

Your life & the law

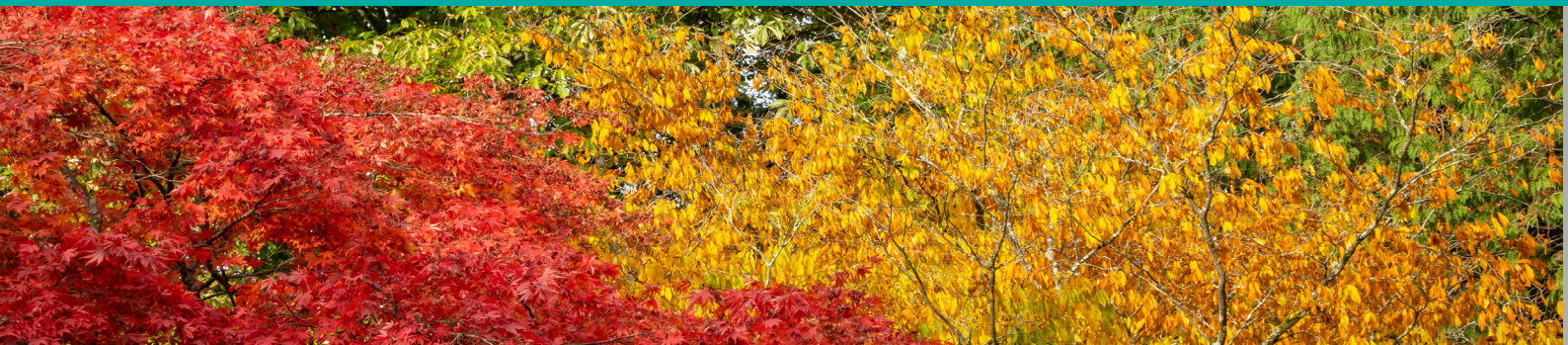
Newsletter for private clients

willans

Willans LLP | solicitors

Autumn / Winter 2023

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

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

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

Bridget Redmond | Managing partner

What's in this issue?

- Preventing property fraud
- Online divorces
- Fiscal drag
- Will manipulation
- Neighbours & disputes
- Overage agreements

Willans pair recognised yet again in Chambers High Net Worth guide



We are delighted that our lawyers have been recommended for the eighth consecutive year by a prestigious and independent legal guide that recognises the best professional advisors for high-net-worth individuals.

Paul Gordon – partner and head of litigation & dispute resolution – has been ranked in *Chambers High Net Worth* guide for the fifth year running, whilst **Simon Cook** – partner and head of wills, trusts & probate – has also been recognised again.

The highly regarded wills, trusts & probate team have also been recognised alongside Simon, rated in the top band for private

wealth law in Cheltenham and the surrounding area.

Managing partner, Bridget Redmond, commented on the latest ranking results, saying: "Receiving recognition every year in *Chambers High Net Worth* guide reflects the quality of advice our firm offers, and is something I'm immensely proud of. Congratulations to Paul and to Simon and his team – the achievement is absolutely deserved."

For the full article, please visit our website by following the link below:

willans.co.uk/knowledge/chambers-hnw-2023/ ■



Property fraud: What precautionary measures should you consider?



Property has long been an enticing target for fraudsters, and regrettably, the incidence of mortgage and property fraud is still an issue. HM Land Registry prevented the registration of 41 fraudulent applications in 2022/2023. These affected properties across England and Wales were worth an estimated £18 million.

The vulnerability of properties to fraud is particularly heightened for those that are vacant, tenanted or mortgage-free. If you find yourself frequently away from your property for extended periods, residing in a care facility, or have your property rented out, it's important to recognise that your property may be at a higher risk.

Fraudsters 'steal' property by assuming the identity of the genuine property owner and subsequently either mortgaging or selling the property before vanishing with the ill-gotten gains. To safeguard against such schemes and mitigate the risks associated with property fraud, it is important to consider specific precautionary measures:

Ensure proper registration: Begin by confirming that your property's title is correctly registered at the Land Registry. Additionally, make certain that your contact details on record are accurate and up to date. This will enable the Land Registry to get in touch with you if they need to issue a formal notice or convey any changes to the register.

Leverage property alert services: The Land Registry offers a valuable and free property alert service that is designed explicitly to assist property owners in detecting potential instances of property fraud. By subscribing to this service, the

Land Registry will promptly notify you of any significant activities that may result in alterations to the register of a property you are monitoring. This early warning system can prove instrumental in preventing fraud.

