Your life & the law

Newsletter for private clients

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Willans LLP | solicitors

Autumn 2024

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Welcome to the autumn 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?

Willans retains long-standing rankings in 2025 national legal guides

Willans has achieved another set of strong results in the 2025 editions of *Chambers UK* and *The Legal 500*.

The internationally recognised independent legal guide *Chambers UK* – which provides insight into the country's best law firms – has once again ranked five of our firm's departments and nine lawyers for their expertise, knowledge and level of service.

Departments recommended include the firm's agriculture & estates, litigation & dispute resolution, corporate & commercial and real estate teams. Furthermore, an expansion into the wider region sees our family law team ranking regionally for the first time, following nine consecutive years in the top tier for Cheltenham and the surrounding areas.

Individual lawyers endorsed by the guide include family law partners Sharon Giles and Jonathan Eager, agriculture & estates partner Adam Hale and litigation & dispute resolution partner Paul Gordon.

These results followed the latest rankings for *The Legal 500,* which recommended 24 of Willans' lawyers across multiple departments. The guide has recognised four of Willans' partners as 'leading individuals', including litigation & dispute resolution's Paul Gordon.

Commenting on the results, managing partner, Bridget Redmond said: "I'd like to congratulate all of our fantastic lawyers and departments for achieving another year of impressive results in these prestigious legal guides.

Both *Chambers UK* and *The Legal 500's* researchers conduct hundreds of client interviews and undertake thorough evaluations of our service, so to be ranked alongside much larger firms throughout the south west is a testament to the outstanding calibre of our lawyers."

Visit chambers.com and legal500.com to read the full list of results. ■

Autumn budget 2024: how will it affect inheritance tax?

The latest autumn budget has brought about a number of changes, some of which relate to inheritance tax.

IHT thresholds and reliefs

It was confirmed that inheritance tax allowances – which had been frozen until 2028 – will continue to remain on ice until 2030. However, property values will likely increase, meaning more and more estates will be subject to inheritance tax.

The standard inheritance tax allowance for an individual (also known as a nil rate band) remains at £325,000. The residence nil-rate band (RNRB) – which benefits estates that include a residence passed to direct descendants – remains at £175,000.

Inheritance tax may be reduced by exemptions such as the spouse exemption (leaving assets to a spouse) or the charity exemption. Changes were not made to these exemptions.

Pensions

From 2027, inherited pensions will be subject to inheritance tax. This will be a seismic change given that pensions are usually exempt from inheritance tax with them being treated as falling outside of an individual's estate.

Pensions have been a useful inheritance tax planning vehicle for some time. This change will likely mean that many more estates will be caught by inheritance tax.

APR and BPR

Agricultural property relief (APR) and business property relief (BPR) will change from April 2026, with inheritance tax relief for AIM shares reduced from 100% business property relief to only 50%.

Our agriculture & estates team detail the changes in more depth in the article below.

With this being the biggest increase to taxes since 1993, it is more important than ever to take estate planning advice to protect wealth as far as possible. For further details or tailored advice, please do get in touch. ■

Eliza Senior-Fellows
eliza.senior-fellows@willans.co.uk

Eliza Senior-Fellows

Solicitor

Wills, trusts & probate

Eliza is a solicitor in our highly rated wills, trusts & probate team. She helps clients on a range of matters, helping you and your family plan for the future.

Farming post-budget: changes to agricultural property relief

Agricultural property relief (APR) was introduced in 1984 as part of the Inheritance Tax Act, to support farming families by reducing the costs associated with transferring agricultural assets. It is anticipated that the changes to both APR and business property relief (BPR) announced in the 2024 autumn budget will have the opposite effect.

Currently, certain business and agricultural assets are eligible for up to 100% relief from inheritance tax. From 6 April 2026 however, only the first £1 million of combined agricultural and business property will qualify for the existing rate of 100% relief. After the £1 million allowance, the rate of relief will be reduced to 50%, resulting in an effective tax rate of all land over this figure of 20%.

This allowance applies to transfers that occur as a result of the death of the proprietor, lifetime transfers to individuals in the seven years before death (including those made between now and 6 April 2026), and chargeable lifetime transfers – for instance, when property is transferred into trust. Any unused allowance will not be transferrable between spouses and civil partners, as is the case with, for example, the residence nil rate band.

As a result of the budget, there is likely to be an increase in the number of farmers transferring their assets into trust or making lifetime gifts, alongside wider estate planning considerations. Decisions of this kind will help farmers protect the viability of their businesses for future generations; but such decisions do require careful thought and consideration.

