Your life & the law

Newsletter for private clients

Issue 5 | Autumn 2021

willans

Willans LLP | solicitors

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New faces as our teams continue expansion

We are pleased to welcome some new faces to the firm, in the agriculture & estates, residential property and employment law teams.

A new addition to our agriculture & estates team is senior associate **Sarah Richardson** - a specialist in rural property and agricultural law. A member of the CLA and ALA, Sarah has worked in the agriculture & estates teams of highly-regarded regional firms.

Joining our employment law team is solicitor **Hayley Ainsworth**, who will be helping clients with a wide range of matters from tribunal proceedings to operational advice on employee relations issues.

We are also pleased to welcome CLC-licensed conveyancer **Tina Caster** back to our residential property team.

To find out more about our new team members, view their profiles at **willans.co.uk/people**. ■

Sarah Richardson

Welcome

Welcome to the Autumn issue of *Your Life & the Law,* in which our lawyers explore the latest interesting legal developments in wills, trusts & probate, residential property, disputes and family law.

Some of the topics we cover in this issue include the introduction of the 'no-fault divorce', a new change to marriage law, deputyship and mental capacity, the validity of a handwritten will and leasehold reform.

As always, if you need legal assistance, we're here to help so please do get in touch. We hope you stay safe and well this Autumn.

Bridget Redmond managing partner

Recognition for our lawyers in respected guide - *Chambers High Net Worth*

We are delighted that an independent guide to the best professional advisors for high-net-worth individuals has given recognition to two of our partners and private wealth experts.

Chambers High Net Worth guide is published each year internationally and has been running for five years – having ranked our lawyers in each edition since it began.

Two partners – head of wills, trusts & probate, **Simon Cook**, and inheritance dispute expert, head of dispute resolution **Paul Gordon** – have again been named as 'notable practitioners' in the guide.

Our wills, trusts & probate department has also received recognition for its expertise and client service in the area of private wealth law.

Quoted in the guide, a market insider describes Willans as "efficient, knowledgeable, helpful and effective", with another observing "(The lawyers) are clearly experts in their field, understanding and very thorough in their advice." ■

Simon Cook

Paul Gordon

Ministers reveal new date for introducing 'no fault divorce'

In what is dubbed as the "biggest reform of divorce law in fifty years", married couples will be able to divorce without blame as of 6 April next year.

The Divorce, Dissolution and Separation Act 2020 will come into force in April 2022 and will enable the first 'no fault' divorces. The new date, revealed by ministers in response to a Parliamentary question, is later than anticipated. The initial timeframe was given as early as this Autumn, but it is indicated that this delay is needed to implement changes to the online divorce system.

The landmark change, campaigned for by professional family law body Resolution for many years, seeks to minimise conflict at a time when emotions are likely to be running high. At present, divorces can only be granted in England or Wales within the first 2 years of separation, based on either adultery or unreasonable behaviour.

As members of Resolution, we welcome the 'no fault' proposal and see it as an important move in reducing conflict and uncertainty for families going through divorce.

This reform means that breaking up will get easier for married couples from next April. At last, couples will have the option to initiate divorce proceedings without pointing the finger of blame at each other.

Divorce settlement talks can then proceed from a much calmer footing, giving couples a better chance of achieving the 'conscious uncoupling' favoured by most celebrities these days.

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 currently opt to postpone a formal separation for 2 years or more, this delay in itself can cause unnecessary conflict and prolonged uncertainty for families.

More information on the Divorce, Dissolution and Separation Act 2020 and what this means for divorcing couples is available to read on the Resolution website (resolution.org.uk). If you would like bespoke advice on divorce or family law, please do not hesitate to contact us. ■

Sharon Giles
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Sharon Giles
Partner
Divorce & family law

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

In case it passed you by: Key change to capital gains reporting

Lockdown has brought about many changes in our daily lives and businesses over the past 18 months. Procedural changes at the HMRC have been no exception.

There is one radical change that may have slipped under the radar: changes to how capital gains on the sale or disposal of UK residential properties are to be reported.

