

Your life & the law

Newsletter for private clients

Autumn 2022

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Welcome to the autumn issue of *Your Life & the Law*.

As we approach the end of our 75th year in business, we're pleased to share our latest news, including the announcement of Willans' charity of the year, as well as our lawyers' recent thoughts and insights in their areas of wills, trusts & probate, disputes, residential property and family law.

As always, if we can assist with any issues you may have in your life, please get in touch; we'd be delighted to help.

Bridget Redmond managing partner

Willans lawyers ranked in *Chambers UK* High Net Worth guide for six consecutive years



Congratulations to senior partner **Paul Gordon** and partner **Simon Cook** who have both been ranked in *Chambers UK's* annual High Net Worth guide 2022.

advisers to the private wealth market and since its inaugural edition in 2017, Willans has been ranked in every issue.

Paul has been named as a leading individual in the South West, while Simon and the wills, trust & probate team are recognised for their expertise and excellent work in Cheltenham and the surrounding area. Well done all! ■

Supporting Young Gloucestershire

Over the past 10 years, the firm is proud to have raised over £114k for some fantastic charitable causes, including Sue Ryder, National Star College, Maggie's and Cheltenham Animal Shelter.

After a Willans staff vote, we're pleased to announce that our 2022/23 charity of the year is **Young Gloucestershire**, a brilliant charity that works with disadvantaged young people across the county; those with poor mental health, who are unemployed, have been excluded from school, have drug and alcohol issues, who live in chaotic households or who are simply lost and don't know where to turn.

Starting with a 'Great Willans Bake Off' in September, our staff charity committee have plenty of plans in place to raise money for Young Gloucestershire over the coming year or so, including the return of Willans' charity carol concert this December. To find out more and book your place to attend, please visit willans.co.uk/events.

Stay up to date on our charity fundraising via [Twitter](#), [Facebook](#) and [LinkedIn](#) @WillansLLP. ■



Digital assets – a life and death matter

From social media and email accounts to cryptocurrency and photographs, digital assets are playing an increasingly important role in our lives. When someone dies without allowing access to their digital assets, it can pose a difficult challenge for loved ones and executors of a will. So, what are some of the steps you can take to make it easier for those you leave behind?

Plan ahead

Firstly, consider whether you want to pass on any of your digital assets. If so, you can start planning now by thinking about the accounts you have; is there a function to nominate a trusted individual to take the account over when you die, for example?

It's also worth considering your will in the context of digital assets. Do any changes need to be made? Are you happy for those you have appointed as your executors to access your online accounts and any information that may be stored online?

“Are you happy for those you have appointed as your executors to access your online accounts and any information that may be stored online?”

Make records

It's important to strike a balance between securing your accounts during your lifetime, alongside making your executors aware of the digital assets you have, so they can be prepared.

Keep a log of your 'online life' and consider filing usernames and passwords separately or using a digital password manager. This is

critical for cryptocurrency, which cannot be retrieved without the 'key' to your crypto wallet.

However, your executors will need to be careful not to break the law by accessing your accounts after your death; we therefore recommend they seek legal advice when the time comes.

You may also wish to leave your executors instructions in your will as to how you want your digital assets to be distributed and stating how you would like your social media accounts to be dealt with. For example, a Facebook account can be deleted after death or memorialised. Each social media platform has a different approach, so it's worth checking their terms and conditions.

Stay informed

While there isn't a legislation (in England & Wales) on how to deal with your online footprint after death, the Law Commission has published a consultation paper which contains new proposals to

reform the law relating to digital assets.

Until such time, we recommend reviewing your will regularly to ensure you keep up to date with your assets, both tangible and digital, so that your affairs are left in line with your wishes. ■

Leah Vincent

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Leah Vincent

Solicitor, Wills, trusts & probate

Leah helps people to look after the affairs and achieve their wishes for the future. She is currently working towards being fully qualified with the Society of Trusts & Estate Practitioners (STEP).

