Your life & the law

Newsletter for private clients

Willans LLP | solicitors

Spring / Summer 2022

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Welcome to the spring/summer issue of *Your Life & the Law* and thank you for reading our newsletter. 2022 is a special year for Willans as we celebrate our 75th anniversary and begin working on some exciting projects and developments.

In this issue, you'll find thoughts from our lawyers on the latest updates and topics in their areas of wills, trusts & probate, disputes, residential property and family law.

As always, if you need any help with legal matters in your life, please get in touch with our teams.

Bridget Redmond managing partner

Celebrating 75 years with promotions & Imperial Square improvements

This April, Willans celebrate 75 years in business and we have lots of activity planned to mark the occasion.

Our founder, Alec Willans, moved the firm to its current home in Imperial Square, Cheltenham in the 1950s and this year, we're delighted to begin some exciting improvements to our regency offices.

Part of the refurbishments will soon see our reception move to a new location in our premises at 34 Imperial Square. While a moving date is yet to be set, we look forward to updating you and welcoming you to our new reception space.

Our 75th milestone also cooincides with some New Year promotions, including for family lawyer **Jonathan Eager** and employment law specialist **Jenny Hawrot**, who are both now partners.

Further promotions include residential property lawyer **Hilary Banister** and trusts specialist **Tom O'Riordan**, who are now senior associates, while **Charlotte Brunsdon, Jennifer Cockett, James Melvin-Bath, Emma Thompson** and **Susie Jones** are promoted to associates. Congratulations all!■

Jenny Hawrot & Jonathan Eager

Willans becomes first law firm to join CheltenhamZero

It was with much excitement that we revealed our pledge to support climate-change campaign CheltenhamZero earlier in February.

In doing so, Willans becomes the first law firm to join forces with many other businesses, charities and community groups, who have come together to help our town shift to net zero emissions by 2030.

As an active member of the Gloucestershire community for 75 years – and with our own green committee – we're proud to show our support to CheltenhamZero and look forward to communicating our green plans and projects throughout 2022.

Don't demolish your prospects in a building dispute

As a team, we often deal with disputes between consumers and builders relating to new builds, extensions and substantial property alterations. While not uncommon, how can you avoid a dispute and what should you do if a dispute does arise? We've put together our top three pieces of advice:

Get a quote

Before starting any major project, always ask for a detailed written quote. This should detail the extent of the works, proposed timescales and materials. Additionally, if any works are provided by third parties, such as specialist aesthetic finishes, always agree who is responsible for arranging and paying contractors.

Agree a contract & any variations in writing

It goes without saying that any building project should be agreed in a written contract before work begins, and it's worth bearing in mind that things almost always change as they progress. Whether it's major amends to plans, alterations to materials, or minor variations in aesthetic finishes, ensure any changes are confirmed in writing (even if they are agreed verbally on-site). It's also a good idea to confirm any changes to the contract price at the same time.

Communicate and manage snags as the build progresses

In any project, it's typical to experience minor snags and issues along the way. These remedial works can quickly add up and lead to a substantial list at the end of a build and can often be the cause of bad feeling between parties. As such, it's best practice to work together closely throughout and catch any snags at an early stage. If these can't be fixed straight away, it's best to confirm what works are needed and when they will be undertaken. This will not only improve your prospects of success should a dispute arise, but more importantly, a dispute is far less likely to occur.

Whether you are a builder or consumer with a question or concerns on a building project, please do not hesitate to contact the dispute resolution team, who would be happy to help.■

James Melvin-Bath
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James Melvin-Bath
Associate, solicitor-advocate

Litigation & dispute resolution

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

Wills & inheritance tax in same sex marriages

The Civil Partnership Act 2004 and The Marriage (Same Sex Couples) Act 2013 ensure that a same sex marriage is afforded the same legal status as an opposite sex marriage, and that a civil partnership is provided with an equivalent status to a same sex and opposite sex marriage. This means that from an inheritance tax perspective, for example, regardless of whether you are married or in a civil partnership, the "spouse" exemption from inheritance tax will apply.