Any individual who is a UK resident, that has sold or disposed of a residential property based in the UK (on or after 6 April 2020) may now need to report that transaction to HMRC. This must be done within 30 calendar days of the date of completion, and any capital gains tax arising must be paid within that same period.

This separation of reporting requirements for residential property disposals can be an onerous but essential task. It is of vital importance that all individuals disposing of a residential property (whether in their personal capacity, trustee or personal representative of a deceased individual's estate) take the appropriate tax advice as early as possible in a transaction (and preferably no later than an exchange of contracts). This is to ensure that HMRC's reporting requirements can be met in good time. Failure to do so, or waiting until the following tax year to report gains with other financial or estate tax affairs, could result in the payment of interest and significant penalties.

If you are currently in the middle of a property transaction, administering an estate or trust containing a residential property, or thinking of selling your own property in the near future, please contact us for more information. ■

Laura Stone
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Laura Stone
Associate, solicitor
Wills, trusts & probate

Laura's work involves the preparation of wills, lasting powers of attorney, inheritance tax planning, estate administration, and Court of Protection matters.

The Leasehold Reform (Ground Rent) Bill

The Leasehold Reform (Ground Rent) Bill is intended to put an end to ground rents for new qualifying long residential leasehold properties.

Currently, freeholders can charge as much as the lease allows and take enforcement measures if not paid. In some situations, an unpaid ground rent can lead to forfeiture of the lease. Ground rent has therefore been causing concern for leaseholders and equally many lenders have been concerned about high and escalating ground rents. Leaseholders subject to high ground rents can feel trapped paying high fees and any potential buyer will be unlikely to be able to raise a mortgage if the ground rent is over £250 per annum.

On 12 May 2021, the Leasehold Reform (Ground Rent) bill was introduced in the House of Lords to set future ground rents to zero ("a peppercorn"). The bill is currently waiting for the third reading in the House of Lords before being passed to the House of Commons.

The bill, as currently drafted, prevents a new lease from requiring the leaseholder to pay a "prohibited rent". This is a ground rent of any more than a peppercorn, meaning future leaseholders will not be faced with financial demands for ground rent. The bill goes on to also ban freeholders from charging administration fees for the collection of rent.

This will put future leaseholders in a better financial position and abolish the annual financial payment to the freeholder with no tangible service received. The bill goes on to set out a maximum financial punishment of £5,000 for freeholders who try to charge a prohibited rent. The bill currently therefore protects new leaseholders financially.

The bill does not rectify all the issues with some modern leases, but it does deal with the problem of escalating ground rents and the cost this can have.

The prohibition of ground rent will likely prevent freeholders from selling freeholds as an investment to third parties. The implication this will have on a developers' desire to build leasehold properties is unknown; this will close an income stream for them, which encourages leasehold developments.

The intention of the bill to make the leasehold system fairer and hopefully end the sale of freeholds as a financial investment is clear. Currently, it's a step in the right direction, but the bill is not yet in force and could be subject to changes before being enacted.

For concerned leaseholders, there are in some circumstances potential options available, such as a deed of variation or a statutory lease extension. ■

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Héloïse Brittain
Conveyancer

Residential property

Héloïse deals with a wide range of property matters, particularly in relation to sales and purchases. The varied range of clients she works with include businesses and individuals, both locally and nationally.

Date for your diary Residential rental update: Buy-to-let property in 2021

Whether you're a landlord, agent, surveyor or other property professional, join two of our property law specialists, **Suzanne O'Riordan** and **James Melvin-Bath**, for an overview of the latest in the fast-paced world of buy-to-let.

Tuesday 19 October, 4.30pm | Register your interest via **events@willans.co.uk**

Cladding latest: "Urgent assistance" required for leaseholders

Since the Grenfell Tower tragedy in June 2017, leasehold property owners have been wary of buildings with cladding.