Wills, trusts & probate lawyers on-hand at Cheltenham Literature Festival



At this year's Times and Sunday Times Cheltenham Literature Festival, Willans' lawyers will offer their expertise as part of a free programme of events.

Following an insightful conversation on death and funeral planning at a free event called 'Last Wishes,' our experienced wills, trusts & probate lawyers will offer guidance to festival-goers on making and updating wills, lasting powers of attorney, trusts and inheritance tax planning in a relaxed setting.

The event takes place at **the Huddle in Montpellier Gardens** on Monday 10 October from 11.15am until 12.30pm, after which our lawyers will be available to speak to one-on-one. ■

Why you can't list a Ford Focus as a Porsche 911

Vehicle misrepresentation – a statement made from one person to another, which is later found to be untrue or inaccurate – is a common issue and can lead to drastic consequences. Perhaps unsurprisingly, you cannot advertise a vehicle as more or less than it is. For example, stating that you have full-service history on a 2009 vehicle which only has one recorded service or claiming the vehicle is in perfect condition when none of its windscreen wipers work. If you do say a vehicle is in “good condition”, what does this mean and how can you avoid being caught out?

What happens if a vehicle is misrepresented?

Although usually the seller's intentions are to emphasise a vehicle's good points to agree the best possible price, making a careless statement which proves to be untrue could lead to a buyer being able to claim for a refund, or the cost of putting the vehicle in the condition that it was advertised in. Along similar lines, if a seller makes an untrue statement knowingly, then this may be deemed fraudulent, and the buyer may be entitled to additional penalties, as well as compensation.

What happens if you are the seller, and you believed that what you said was true?

There is some allowance made in cases whereby a seller makes a statement which they believed to be true, but it has later been proven to be untrue.

What should I do if I think a vehicle was misrepresented?

The most important thing to remember in claims of this type is to act quickly. Delays can have a significant impact on your prospects

of success. Make sure to contact sellers to complain about defects with a vehicle and seek rescission of the contract or compensation, to provide a letter of claim or issue court proceedings in good time; speed is key! This is especially true if you purchased the vehicle from a motor trader, where the Consumer Rights Act 2015 applies.

Often, neither the seller nor the buyer wants to proceed to court, and it will be in the best interest of all parties to resolve the matter without prejudice negotiations or mediation. This will keep costs to a minimum. Most matters which proceed to mediation are settled before proceeding to trial.

Whether you have bought a vehicle that is not as described or you are a seller who has been accused of misrepresentation, our team of vehicle litigation specialists would be happy to help you. Please get in touch with either James or Bethen. ■

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James Melvin-Bath

Associate, solicitor-advocate, Litigation & dispute resolution

James works closely with clients to consider the legal, time and financial implications of their matter.



Bethen Abraham

Trainee solicitor, Litigation & dispute resolution

Bethen works across a variety of areas including residential possession matters, as well as building and vehicle disputes.

The plight of unmarried cohabiting couples: MPs call for reform



Sharon Giles

Partner, family law

Sharon helps people to resolve family law disputes in a calm and constructive way. She specialises in complex financial matters.

A group of MPs recently published a report calling for “urgent” reforms in legislation, which currently leave unmarried, cohabiting couples with “inferior” protections. Some key recommendations made for the government's consideration are those that legal professionals have been calling for for some time.

Unmarried couples who live together, and who may well have children and generally function as a traditional family unit, do not currently have the same legal claims over finances upon separation or death as married couples and civil partners. While it is possible for cohabiting couples to enter into legal agreements, for example to clarify financial

entitlements, there's unfortunately a lack of information available for those affected. These individuals often falsely assume they have the same rights as those who are married or in civil partnerships.

To speak to someone about the options you have available as an unmarried, cohabiting couple, please get in touch with a member of the family law team, who would be happy to help. ■

Sharon Giles

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Are you feeding heifers or horses? A guide to agricultural property and business property relief



Agricultural property relief allows land and farm buildings to be passed free from inheritance tax either during a lifetime or after a death. This is subject to certain conditions being met; for instance, the land must be owned for at least two years prior to death for HMRC to consider a claim for relief.

