 September at [soglos.com/awards](https://www.soglos.com/awards), so it's not too late to cast a vote for your favourite county lifestyle business.

The big reveal of the category winners - along with some surprise giveaways - starts at 8pm on Thursday 22 October 2020. Register to attend at [facebook.com/soglos](https://www.facebook.com/soglos). ■



## What are lasting powers of attorney, and who may need them?

Everyone should consider making lasting powers of attorney, explains private client executive **Sian Devereux-Renny**.

A lasting power of attorney (LPA) is a legal document which allows you to nominate attorneys to make decisions on your behalf should you lack the capacity to do this yourself, either temporarily or permanently. Many people have heard of enduring powers of attorney (which remain valid), however, these were replaced by LPAs in 2007.

There are two types of LPA:

- Personal welfare: enables decisions to be made about health and welfare, such as where you live, who provides day-to-day care, medical treatment etc; and
- Property and affairs: enables decisions to be made about financial affairs such as selling your house, managing your bank account, paying bills etc.

The two LPAs are completely separate: you can choose to make one or both, depending on your circumstances and need. The choice of your attorneys is up to you and they can be the same for both LPAs or completely different.

Setting up an LPA can be lengthy and complex; it is often best to speak to a professional to discuss your choice of

attorney and how they will act for you under the LPA. In addition, each LPA must be “activated” by registering it at the Office of the Public Guardian before it can be used.

Whilst you do not have to tell anyone that you are making an LPA, you can nominate people to inform when the LPA comes into force. These people also have the opportunity to object to the registration of the LPA.

Often, people believe that LPAs are ‘old age’ documents, but this couldn’t be further from the truth. Everyone should consider putting place LPAs and, a good time to do this is when reviewing your personal affairs, such as when you prepare or review your will.

If we can help you to get started with preparing an LPA, get in touch. ■

**Sian Devereux-Renny**

[sian.devereux-renny@willans.co.uk](mailto:sian.devereux-renny@willans.co.uk)

“...Often, people believe that LPAs are ‘old age’ documents, but this couldn’t be further from the truth...”



## Equestrians - if you lose capacity, who'll take the reins?

Lasting powers of attorney can be a wise insurance for livery yard owners, explains chartered legal executive **Miranda Hawkes**.

You would always ensure that the stable yard was never without insurance in case of a fire. However, have you ever thought about whether the business itself could continue should you be unable to look after the yard, and its liveries?

Owning and running a yard can be a dangerous business. Hazards loom around every corner, from the threat of injury from a horse to the heavy machinery and equipment used around the yard.

Have a think about all the decisions you make regarding the day-to-day running of the yard. Imagine, who would order and pay for shavings, hay, feed etc. collect rent from liveries, set up or terminate livery contracts, or pay staff if you were to lose your capacity?

Also, who would take care of your own horses? If you don't have a lasting power of attorney in place, then the answer is that no-one has the legal right to take over the reins from you in this situation (pardon the pun!)

Livery owners notoriously never retire as in most cases the business is ran from their home. There is therefore a strong possibility that loss of mental capacity may occur at some point, due to either an accident or old age.

As Sian mentions above, you can create separate lasting powers of attorney in relation to your business and personal affairs. It would be advisable to appoint someone with equestrian knowledge to be your attorney for the livery business (or you may end up with an order being placed for bag of peanuts rather than a bag of pony nuts!)

As you can see from the picture, I am myself a keen horsewoman. If I can be of any assistance or answer any questions you may have, please get in touch. ■

**Miranda Hawkes**

[miranda.hawkes@willans.co.uk](mailto:miranda.hawkes@willans.co.uk)



**Jennifer Cockett**  
Solicitor  
Wills, trusts & probate

## Making your legal life easier: the Willans app

Life is busy at the best of times; not least when you're going through a legal process, such as buying a house or preparing a will.

We know that good communication from your lawyer invariably makes a difference to your overall experience.

While there will always be someone here to help you by phone or by email, we're going one step further - enabling clients to check the progress of their

matter anywhere, and at any time. To make this possible, we're pleased to have begun the process of integrating a mobile app for Android and iOS.

The app provides you and your lawyer with an encrypted and secure method of communication, as well as enabling

you to view the progress of your matter at every stage in real time. It also allows you to complete forms, for example, from the convenience of your mobile phone or tablet.



During the pandemic, one of the challenges for us has been ensuring that we are still able to obtain appropriate levels of identification when meeting our clients virtually. An impressive feature of our new app will allow us to conduct ID checks through the app, using both facial recognition and reading biometric passport chips.

Initially, we intend to use the app in some of our private client departments; a progressive rollout of the app to select clients will begin at the end of September, with a final launch later in the year. ■

## Willans' lawyers raise over £2k for Cobalt

We're long time supporters of Cobalt's Make a Will Month, and this year our wills, trusts & probate lawyers raised a fantastic £2,135 in donations in exchange for their time & expertise.

Based in Cheltenham, Cobalt scans over 75,000 patients each year from across the Three Counties and beyond. They raise money to improve medical imaging services, primarily cancer and dementia imaging

services, and they make cutting edge diagnostic imaging equipment accessible to people when they need it most.

Our team's support of Cobalt's scheme is now in it's seventh year running - we're delighted to be able to make a difference for such a worthy cause. ■

**Jennifer Cockett**  
jennifer.cockett@willans.co.uk



### Contact

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

#### Corporate & commercial

Chris Wills [chris.wills@willans.co.uk](mailto:chris.wills@willans.co.uk)  
Paul Symes-Thompson [paul.symes-thompson@willans.co.uk](mailto:paul.symes-thompson@willans.co.uk)

#### Commercial property & construction

Nigel Whittaker [nigel.whittaker@willans.co.uk](mailto:nigel.whittaker@willans.co.uk)  
Alasdair Garbutt [alsadair.garbutt@willans.co.uk](mailto:alsadair.garbutt@willans.co.uk)

#### Employment law

Matthew Clayton [matthew.clayton@willans.co.uk](mailto:matthew.clayton@willans.co.uk)

#### Residential property

Suzanne O'Riordan [suzanne.oriordan@willans.co.uk](mailto:suzanne.oriordan@willans.co.uk)

#### Litigation & dispute resolution/ property litigation

Paul Gordon [paul.gordon@willans.co.uk](mailto:paul.gordon@willans.co.uk)  
Nick Cox [nick.cox@willans.co.uk](mailto:nick.cox@willans.co.uk)

#### Divorce & family law

Sharon Giles [sharon.giles@willans.co.uk](mailto:sharon.giles@willans.co.uk)

#### Rural business, agriculture & estates

Robin Beckley [robin.beckley@willans.co.uk](mailto:robin.beckley@willans.co.uk)

#### Wills, trusts & probate

Simon Cook [simon.cook@willans.co.uk](mailto:simon.cook@willans.co.uk)

#### Charities & not-for-profit

Nigel Whittaker [nigel.whittaker@willans.co.uk](mailto:nigel.whittaker@willans.co.uk)

*Disclaimer: The articles in this publication are intended as a guide only & do not constitute legal advice. Specific advice should be sought for each case; we cannot be held responsible for any action (or decision not to take action) made in reliance upon the content of this publication.*



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

01242 514000  
[law@willans.co.uk](mailto:law@willans.co.uk)  
[www.willans.co.uk](http://www.willans.co.uk)