Many leaseholders are faced with a large service charge bills, relating to costs incurred by the freeholder to remedy the cladding and also an interim walking watch throughout the night. This means many are stuck in an unsafe property, facing high fees to remedy the danger and unable to sell the property. In order to sell (to a purchaser with a mortgage) a property which is considered to be at risk (over 18m or with specific risks such as 4 wooden stackable balconies) an EWS1 must be prepared.

An EWS1 will need to be carried out by a qualified professional to confirm the cladding on the building is acceptable. Potentially all buildings will need an EWS1 in time, but currently just those which are considered a risk. An EWS1 is then valid for 5 years. An 'A' is a pass with "no combustible materials" whereas 'B' requires "remedial works to be carried out" by the building owner.

An 'A' is however not enough. The person who completed the form needs to be checked carefully. There have been cases of fraud as desperate property owners are an easy target.

It has also been noted some surveyors' insurers have been advising surveyors not to carry out work which involves completing EWS1s. Many professional insurers are excluding cover for surveyors in completing an EWS1, and those few competent to complete an EWS1 are become less willing to do so.

These difficulties are causing delays in discovering the safety of a building. In addition, many freeholders of affected properties are struggling to obtain buildings insurance. A combination of fraud, lack of insurance and lack of those competent to fill in the EWS1 has meant many leaseholders are stuck in potentially dangerous properties.

It is clear the government's urgent assistance is required to assist leaseholders stuck in these situations. Therefore, the announcement on 21 July confirming the government will follow the recommendations of the "independent expert statement on building safety in medium and lower-rise blocks of flats" must be welcome. ■

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Changes to marriage law with new electronic registration

From 1 July 2021, civil wedding and civil partnership ceremonies in England and Wales can take place outdoors, offering more options to couples looking to tie the knot.

Under the previous laws the legal ceremony had to take place in an approved room or permanent structure, such as a stately home or hotel. All aspects of the wedding ceremony can now take place outdoors, providing a greater level of flexibility for venues and couples, particularly during the pandemic when public health considerations and social distancing need to be taken into account.

This latest update comes as a welcome boost to the marriage industry, which has been one of the hardest hit by the pandemic. The change opens up a much greater choice of venues which will hopefully help ease the huge backlog of betrothed couples forced to kick their Big Day celebrations into touch until maskless photos could be put back on the agenda.

The venues themselves will be able to more safely accommodate larger groups of guests. At this stage, the change is just a trial, but it is hoped that they will become permanent.

A further change to the way in which marriages in England and Wales are registered came into force from 4 May 2021, with the creation of an electronic marriage register.

Previously, couples would sign a register book which was held at register offices, churches and other premises licensed for marriage straight after the marriage ceremony. The couple now sign a marriage schedule during the ceremony and will receive their marriage certificate by post shortly after the wedding.

The new electronic register system is more secure and saves the need for paper records to be manually entered onto a database, saving time and money.

At last, too, the names of both parties' parents are mentioned in the marriage entry, rather than just the father or step-father; a move which represents the more modern attitude of today's society. ■

Kristie Silsby
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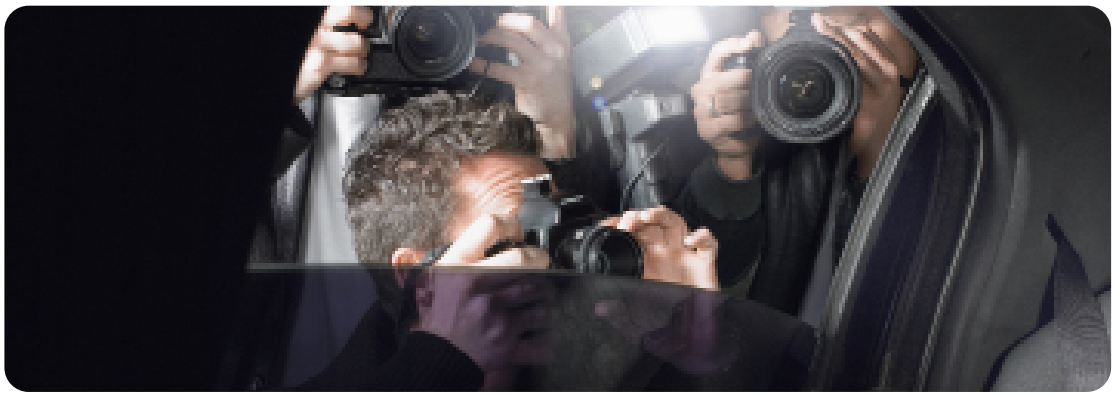
Kristie Silsby
Solicitor