Implement restriction measures: The Land Registry has introduced a form of restriction aimed at protecting absent property owners. This restriction is listed on the title register and serves as a deterrent to forgery. It requires a conveyancer or solicitor to provide certification confirming that the individual transferring or mortgaging the property is, indeed, the true owner. This additional layer of security can be invaluable in thwarting fraudulent attempts.

If you are uncertain whether the restriction has been applied to your property, we recommend reaching out to the Land Registry for clarification. Should you want further assistance, our residential property team are on hand to help and, if necessary, facilitate the registration of a restriction on your behalf.

In the unfortunate event that you suspect you may have fallen victim to property fraud, it is of paramount importance that you take immediate action. Seek professional advice by contacting a conveyancer or reaching out to the Land Registry without delay. Prompt intervention can make all the difference in mitigating the potential damage caused by fraudulent activities targeting your property. ■

Suzanne O'Riordan
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Suzanne O'Riordan

Partner, conveyancer
(non-solicitor)

Residential property

Suzanne leads our highly rated residential property team. She is experienced in her field, helping first-time buyers through to buy-to-let investors with a range of property needs.

Review us online!

Have you had a positive experience working with us? If so, please consider leaving us a review online at [ReviewSolicitors](#).



'Quickie' divorces – are they worth it or do they cause more complications?



Since the introduction of no-fault divorce in April 2022, there has been an increase in online services claiming to deal with divorces in a cheaper, quicker and more convenient way than formally instructing a solicitor. Whilst the new blameless divorce process itself is relatively simple to start online, the need – and indeed value – of sound legal advice is frequently overlooked.

It is a common misconception that the simplified online divorce application settles everything.

In reality, the application simply serves as the trigger for a whole raft of life-changing discussions and decisions about shared care of children and the division of finances. This is where professional legal advice from a specialist family lawyer can really assist parties in a way which online divorce services simply cannot.

The UK's competition watchdog, the Competition and Markets Authority (CMA), has recently confirmed that it will begin an investigation into firms offering 'quickie' divorces.

Such services are often unregulated and leave their customers at risk of not having access to standard consumer law protections. The CMA reports complaints about misleading claims by these services, whether in respect of the process itself or the overall cost. Other complaints relate to an inadequate quality of service, where agencies have used the wrong forms, entered incorrect details or sent papers to the court late.

Whilst it can be tempting to choose what appears to be the cheapest option, the CMA's investigation serves as a stark warning that all may not be as simple as it seems.

Divorce is a legal process which should be taken seriously. Without the support and assistance of professional experts, clients could end up paying as much as – or more than – they would have by going to a regulated law firm to begin with, especially if additional work needs to be done to rectify errors made. They could also be deprived of the essential information and advice needed to assist them in resolving all the issues arising from the divorce. Due to the unregulated nature of these various online services, many clients are thus left unprotected in a family law context, as well as in respect of their consumer rights.

A qualified family law professional can advise not only on the divorce process, but on the difficult issues arising from divorce such as the division of finance and shared care of children – important issues which are not addressed by the application itself.

There is no question that a divorce is one of the most challenging experiences that a person can face, which makes it all the more important that the best possible information and advice is on hand to ensure that sound, long-lasting decisions are made at a critical turning point of life.

If you have any questions or require support, please get in touch with our highly rated team. ■

Joeli Boxall

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Sharon Giles

Partner

Family law

Sharon is an experienced family lawyer and collaborative practitioner who heads up the department. She specialises in complex financial matters, often involving business interests, significant pension resources and/or properties and investments owned abroad.



Joeli Boxall

Solicitor

Family law

Joeli advises clients at various stages of their relationships, ranging from divorce, financial remedy, arrangements for children and nuptial agreements.

They didn't tell me the neighbours were a nuisance when I purchased the property!

When purchasing a property, the seller must complete a sellers property information form (SPIF). These include simple questions asking whether there has ever been – or if there are currently – any disputes with any neighbouring properties.

In the case of *McMeekin v Long*, the sellers ticked 'no' to these questions.

The McMeekins purchased a four-bedroom detached house in Hampshire from the Longs back in July 1999 for £124,000. After moving into the property, the McMeekins soon discovered that the Longs had been in an ongoing dispute with the neighbouring property relating to parking and rubbish dumping.

11 months later, the dispute was reignited when the McMeekins ordered a home delivery of groceries which utilised the access road, causing the neighbouring property to complain to the grocery company. This then spiralled into further aggravated disputes between the McMeekins and the neighbours.

