



Hewitsons Private Wealth

LEGAL UPDATE

Absolute Client Focus

July 2018

In this Issue

- UK Heading Towards an "Incapacity Crisis"
- Marriage Revokes a Will – Even if Testator Doesn't Have Capacity to Marry
- MPs Suggest Over-40s Should be Taxed to Pay for Old Age Care
- £200,000 Personal Penalty Imposed on Personal Representative
- Prince Charles' 80-Year-Old Neighbours Barred from the Family Home after Gifting it to their Children
- Court of Protection Fee Reduction

UK Heading Towards an "Incapacity Crisis"



Antonia Cooper
Associate

The Times reported on 30 June 2018 that we are heading towards an "incapacity crisis". This was following a report and campaign by Solicitors for the Elderly, supported by many charities.

One third of people in the UK have made no provision at all for old age: no pension, no Will, no savings, no funeral plan and no Power of Attorney to cover their wishes neither on health and care nor on financial affairs. The report urges everyone to have a conversation with their loved ones about their medical and care preferences.

Many people do not have Lasting Powers of Attorney for Health & Welfare in place, possibly because they are unaware of the problems that arise without one. The report gives examples such as one lady who was unable to make decisions about her father's home or his care, because she was only his next of kin, not his attorney. As there was no

Health and Welfare LPA in place, her father's care was decided by social workers and doctors, not by his daughter.

Health & Welfare Lasting Powers of Attorney allow you to choose the people you would trust to make medical and care decisions for you if you reach a stage where you cannot make those decisions yourself; to avoid those choices being made for you by strangers in the future.

Hewitsons have solicitors who have passed the extra exam to be accredited members of Solicitors for the Elderly. They have specialist client care skills that enable them to advise and support older and vulnerable clients.

For more information, please see our [website](#). Details of the Solicitors for the Elderly campaign is on their website, at the following [link](#). A link to our guidance note on Lasting Powers of Attorney is [here](#).

If you would like advice please contact Antonia Cooper on 01604 463314 or [click here](#) to email Antonia. or contact Kelly Wardell on 01223 461155 or [click here](#) to email Kelly.

Marriage Revokes a Will – Even if Testator Doesn't Have Capacity to Marry



Ciara Wanstall
Solicitor

One of the ways in which a Will can be revoked is through marriage, unless the Will is written in contemplation of marriage to a specific person. A recent case highlighted the fact that, even if one party to the marriage does not have capacity to marry, their Will is still revoked by the marriage.

The recent case concerned a lady who was suffering from dementia. She had secretly married five months before her death. She did not have capacity to consent to marriage and her children had been unaware of the marriage, which meant they did not take steps during her lifetime to have the marriage annulled. The court held that, regardless of whether or not the lady had capacity to consent to marriage, the marriage had revoked her Will, meaning she died intestate. Her estate therefore passed to her "husband" under the intestacy rules, and he was entitled to choose how to dispose of her body, which he did in a way contrary to the wishes of the lady's family and friends.

If you would like advice on making a Will, please contact Ciara Wanstall on 01604 463101 or [click here](#) to email Ciara. If you would like advice on dispute resolution, or an application to Court in such circumstances please contact Tiffany Wiggett on 01604 463340 or [click here](#) to email Tiffany.

MPs Suggest Over-40s Should be Taxed to Pay for Old Age Care



Hauke Harrack
Solicitor

A report prepared by two House of Commons committees has suggested a new tax should be introduced for those over the age of 40 to help plug the social care funding gap, and the new tax should be extended to "rich" retired people. The report also suggests an extra Inheritance Tax on the largest estates.

One in ten people have to pay more than £100,000 towards their own care, with only 21% of people receiving council help. Reports suggest that many people are now relying on friends and family to help them with care, rather than using professional carers, and that 30% of older people receive no help at all.

A poll carried out by Ipsos Mori showed that only one in four people were in favour of using wealth tied up in people's houses to fund care fees.

Many people are concerned about protecting their home from care fees. If you would like advice on protecting your home, please contact Hauke Harrack on 01604 463131 or [click here](#) to email Hauke.