> "...many people may not realise that The Marriage (Same Sex Couples) Act 2013 is not retrospective in terms of the drafting of legal documents."

However, many people may not realise that The Marriage (Same Sex Couples) Act 2013 is not retrospective in terms of the drafting of legal documents.

Therefore, if you prepared a will prior to 13 March 2014, including a gift to the "spouses" of your children, this would be interpreted as only including spouses of the opposite sex and not the same sex. That is, unless your will explicitly referred to both same sex and opposite sex marriages.

Given the above, if it has been some time since you have reviewed your will, you may wish to do so to ensure that it aligns itself with your current wishes and that the will achieves the result you intended. Please get in touch with a member of the wills,trusts & probate team, who will be happy to help.■

Jennifer Cockett
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Jennifer Cockett
Associate, 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.

Amending wills on a whim – when not all is lost

While spending time with family is something many of us look forward to, often high expectations and prolonged periods spent together can cause stress and tension. Reflecting on such periods in the new year is normal, of course, but unfortunately, this combination can result in a decision to amend a will with the intention of disinheriting certain family members.

Any decision made in retaliation to a moment of high tension, without regard to how the relationship may improve in the following months and years, can be devastating following the individual's death. Once the will is found and those who have been left out discover what has happened, they may want answers. Worse still, they may not be told that they won't benefit from the will and are refused a copy, so don't see what has happened for many months and after numerous requests.

Of course, everyone is entitled to distribute their estate however they wish, but those left behind may feel that they have been unfairly excluded. In those circumstances, a person may be able to make a claim – under the Inheritance (Provision for Family and Dependants) Act 1975 – for reasonable financial provision from the estate in question.

If the exclusion is the result of an argument, then when making a claim, it may be worth explaining the facts to the court. Perhaps this was unusual, or a reaction to a particular situation, which the person who died took offence to. It may be the case that the parties were attempting to reconcile or even had repaired their relationship, but the person who died forgot or hadn't got around to changing their will back. These factors may be relevant to how a judge assesses their decision making.

However, even if there is no repairing the relationship, that would not stop a claim being successful. In the well-publicised case of *Ilott v Mitson*, the Supreme Court made an award to an adult child who had been estranged from her mother for many years and where there was no chance of a reconciliation. After all, the relationship between parties is simply one of the many factors which the court takes into consideration.

If a loved one has sadly passed away, and you have concerns in relation to their will, it is always worth seeking legal advice on the options available to you. Our team would be happy to assist, so please get in touch.

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.

Marriage law: what's new in 2022?

'No fault' divorce

From 6 April 2022, a new law will allow married couples to divorce without attributing blame. When the Divorce, Dissolution and Separation Act 2020 comes into force, this landmark change will make seeking a divorce much easier.

Outdoor wedding ceremonies

A consultation launched by the government aims to seek views on its proposals to continue allowing outdoor civil marriages and partnerships to take place at licensed venues, as well as religious marriages in the grounds of places of worship.

Meet the team – wills, trusts & probate

Read more & get in touch with the team at **willans.co.uk/people/wtp**

Simon Cook
Partner

Head of the team, Simon specialises in complex estate & tax planning, lifetime trusts & vulnerable beneficiaries, & creating personal injury trusts.

Hannah Wall
Senior associate, solicitor

Hannah advises UK & non-UK residents on matters including high value estates, non-UK assets & foreign domicile issues.

Rachel Sugden
Senior associate, solicitor

Rachel has a particular interest in helping business owners to safeguard their interests & build a legacy to pass on to the next generation.

Tom O'Riordan
Senior associate, solicitor

Tom is an expert in creating & administering trusts, either created during a lifetime or incoporated into a will.

Laura Stone
Associate, solicitor

Laura supports a wide range of clients in preparing wills & lasting powers of attorney (LPAs), as well as inheritance tax planning & more.

Jennifer Cockett
Associate, solicitor

Jennifer enjoys working closely with families to advise on wills, trusts, inheritance tax planning & lasting powers of attorney.

Miranda Hawkes
Associate, chartered legal executive

Miranda helps elderly & vulnerable clients, as well as advises clients with agricultural & equestrian assets.