The McMeekins eventually decided to bring a claim for compensation against the Longs due to the misrepresentation of the property, in that they failed to disclose within the SPIF that there had been a dispute with their neighbours.

Mr Justice Astill favoured the McMeekins and commented that this information is imperative to be disclosed in the conveyancing process and, as the questions of the form are so simple to understand and to answer, it was "impossible to conclude other than that [the Longs] must have known they were not being truthful when they answered those two questions."

The Longs were found liable for fraudulent misrepresentation and the parties agreed an out-of-court settlement in the sum of £67,500 for the devaluation of the property and costs – equivalent to 59% of the purchase price of the property in 1999.

In circumstances where you find yourself having purchased a property which is subject to an ongoing nuisance which was not disclosed to you during the conveyancing process, you may have a claim for misrepresentation against the seller. Typically, it is the case that had the purchaser known of the ongoing dispute then they would not have purchased the property, or would have purchased it at a significantly reduced price.

If you find yourself in this position and wish for our assistance in assessing whether you may have a claim against the seller of your property for misrepresentation, please contact our team of specialists. ■

Nick Southwell

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Bethen Abraham

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Nick Southwell
Partner

Litigation & dispute resolution

Nick is a partner in the litigation team who advises both businesses and individuals on resolving disputes, particularly those concerning property.



Bethen Abraham
Trainee solicitor

Litigation & dispute resolution

Bethen helps clients with residential possession issues, building disputes and disputes involving vehicles, but also works on other contract-based claims.



Christmas carol concert 2023

Wednesday 20 December | Doors open 6:15pm | Cheltenham College

Our Christmas carol concert is back for another year, this time at Cheltenham College Chapel on Wednesday 20 December. Join us for a festive evening of readings and popular carols as we look to raise funds for our charity of the year, **Young Gloucestershire**.

Register your interest now by contacting events@willans.co.uk, and keep an eye on our website and social media for more details on how to book soon!



Fiscal drag: Nil rate band & inflation

The two main reliefs from inheritance tax (IHT) available to individuals are the nil rate band (NRB) and the residence nil rate band (RNRB).

The NRB has remained frozen at £325,000 since 2009 and will continue to remain frozen until 2027/2028. The RNRB has been frozen at £175,000 since 2021.

It is predicted that if the main IHT allowances had increased by 2% year on year, in 2023 the NRB would have increased to £428,830 and the RNRB to £185,711. As the allowances have not increased, it is estimated that the potential additional IHT collected by HMRC would be £45,816 per individual.

IHT receipts are continuing to increase at a substantial rate and are now at their highest level on record. In the tax years 2020/2021 to 2021/2022, receipts increased by 14% (£729 million). A total of £6.1 billion of IHT was collected by HMRC in 2021/22. Between 2022 and 2023, HMRC collected just over £7 billion – a new record.

An additional factor to consider is the increase in property prices. Since the NRB was frozen in 2009 at £325,000, the average house price has increased by 84% (£131,654). This has meant that more property owners may find themselves subject to IHT in the

future because their property has increased in value, but the NRB and the RNRB have not increased at the same rate. This is what is called 'fiscal drag'.

As the tax allowances have not increased in line with other factors like inflation and property values, more people will have assets above the allowances and be subject to IHT.

Most of the population still do not have a will. It is important to have a will in place, along with lasting powers of attorney, and to consider affairs generally. At that time, IHT can be considered and advice can be taken as to whether any potential IHT liability can be mitigated.

We are happy to talk about and advise on all these points. Contact our highly rated wills, trusts & probate team for more information. ■

Simon Cook

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Abigail Waldron

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Simon Cook

Partner

Wills, trusts & probate

Simon heads our highly rated wills, trusts & probate team. With 30 years' experience, he specialises in complex estate planning, lifetime trusts and vulnerable beneficiaries, as well as the creation and administration of personal injury trusts.