When it comes to claiming inheritance tax reliefs, landowners should be aware of the legal distinction between “agricultural use” and “equestrian use” of their land and associated buildings.

For agricultural property relief (‘APR’) from inheritance tax, the only equestrian use that falls within the definition of “agricultural property” is the breeding and rearing of horses on a stud farm, together with the grazing of those breeding horses, horses kept and raised for slaughter and working horses (such as those kept for forestry work or ploughing). All other equestrian activities require the land to have planning permission for equestrian use and must satisfy HMRC’s requirements to qualify for business property relief (‘BPR’) from inheritance tax.

Due to the high level of claims made, HMRC now require livery yard owners to provide “enhanced services” to qualify for BPR. These are essentially hotel services for equine owners, such as feeding, turning in and out, mucking out, worming and so on, on behalf of the livery client.

Landowners also need to be certain that the planning permission granted matches the activities being undertaken on the land, so that HMRC can consider an application.

“Agricultural” and “agricultural equine” planning permission only permit horses to be kept upon the land for grazing purposes. Additional activities such as rugging horses, riding on the land and supplemental feeding all require “full equestrian” planning permission. Failing to match the planning permission with the use of the land could result in executors not being able to claim either APR or BPR upon a person’s death.

It is also equally important to ensure that a will is structured in a way that allows APR and/or BPR to be successfully claimed. Simple wills leaving everything to a spouse and then to children will not necessarily be the most tax efficient way of leaving an estate to loved ones if there are agricultural or equine business interests involved.

Remember, a will can include specific guidance as to how a business should operate following death or detail an option to purchase a business or set out wishes for the animals to be given to a loved one or sold.

To discuss the creation of a tax-efficient, personalised will and to take advice to ensure that your executors have the best chance of successfully claiming the necessary inheritance tax reliefs upon your death, please contact our team. We would be pleased to assist you. ■

Miranda Hawkes

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Miranda Hawkes
Associate, chartered legal executive, Wills, trusts & probate

Miranda has over 12 years of experience and is a member of the Society of Trust and Estate Practitioners. As a keen equine enthusiast, she helps those with agricultural and equestrian assets.

The return of Willans’ charity carol concert



After a two-year hiatus, our charity carol concert returns on **Wednesday 14 December 2022**. Raising funds for Young Gloucestershire, the concert will feature carols performed by local choir Severn’s Eight.

To join us for a festive evening, register your interest in attending at willans.co.uk/events. ■

From neverland to never ever – disputing ‘the king of pop’s’ estate

Michael Jackson, known by many as the ‘king of pop,’ passed away on 25 June 2009. When preparing his will, he had plenty to consider, including his many assets and debts, as well as his children, parents, ex-wife and others who would have expected, or at least hoped, to inherit from his fortune.

Although Jackson prepared a will before his death, several inheritance claims were made against his estate, including those by his father, brothers and sisters, who he intentionally left out of his will.

Over the course of his life, Jackson prepared three wills, and under the terms of his first, made in 1995, he specified that his assets were to be placed in the ‘Michael Jackson Family Trust’. The trust was to give 20% of his estate to charity and the remaining amount was left to his mother, Katherine, and his children. Upon his mother’s death, the trust fund would be used solely for the benefit of Jackson’s children. His subsequent three wills, prepared in December 1997, March 2002 and July 2002 did no more than clarify the names of his children; the distribution of his estate was otherwise identical.

Following his death, Jackson’s brothers and sisters attempted to overturn his final will by claiming that it was “fake, flawed and fraudulent,” however, they were unsuccessful due to missing the deadline to challenge its validity.

Had they not been ‘timed out’ of challenging the will, what could Jackson’s siblings have hoped to achieve? Under the law in England and Wales, the answer would be very little. This is because by having Jackson’s 2002 will

declared invalid, the terms of March 2002 would have applied. This would have meant that his estate would still have been divided between charity, his mother and three children, as intended.

