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### Coronavirus and Wills – Remote witnessing available as a last resort

Wills can be witnessed remotely via video calls for the first time as part of the Government's response to the COVID-19 pandemic. The statutory instrument amending the Wills Act 1837 has been presented to Parliament and marks a significant relaxation of the strict requirements for witnessing Wills.

Under the existing rules, a Will must be signed by hand in the presence of at least two witnesses who will not be beneficiaries. 'In the presence of' has previously required physical presence, with the witnesses being in the same room or at least having a clear line of sight when the Will is signed. Under the new rules, the need for two witnesses will remain the same, but 'in the presence of' will be broadened to take account of video calls. Importantly, all participants must still sign the same document by hand as electronic signatures will not be permitted.

However, the new rules are not here to stay. Only Wills made since 31 January 2020 and up to 31 January 2022 will qualify.

Solicitors have expressed reservations about the changes. A remotely-witnessed Will is much more likely to have its validity challenged. There will also be practical difficulties caused by issues with video and audio quality. Further, as the same Will must be signed by all three parties (the person making the Will and the two witnesses), there will be a delay in finalising the Will as it is posted or transported around.

If possible, Wills should continue to be witnessed in person. The Government's advice is that remote witnessing should serve as a last resort. If a video call is used, a recording should be made and all participants should agree on a location for the video file to be stored.

For a more detailed analysis, please see the article on our website [here](#).

Creating a valid Will to give effect to your wishes is extremely important. If you would like to speak to a member of our team about this, please contact us on the details below.

Chloe Harbutt on 01223 461155 or [click here](#) to email Chloe.

Rachel Hawkins on 01604 463165 or [click here](#) to email Rachel.

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## Tax Returns – the importance of getting it right!

The England and Wales High Court recently refused an applicant's request for permission to amend his tax return which had erroneously reported his total charitable donations in a particular tax year. As a result of the error, the applicant was liable to pay approximately £215,000 of additional tax (the Gift Aid claimed by the charity on his donation), plus penalties and interest.

The applicant initially asked HMRC for permission to amend his tax return. HMRC declined on the grounds that claims for Gift Aid relief can only be made on the original tax return and that the applicant's mistake meant that he had lost his ability to claim the full relief.

Appealing to the High Court, the applicant requested that his incorrect tax return be amended retrospectively. The High Court categorically refused his request, noting the applicant's prior carelessness in declaring the tax return as true and correct to the best of his knowledge. The judge held that a completed tax return cannot simply be amended on request and noted that any disputes should be raised at the tax tribunal rather than the High Court.

This judgment demonstrates the importance of getting your tax return right and the potentially high cost for failing to do so. To speak to one of our experienced team members in relation to your tax return, please use the details below.

Eric Wardle on 01604 463110 or [click here](#) to email Eric.

Laura Wood on 01223 447496 or [click here](#) to email Laura.

Case citation: Re Webster [2020] EWHC 2275 (Ch)

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## Caution at the MoJ's plans to require electronic probate applications

A service allowing solicitors to submit probate applications online has been in place since November 2017. The Ministry of Justice has now pushed for the electronic submission of all non-contentious applications to become mandatory.

The Law Society has given its support but insists that alternatives must be available should the online portal encounter technical difficulties or fail to cope with complex applications. Solicitors have expressed similar concerns, suggesting the current system is useful for the simplest probate applications but unsuitable for complex applications.

Any mandatory online system will therefore need to be flexible to deal with the whole range of complexities but also reliable enough to cope with the inevitable high volume of applications.

If you would like to talk to a solicitor about making a probate application or any other estate administration issues, please use the contact details below.

Hauke Harrack on 01064 463131 or [click here](#) to email Hauke.  
Alexandra Francis on 01223 447442 or [click here](#) to email Alexandra.

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## Ambiguous Wills – The importance of proper instructions

The England and Wales High Court was asked to decide who was to benefit under an ambiguously drafted Will. The question was whether the Will intended to distribute the deceased's estate to only the children of his own siblings, or whether his wife's nieces and nephews were also to be included.

The issue arose due to the quality of the instructions given by the deceased to his solicitor and the solicitor's subsequent failure to draft the Will clearly.

The High Court judge criticised the manner in which the solicitor's instructions were taken (over the telephone, despite the client being an elderly widower) and noted that the Will was drafted and sent out on the very same day. Efficient, but ultimately very costly! The new Will failed to take proper account of the deceased's prior Will and contained multiple grammatical errors and ambiguities.

The case demonstrates the need to consider the existence of earlier Wills, to be aware of family trees and to be absolutely clear on the intended recipients of gifts. Naming the individual beneficiaries, rather than using unclear categories of people, would have avoided the need for a court application.

If you need advice concerning the validity of a Will, or would like help in preparing a Will to avoid ambiguity, please contact our team using the details below.

Tiffany Benson on 01604 463340 or [click here](#) to email Tiffany.  
Kelly Wardell on 01223 532722 or [click here](#) to email Kelly.

Case citation: Wales v Dixon [2020] EWHC 1979 (Ch)

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## Estate administration – As simple as HM Revenue & Customs would like Executors to believe?

In the tax year 2019/20, HM Revenue & Customs opened over 5,500 investigations into probate applications where not enough Inheritance Tax had been paid. This is the highest number in over four years and equated to an additional £274 million Inheritance Tax being paid as a result. There has been speculation that the complexity of the Inheritance Tax rules is the main problem, causing more investigations into whether the correct analysis of an estate has been undertaken. However, professionals are noting that the increased number of lay Executors carrying out the estate administration themselves, is likely to be a contributing factor.

With the introduction of the online probate service, HM Revenue & Customs have seen a surge of personal probate applications. There is a trend toward lay Executors choosing to take on the responsibility of correctly reporting the tax due on an estate, over instructing a professional. Those who are innocently unaware of the pitfalls in failing to report key Inheritance Tax considerations, for example, gifts made in the seven years before death or where the deceased reserved a benefit over an asset, can end up in hot water with HM Revenue & Customs. It begs the question, are lay Executors properly qualified to assess the Inheritance Tax and deal with the tax complexities that often arise in estates? With the uncertainty of the current economy where the value of assets is constantly fluctuating, it is predicted that the number of investigations will continue to rise.

Many lay executors do not realise that they are personally liable for penalties and interest when they have incorrectly reported the estate. The estate itself is not liable.

This evidence demonstrates the importance of instructing specialist probate solicitors to ensure that the estate administration is completed correctly to reduce the possibility of HM Revenue & Customs investigations. To speak to one of our experienced team members in relation to an estate you are concerned about or would like assistance with, please use the details below.

Hauke Harrack on 01064 463131 or [click here](#) to email Hauke.

Alexandra Francis on 01223 447442 or [click here](#) to email Alexandra.

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