



## Hewitsons Private Wealth LEGAL UPDATE

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### Income Tax and Death



Elaine Morgan  
Senior Tax & Trust Manager

Since HMRC withdrew form R27, which was used to calculate the tax reclaim or payment due following a person's death, the chances of mistakes arising in relation to the deceased's tax affairs are much more likely. Reliefs can be lost. Requests for tax due may be made after the estate has been dealt with. This is because, in many cases, HMRC is relying on information from third parties and the income tax rules have become more complicated since the withdrawal of the form (introduction of personal savings allowance, trading and property income allowance, etc.).

By checking the tax position for the period up to the date of death, those dealing with the estate can ensure that any repayment due to, or from, HMRC can be dealt with in a timely manner, leaving no fear that HMRC will look into these at a later date. It is also recommended that the surviving spouse reviews their own personal tax position.

For further information please see our website <https://www.hewitsons.com/latest/news/income-tax-and-death>

For advice please contact please contact Elaine Morgan on 01604 463120 or email [elainemorgan@hewitsons.com](mailto:elainemorgan@hewitsons.com)

## **New National Framework for NHS Continuing Healthcare**



Tiffany Wiggett  
Associate

NHS Continuing Healthcare comprises a package of continuing care provided outside of hospital, arranged and funded solely by the NHS. 'Continuing care' is care provided over an extended period of time to a person aged 18 or above, to meet physical or mental health needs which have arisen as a result of disability, accident or illness.

If an individual is assessed as being eligible for the funding, then the NHS will have responsibility to pay for the entire package of care, including functions which may ordinarily be regarded as "social care functions".

When Clinical Commissioning Groups assess whether an individual is eligible for the care, they must have regard to the National Framework, which is changing on 1 October 2018. The new framework is intended to provide greater clarity in relation to applying the eligibility criteria for care, and will reflect various changes in legislation.

For further information on the changes to the National Framework please see our website: <https://www.hewitsons.com/latest/news/the-new-national-framework-for-nhs-continuing-healthcare-nhs-funded-nursing-care-whats-changing>

If you would like advice on NHS Continuing Healthcare, either under the current or new Framework, please contact Tiffany Wiggett by email at [tiffanywiggett@hewitsons.com](mailto:tiffanywiggett@hewitsons.com), or by telephone on 01604 463340.

## **Will Held to be Valid Despite Witnesses Not Signing**



Tobias Gleed-Owen  
Solicitor

The Court of Appeal has held that a person can validly witness a Will by writing their name in block capitals.

Mr Payne had made two Wills before his death. He had prepared each Will himself without professional assistance. The two witnesses to his first Will had written their names in block capitals. There was no space identified for signatures, and neither witness had signed the Will. His second Will was admitted to probate but his wife claimed it had not been properly executed.

The court initially held that both Wills were invalid and as a result Mr Payne died intestate. Mr Payne's widow appealed, and one of the witnesses to the first Will was called to give evidence during the appeal. He confirmed that both witnesses had written their own names in block capital letters

for the purpose of attesting the Will. The court held that there was no requirement for an actual signature, as long as the witnesses wrote their names intending them to operate as an attestation. The first Will was therefore held to be a valid Will.

There are certain formalities which must be met to create a valid Will. Without a valid Will your estate is likely to be distributed under the intestacy rules. If you would like to discuss updating your Will, please contact please contact Tobias Gleed-Owen on 01223 532718 or click [here](#) to email Tobias.

### **Court Approves £73,000 Son Withdrew from Elderly Father's Bank Account**



Alexandra Howard  
Senior Solicitor

The Court of Protection has retrospectively approved gifts and expenditure of £73,000 that a son, acting as an attorney, withdrew from his father's bank account. The father was aged 95 and suffering from dementia. His son made an application for retrospective approval of £88,000 which he had withdrawn from his father's bank accounts, after another family member raised concerns.

The son moved from Ireland to England to become his father's live-in carer, after it was ruled that his father was not eligible for any local authority funding. He paid himself for acting as his father's carer, and also used his father's accounts to benefit himself and his family back home in Ireland. The son told the court that he was not able to manage money well and that his attitude to his duties was 'lackadaisical'. His father's bank accounts became overdrawn during this period of time and the son admitted that he had rarely opened his father's bank statements.

The court approved a significant proportion of the withdrawals, mainly for the time that the son was acting as his father's carer and his associated expenses, and ratified certain sums made as gifts to the son and to other family members. The court ordered that the unapproved portion of the withdrawals should be deducted from the son's share of the residue of his father's estate after his death, or should be treated as a debt to the estate.

Powers of Attorney can be very useful in helping you to manage your affairs if you lose mental capacity. However, it is essential that you appoint somebody you trust who will be capable of managing your affairs properly.

If you would like advice on acting under a Lasting Power of Attorney or preparing a Lasting Power of Attorney please contact Alexandra Howard on 01223 447422 or click [here](#) to email Alexandra.

## Son Succeeds in Claim Against His Father for Large Share of Family Farm



Catherine Ball  
Partner

A son has succeeded in his claim against his father, after his father had made promises to leave him the £8 million family farm, but then transferred the farm to his brother.

The son, Mr Gee, had worked and lived on the family farm since the 1970s. He had worked long hours and received low wages, as his father had told him that he would inherit the lion's share of the family farm. However, his father transferred his shareholding in the farm company and interest in the land to Mr Gee's younger brother, Robert, in 2014. There was some suggestion that the father had intended to transfer the farm to Mr Gee, but was turned against his son by Robert and Robert's wife, who criticised Mr Gee's farming ability to their father. Robert worked as a builder and property developer, not on the farm.

The court held that Mr Gee had acted to his detriment based on his father's promises and, as a result, it would be inequitable to deny him an interest in the farm and the business. The judge chose not to award a lump sum payment to Mr Gee, commenting that cutting either son out of the farm completely would not be fair, and instead awarded him 52% of the shares in the farm business company and 32% of the farmland.

If you would like advice on succession planning for your farm or family business, Catherine Ball by email at [catherineball@hewitsons.com](mailto:catherineball@hewitsons.com), or by telephone on 01604 463337.

## Care Fees Charged After Death – Update



Rachel Hawkins  
Senior Solicitor

We reported last month that care home providers who continued to charge fees following a resident's death were being investigated, along with care homes which forced residents to pay advance fees before moving in.

Care homes have now been formally ordered to stop charging fees after a resident's death and refund all fees paid upfront by residents. The average amount due back to each resident who was forced to pay upfront fees will be around £3,000. Care homes are able to continue to charge 'reasonable' daily charges for storing a deceased resident's belongings if they are not collected from the care home within three days of the death.

If you would like advice on protecting your savings from care home fees, please contact Rachel Hawkins on 01604 463165 or [click here](#) to email Rachel.

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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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