In fact, for there to be any changes to how the estate would be distributed, Jackson’s siblings would have had to challenge all of their brother’s previous wills and have all four found to be invalid. Under English and Welsh law, in these circumstances the rules of intestacy would then have applied, meaning that Jackson’s mother and the charities would not receive anything from the estate, and his children would have shared the entire fortune between them.

This would have meant that, in England and Wales, there would simply have been no point in Jackson’s siblings challenging the validity of his wills in the first place, as there would never be a way for them to benefit.

Although not a recent case, the story of disputing Michael Jackson’s estate demonstrates the importance of seeking legal advice if you are considering challenging the validity of a will, to ensure that there would be a benefit in doing so.

Please get in touch with our inheritance and trusts disputes team should you need any advice on such a matter; we’d be happy to help. ■

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Jessica Whooley
Solicitor, Litigation & dispute resolution

Jessica specialises in a wide range of disputes, including those made over inheritance and trusts.



Evie Claridge
Trainee solicitor, Litigation & dispute resolution

Evie assists with a variety of contract, inheritance and trusts disputes.

Hot topics – our latest webinars on catch up

Working with the menopause

Listen to our employment and business immigration team unpack one of 2022’s hottest topics for businesses, including the potential impacts on organisations and how they can best support their workforce.

Business immigration for employers

Following the UK government’s announcement of a new global mobility route, this webinar offers an update on recent rules and how to apply for sponsor licenses for overseas workers.

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



Evicting eviction notices & plans for the private rental sector

A recent white paper has detailed the government's proposal to reduce poor-quality housing and abolish section 21 eviction notices. It also proposes introducing a new housing ombudsman to reduce the number of claims that make it to court.

What is a section 21 notice?

This no-fault eviction notice is used by landlords to recover possession of their property where a tenant has not necessarily done anything 'wrong'. This can currently be used at any stage after the fixed term letting agreement has expired and consequently, the government and action groups argue that it means renters do not have any security, even when they are 'good' tenants.

What are the changes proposed?

As well as its intention to abolish section 21, the government has suggested relying on the 'grounds for possession' currently detailed in a section 8 notice – also used by landlords to evict tenants.

The proposed changes imply that these grounds will be reformed to include further reasons for eviction, designed to strike a balance between providing security for tenants and landlords alike.

Currently, grounds for possession under section 8 do not allow for a landlord wishing to sell the property, or a 'no fault eviction,' and are typically used where the renter has breached the tenancy agreement. The suggested reform, however, will allow landlords who wish to sell the property or move into it themselves to seek possession, as well as allow for evictions where the tenant hasn't necessarily been at fault, but nonetheless, possession is required for a reasonable intention. Therefore, tenants will still need to comply with their obligations, as much as landlords must comply with theirs.

Will this level the playing field between landlords and tenants, or will landlords continue to face an increasingly complicated compliance regime alongside getting to grips with new possession grounds, without the security of section 21? The answer remains to be seen.

Good news – a new rent arrears ground

The white paper also discusses a new mandatory rent arrears ground for possession – to protect landlords from tenants who habitually fail to pay their rent. The ground would be used where the tenant has been in at least two months' rent arrears three times over three years, regardless of the balance at

the time of the hearing. This would resolve a current issue, where tenants are in arrears for a long time, and settle these at or before a possession hearing, meaning the landlord is no longer entitled to possession.

So, what does the future hold?

In scrapping section 21 and bringing an end to 'no-fault' evictions, the government is effectively getting rid of Assured Shorthold Tenancies (ASTs) as we know them. Under new rules, a future regime may mean that private tenancies have more in common with current assured tenancies in the regulated housing sector.

It's likely there will also be amendments made to the notice periods required to seek possession of a property, including increasing those for minor faults and decreasing those for serious tenant faults, where necessary.

“The white paper estimates that only 30% of landlords comply with requirements and are concerned with renewing their knowledge on legislative changes. Therefore, the government is seeking to introduce a property portal to make compliance requirements easier to deal with.”

