Your life & the law

Newsletter for private clients

willans

Willans LLP | solicitors

Spring / Summer 2024

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Welcome to the spring/summer 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, agriculture & estates 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

What's in this issue?

Encouraging inclusivity through our work experience scheme

This spring, applications will close for Willans' inclusive work experience scheme, launched as part of our commitment to diversity and inclusion, and to supporting emerging young talent in the legal sector. For the second year running, we've worked with local schools to promote the scheme to students who are interested in a career in law but come from less privileged backgrounds.

Like all work experience, we offer successful applicants the chance to spend a week at our offices, getting a feel for what it's like to work in the sector. However, some students may think they don't fit the usual 'mould' of a lawyer and that their circumstances would hold them back. This scheme is about breaking down those invisible barriers and giving opportunity to those who may not otherwise have it.

Our employment & business immigration lawyer, Hayley Ainsworth, coordinates the scheme, and said: "As a firm, we're particularly invested in our local community and in supporting the next generation of legal talent to reach their full potential. Several of our employees, for example, started as secretaries and have worked their way up to be fully qualified solicitors.

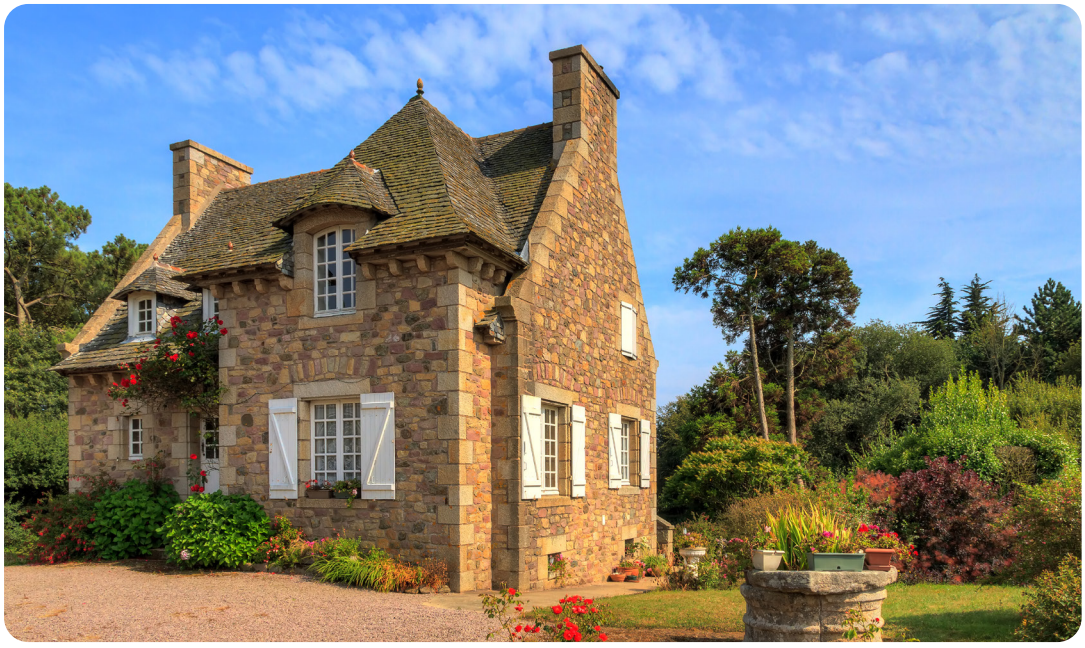
"For the past two years our charity committee has also been fundraising for Young Gloucestershire – a charity that support students and young people from disadvantaged backgrounds. The work experience scheme is another way of giving back to our community."

Throughout the week they're with us, students will spend time in different legal departments, assisting our teams, undertaking research and joining client calls and meetings. They'll also get the chance to experience work in other teams within the business, such as finance and marketing, and we'll support them to develop practical skills in delivering presentations, interviews and C.V. writing.

To find out more about the scheme, visit:

willans.co.uk/knowledge/inclusive-work-experience-scheme ■

Own a property abroad? Your will can still be affected by European law



Do you own a property abroad? If so, did you know that your will can still be affected by European law? If not, it's worth reading on.

Despite opting out when it was first introduced – and having since left the European Union altogether – UK nationals with property abroad are still affected by this particular regulation.

Brussels IV is an EU regulation that was widely adopted across the European Union around 10 years ago in an attempt to unify succession laws across the continent. As has been the case since August 2015, it applies to the estate of any person who dies with a connection to more than one European member state.

