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#### RNRB - What the papers say



Carolyn Bagley  
Partner

Beware the "man at a dinner party" who passes on tax advice – or the daily papers. One national paper recently produced an article helpfully alerting readers to the advantages of the Residence Nil Rate Band (RNRB). It referred to it being available where a house is left to children via "partners", which implies unmarried partners (or the so-called common law spouse). Unfortunately for anyone relying on the information without specialist advice (yes, some people do), the allowance can only be used if it's a registered civil partner, or spouse. Just one little word, but a significant difference for your significant other! The RNRB will soon be worth up to £140,000 in tax savings.

For specialist advice on Inheritance Tax please contact Carolyn Bagley on 01908 247015 or [click here](#) to email Carolyn.

## Recommended changes to Inheritance Tax: reduction of 7 year gift rule to 5?



Katherine Hague  
Associate

The UK Office of Tax Simplification (OTS) has published a report on IHT.

The report contains three areas of recommendations for the "simplification" of inheritance tax: lifetime gifts; interaction with capital gains tax (CGT); and agricultural and business property reliefs (APR and BPR).

Not to be missed from this report is the headline recommendation that the current "seven year survivorship rule" ( to enable gifts to escape the taxable estate) be cut down to five years. The OTS also called for the confusing array of gift exemptions to be swept away and replaced with a "single personal gift allowance", which would allow an individual to give up to a fixed amount each year.

Whilst these changes sound favourable to the taxpayer, the proposed "offset" is that the total allowances be reduced. Not to mention tightening up on APR and BPR. It is possible that very few would benefit overall.

The professional body STEP welcomed these plans. However, they did add that they "are disappointed to note that there are no recommendations in relation to the nil-rate band, the residence nil-rate band or the treatment of trusts."

As RNRB and Trust Taxation tends to become more complex and less favourable, the more it is simplified, perhaps that's a good thing!

For more information on estate planning please contact one of our Solicitors below.

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## Increased Pension Protection for Cohabitees



Tiffany Benson  
Associate

The surviving cohabitant of a deceased RAF employee has won the right to receive his pension death benefits, although rules set out in the Armed Forces (Compensation Scheme) Order 2011 exclude her as a beneficiary because she is still married to someone else.

Jane Langford had cohabitated with Christopher Green and believed she would be entitled to benefits, and a pension, on his death.

Although the scheme does provide for benefits for surviving unmarried partners of deceased members, it explicitly excludes a surviving partner who is married to another person. Mrs Langford was still married to another man. Although she had been estranged for 17 years, and she neither received nor expected financial support from her husband, the Ministry of Defence followed its rules and disallowed her claim.

She appealed, alleging she was being unlawfully discriminated against because of her marital status. Her appeals were rejected by the First-tier Tribunal in February 2014, and by the Upper Tribunal in October 2016, so she appealed again and the England and Wales Court of Appeal (EWCA) has found in her favour.

The key passages in the rules set out in the Armed Forces (Compensation Scheme) Order 2011 specify that the prospective beneficiary and the deceased must have been 'cohabiting as partners in a substantial and exclusive relationship', where 'exclusive' means that neither of the parties to the relationship is married to someone else and that, at the time of the deceased's death, the person and the deceased were not prevented from marrying or forming a civil partnership. This wording, said McCombe LJ in his judgment, was not necessary to achieve a legitimate aim of the scheme which was to secure benefits to married and unmarried partners of scheme members alike and effectively, as the discrimination could not be justified, the wording could be ignored.

The EWCA judgment could be important for many other survivors of deceased public sector workers, as many public sector pension schemes contain a similar rule to that in the Armed Forces (Compensation Scheme) Order 2011. However, the judge commented that in other cases it might be possible, depending on the evidence put forward, for an exclusionary rule of the same character to be justified and proportionate.

For more information on litigating in connection with estates, please contact Tiffany Benson on 01604 463340 or [click here](#) to email Tiffany; or Lucinda Brown on 01223 532721 or [click here](#) to email Lucinda.

## Undue influence: behind the social façade of dementia



Lucinda Brown  
Partner

In the case of *Moursi v Doherty* [2019] the Deceased and the Defendant met when she was 78 and he was 33, when he did some gardening and property repairs for her. (Not a dissimilar scenario to the current furore over Gina Lollabridgida). They formed a close friendship, and two years later the Deceased sold her home to the Defendant for the low sum of £70,000 and he signed a Deed allowing her a life interest, so she could remain there. Evidence established the property was worth £275,000 unencumbered, or £191,500 subject to the life interest. The Deceased died five years later from pneumonia and dementia.