Please do not hesitate to get in touch if you have queries on how your farming partnership and operations can be best adapted in light of these recent changes. ■

Adam Hale
adam.hale@willans.co.uk

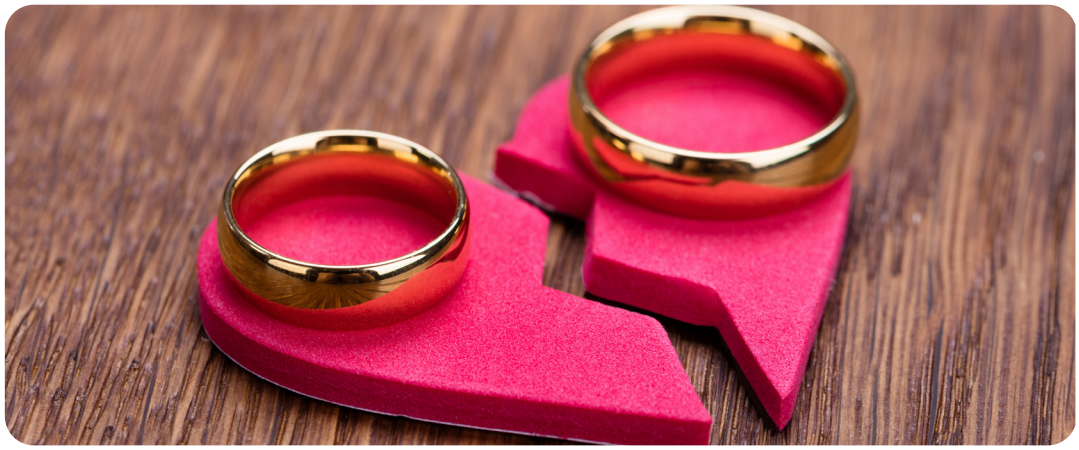
Adam Hale

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.

Do I need a financial order on divorce?



Following the introduction of no-fault divorce in April 2022, many couples have found themselves applying for a divorce using the now streamlined, modern and efficient divorce portal, MyHMCTS.

As part of the divorce application process, the applicant(s) will be asked if they want to apply for a financial order, whether by consent or through contested court proceedings. The response required is simply a tick in the relevant box to say yes or no.

When it comes to sorting out a financial settlement on divorce, it's important for everyone to obtain legal advice from an experienced family lawyer. However, the guidance on this point within the divorce application process itself is extremely lacking.

A final divorce order – previously called a 'decree absolute' – confirms the end of a marriage, however it does not mean that all of the financial claims have been severed between the ex-spouses. As financial claims on a divorce can be pursued against one another's income, pensions, property and other capital assets at any point after a divorce has concluded, it is imperative to resolve this formally by getting a court-approved financial order in place for protection and peace of mind.

Some people might be of the view that their matrimonial assets are nominal at the point of separation, and so it is not worth applying for an order to confirm the arrangements and to achieve a clean break.

The well-known 2015 case of *Vince v Wyatt* demonstrates why this is a mistake. This couple had very modest assets at the point of separation and no financial order was sought when the parties divorced in 1992. After the divorce, Mr Vince achieved remarkable success with his green energy business and became a multi-millionaire.

In 2011, Ms Wyatt applied to the court for financial provision in the form of a lump sum and for interim payments to fund her legal costs. Ultimately, the supreme court determined that Ms Wyatt's application could proceed despite 19 years having passed since the divorce was finalised. She received a £300,000 lump sum plus significant payments towards her legal costs.

While no-fault divorce was introduced to enable couples to go through this difficult process as easily and amicably as possible, the financial arrangements can be complex and legal advice at the outset is certainly recommended – whether the matrimonial pot is significant or not.

If you have any questions or queries, please don't hesitate to contact our friendly team of family law experts. ■

Kristie Silsby
kristie.silsby@willans.co.uk

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.

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Proactive landlords serving documents early get caught out!

Under tenancy deposit protection legislation, landlords must provide their tenants with certain prescribed information in relation to the deposit within 30 days of receiving it. This is to allow for the tenants to have an opportunity to check and sign this information at an early stage.

Under section 213 (6) of the Housing Act 1988, the prescribed information must be given to the tenant "within the period of 30 days beginning with the date on which the deposit is received by the landlord."

The court has recently had to consider what happens if a proactive landlord serves the prescribed information before this.

In *Siddeeq v Alaian*, the court made clear that early service of the prescribed information prior to receiving payment of the deposit from the tenant would be a breach and would prevent the service of a valid Section 21 notice.

At the appeal, the appeal judge confirmed that the early provision of prescribed information did not satisfy the statutory requirements under the Housing Act. Please note that a decision by the County Court cannot be binding, however, as the appeal decision was made by a circuit judge, it seems likely that other County Court judges will take a similar approach.

It is therefore vitally important that landlords ensure that prescribed information is not provided to tenants prior to them making payment of their deposit. As such, landlords must ensure that – once in receipt of the deposit – they provide prescribed information that is relevant at that time, within 30 days.