Every country has its own set of rules which govern who inherits your estate on your death. Each also has its own set of rules to determine which country's laws will apply to your estate when you die. If you own assets in more than one country, the various sets of rules can often conflict with each other. This regulation aims to reduce the potential for conflict.

One of the ways it does this is to allow you to elect in your will which country's laws should apply to your estate on your death.

The implementation of the regulation also meant that you may have inadvertently elected the law that will govern your estate on your death in your existing will, even if it does not explicitly mention this. This could mean that your will might not do what you thought it would.

Although the UK didn't sign up to the regulation, Brussels IV still impacts UK nationals who own property abroad – even in a post-Brexit world.

If upon reading this you know that Brussels IV applies to you, then while you should of course already have a will in place, now is the time to review it to make sure that your wishes regarding your estate are carried out, and to reduce the potential for costly disputes. ■

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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.

Review us online!

Have you had a positive experience of working with us? If so, please consider leaving us a review online at **ReviewSolicitors**.
You can visit our page by scanning the QR code (right).

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What is parental responsibility and why is it important?

Parental responsibility is a legal term which many parents haven't even heard of until they face a separation. It relates more to the legal duties of a parent towards a child than their rights over them, though these are covered by the definition too.

Mothers automatically have parental responsibility for a child from birth, whereas fathers acquire it automatically if they are either:

- married to/in a civil partnership with the mother at the time of birth (whether or not they are the natural father)
- named on the child's birth certificate
- entering into a voluntary parental responsibility agreement with the mother.

In cases of dispute, the family court can award responsibility to a birth parent or a non-birth parent/primary carer – for instance, in cases where a child lives with relatives or is adopted.

For same-sex couples, there are various ways in which you can have a child together. While the birth mother has responsibility automatically (unless her parental status is removed by a parental order following surrogacy or adoption), responsibility for the other legal parent depends on the circumstances of conception, the marital or civil partnership status at the time and any steps that have been taken after the birth to formalise their legal status.

Having parental responsibility means that you are legally recognised as the child's parent or custodian, and so you have the legal authority to make important decisions about that child's life. This can include giving consent for medical treatments, choosing which school the child goes to, changing their name and appointing a legal guardian to care for them in the event of your death.

Why should you appoint a guardian in your will? When will it take effect?

Appointing a guardian in your will gives you peace of mind that, if you and the other parent die before the child reaches the age of 18, people that you trust and have specifically chosen will take care of your child.

If you fail to appoint a guardian for your child and both you and your child's other parent pass away whilst your child is under 18 – and if no other family member steps in voluntarily to assist – then the court may make an order appointing a guardian, and this may not be someone that you would have entrusted yourself.

On the death of a parent, a person appointed in a will as a 'testamentary guardian' will automatically obtain parental responsibility for the child if there is no other surviving parent or person with parental responsibility.

If there is a surviving person with parental responsibility who for some legitimate reason is not fit to parent – or who hasn't been involved in the child's life, so is unknown to them – then a testamentary guardian will have legal status to apply to the court for the child to live with them.

To continue reading the full article that delves into why appointing a guardian is especially important for separated parents, please visit our website via the link below.

willans.co.uk/knowledge/parental-responsibility-importance/

If you would like to get in touch with our family law team regarding child arrangements, or would like to appoint a guardian, please don't hesitate to contact us. ■

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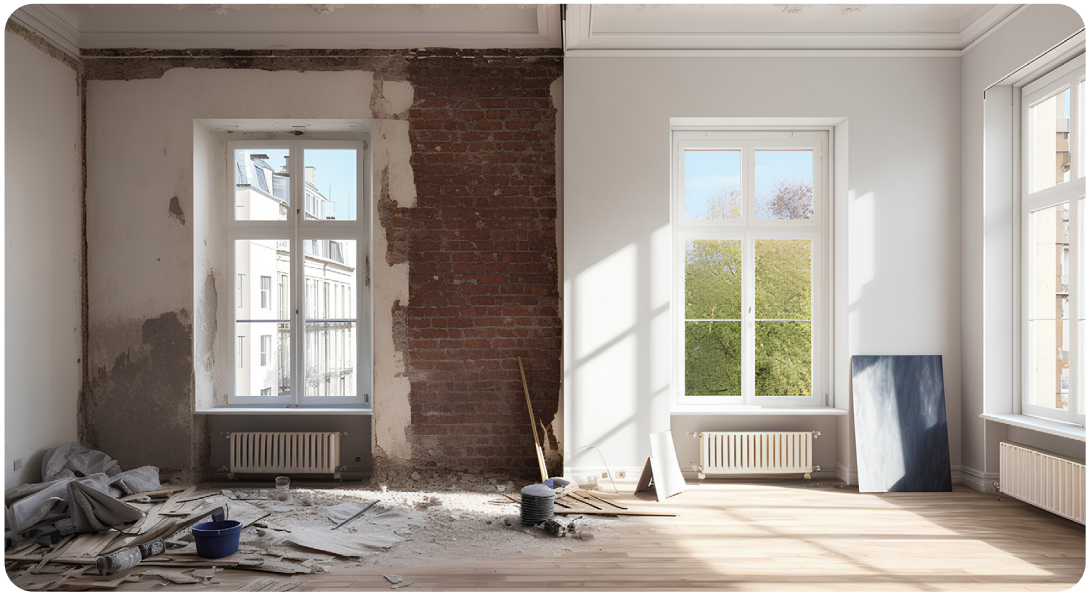
Kristie Silsby
Associate, solicitor
Family law