In this case the same solicitor acted for the deceased and the defendant in the sale of the home. The solicitors knew the sale was at an undervalue, and this was explained by the Deceased on the basis that she had some financial difficulties and that she preferred to generate the ready money quickly. The Deceased had also procured a letter from her GP recording that she was in 'a sound state of mind'. Nevertheless, given her dependency on the Defendant, her age and health, it was a presumption that she had been unduly influenced.

As the Master put it, the facts which would establish a presumption of undue influence not being in dispute, "it would at the very least be necessary to show that [the Deceased] was advised independently as to her options, and such advice should have been given independently and in the knowledge of the defendant's character."

As this independent advice was not given, there was "no evidence to displace the presumption of undue influence since the transaction was preceded by inadequate and uninformed advice." It was also noted that the Defendant had a criminal history of defrauding the elderly! The conclusion was that allegations of undue influence, fraud and sham could be dealt with summarily as the defence has no real prospect of success

For more information on disputed estates please contact Tiffany Benson on 01604 463340 or [click here](#) to email Tiffany; or Lucinda Brown on 01223 532721 or [click here](#) to email Lucinda.

## High Court allows trustees to treat illegitimate child as a beneficiary



Francesca Rossi  
Associate

An £80 million Trust Deed created in 1968, required the trustees to pay the income to the settlor's grandchildren, RS and TU (all parties are anonymous for safety reasons), and their children.

A difficulty arose regarding the children of RS. RS is married with three children, but one of them, V, was born a month before the wedding. The trustees were uncertain whether she qualifies as a beneficiary, as the Settlor had not foreseen this possibility, so the Trust does not contain any provisions concerning illegitimate children and illegitimate children are often treated differently in law.

All parties were happy for V to benefit from the trust. The trustees therefore asked the High Court to approve this.

Arguments considered in favour of the variation included that it was for the objective benefit of V's father, RS, to make provision for all of his existing children; and for TU to make provision for all of his future children, whether or not they are legitimate. It was also what the entire family, including RS and TU, consider to be right. An important consideration was that V's exclusion could be the source of family dissension, which would not be in the interests of family harmony.

The Court allowed the change, but obviously costs were incurred. The case illustrates the importance of thinking ahead to cover all possibilities when creating a Trust, whether that be during your lifetime or in a Will.

For more information on making a Will or Trust, please contact one of our Solicitors below.

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## Recommendations needed to safeguard against fraud in the Lasting Power of Attorney process



Tiffany Benson  
Associate

A recent study calls for more oversight of the Power of Attorney system. Its recommendations include:

- Establishing of a register of people with active Lasting Powers of Attorney, or Deputyships, for inspection by financial services businesses; and
- Credit and criminal record checks of potential Attorneys.

The former would need to be carefully monitored to prevent misuse (or hacking). The latter would incur extra cost and delays, although would be a useful precaution. However, unless they were used to ban attorneys with certain offences/ level of credit problems, in reality, Donors would probably not change their minds.

In 2017-18 the Office of the Public Guardian, which oversees power of attorney, received notice of 5,245 safeguarding concerns and accepted 1,886 for further investigation. Abusive behaviours included the attorneys gifting money to themselves and hoarding or spending assets to avoid liability for care home fees.

Authors of the study suggest that one problem is that 'Power of attorney is seen as a blanket operation, where the attorney takes over someone's affairs once they lose capacity. This is not in keeping with the reality of capacity, which is decision-specific, and often fluctuating.'

Due to this "blanket" model of protection, when creating LPAs we always advise that Donors only appoint Attorneys whom they are sure they can trust.

For more information on making an LPA, if you don't yet have this protection in place, please contact one of our Solicitors below.

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- Alexandra Svennevik - 01604 463342 or [click here](#) to email.

## Beecham House – Advice for John Beecham



Carolyn Bagley  
Partner

On a lighter note we have been following the period drama billed as Delhi's Downton Abbey. Please see the links below for our advice to John Beecham on various Will and LPA related topics.

- [Beecham House - his family is expanding so what type of Will does John need?](#)
- [Beecham: Who Gives the Orders Now?](#)
- [John Beecham – who would argue over his estate if he is killed?](#)



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