



## Hewitsons' Private Wealth LEGAL UPDATE

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### Parents and Grandparents Fail to Use Tax Reliefs on Gifting



[Antonia Cooper](#)  
Senior Solicitor

A study by Key Retirement has revealed that almost half of parents and grandparents do not understand the tax rules on gifting, and nearly three quarters of those found the rules very complicated. The study revealed that many parents and grandparents would rather benefit their children or grandchildren now rather than after their death, and wanted to contribute to first homes, weddings, paying off debts and student loans. However, more than a third of those interviewed were not aware that their estate might be liable for Inheritance Tax on any gifts made to family members during their lifetime.

Each person has a £325,000 Inheritance Tax free threshold which is called the 'Nil-Rate Band'. The Nil-Rate Band is subject to any gifts made during the 7 years before death, so if you make gifts exceeding this amount during the 7 years before your death, your estate will then have to pay Inheritance Tax after your death.

There are, however, certain exemptions available which allow you to make gifts to family members without them using up your nil rate band, even if you should sadly die within 7 years of making them. If you would like advice on making gifts or on Inheritance Tax planning, please contact Antonia Cooper on 01604 463314 or [click here](#) to email

Antonia.

## 1.2 Million with Dementia by 2040



[Alex Turtle](#)  
Solicitor

New research has suggested that the number of people living with dementia in England and Wales will rise to 1.2 million by 2040 as life expectancy increases and survival rates for other life-threatening illnesses improve.

Lasting Powers of Attorney (LPAs) give you the power to decide who will make decisions if you are no longer capable of making your own decisions. A Property and Financial Affairs LPA allows your attorney to deal with financial decisions, for instance managing your bank account or paying your bills. You can choose to have your Property and Financial Affairs LPA available for use before you lose mental capacity (useful for example if you are too busy/not in the UK/ break an arm) or only once you have lost mental capacity. 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, but, sensibly, can only be used once you lack mental capacity.

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 with you. The Court often holds the money and distributes annually with the Deputy needing to provide accounts, so the court can stay involved, and charging, until your death.

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

## Second Finance Bill to be introduced



[Eric Wardle](#)  
Chartered Accountant

The government has confirmed its intention to introduce a second Finance Bill 2017 as soon as possible. The bill will include all of the policies that were withdrawn before the general election, and all policies that were due to start from April 2017 will be effective from that date.

The policies include the introduction of the new deemed domicile rules and the introduction of inheritance tax on UK residential property interests held indirectly by non-UK domiciled individuals. It is currently not known whether the government still intends to increase the probate fees.

If you would like advice, please contact Eric Wardle on 01604 463110 or [click here](#) to email Eric.

## REASONABLE PROVISION: Estranged daughter wins 1975 Act award in Ilott-like case



[Eleanor Rutherford](#)  
Senior Solicitor

One of three estranged children of the late Stanley Nahajec has won a GBP30,000 award from his GBP264,000 estate under the Inheritance (Provision for Family and Dependants) Act 1975, despite there being almost no contact between them for several years before his death, and despite his leaving a letter of wishes explicitly disinheriting all three children. Elena Nahajec's county court claim succeeded in part because of her desire to train as a veterinary nurse. However, the sole beneficiary of the estate, a friend of the deceased, has already spent nearly all of it, and has had to borrow money to settle a similar claim made by one of Elena's brothers (Nahajec v Fowle, 2017 EW Misc 11 CC).

For more information on this case please read our longer article on our website [here](#). Alternatively you can contact Eleanor Rutherford on 01604 463340 or [click here](#) to email Eleanor.

## Concerns Will Reforms will increase Fraud and Claims



[Francesca Rossi](#)  
Associate

The Law Commission's recent report proposes updating the laws surrounding Wills. Their proposals include provision for electronic Wills. They also include a retrospective power for the courts to have a "dispensing" power to overlook the normal formalities (witnesses etc) and to be able to accept an email or even a text message as a valid Will in exceptional circumstances.

The Commission accepts that such changes may open up more estates to the risk of forgeries and undue influence and has asked for comments on whether this risk, which will be a big disadvantage, and huge after death expense, for some estates, is outweighed by the possibility of more people being encouraged to make Wills.

However, Solicitors for the Elderly (SFE) has also raised concerns that changing the laws will result in more challenges to Wills. SFE said that as Wills are such powerful documents, it is important that people understand the potential risks they are exposing themselves and their loved ones to if they do not seek professional legal advice. They suggest that the proposed reforms will result in an increase in challenges from unhappy relatives. The Law Society has also raised concerns in relation to how safe electronic Wills, in particular, would be from fraud or undue influence.

There are various formalities involved in the preparation of Wills. These are intended to safeguard the intentions of the Testator, and also to ensure that they have capacity to make a Will. Having your Will prepared by a solicitor ensures that the necessary formalities are complied with. If you would like advice on making a Will, please contact Francesca Rossi on 020 7400

5034 or [click here](#) to email Francesca.

## 40% of People Die Without a Will



[Hauke Harrack](#)  
Solicitor

The Law Commission's report on Wills has revealed that an estimated 40% of people in the UK die without leaving a Will. When you die without a Will this is referred to as an intestacy. There are intestacy rules which govern to whom your estate will pass.

One problem this can cause is who will inherit under your intestacy. The rules may mean that your estate will pass to relatives you have never met and perhaps people you would not want to inherit. They can also stop those you care about from inheriting. For instance, whilst a spouse or civil partner should inherit (part if not all) under an intestacy, a cohabitant will not, without an application to court.

Another issue that may arise is in relation to your funeral and to locating your relatives. Your administrators will need to find any potential heirs to your estate. They may often need to involve tracing agents and your estate could be liable for the costs of these agents. This will ultimately result in there being less for your relatives to inherit. However, there may be a lack of people willing, or legally permitted, to take on the role of administrator, which can cause problems with funeral and other arrangements.

## Woman Faces Jail for Failure to Pass on Inheritance Correctly

A woman faces jail for continuing to claim benefits despite receiving £40,000 under her father's Will. Kerensa Milner failed to disclose the inheritance to the Department for Work and Pensions, claiming that she gave some of the money she received from her father to her three children, but that they had agreed it would be saved in her bank account.

It is possible to pass an inheritance you receive on to your children without it counting as a gift for tax purposes, and sometimes (not always) without it counting as "deprivation of assets" for benefit claims by Disclaimer or Variation. However, Ms Milner's actions did not follow the correct legal process. Ms Milner's situation highlights how important it is to make sure you get it right when passing on an inheritance.

If you would like advice on leaving a Will or the handling of Inheritance, please contact Hauke Harrack on 01604 463131 or [click here](#) to email Hauke.

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