Susie Jones
Associate, chartered legal executive

Susie predominantly advises on trusts, & also helps clients with wills, LPAs, estate administration & tax planning.

Janine Guthrie
Associate, chartered legal executive

Janine helps clients, particularly those who are vulnerable, with wills, LPAs, deputyships, contentious deputyships & LPAs, & care fees.

Sian Devereux-Renny
Private client executive

Sian mainly assists clients with administering estates, preparing wills, inheritance tax planning & lasting powers of attorney.

Missed out first time around? Watch our webinars on catch up

Spotlight on managing your investment property portfolio

Listen to our experienced residential property and property dispute teams, who were joined by guest speakers for an insightful webinar aimed to help both established buy-to-let owners and those considering starting out.

COVID-19 commercial rent debt rules update for landlords & tenants

Following the government's recently updated Code of Practice to resolve commercial rent debts, our experienced commercial property & litigation lawyers discussed what this means for commercial landlords and tenants.

Visit willans.co.uk/webinars to watch on catch up & subscribe to receive our event invitations in your inbox: willans.co.uk/subscribe/.■

Buying on an estate? Beware of rentcharges

Recently, the government has said it intends to ban the sale of houses on a leasehold basis; to put an end to the practice of developers imposing escalating ground rents and high estate charges. While not without its problems – some of which will be addressed when the Leasehold Reform (Ground Rent) Act comes into force – there are often good reasons why properties are sold on a leasehold basis, and the alternatives aren't necessarily straightforward.

Leasehold provides a mechanism to ensure that owners who share parts of a building or external areas, such as a private road or shared accessway, are subject to mutually enforceable obligations, intended to ensure that facilities or areas are maintained and paid for by those who use them. If a property is sold on a freehold basis (as opposed to by the grant of a lease), it's not as simple to incorporate enforceable provisions relating to the maintenance of facilities.

One of the most common methods of achieving this is by selling freehold properties subject to an estate rentcharge. Shared areas are increasingly common in new developments and estate rentcharges are being used to ensure that successive owners are obliged to contribute towards their maintenance.

However, a 2016 decision in the Upper Tribunal (Tax and Chancery Chamber) brought some troublesome clarification to the law regarding rentcharges, potentially blighting many freehold properties subject to an estate rentcharge. According to the Law Of Property Act 1925 (LPA1925), if a property owner falls into arrears with their rentcharge, the person entitled to receive it can lease (and take possession of) the property, enabling them to receive income and clear the arrears. In the 2016 decision, the judge said that if such a lease is granted, it stays in place until voluntarily surrendered by the person entitled to the rentcharge; it would not otherwise come to an end when the arrears have been cleared.

The implications of this have filtered down to conveyancers and mortgage lenders, many of whom insist that if the property is subject to a rentcharge, a deed of variation must be entered into to amend the provisions of the original deed and exclude the relevant part of the LPA1925. However, due to its wording, there's an argument that its operation can't be excluded by a later deed (although it probably could be when the estate rentcharge is created). So, while a deed of variation may make the property acceptable for, and meet the requirements of, a mortgage lender, there's no guarantee that it will solve the problem and homeowners may still be at risk.

"According to the Law Of Property Act 1925, if a property owner falls into arrears with their rentcharge, the person entitled to receive it can lease (and take possession of) the property, enabling them to receive income and clear the arrears."

Clearly, the situation is murky. Although the government says it intends to revoke the problematic section of the LPA1925, in the meantime, if you own a property subject to an estate rentcharge, it's crucial to protect your position by making sure you're never in arrears. If you're purchasing a new-build property that's subject to an estate rentcharge, careful drafting can ensure that you're protected from these potentially catastrophic consequences.

Our team of expert advisors can help you with the sale or purchase of properties subject to estate rentcharges, as well as any disputes. Please get in touch; we'd be happy to help.■

Héloise Brittain
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Héloise 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.

What to expect from the family courts in 2022

As we set off on our journey of recovery from the impact of COVID-19, it seems that many of the changes to family law process, which were made to keep the wheels of justice in motion, are here to stay.