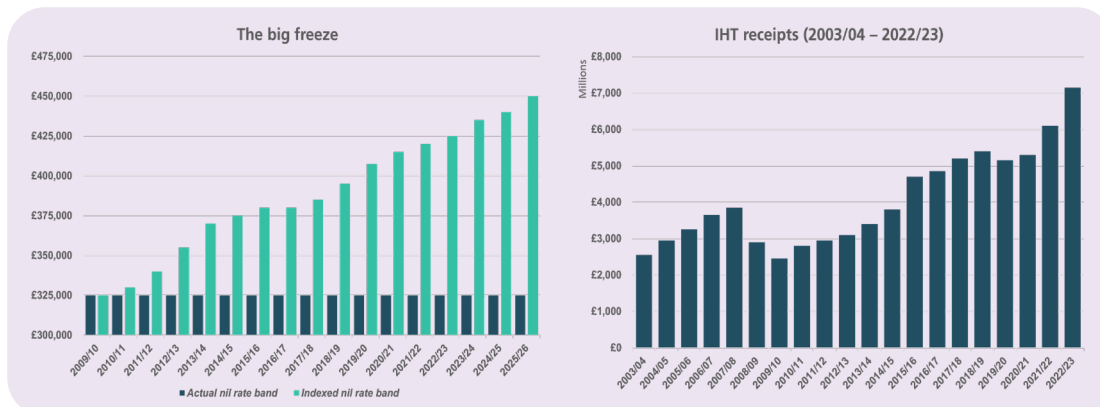


Abigail Waldron

Paralegal

Wills, trusts & probate

Abigail supports the team with drafting wills, powers of attorney, administering estates and trusts, as well as applications to the Court of Protection.



Come along to our coffee morning!

Wednesday 18 October | 11am-2pm | Winchcombe Guide Hall

Would you like to find out more about planning for the future? Or are you looking to buy or sell your property? If so, come along to our free coffee morning where our friendly wills, trusts & probate and residential property lawyers will be on hand to answer any questions you may have.

No pre-booking is required, just turn up. We look forward to seeing you there.



'One lawyer, two clients' to be introduced soon for divorcing couples

The last few years have seen a considerable amount of change in our UK divorce laws. From the introduction and roll out of a no-fault divorce process to online applications generally and remote court hearings, all of which reflect the evolving needs of modern society.

One of the big questions in recent times has been whether it is ever possible for one lawyer to represent both parties to a divorce. Historically, solicitors have been prevented from doing so for fear of there being a possible conflict of interest – a premise fully supported and enforced by the Solicitors Regulation Authority (SRA). This has meant that both parties to a divorce had to get their own separate advice and incur two sets of legal fees no matter how amicable the split.

New attitudes to the ways in which couples separate have resulted in a landmark change to the traditional approach in delivering divorce related advice, and the SRA has recently endorsed a joint assistance and advice model, whereby one lawyer can advise and represent both parties.

There will be strict safeguards in place to ensure that both parties are sufficiently protected from a legal perspective, and most importantly the parties must be committed to resolve issues amicably and make difficult decisions themselves rather than defer the decision making to someone else, such as a judge or arbitrator.

A careful screening process will inevitably be involved and a joint advice approach will not be suitable for all cases, but assuming that the essential criteria are met, this method is expected to become a revolutionary step forward in the way that divorcing couples can receive legal advice.

Although the finer details are still being ironed out amongst the various regulatory bodies, this service will be available to Willans clients in the very near future. Stay tuned for more details! ■

Kristie Silsby

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Kristie Silsby

Associate, solicitor

Family law

Kristie helps clients who are starting a relationship as well as those involved in a relationship breakdown. Understanding the emotional issues involved, she works to resolve financial and children disputes as efficiently and amicably as possible.

True story: Changing wills for financial gain

The recent BBC drama, *'The Sixth Commandment'*, told the true story of chilling crimes of a man who targeted elderly victims who he could persuade to change their wills for financial gain.

The perpetrator, Ben Field, was a trainee vicar who befriended Peter Farquar – a retired teacher – and Ann Moore-Martin – a retired headmistress – who, at the time, were pensioners with no children.

Peter and Ann were neighbours on the same road. Field set about befriending Peter and Ann and then isolating them from their family and friends. He sought to exploit their vulnerabilities, convincing them both that he was in love with them and seeking to formalise their relationships. The purpose of his heinous actions was to encourage them to change their wills so that he would benefit from their estates.

Peter was manipulated into updating his will three times in two years to benefit Field. Ann was also convinced to change her will, but upon becoming aware of the true horror of Field's motives, amended it to remove Field before her death.

Field was found guilty of murdering Peter in 2019 and jailed for a minimum of 36 years. He was cleared of conspiring to kill Ann Moore-

Martin and of her attempted murder. He also admitted to duping them both into fake relationships in an effort to change their wills.

Unfortunately, money can be a strong motivation and, with an ageing population, there are an increasing number of vulnerable people who could be targeted. This case is perhaps an extreme example, but if you have concerns that a will may have been changed following some form of undue influence then we can assist in investigating.