Ultimately, if a landlord fails to provide their tenant with prescribed information within 30 days of receiving the deposit, they could be liable to a deposit breach. This could result in the landlord having to pay the tenant the return of the deposit and up to three times the value of the deposit for each breach per tenancy.

If you are a landlord who has ultimately served the prescribed information to your tenant prior to receiving the deposit, please contact us so we can provide you with the relevant advice and support to ensure that you are compliant, reducing the risk of your tenants bringing a deposit claim against you or invalidating any future Section 21 notice. ■

James Melvin-Bath
james.melvin-bath@willans.co.uk

Katie Charlton
katie.charlton@willans.co.uk

James Melvin-Bath

Senior associate, solicitor-advocate

Litigation & dispute resolution

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

Katie Charlton

Trainee solicitor

Litigation & dispute resolution

Katie helps clients with a range of property litigation matters, including residential repossession and tenant deposit disputes.

Testamentary capacity: what lessons can be learned?

Although a will may appear rational and is shown to have been executed correctly, it may still be challenged.

There are a number of reasons why a will might be invalid, one being that the person making the will lacked the requisite testamentary capacity to prepare it.

Banks v Goodfellow set a precedent back in 1870 for defining testamentary capacity which confirmed that, when a person has made a will, they must understand the following:

- the nature of the will and its effect
- the extent of the property of which they are disposing under the will
- be aware of the persons for whom they would usually be expected to provide
- be free from any delusion of the mind that would affect their dispositions to those people.

The test set by this case remains the standard for assessing capacity, and has recently been reaffirmed in the case of *Leonard v Leonard*.

In this case from earlier this year, Dr Jack Leonard (the deceased) married his wife Audrey in 1958. They had four children – Jonathan, Andrew, Sara and Megan (the claimants). Audrey passed away in 1998 from terminal cancer and her estate of around £1.7M was left to Jack.

Jack then married his second wife, Margaret, in 1999. Margaret had two children from a previous marriage – Mark and Elizabeth. Margaret also had three grandchildren from another child (Melanie) who had predeceased – Charlotte, Michael and Melissa.

Margaret and her children/grandchildren are six of the seven defendants.

The dispute involved two wills made by Jack in 2007 (prepared by solicitors) and 2015 (prepared by chartered tax advisor). The 2007 will made provision for Jack's residual estate to be divided in five equal shares between Jack's children and Margaret.

The 2015 will included provision for a life interest in the residual estate for Margaret, but subsequent division to provide for Jack's children (4/7) and Margaret's children/grandchildren (3/7).

Evidence was considered from a number of sources, which included the following:

- Two experts (Dr James Warner for the claimants and Dr Hugh Series for the defendants)
- 25 witnesses
- Written hearsay evidence from witnesses
- The will file
- Barclays files (in relation to Jack's investments)
- Jack's medical notes and reports from his treating consultants (Professor Hawkes and Dr Fuller).

The experts agreed that, by 2015, Jack was suffering from dementia. They did, however, have differing views on the likely severity of his executive dysfunction.

The court explained the *Banks v Goodfellow* test and that the relevant question in this case was:

"Was Jack suffering from a disorder of the mind which poisoned his affections, perverted his sense of right or prevented the exercise of his natural faculties thereby causing him to bring about a disposal of his property which, if his mind had been sound, would not have been made?"

The judge recreated the events based on the evidence available and concluded that Jack did not have capacity to execute the 2015 will. His estate was therefore to be distributed in accordance with the terms of the previous version.

The court criticised the conduct of the tax advisor in the taking of instructions and execution of the will, with inappropriate regard to testamentary capacity issues.

The court also expressed dissatisfaction that the parties could not resolve the claim without a trial, and confirmed that "parties to cases of this sort should be under no illusions as to the emotional and financial toll they extract, and the considerable ordeal for both sides of contesting the matter to a final judgment."

In light of the above, practitioners should be advising their clients that:

- wills should be drafted by appropriately qualified solicitors
- alternative dispute resolution/mediation should be encouraged at all stages, meaning litigation should be a last resort.

If you are involved in a will dispute or have concerns regarding a deceased loved one's testamentary capacity prior to the execution of their will, please do not hesitate to contact us. ■

Evie Claridge
evie.claridge@willans.co.uk

Evie Claridge
Solicitor

Litigation & dispute resolution

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

Charitable legacies: the benefits of leaving a gift in your will

At Willans, we recognise that there is a wide range of local and national charities that our clients support throughout their lifetimes, whether this is through regular donations or volunteering. Leaving a gift in your will is a way to continue this support when you're no longer around.

Currently, legacies pass free of inheritance tax, which means the full legacy amount passes to that chosen charity and maximises the impact of your support. As a result, leaving a gift in your will to a registered UK charity is often greatly appreciated. In fact, as government funding in this respect is often unavailable or extremely limited, many charities rely heavily on donations and legacy payments under individuals' wills as their main source of income.

