



Hewitsons' Private Wealth LEGAL UPDATE

April 2017

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Probate Fees Increase Postponed



[Alex Turtle](#)
Solicitor

The proposed increase in probate court fees has been postponed until after the General Election.

Probate court fees are charged before a Grant is issued in an estate, meaning it has to be paid before the estate assets can be accessed. The new probate fees were due to come into force from May onwards, massively increasing from the current flat rate of £155 to up to £20,000 for estates worth over £2 million. It was reported that there was not enough time for the legislation to pass through Parliament before the election. The Newcastle District Probate Registry confirmed that the probate fees issue is now a matter for the next government.

The increased fees met strong resistance and the Parliamentary Joint Committee on Statutory Instruments questioned the legality of the proposed increase, reporting that it constituted a tax rather than a fee.

The fee will remain at £155 for now, although following the General Election in June the fees may still increase, so anyone who is dealing with an estate where the Grant has not yet been applied for, needs to consider carefully whether they can take steps to apply more quickly!

If you would like advice, please contact Alex Turtle on 01604 463376 or [click here](#) to email Alex.

LPA Fees Decrease



[Hauke Harrack](#)
Senior Solicitor

From 1 April 2017 the Office of the Public Guardian's registration fee for Lasting and Enduring Powers of Attorney was decreased from £110 to £82. This is a welcome change to help encourage people to protect themselves by appointing Attorneys.

Lasting Powers of Attorney (LPAs) give you the opportunity to choose attorneys to help you in the future if a time comes when you need them, either to carry out your decisions or to make decisions for you.

People often don't realise that even houses and savings owned jointly with their spouse cannot be used by that spouse once the co-owner has lost mental capacity.

A Property and Financial Affairs LPA allows your attorney to deal with financial decisions, for instance managing your bank account or paying your bills. A Property and Financial Affairs LPA can be used before you lose mental capacity or only once you have lost mental capacity, as you wish. A Health and Welfare LPA can be used by your attorney to make decisions about your healthcare, including where you live and your medical treatment, only if you lose mental capacity.

If you lose capacity without having an LPA in place, then an application can be made to court to appoint a Deputy to manage your affairs. However, this is a lengthy and expensive process, and you will have no say in who is appointed as Deputy. This is why the number of people making LPAs is rising every year.

If you would like advice, please contact Hauke Harrack on 01604 463131 or [click here](#) to email Hauke.

STOP PRESS - alterations to Finance Bill



[Eric Wardle](#)
Chartered Accountant

Due to the Election, parts of the Finance Bill have had to be dropped. These include:

- The reduction in the dividend nil rate tax band (from £5,000 to £2,000)
- Deemed domicile rules for inheritance tax, capital gains tax and income tax

It is expected that these provisions will still be enacted after the Election if the Government gets back into power. However, what is unclear is whether the changes will then have retrospective effect from April 2017 and naturally this uncertainty will make it difficult for taxpayers and their advisors.

For more information please contact Eric Wardle on 01604 463110 or [click here](#) to email Eric.

Cost of Will Dispute Wipes Out Inheritance



[Eleanor Rutherford](#)
Senior Solicitor

Mr Williamson made a Will in 2009 leaving half of his estate of £250,000 to his wife and a quarter to each of his sons from a previous marriage, Richard and Jonathan Powell. The sons disputed their father's 2009 Will, claiming he had not understood it. If they had succeeded, then an earlier Will prepared in 2008 would have been his last valid Will. The earlier Will had left a third to each son.

Mr Williamson was 84 and had suffered from Parkinson's Disease for 20 years. His sons claimed this meant their father did not know what he was doing when he made his final Will.

The brothers lost their case and were ordered to pay £200,000 in legal fees. Judge Marc Dight held that the brothers were unreasonable in refusing to accept that their father and stepmother were a devoted couple, and that Mrs Williamson should never have been put to the trouble and expense of dealing with their claim. Mrs Williamson's counsel argued that the brothers had brought the case just because they did not like their stepmother, and because they hoped that the 75 year old widow would "lack the stomach or means to fight".