Everyone's will should reflect their true wishes, and this is recognised by law. If you have concerns regarding the validity of a will – such as suspicions it may have been forged, that the person making it had been coerced, manipulated into preparing it or that they have been unduly influenced – you may be able to contest it on the basis of invalidity. In doing so, we can assist you contesting this and in seeking to establish evidence to support your claim.

Contact our specialist inheritance disputes team if you have any questions or queries. ■

Lucy Richmond

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Lucy Richmond

Litigation executive

Inheritance & trusts disputes

Lucy specialises in claims relating to inheritance and trusts. Having previously worked in the administration of estates, she has developed a particular insight into these types of cases and brings an understanding and balanced approach.

Making the most out of your land with an overage agreement

With the current housing shortage, farmers and other landowners are finding that their fields, agricultural buildings and even small parcels of unused scrub land are increasingly being considered for development. When they need or want to sell their land on, therefore, landowners are understandably anxious to avoid giving away all of – what could be – a highly lucrative windfall from the land to a new buyer.

This is where an overage agreement can help.

What is an overage agreement and what does it do?

An overage agreement awards a seller an additional payment from the buyer if certain conditions (such as the grant of planning permission) are met.

Adding overage to a sale of land is likely to reduce the sale price as any premium for development potential will be accounted for at a later date. This reduces both the upfront costs and the risk for the buyer intending to develop the land. However, it will also impact the price that someone is prepared to pay for the land and make it more difficult for any potential buyer to borrow against the land to fund their purchase.

What do I need to consider?

Consideration needs to be given to the following:

Duration: Nothing lasts forever, including overage. The period of time that land remains subject to overage is determined by many factors, including the bargaining power of the two parties and the characteristics of the land.

Trigger event: An overage payment is normally triggered by something that

increases the value of the land, such as the granting or implementation of planning permission, or a sale of the land with planning permission.

Trigger due date: Payment of overage can be required immediately following a trigger event, or years later. When the new owner of the land will have the means to make the overage payment will need to be taken into consideration.

Protection: To ensure the overage is binding against any future owner of the land (including the buyer), care needs to be taken to ensure the agreement is properly protected. This will often include registering a covenant against the title to the property at Land Registry.

Uplift: What percentage of the uplift will be clawed back? Too much and it will void any incentive for the new owner to develop the land. Too little and it may be more effort than it's worth.

How can we help?

If you are considering selling land with development potential, we can help you determine whether overage is suitable for your property, ensure that the overage agreement secures you the best possible terms and that your interests are adequately protected once the land is sold.

Please don't hesitate to get in touch with our specialist team. ■

Adam Hale

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Adam Hale

Partner

Agriculture & estates

Adam's varied client base includes rural businesses and private landowners. He advises on issues affecting landowning clients, ranging from rural land management to transactional work, with a particular focus on the disposal of development land.



Rich & famous: Disputing the inheritance

George Michael, famed singer-songwriter and producer of some of the best-selling music hits of all time, died on Christmas day in 2016.

Under the terms of his will, the beneficiaries of his £97 million estate were his father, sister and close friends.

However, although the pop icon had prepared a valid will, his ex-partner, Fadi Fawaz, pursued a claim under the Inheritance (Provision for Family and Dependents) Act 1975 (the 1975 Act) on the basis that he was maintained/financially dependent upon George throughout their seven year relationship.

The 1975 Act is designed to protect people who ought to have been provided for under a will or the rules of intestacy (where a person dies without preparing a valid will).

In order to be an eligible claimant, Fadi would have needed to have demonstrated that he had lived with the former *Wham!* singer for a period of two years as a husband or civil partner, up to the date of George's death and/or was financially maintained by him immediately prior to his death.

Only after Fadi proved that he was an eligible claimant would the court then be

able to consider whether the will had made reasonable financial provision for Fadi.

It has since been reported that the dispute has now reached a settlement, however the amount Fadi received from the singer's estate has not been disclosed.

If you have been excluded from a partner or former partner's estate, or if someone was maintaining you but did not provide for you under the terms of a partner/family member's will or the rules of intestacy, please do not hesitate to contact our specialist inheritance disputes team. ■

Evie Claridge

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Evie Claridge

Trainee solicitor

Litigation & dispute resolution

Evie advises on a range of disputes, including those relating to inheritance & trusts as part of our *Legal 500*-rated team.



For more expert insight from our highly rated team of lawyers, please view our website.

Visit willans.co.uk/insight/ for the latest legal updates that could be affecting you or your family. ■

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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