When it comes to tax planning for your own estate, leaving a charitable legacy under your will can also offer many benefits. It reduces the value of your estate chargeable to inheritance tax, and (if the necessary criteria are met) can also reduce the rate of any inheritance tax payable on assets passing to non-exempt beneficiaries (such as friends and families) from 40% to 36%.

We recently teamed up with our new charity partner, Cheltenham Open Door, to film a short video covering charitable legacies. You can watch this by clicking here.

Many individuals choose to nominate a specific purpose for the legacy, or a wish of how the monies should be used. Although stipulating a use for the legacy is possible, care should be taken when drafting such a condition. It is important to ensure that this is not too restrictive on the charity, but that the funds will still be used in accordance with your wishes.

Our wills, trusts and probate team have vast experience in drafting charitable legacies. We work closely with many local and national charities regarding the wording of legacies, ensuring that your legacy supports the work of that charity in the areas you most wish to benefit.

If you haven't yet made a will or would like to review your will with our specialist team, or simply wish to discuss the effect of including charitable legacies within your will, please contact a member of our specialist wills, trusts & probate team. ■

Laura Stone
laura.stone@willans.co.uk

Alisha Eden
alisha.eden@willans.co.uk

Laura Stone

Partner

Wills, trusts & probate

Laura is a partner in our highly rated wills, trusts & probate. She helps with the preparation of wills, lasting powers of attorney, inheritance tax planning and more.

Alisha Eden

Solicitor

Wills, trusts & probate

Alisha helps a wide variety of clients on a range of matters that helps individuals and families plan for the future.

What does the new Renters' Rights Bill mean for landlords?

The Renters' Rights Bill is currently in the report stage with the House of Commons, to be shortly followed by progression through Parliament. It is anticipated that this will be an act by early 2025 - but what will this new bill mean? Please get in touch with any questions you may have. ■

Abolishing Section 21 notices: All assured shorthold tenancies will become periodic assured tenancies. Given uncertainty about when this will take effect, it's possible there will be an influx of landlords arranging to serve Section 21 notices.

Grounds for possession: Two new grounds include 'landlord wants to sell' and 'landlord/landlord's family member wants to live in the property'. Ground 8 has changed – an increase to the required rent arrears (from eight weeks to 13 weeks).

Notice periods: Proposed changes to notice periods include two weeks, four weeks, two months and four months, depending on the reason for possession being sought. Ground 8, for instance, would require four weeks' notice and the new grounds would require four months.

Consequences: For some grounds, there will now be consequences imposed for relying upon them. The aim is to try to reduce landlords abusing grounds to recover possession of their property, and to therefore provide security to tenants.

Compliance: Currently, failure to comply with procedure only impacts the ability to serve a valid S21 notice. It looks like non-compliance will not preclude landlords from being able to serve a S8 notice under the new bill, except for deposit protection requirements. This could change, however.

Other changes: The local authority may impose civil penalties for illegal evictions of up to £40,000. It is anticipated that this will lead to more successful challenges of illegal evictions.

Bethen Abraham
bethen.abraham@willans.co.uk

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.

Contact

Your Life & the Law

Corporate & commercial

Chris Wills	chris.wills@willans.co.uk
Peter Raybould	peter.raybould@willans.co.uk

Employment law & business immigration

Jenny Hawrot	jenny.hawrot@willans.co.uk
Matthew Clayton	matthew.clayton@willans.co.uk

Litigation & dispute resolution/property litigation

Paul Gordon	paul.gordon@willans.co.uk
Nick Southwell	nick.southwell@willans.co.uk

Rural business, agriculture & estates

Adam Hale	adam.hale@willans.co.uk
John Fisher	john.fisher@willans.co.uk

Charities & not-for-profit

Alasdair Garbutt	alasdair.garbutt@willans.co.uk

Real estate & construction

Alasdair Garbutt	alasdair.garbutt@willans.co.uk
Nigel Whittaker	nigel.whittaker@willans.co.uk

Residential property

Suzanne O'Riordan	suzanne.oriordan@willans.co.uk
Simon Hodges	simon.hodges@willans.co.uk

Divorce & family law

Sharon Giles	sharon.giles@willans.co.uk
Jonathan Eager	jonathan.eager@willans.co.uk

Wills, trusts & probate

Simon Cook	simon.cook@willans.co.uk
Tom O'Riordan	tom.oriordan@willans.co.uk
Rachel Sugden	rachel.sugden@willans.co.uk
Laura Stone	laura.stone@willans.co.uk

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Willans LLP | solicitors

Cheltenham, Gloucestershire

01242 514000
law@willans.co.uk
www.willans.co.uk