Divorce & family law

Kristie helps clients both with the legal considerations when starting a relationship, including nuptial and cohabitation agreements, as well as when there is a breakdown in a relationship.

'#FreeBritney' campaign opens up dialogue on UK deputyship



Janine Guthrie
Associate, chartered legal executive

Wills, trusts & probate

Janine helps clients with wills, lasting powers of attorney (LPAs), enduring powers of attorney, LPAs, and care fees.

She is particularly experienced in Court of Protection work, including contentious and non-contentious deputyship matters.

Since Britney Spears' mental health crisis in 2008, she has been deemed to lack mental capacity to make decisions for herself. Her father, Jamie Spears, was appointed as her conservator, giving him the legal authority to control her personal and financial affairs. This has included negotiating business deals and apportioning her fortune, making decisions about her health and who she can date, and even deciding the colour of her kitchen cabinets.

Ms. Spears (Britney) has recently come forward to request that her father be criminally charged with conservatorship abuse, claiming that the order is oppressive, abusive and toxic. This has sparked the question, could such alleged abuses as detailed by Britney, be overseen by the English courts?

The equivalent under the laws of England and Wales to the conservatorship is a deputyship. These are ordered by the Court of Protection (COP) and overseen by the Office of the Public Guardian (OPG) to ensure that a mentally incapacitated person (P) is not subjected to any abuse of power.

The COP makes a clear distinction between health and welfare deputies, and financial deputies. The courts are cautious when appointing health and welfare deputies, limiting the deputies as to what they can and cannot do, and would only make such an appointment where a person has complex ongoing health issues. Decisions such as placing Britney on sedative drugs and forcing her onto birth control as she has alleged, would have required a Court application to prevent such decisions being made so arbitrarily.

The 'best interest' principle enshrined in the Mental Capacity Act 2005 ensures that P is involved in any decision made for them, so far as possible, to obtain their current and previous wishes. It has taken 13 years for Britney to have a public platform to express her opinion about how deeply unhappy she is and, until last month, was not allowed to choose her own legal representation.

In the English courts, the Official Solicitor would have been appointed by the court for Britney, who could have challenged any psychological assessments and ensure stripping her of her liberty was done so with accurate evidence, if indeed that was necessary.

The public have expressed their worries over Britney's conservatorship through the #FreeBritney movement for some years, however it has taken 13 years for Britney's case to be investigated openly by the courts.

So what happens in the UK if anybody, including a member of the public, has worries about a deputy abusing their power? They can make a complaint to the OPG, who are duty bound to investigate the claim, and they themselves can apply to the courts for the deputy to be removed.

Where a person's finances are large and complex, the COP is reluctant to appoint a lay deputy and would usually appoint a professional independent deputy. Britney's father had sole control over her earnings for years, allowing him to take a salary from her income.

In England and Wales, a lay deputy is only allowed reimbursement for their expenses, unless specifically authorised by the court. Even professional fees are tightly controlled and assessed by the Court to ensure that they are fair. Deputies must submit annual reports to the OPG which will be analysed to ensure they are reasonable.

In England and Wales, due to the safeguards explained above, we can rest assured that where a person loses their mental capacity, such abuses alleged by Britney could not arise.

If you would like legal advice on making a deputyship application, or are worried about a deputy abusing their position, please get in touch for assistance. ■

Janine Guthrie and **Olivia Lea**
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Please note that the Britney case is ongoing, and details of her conservatorship have not been released. Therefore, we have not been able to establish the facts of her case.

