



## Hewitsons Private Wealth LEGAL UPDATE

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### Office of the Public Guardian Refunds



Hauke Harrack  
Solicitor

We are very pleased to hear that some of our clients have followed our advice contained in last month's update and already obtained refunds from the Office of the Public Guardian.

As a reminder: if you paid fees to the Office of the Public Guardian for registering a Lasting, or Enduring, Power of Attorney between 1 April 2013 and 31 March 2017 then you may be entitled to a partial refund of those fees. The refund will depend on how recently you paid your fee and how much you paid, but it is likely to be between £34-54 for each Power of Attorney.

The refund application can be made online or by telephone by either the Donor (the person who created the Power of Attorney) or one of the Attorneys. Please note that solicitors are not permitted to make the application on your behalf. [Click here](#) for more information on how to apply.

If you would like advice on how to prepare or register a Power of Attorney, or alternatively make a court application if mental

capacity has already been lost, please contact Hauke Harrack on 01604 463131 or [click here](#) to email Hauke.

### Daughter may need DNA test to inherit



Ciara Wanstall  
Solicitor

Colin Birtles died without a Will in June 2013. He had two daughters, Lorraine Freeman and Janice Nield-Moir. He had divorced their mother in 1977, so under the statutory rules of intestacy (the Will written for us by the government in 1925 if we do not make our own Will) his estate passed equally among his biological children.

Mrs Nield-Moir moved to Australia in 2007, and, following their father's death, Mrs Freeman obtained a Grant of Administration to deal with their father's estate. Mrs Nield-Moir then issued a claim to revoke her sister's Grant, and sought a ruling that Mrs Freeman was not Mr Birtles' biological daughter and, as a result, was not entitled to receive anything from his estate. Mrs Nield-Moir alleged that Mr Birtles had told people that Mrs Freeman was not his biological child. She wanted Mrs Freeman to submit to a DNA test, with Mrs Nield-Moir and Mr Birtles' niece also being tested.

Mrs Freeman refused to consent to a DNA test, saying that discussions about her parentage were just gossip. Her birth certificate named Mr Birtles as her father and her parents were married at the time of her birth. There is a presumption that, when a man is married to a woman at the time of her giving birth, he is the child's father. Mr Birtles also paid maintenance to her mother following their divorce until Mrs Freeman was 16.

The judge granted an order for Mrs Freeman to submit to a DNA test. Whilst Mrs Freeman cannot be forced to take provide a saliva sample, the court will be able to draw adverse inferences against her right to inherit if she refuses to participate in the testing.

Mrs Nield-Moir, if not a biological child, may have left it too late to make an alternative claim for provision as a "child of the family" under the Inheritance (Provision for Family and Dependants) Act 1975.

Of course Mr Birtles may have thought that the intestacy rules covered his estate just as he wished, or alternatively that he still had time to "get around " to making one. Either way he was sadly mistaken, to the cost of both daughters, both emotionally and financially.

If you would like advice on preparing your Will, please contact Ciara Wanstall on 01604 463101 or [click here](#) to email Ciara.

## Farmer tried to leave farm to Wife - daughter awarded 45%



Tiffany Wiggett  
Associate

A farmer's daughter has sued for and obtained a large cash payment from her mother on the basis that her father had promised her a share in the family farm.

Mr Habberfield and his wife owned and farmed their farm as a partnership, until his death. They held the property as beneficial joint tenants, and on his death the farm passed to Mrs Habberfield automatically by survivorship. Even if the property had not passed directly to Mrs Habberfield, the terms of Mr Habberfield's Will left his entire estate to his wife, so she would have received the farm in any event.

Their daughter, Lucy, had worked on the farm from childhood until 2013. She worked 70 hours a week and earned around £40-50 per week. Her husband had also worked full time at the farm between 2007 and 2013. Lucy brought a claim against her mother to receive the farm, stating that her father had promised that she would take over the farm after he retired, which is why she had been prepared to work such long hours for a low wage.

Promissory estoppel claims are a form of oral contract and frequently arise in farming families. The argument is that the parent obtained cheap/free labour, to the detriment of the son/daughter, by promising them deferred consideration in the form of a share in the farm. If proved the child takes the promised share irrespective of any other inheritance arrangements.

Mrs Habberfield said that neither she nor her husband had ever made promises to Lucy that she would take over the farm. She said that Lucy had exaggerated the work she carried out on the farm and had received appropriate payment and other benefits for her work on the farm.

There was evidence supporting Lucy's claim in the form of a letter from a surveyor employed by Mr and Mrs Habberfield in 2008. In the letter, he recorded a proposal which Mr and Mrs Habberfield were going to put to Lucy for a new limited partnership to run the business. The proposal also said that Lucy would end up being the owner of the overall farm after her parents' death, and that some of the property would pass to her siblings.