At the start of the pandemic, family court hearings moved to remote hearing platforms, and for the most part this will continue. However, it is generally agreed amongst family law professionals and judges that complex dispute resolution hearings and contested final hearings benefit from the atmosphere of court, and so physical attendance should be encouraged where possible.

It's expected that 2022 will see a continued trend for parties to represent themselves in family-related proceedings, including divorce, financial remedy and children matters, especially as most of these processes shift online. That said, it's still very important for parties to receive sound legal advice prior to pursuing court proceedings. This will not only help to focus on the intended outcome, but also to reduce the costs and delays of emotionally charged and often legally groundless lines of argument being pursued.

The introduction of no-fault divorce in April 2022 is expected to temper the emotional strain of the divorce process significantly and could well lead to a rise in couples seeking a divorce throughout the year. Of course, once a divorce petition is issued, the real challenge lies with untangling the matrimonial finances and sorting out arrangements for children as the family unit re-establishes itself across two households. It is these related issues that are often brought to court and require parties to attend.

So, what can you expect if you are summonsed to attend an online hearing? The key thing to remember is that this is still a formal hearing, so the same formalities apply as they would if you were attending in person:

- you should still act and dress as you would in a court room
- make sure you are in a private space where you and others engaged in the hearing cannot be overheard
- ensure you can access documents and have the right software installed ahead of time
- be prepared to wait if the hearing is late or delayed
- don't panic if you lose connection – just re-join when you can
- create a line of communication with your lawyer, such as an email chain or WhatsApp group to allow you to communicate with them while not in the same room
- only speak when asked, and if you are represented, let your advocate speak for you.

As this flexible access to family courts becomes the norm, the long delays and backlogs caused by the sheer volume of litigants in person and the impact of the pandemic can be frustrating and cause costs to spiral. So, it's expected that out of court resolutions, such as mediation, collaborative process, arbitration, and private hearings will increase over the next year or so.

On the plus side, these alternative methods have the benefit of privacy as pressure is on for our publicly funded family courts to be more transparent and to increase public confidence in the work that they do.

If you need help with a divorce or family law matter, our team would be happy to hear from you.■

Sharon Giles
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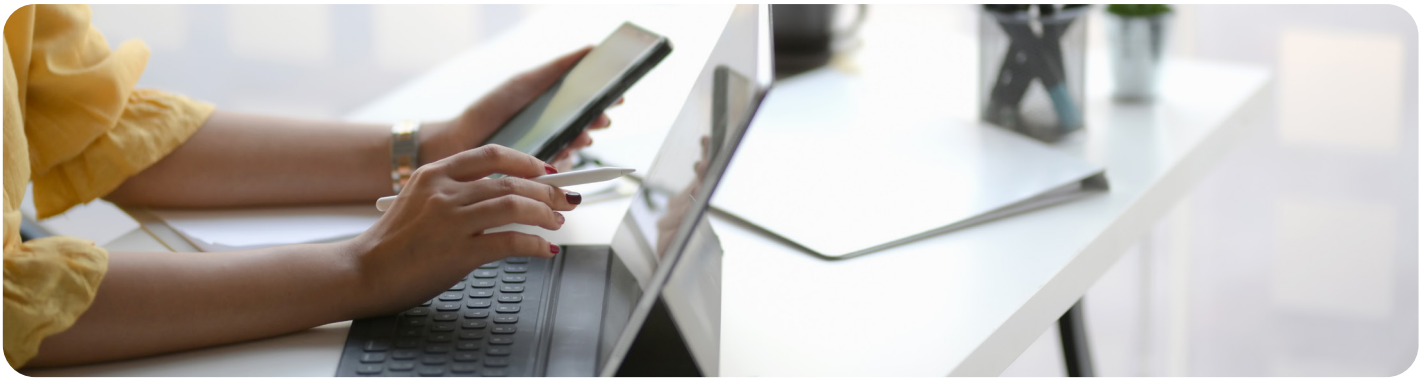
Sharon Giles
Partner

Family law

A partner in our top-tier *Legal 500*-rated family law team, Sharon helps clients to resolve disputes in a cam and constructive way. She specialises in complex financial matters, often involving business interests, pensions and overseas investments.