The brothers argued that the £200,000 costs should be paid from their father's estate. However, the judge said that it would wipe out everybody's inheritance and ordered the brothers to pay the £200,000 themselves €“ wiping out only their inheritance and not that of the widow.

Although this was a happy ending for the widow, the intervening arguments must have been very upsetting and worrying. Could anything be done, by those who might be facing a similar family situation, to avoid that? Possibly, yes. Where there is family conflict, so that members are likely to dispute the Will later on, it can be invaluable to obtain a Doctor's opinion at the time of the Will and detailed notes or a letter setting out the reasoning are also useful. If the death has already occurred, then taking specialist advice as soon as possible can still help to ward off a claim €“ or make a suitable counter-claim.

Grandson's Repeated Litigations against Family

An extended restraint order against Rupert Webster has been renewed for two years, as a result of his repeated litigation against the Executors of his grandparents' estate.

In the early 1990s Antony and Valerie Webster put their main property into a Discretionary Trust for tax planning purposes, with their four children as the beneficiaries. Antony Webster died in 1996. His eldest son Valentine had already moved into the property with his wife and children to join the widow. Valentine Webster died in 2006 and his mother died in 2007.

Valentine's son Rupert Webster brought a claim in proprietary estoppel against his grandparents' estates in his role as personal representative of Valentine's estate. Rupert claimed that Antony and Valerie had made various promises, starting in the 1970s, to leave

the property to Valentine. If the court upheld those promises then the house would have passed to Rupert and not be available to be shared with his grandparents' other children.

Rupert's claim was dismissed in 2013 and permission to appeal was refused three times. He entered six charges against the property at the Land Charges Registry to protect his position in the litigation. The executors had to obtain a court order to remove the charges. Rupert then brought a new claim seeking possession of a part of the property as a beneficiary under the Discretionary Trust. This claim was struck out as totally without merit. Valerie Webster's Executors brought a claim for trespass and slander and were granted an injunction against Rupert Webster in 2015. Rupert then brought a further claim against the Executors, which was also struck out.

As a result of the three failed cases, in March 2015 a Judge, on his own initiative, made an extended civil restraint order against Rupert which forbade him from issuing any future claim or application against the Executors for two years. A further three claims lodged against one of the Executors were struck out.

The order expired in March 2017 and Rupert Webster has since attempted to resurrect his original claim, appeal the dismissal of his other claims and has issued two further claims. As a result, the Judge has extended the order for a further two years.

This is another very sad story for all concerned. If you are threatened with litigation against you as an executor or need to make a (justified) claim against one, please contact Eleanor rutherford on 01604 463340 or [click here](#) to email Eleanor.

Increase in Will disputes



[Antonia Cooper](#)
Senior Solicitor

It was recently reported that the number of Will disputes rose from 11,725 in 2014 to 14,167 in 2015. The majority of these disputes were claim for "reasonable provision" under the *Inheritance (Provision for Family and Dependants) Act 1975*. The number of these claims that actually reached court was 98 in 2014 and 164 in 2015.

Certain categories of people are able to make claims under the 1975 if they believe that a Will does not make reasonable financial provision for them. The Supreme Court provided clarification on what was deemed to be reasonable provision in last month's landmark decision in *Ilott v The Blue Cross and others*. Those entitled to claim does not just include spouses and children, but anyone else who was financially dependent on the deceased.

One reason cited for the increase in claims is rising property prices leading to larger estates, which means there is more money to fight over. The increase in second and third marriages may also have lead to the increase in Will disputes, as family relationships become more complicated. The increase highlights that great care is needed when preparing a Will and specialist advice from a STEP qualified solicitor should always be taken

If you would like advice, please contact Antonia Cooper on 01604 463314 or [click here](#) to email Antonia.

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