£200,000 Personal Penalty Imposed on Personal Representative



Catherine Ball
Partner

A penalty of £200,000 has been imposed on a Personal Representative, who failed to comply with requests from HMRC for further information.

Mr Tager senior died intestate in 2005 and his son, Mr Tager Junior, acted as his father's Personal Representative. Mr Tager Junior filed the Inheritance Tax Return for his father's estate three years after it was due. Mr Tager Junior had paid some Inheritance Tax on account. HMRC requested further information from Mr Tager Junior relating to the Inheritance Tax Return, including details of bank accounts, shareholdings, charitable donations and interests in property. He was given 35 days to provide the information and was warned about fixed and daily penalties if he did not comply. Various other details in the Return appeared to be incomplete or incorrect, including the number of children the deceased had.

Mr Tager Junior did not reply to HMRC's request, and had a fixed penalty of £300 imposed on him, plus daily penalties of £60 which amounted to £9,000 by the time HMRC made a separate application for a penalty in respect of his continuing failure to comply with the request.

The Upper Tribunal imposed a penalty of over £1million on Mr Tager Junior, which was equivalent to 100% of the Inheritance Tax it was believed might be payable. Mr Tager Junior appealed the decision. The parties eventually agreed, 12 years after the deadline for the Inheritance Tax Return,

that the amount of Inheritance Tax outstanding was £195,000. The Court of Appeal reduced the amount of the penalty down to £200,000.

If you are acting as an Executor/Personal Representative and need tax advice, please contact Catherine Ball on 01604 463337 or [click here](#) to email Catherine.

Prince Charles' 80-Year-Old Neighbours Barred from the Family Home after Gifting it to their Children



Tiffany Wiggett
Associate

Manny and Brigitta Davidson, both in their 80s, have released a book revealing how they were barred from returning to the family home by their children; detailing the long legal battle that followed.

Mr and Mrs Davidson set up two Trusts for their children in the 1960s to save Inheritance Tax, and those trusts are now worth £500 million. Apparently, following a family fall out, their children put their family home, which is located next door to Prince Charles' home in Gloucestershire, up for sale and would not allow their parents to enter the house. The children made a claim to remove 'Protectors' of the Trusts, who they claimed were influenced by their parents. The parents made a claim for the return of £17 million worth of jewellery, antiques and fine art left in the home, and the children counterclaimed for £3 million of jewellery which they claimed their parents had taken without their permission.

The children have now ended up with the majority of the estate and Mr and Mrs Davidson have released their book in order to tell their side of the story. Mr Davidson gave an interview on the family feud a few years ago, where he warned parents not to make any gifts to their children. However, not all tax planning gifts end so unhappily. By making gifts, but ensuring you retain enough money for yourself, you can effectively reduce the size of your estate and therefore reduce the amount of Inheritance Tax payable by your heirs – but take advice first and think it through carefully

Trusts can also be used as a form of Inheritance Tax planning, or to protect assets, but, again, care must be taken in choosing trustees and in the terms of the trust.

For advice on Inheritance Tax, or Trusts, please contact Antonia Cooper on 01604 463314 or [click here](#) to email Antonia.

For advice on claims to Court, please contact Tiffany Wiggett on 01604 463340 or [click here](#) to email Tiffany.

Court of Protection Fee Reduction



Rachel Hawkins
Senior Solicitor

We have previously reported that the Office of the Public Guardian first reduced its fees and then started refunding court fees for Enduring and Lasting Powers of Attorney made between 1 April 2013 and 31 March 2017.

From 25 July 2018 the Court of Protection has similarly introduced a fee reduction for applications from £400 to £385, and for appeals from £400 to £320.

It is not yet known whether there will be a refund scheme for those that have previously paid the higher court fees.

For advice on Court of Protection matters, please contact Rachel Hawkins on 01604 463165 or [click here](#) to email Rachel.



This Bulletin is produced by Hewitsons for clients and contacts of the firm to provide them with a useful summary of recent cases, journal reports, developments in the law and dates to be aware of. It is not a definitive statement of the law in any area. Advice should be sought from a solicitor in the Private Wealth Team at Hewitsons in respect of any information contained in this Update that affects any matter with which you may be concerned. All legal references made within the above legal update are made in reference to the law at the time of publication.

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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