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.

Dealing with cowboy builders and legal lassos



With more and more of us benefiting from hybrid and home working, we are increasingly looking to create new spaces or improve our current ones. This could be anything from simple decorative works to outbuildings and significant extensions.

Unfortunately, with the rise in the amount of domestic building projects comes an increase in the number of disputes. But what can you do to avoid the common pitfalls in your building project?

Getting a project right is always less costly than resolving issues later. Most project issues can be resolved by:

- a detailed scope of works or design (ideally professionally prepared)
- a contract setting out the agreement between the parties and both parties' expectations and obligations
- a clear timeline for the works
- having an agreed budget. Are there any penalties if things go wrong/are delayed?
- appointing a professional contract manager
- agreeing any variations in writing.

However, even with the most detailed preparations, things do occasionally go wrong.

The first step if you have an issue with your builder – whether in relation to the speed, extent or quality of their work – is to review your agreement. What specific issues are you having and are they provided within the agreement or any other document?

Once you have considered this you would then need to consider any statutory protections you may have, such as under the Consumer Rights Act.

These can both be complex items to consider, and it's vital that you understand your legal position before you proceed with any dispute.

When you have established your legal position, you would then typically seek to discuss your concerns with your builder. This may be done by a meeting on site, a facilitated meeting with the third-party intermediary, or sometimes a more formal mediator.

If at the outcome of that matter you still cannot find a way forward, you would then need to consider whether you can terminate your agreement, find an alternative builder and bring a claim for any losses you have suffered.

We appreciate that all of the above is complex and stressful in circumstances where you are dealing with your home, and with one of your most substantial assets. At Willans, we have years of experience in dealing with such disputes, helping you to find the best way forward and giving you pragmatic commercial advice. ■

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Senior associate, solicitor-advocate

Litigation & dispute resolution

James helps clients ranging from individuals to large limited companies, with a range of dispute resolution queries.

Simon Arneaud

Senior associate, solicitor

Litigation & dispute resolution

Simon helps a wide range of clients, including large corporate clients and private individuals, assisting on a number of dispute issues.

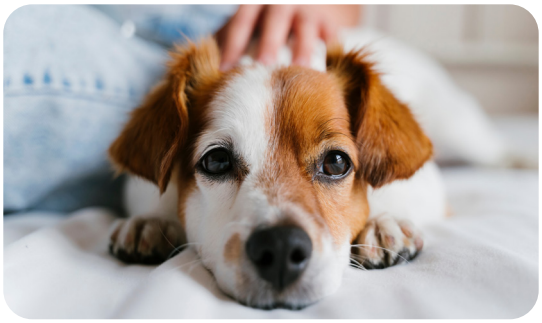
Paws for thought: what happens when I can't care for my pets anymore?

According to recent statistics, the number of households in the UK owning a pet have remained stable over the years with an estimated 57% of us owning a pet in 2023. It is clear we are a nation of animal lovers, and it seems that fact is here to stay!

It is one thought to consider what happens to your pet when you die, but what if you lose capacity to take care of them during your lifetime? While it is difficult to think about what might happen if you can no longer take care of your pet, you can take positive steps to ensure your pets are looked after, no matter what the future may hold.

The first step should be putting in place lasting powers of attorney (LPAs) if you do not already have them. LPAs are powerful legal documents which allow you to appoint people you trust (attorneys) to make decisions on your behalf if you are no longer able to.

When creating LPAs, it is possible to write guidance (preferences) and instructions to your attorneys as to how you would like them to make decisions for you. We recommend including these so your attorneys have a record of your wishes. This guidance is where you can make provision for your pets.