The case of the holographic will

Legally a will does not have to be prepared by a solicitor. However, preparing a will without seeking legal advice can be risky; for a will to be valid, there are certain legal requirements which must be complied with.

One important requirement set out in law dating back to 1837, is that the will must be signed in the presence of two or more witnesses present at the same time. If this is not carried out correctly, then the will is likely to be invalid.

The importance of the witnesses being present at the will signing was highlighted in a recent case which dealt with the estate of Professor Robert Whalley. Professor Whalley prepared a hand-written or "holographic" will in 2018 leaving his entire estate, approximately £1.9 million, to Professor Ebrahimi and his wife in equal shares.

The will was signed by Professor Whalley on 3 May 2018, but the witnesses signed on 4 May 2018 separately. The judge found that the signing did not comply with the legal requirements set out in the Wills Act. Therefore, they had not validly attested the will.

There was, however, a second chance for the will to be declared valid; on the back of the 2018 will, there were two further signatures dated 3 May 2018. It was claimed that the witnesses had visited the Professor at home on 3 May and it was there the will had been signed, although the witnesses did not know the document was a will.

As for why the Professor then had the will witnessed a day later, it was claimed this was due to concerns the 3 May witnesses could not legally sign the will as they were not UK nationals.

At the trial, the judge was asked to consider whether the witnesses had complied with the legal requirements, and in answering that question, whether the will was valid or not. The last witness for Professor Ebrahimi was one of the 3 May witnesses, Dr Pezouvanis. He was asked whether the contents of his witness statement confirming how the will was signed was true, to which his response was "No". When asked how he would like to correct his statement he simply replied: "There was no meeting on 3 May 2018". In light of this evidence, there was no doubt, the will was not valid.

A holographic will can be an early indicator that a will is not valid. With a hand-written will, not only is there an increased risk that the legal requirements have not been complied with, but the situation lends itself more readily to a testator being unduly influenced, or not properly consulted about the contents of a new will.

If the will then leaves out people who would ordinarily have expected to benefit, or is not in keeping with the testator's previously known wishes, then it could be the case that the decision not to instruct a solicitor has been orchestrated to avoid too many questions being asked.

If you have concerns about the validity of a will then seek legal advice as soon as possible. There may be steps which can be taken to stop the administration of the estate and ensure distributions are not made. This will allow time to investigate the circumstances in which the will was prepared, including time to speak with the witnesses. ■

Jessica Whooley
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Jessica Whooley
Solicitor
Litigation & dispute resolution

A solicitor in our *Legal 500*-rated dispute resolution & litigation team, Jessica is experienced in assisting individuals, both claimants and defendants, on a wide range of disputes, with a specialism in inheritance and trust disputes.

"...With a hand-written will, not only is there an increased risk that the legal requirements have not been complied with, but the situation lends itself more readily to a testator being unduly influenced, or not properly consulted about the contents of a new will...."

Deeds of variation: When is it appropriate to use them?

If you are due to inherit and you would like to redirect your inheritance elsewhere (for example if you would prefer your children to inherit instead), you can do this via a deed of variation. This is sometimes called a deed of family arrangement.

This can be useful if, for example, you have your own inheritance tax problem and you do not want the money entering your own estate.

As long as the deed of variation is completed within two years of death, for inheritance tax and capital gains tax purposes it can be treated as if the deceased themselves made these gifts in their will.

However, in some circumstances, a deed of variation will not be appropriate. For example:

- **If consideration is given**. If the person varying their entitlement receives something in return, then this is likely to fall foul of the tax rules and HMRC may wish to investigate.
- **To avoid care fees.** If a deed of variation has been entered into when care was already being received or if it was foreseeable that care might be needed in the future, then diverting inheritance elsewhere may be seen as a deliberate deprivation of assets by the local authority. If it is found to be a deliberate deprivation of assets then it may be disregarded and fees still charged or the person receiving the inheritance may be made to pay for the care fees in future.
- **If you are on means-tested benefits**. If you were in receipt of, or were hoping to be in receipt of means-tested benefits and an entitlement under a will was varied, then this may be a criminal offence in some cases, or at the very least leave you ineligible for certain benefits.