The judge said that Lucy had demonstrated a clear commitment to the farm and that she had acted on the assurance that the farm would pass to her in the future. He held that Lucy was entitled to 45% of the business. As the judge did not want to split the farm up, or force Mrs Habberfield, who is aged 81, to leave her home, he ruled that Lucy was entitled to a lump sum equivalent to the value of 45% of the farmland and farm buildings, which were valued at £1.7 million.

If you would like to discuss the implications of this case, please contact Tiffany Wiggett on 01604 463340 or [click here](#) to email Tiffany, or contact Antonia Cooper concerning Will making on 01604 463314 or [click here](#) to email Antonia.

## DWP ignore care home resident's Power of Attorney



Rachel Hawkins  
Senior Solicitor

Mr B held an Enduring Power of Attorney for his aunt Miss E, which authorised him to deal with her financial affairs (the more recent version is called a Lasting Power of Attorney - LPA). Mr B complained the Secretary of State appointed Birmingham City Council as Miss E's social security appointee, despite him being her attorney.

DWP began paying Miss E's state pension credit to the Council rather than directly to Miss E. Mr B wrote to DWP asking why they had stopped paying Miss E and provided evidence that he was her attorney. However, DWP told Mr B that they could not provide him with any information as he was no longer her authorised representative. The Tribunal judge noted that DWP behaved inappropriately by telling Mr B that he had no right to receive any information about his aunt's benefits. As her attorney, he was entitled to deal with her financial affairs and receive this information.

Making an LPA gives you the opportunity to choose attorneys to make decisions for you if you lose the capacity to make those decisions yourself. A Property and Financial Affairs LPA allows your attorney to deal with your financial decisions, for instance managing your bank account or paying your bills – or receiving and dealing with your pensions and benefits! A Health and Welfare LPA has also now been introduced, which can be used by your attorney to make decisions about your healthcare, including where you live and your medical treatment.

If you lose capacity without having an LPA in place, then an application will need to be made to court to appoint a deputy to manage your affairs. This is a lengthy and expensive process, and you will have no say in who is appointed as deputy. A deputy does not necessarily need to have any personal connection to you and the court will remain permanently involved in your finances.

If you would like advice, please contact Rachel Hawkins on 01604 463165 or [click here](#) to email Rachel.

## Right to reclaim Spanish Inheritance Tax



Alexandra Svennevik  
Solicitor

Spanish Inheritance Tax is imposed by the central government in Madrid, but the individual regions have full autonomy to grant reliefs. The regions have typically granted high reliefs, in some cases of up to 99%, to the estates of people living in their regions. However, these reliefs were not extended to estates where either the deceased or the beneficiary was a non-resident – for example English residents who owned a home in Spain.

Following a European Court of Justice (ECJ) ruling, in 2015 Spanish law was changed to remove Inheritance Tax discrimination against other EU and EEA country residents and we reported on this at the time.

We also reported after the Brexit vote that this equality could be removed after Brexit once the UK is no longer in the EU. However, there is now new hope.

The ECJ has recently ruled that those tax reliefs should be extended to residents of all other countries outside the EU. For any residents of the USA etc who may be reading this, please note this ruling also covers Inheritance Tax paid by residents of such countries during the last four years, and the Spanish government ought now to refund such death/ Inheritance Tax.

If you would like advice, please contact Alexandra Svennevik on 01604 463342 or [click here](#) to email Alexandra.

### Charity donations increase to over £10 billion in 2017



Carolyn Bagley  
Partner

In 2017, the total amount given to charity increased by £600 million to £10.3 billion.

Some people choose to leave money to charities in their Wills to take advantage of Inheritance Tax relief. Each individual has an Inheritance Tax free threshold of £325,000, subject to any gifts made during their lifetime, and a Residence Nil Rate Band of £100,000 (rising to £125,000 on 6 April) may also be available (but not to everyone). Everything exceeding any thresholds available is normally taxed at 40% unless covered by other reliefs such as those for farms or businesses. Legacies left to charities under Wills are exempt from Inheritance Tax, and, where the 10% rule applies, the Inheritance Tax rate is reduced from 40% to 36% for the rest of the estate. The 10% rule applies roughly where over 10% of the value of the taxable estate is left to charity,

If you would like advice on Inheritance Tax or leaving legacies to charities in your Will, please contact Carolyn Bagley on 01908 247015 or [click here](#) to email Carolyn.



Hewitsons offers a full private wealth service. This Update will help to keep those involved up to date with the latest developments.

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