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



Reduced reporting requirements for lower value estates

From 1 January 2022, HM Revenue & Customs (HMRC) have simplified the way estates belonging to those who have passed away on or after 1 January 2022 have to be reported for Inheritance Tax (IHT) purposes.

Deaths on or before 31 December 2021

Deaths on or before 31 December 2021, where an estate is low value or exempt and therefore no IHT is due, will be classified as an "excepted estate" and form IHT205 must be completed and submitted to the Probate Registry when applying for a grant of representation. The requirements for an estate to be classified as "excepted" are:

- an estate value below the current nil rate band allowance (£325,000) and, therefore, not subject to IHT
- when the surviving spouse has died, and their late spouse's nil rate band allowance can be transferred to their estate on their death, and their estate is within this allowance (currently £650,000 i.e. two nil rate band allowances);
- an estate with a gross value of less than £1,000,000, which has been left to their surviving spouse, civil partner or to a charity;
- when the deceased was domiciled outside of the UK at the date of death, have never been UK domiciled during their lifetime and the value of their assets in the UK are under £150,000.

As well as the above, the following requirements must also be satisfied for an estate to be classed as "excepted":

- where the person who died held assets in a trust, those assets must be held in only one trust and be worth less than £150,000.
- the total value of gifts made by the person who died in the seven years preceding their death must not exceed £150,000.

If the above requirements aren't satisfied, a full inheritance tax account form (form IHT400) would need to be submitted to HMRC.

Deaths on or after 1 January 2022

For deaths occurring on or after 1 January 2022, excepted estates do not need to be reported using form IHT205, but rather the probate confirmation forms will include questions about the IHT status of that estate.

Changes made to the reporting requirements for deaths on or after 1 January 2022 also mean that more estates will be classified as "excepted", reducing the number of estates that need to submit IHT forms. The following amendments have been made to the category of an excepted estate:

- the threshold of the gross value of an estate has been raised from £1,000,000 to £3,000,000 where it is passing to a spouse, civil partner or charity.
- where the person who has died held assets in a trust, the value of those assets must be below £250,000, rather than £150,000, although they must still only be held in one trust.
- where the person who has died made gifts during the seven years proceedings their death, the limit of their value has increased to £250,000.
- if the person who has died has foreign domicile, their estate will no longer be classified as excepted if they owned indirect interests in UK residential property, or they made gifts during their lifetime of UK assets above £3,000 per tax year, in the seven years preceding their death.

The changes to the reporting requirements mean that where an estate meets the above requirements, the executors and administrators will no longer have to fill in such lengthy paperwork when applying for a grant of probate, and for many estates where no IHT is payable, inheritance tax reporting will be amalgamated with the application to the Probate Registry.

If you need any help with a probate application, please contact a member of our team; we'd be delighted to assist you.■

Simon Cook
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Simon Cook
Partner
Wills, trusts & probate

Simon is a partner & head of the wills, trusts & probate team. He specialises in complex estate & tax planning, lifetime trusts & vulnerable beneficiaries, as well as creating personal injury trusts.

1 September 2022 – TRS registration deadline

This year, **all 'express trusts' will need to be registered with the Trust Registration Service (TRS) by 1 September 2022.**

Here's a reminder of the changes, what classes as an 'express trust' and what you need to know:

- Changes set out by the TRS, operated by HMRC, mean trustees are responsible for ensuring a trust is registered by the deadline of 1 September 2022.
- Trustees should provide information about the settlor, the trustees, the trust's assets and all beneficiaries.
- Trustees must also notify HMRC of any changes to the trust, such as if a new trustee is appointed.
- New trusts must be registered within 30 days of creation (this does not apply to trusts incorporated into a will).
- Only trusts that are named in Schedule 3A of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 list do not need to register.
- All other trusts are deemed to be 'express trusts' and should be registered, unless they already are.
- If an 'express trust' is not registered prior to HMRC's deadline, HMRC 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.■

For more information or advice on trusts and the TRS deadline, please get in touch with one of our trusts experts, **Tom O'Riordan on tom.oriordan@willans.co.uk,** who would be happy to assist you.

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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