We set out below some examples of points you may wish to consider:

- Who do you want to take care of your pet? The named individual could be a relative or close friend. If you wish to name a specific person to look after your pet, be sure to discuss your intentions with them and obtain their agreement before completing your LPAs
- Do you wish to provide instructions to make financial provision for your pet? For example, for your attorneys to continue to pay for food/vet bills
- Do you wish for the named individual to bring the pet to visit you on a weekly or monthly basis?
- Would you like to nominate a shelter/ rescue charity to take care of your pet before they are re-homed?
- Do you wish for your pet to carry on living with you? If so, would you like someone to come over to put out food and exercise your pet so that your pet can stay with you?
- Alternatively, if you were to move into a care home, would you like your pet to join you? Therefore, is it a stipulation that you move somewhere that allows pets?

You can use the guidance in the LPAs to make all of this known.

Unless you specifically state who you want to take care of your pets, or specify a shelter that can rehome them, you may not be able to have a say in the future of your pet's life.

To avoid an unwanted fate for your pet, you must be specific when drafting guidance and instructions for your LPAs, and we recommend obtaining professional legal advice to ensure your wishes are recorded as you want them.

If you instruct us to prepare your LPAs, we will go through them in detail with you to make sure they are tailormade and specific to your wishes and instructions. ■

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Leah Vincent
Solicitor

Wills, trusts & probate

Leah helps people to look after their affairs and achieve their wishes for the future. She is recognised as an expert in her field and can help with wills, LPAs, digital assets and more.

Come along to our coffee morning!

Wednesday 24 April | 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.

Should the court have the power to make parties engage in mediation?

In the recent decision handed down in the case of *Churchill v Merthyr Tydfil County Borough Council (2023)*, the Court of Appeal ruled that the courts now have the power to stay proceedings and order parties to engage in 'alternative dispute resolution' (ADR) and mediation.

It therefore follows that the Court of Appeal have overturned the longstanding precedent of *Halsey v Milton Keynes General NHS Trust (2004)*, which established parties could not be forced to engage in mediation.

The decision in *Halsey* was criticised because of the underlying fact that parties participating are not forced to settle their disputes at mediation, and still have access to the court in any event. The Court of Appeal also deemed the previous decision in *Halsey* to be no longer reflective of the general direction to encourage the use of ADR and mediation.

However, the decision in *Churchill* does not go as far as some have campaigned for and has stopped short of making mediation compulsory in all proceedings. The Court of Appeal provided that an order to stay proceedings for ADR and mediation should only be ordered where it *"does not impair the claimant's right to proceed to a judicial hearing, and is proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost."*

In deciding whether to stay proceedings and order parties to engage in mediation, the court will consider the following:

- the cost to mediate and the financial situation of both parties
- whether the case is suitable for mediation
- why parties may decline to participate in mediation.

As a result of the decision in Churchill, there is potential to bring about a significant shift in the case management of proceedings, by encouraging parties even further to consider settlement at an earlier stage.

It has become apparent in recent years that mediation is usually in the best interests of both parties. If you are involved in a dispute and would like to discuss the potential benefits of ADR and mediation, please do not hesitate to contact us. ■

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Evie Claridge
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.

Gifting: how you can minimise inheritance tax

Between 2022 and 2023, over £7bn in inheritance tax (IHT) was paid. Payments of IHT continue to rise, partly due to the main tax-free allowances having been frozen since 2021 – namely the nil-rate band (NRB) and the residence nil-rate band (RNRB) – all while house prices increase in value. As a result, we are seeing more people reviewing their estates and looking into whether they can minimise IHT by gifting in their lifetimes.

A lifetime gift of an asset or money to an individual is treated for IHT purposes as a potentially exempt transfer (PET). At the time, this means that no tax arises on the gift. The donor's NRB, however, is reduced by the value of the gift and, if they die within seven years, it reduces the NRB tax free allowance available to their estate.

If the person survives this seven-year period from the date of the gift, the NRB is restored to its value before the asset or money was gifted, meaning it has no impact on the IHT position of the estate.

Such gifting and survival can be an effective tool for minimising IHT, though it relies on the uncertainty of living for at least seven more years.

To read about other ways of minimising inheritance tax, our full article is available to read on our website via the link below:

willans.co.uk/knowledge/how-to-minimise-inheritance-tax/

Lifetime gifting can be an efficient way of minimising a potential IHT bill, but it is a very technical area of estate planning that requires a bespoke approach. Our highly rated wills, trusts & probate team would be happy to discuss with you whatever questions or queries you may have. ■

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Ashley Wood
Solicitor
Wills, trusts & probate

Ashley helps people with the administration of estates, the preparation of wills and lasting powers of attorney, inheritance tax planning and the administration of trusts.