If you are considering a deed of variation, it is extremely important that they are drafted correctly and that they fulfil all of the legal requirements for them to be effective.

If you are looking for bespoke advice as to whether a deed of variation would be appropriate for your situation, please contact our wills, trusts and probate team. ■

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Jennifer Cockett
Solicitor

Wills, trusts & probate

Jennifer helps clients with the preparation of wills, trusts, inheritance tax planning and lasting powers of attorney. She also deals with the administration of estates.

Read more & get the latest legal updates at **willans.co.uk/insight/**

Latest legal developments for landlords

It has been a rollercoaster year for legal updates in the area of residential lettings, primarily due to the various temporary measures put in place by due to COVID-19.

Many of these restrictions are now being lifted or loosened, enabling landlords to proceed more easily. Here is a brief overview of the latest.

Section 21

The Section 21 notice period has dropped to four months and it is unlikely that is will drop further for the time being. This is because the government wishes to avoid a rush of repossessions and also to likely allow time for them to consider and implement renter reform, including the eventual abolishing of no-fault evictions.

Section 8

There is however good news if you are trying to recover possession of your property from a tenant in arrears. As of 1 August 2021, if your tenant is in arrears the notice period has reduced from four months to two months. If your tenant owes you more than four months rent the notice period is now just four weeks.

Other changes

Whilst we don't know the exact changes likely to happen, the government has made clear that they wish to proceed with their reform of residential lettings and as such we expect the end of no-fault evictions, the introduction additional grounds for possession under section 8 and potentially a new housing court to assist with the speed and cost of bringing claims. On top of these changes to the court process, the government has also made clear their drive to reduce emissions, by increased EPC ratings and improving the condition of properties by tighter gas and electrical regulations.

So, it is currently a period of immense change in residential lettings, with a lot of change still to come over the coming months. If you have a question in regards to residential lettings, buy-to-lets or landlord disputes please do not hesitate to contact us. ■

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James Melvin-Bath
Solicitor-advocate

Litigation & dispute resolution

James helps private and commercial clients to resolve disputes. He specialises in landlord and tenant, contentious probate and commercial matters.

Tom O'Riordan
Associate, solicitor
Wills, trusts & probate

Tom predominantly helps clients with the creation and administration of trusts and estates, as well as drafting wills and lasting powers of attorney.

Big changes on the horizon for the Trust Registration Service

The Trust Registration Service (TRS) is a website operated by HMRC which was introduced in 2017. The purpose of the TRS is to prevent money laundering, terrorist financing, minimise tax evasion and provide trustees with a way of applying for a tax reference for a trust.

Trustees are responsible for ensuring a trust is registered on the TRS, if necessary. Currently, only trustees of trusts that pay tax are required to register. Registration involves providing HM Revenue and Customs ("HMRC") with information about the settlor, the trustees, the trust's assets and the beneficiaries.

Next year, the TRS will change so that the majority of non-taxpaying trusts will need to register. Some of the planned changes are:

- Trustees of UK 'express trusts' will be required to register regardless of whether the trust pays tax.
- New trusts must be registered within 30 days of the creation of the trust (this does not apply to trusts incorporated into a will).
- Trustees must notify HMRC of changes to the trust. For example, HMRC should be notified if a new trustee is appointed.

You may be wondering what an 'express trust' is. The clearest answer is trusts that are not named in Schedule 3A of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020. Trusts named on this list do not automatically need to register. All other trusts are deemed to be 'express trusts' and should be registered, unless they are already registered.

We are waiting for HMRC to confirm the deadline by which 'express trusts' need to be registered. It is expected that the deadline will be in Autumn 2022. If an 'express trust' is not registered prior to HMRC's deadline, HMRC has indicated they will send a letter to the trustees to remind them of the duty to register. If the trustees do not comply, a financial penalty will be issued to the trustees.

If you have any questions about an existing trust or a trust you wish to create, please get in touch - we would be delighted to help. ■

Tom O'Riordan
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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.

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