What should landlords be thinking about?

If you are thinking of regaining possession of a property, it's advisable to issue notice and commence proceedings as soon as possible.

While still unclear, the most obvious take away from the recent white paper is that possession proceedings are changing, and it is safe to assume that the private rental sector will continue to become more regulated as the government seeks to fill the hole in social housing stock.

Look out for more news from us on upcoming changes in the sector and for help with any of the matters discussed, please get in touch with our dispute resolution team. ■

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James works closely with clients to consider the legal, time and financial implications of their matter.



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A new chapter for wills, trusts & probate



Our dedicated wills, trusts & probate team, ranked by national legal guides *Chambers UK* and *The Legal 500*, and recently recognised in the *Chambers UK High Net Worth guide 2022*, is entering a new chapter, with recent additions and changes allowing for a more specialised approach to helping their client base.

Always focused on explaining things in a clear and friendly way, the team is led by partner, Simon Cook, and headed up by senior associate solicitors, Rachel Sugden, Tom O'Riordan and Laura Stone.

New to the team this year are chartered legal executive Gabrielle Renouf and solicitor Leah Vincent,

who join associate, solicitor Jennifer Cockett, associate chartered legal executives, Janine Guthrie, Susie Clay and Miranda Hawkes, private client executive Sian Devereux-Renny and paralegal, Abigail Waldron.

“I’m proud of the depth of expertise we currently have within the team. Offering specialist knowledge and advice across the different and often complex matters we deal with, will help us to continue providing the best possible service to clients in Gloucestershire and beyond.”

Simon Cook
Partner & head of wills, trusts & probate

Together, they help people to plan for their futures by creating and updating wills, preparing powers of attorney, trusts and inheritance tax planning, protecting assets and business interests, and more.

To find out how the wills, trusts & probate team can help you, whatever your stage of life, visit willans.co.uk/people/wtp ■

First-time buyer? Stamp duty tax cuts revealed

In the new government’s recent growth plan, announced by the chancellor on Friday 23 September, it was revealed that first-time buyers will only pay stamp duty land tax on homes worth over £425k, instead of those worth over £300k. This first-time buyers’ relief applies to properties worth up to £625k, instead of £500k.

Alongside this, the nil-rate band has been doubled from £125k to £250k for all buyers, meaning that 200,000 people will be able to buy a home without paying stamp duty tax. However, the 3% surcharge applicable to purchases of “additional property” continues to apply in all cases, including properties that fall within the nil-rate band. Higher rates also still apply in certain circumstances, such as for purchases by companies, trusts or non-UK residents.

The changes to stamp duty are intended to allow people to “keep more of the money they earn... boost household consumption, increase economic confidence and support jobs.”

If you’re a first-time buyer, or moving house, and need help from our team of residential property lawyers, please don’t hesitate to contact us via willans.co.uk/contact. As always, we’d be delighted to assist. ■



Paws for thought – staff fundraising for Cheltenham Animal Shelter

At the height of the pandemic, Willans' staff nominated **Cheltenham Animal Shelter** as its charity of the year.

While it was likely it wouldn't be possible to host our usual charity fundraising events, our attention turned to different ways we could help the shelter. We also made the decision to extend our usual year-long charity partnership to two years, to allow even more support and fundraising to take place between 2020 and 2022.

We're pleased to reveal that a grand total of almost £3,000 was raised by our charity committee and staff, who participated in a range of events and activities (many of which were virtual). These included an online quiz, bake off, dog walk, 'pets for talent' contest, Christmas jumper day, "guess the weight of the animal" competition and 'make a will' week.

As well as fundraising, our staff have also spent time volunteering at the shelter's Christmas fair, as well as participating in volunteer days to help to maintain the

shelter's sensory garden, assisting with dog walks and simply spending some much-needed time with the animals.

To read more about Willans' commitment to charity and the community, visit willans.co.uk/charity-and-community/ ■



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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