Buying, selling and letting farmland during the agricultural transition

English agriculture is in the middle of a major transition, with some of the biggest changes to farming practices and farm payments seen in over half a century.

When buying, selling or letting farmland, the ongoing changes to the schemes, policies and grants on offer need to be carefully considered. Whilst detail is still emerging, here is what we know about the impact of some of the changes.

Delinked payments

- Replacing the Basic Payment Scheme (BPS), the first 'delinked payments' are to be made later this year and will gradually reduce until a final instalment in 2027
- Delinked payment recipients do not need to be farming, or own any land or entitlements; instead, they must have applied for BPS in the 2023 claim year, with their payment amount determined by their reference data for 2020-2022
- From 15 February until 10 May 2024, 2020-2022 BPS reference data – and thereby (a share of) the delinked payments – can be transferred from one business to another, subject to certain conditions. However, those who accepted a Lump Sum Exit Scheme payment can't transfer their reference data
- New buyers/tenants are also unable to receive delinked payments, making the availability of other schemes increasingly important.

Countryside Stewardship Scheme (CSS)

- These schemes incentivise farmers and other landowners to take positive environmental action, with a typical agreement lasting between three and five years
- When transferring land subject to a CSS, a buyer and seller will normally demand of each other that they have complied/will comply with the terms of the agreement in place. Either could indemnify the other against any loss suffered as a result of any breach
- The sale contract will need to address whether the payments are to be retained by the seller, transferred to the buyer or apportioned between the two parties
- There are further procedural requirements demanded by the Rural Payments Agency (RPA) that both parties will need to consider.

Sustainable Farming Incentive (SFI)

- These newly launched three-year SFI agreements encourage farmers to adopt and maintain sustainable practices. Farmers can sign up for various 'actions', with each action performed in exchange for a payment. The amounts received for each action depends on the nature of the action performed
- Around fifty new CSS/SFI actions were announced – and 50 updated – at the start of 2024, with more than 180 projects expected to be on offer by the end of this year
- Though they run alongside the CSS and have many similar characteristics (and therefore considerations), a SFI can be entered into by a tenant without landlord consent
- A tenant who expected to retain management control over land for the required three-year period can leave a SFI without penalty if an unforeseen 'change of circumstances' has occurred.

Woodland creation

- With agreements typically lasting between 10 and 30 years, these funds/grants provide landowners with financial and advisory support for the creation and maintenance of woodland
- Buyers and sellers of woodland will want to account for the same considerations as for a CSS/SFI above, and should also contact the Forestry Commission to advise on the impact of any transfer
- Landowners can also enter into a Woodland Carbon Guarantee to sell 'carbon credits' and earn additional income
- Many tenancies will prevent a tenant from entering a woodland creation scheme or a CSS, however.

With the agricultural landscape changing faster than ever before, it is important to receive expert guidance on the legal implications of transferring or taking over land subject to these – and other – agreements.

Whether you're looking to buy, sell or let farmland, we can help guide you through what the new farming policies and payments will mean for you. ■

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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.

Dominic Morgan
Paralegal
Agriculture & estates

Dominic is a paralegal in our agriculture & estates team. He works with private landowners and rural businesses on a wide range of issues.

Tenants already in situ: which notices should landlords be aware of?

Have you bought or sold a property with tenants already in occupation? Perhaps you have purchased a property like this through auction and need to act quickly to meet your responsibilities.

There are two types of notices you need to be aware of to avoid facing penalties.

Section 3 notice

Landlords are required to notify tenants of a change of landlord and their address details. Both the seller and the buyer of a property with tenants in occupation are responsible for this.

You have two months from the date of assignment to provide correct notice to the tenants. If you have failed to comply within this time limit, you should seek legal advice as soon as possible to minimise your liability.

Failure by the buyer or seller to provide a Section 3 notice could result in a summary offence, or even a fine of up to £2,500. It is therefore very important that you take legal advice when buying or selling a property with tenants in occupation.

Section 48 notice

Whilst a Section 48 notice can seem very similar to a Section 3 notice, it is very important that both are served. A Section 48 notice provides the tenants with the appropriate address details for where notices should be served.

This notice is only the responsibility of buyers or landlords who change their service address. Failure by a landlord to provide a Section 48 notice to the tenants will prevent rent from being lawfully due until the notice is correctly served.

If a Section 48 notice has not been served prior to issuing an eviction notice or proceedings, it is likely that a court will find that the notice is invalid, and the proceedings will be unsuccessful.

Actions to be taken

If you are buying or selling a property with tenants already in occupation or have changed your service address, get in touch with our specialist property litigation team so that we can assist you further. ■

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

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