



Hewitsons' Private Wealth LEGAL UPDATE

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Couple Jailed for Six Months after Forging Will



[Hauke Harrack](#)
Solicitor

Record numbers of people trusted to look after the finances of others are being struck off by the authorities.

Recent data shows that in 2013, 68 attorneys and deputies, were removed because of financial mismanagement or alleged theft. The figure rose to 203 in 2014 and fell slightly to 172 in 2015, but this still equates to a 153% rise on 2013's levels.

A recent case shows how attorneys are abusing their position to make decisions in their own interests rather than the donor's.

An Essex couple who admitted forging a relative's Will to obtain possession of his home have each been jailed for six months.

The late Martin Blanche owned and lived in a cottage in the Nottinghamshire village of Rolleston until his death in 2007. He also owned a half share of the adjoining, empty, cottage - the other half being owned by his cousin Josephine Burroughs.

At the time of Mr Blanche's death, Mrs Burroughs had already granted a power of attorney to handle her affairs to another cousin, Margaret Hampshire. When Mr Blanche died, Mrs Hampshire decided to take over the administration of his estate. She and her husband, Alan

Hampshire, entered Mr Blanche's house to clear out the contents. In the process they claimed to have found a Will leaving his interests in both properties to Mrs Burroughs. In fact, as was later proved at trial, this Will had been forged by Alan Hampshire.

The Will was admitted to probate and both properties were transferred into Mrs Burroughs' name. Mrs Hampshire then forged a letter purporting to have been signed by Mrs Burroughs, apparently agreeing to give the two cottages she had inherited to Mrs Hampshire's daughter.

Mrs Hampshire then used the power of attorney she held for Mrs Burroughs to transfer the two cottages to her daughter. The cottages were subsequently renovated and redesigned as a single dwelling - apparently with £23,000 of Josephine Burroughs' money, again appropriated by Mrs Hampshire through her power of attorney.

The subsequent police investigation employed a handwriting expert who concluded that the Will was forged. The Hampshires initially pleaded not guilty at trial, but part way through the hearing they changed their pleas, with Mrs Hampshire admitting two counts of forgery and one count of fraud, and her husband admitting forgery and two counts of theft.

The case highlights why choosing the right person as your attorney is all important. Donors can appoint attorneys that are friends, relatives or professionals. You need to be able to place complete trust in that person and you need to decide whether they should always make joint decisions or be allowed to act separately.

There is not an automatic right for next-of- kin to make decisions on a person's behalf, so a lasting power of attorney can make all the difference. However, care needs to be taken when choosing an attorney.

Taking advice from a solicitor on the risks and benefits, and the options, can be of crucial assistance. Similarly having a Will made by a solicitor and stored safely by that solicitor's firm.

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

Sharp Rise in Wealth among the Elderly



[Antonia Cooper](#)
Senior Solicitor

The number of elderly people expecting to bequeath large sums when they die has doubled in 10 years.

The Institute for Fiscal Studies has published research showing that the wealth of over 80s has increased by 45% over the past decade to 2013. The number who think they will leave amounts over £150,000 to loved ones has also risen from 24% to 44%.

The Institute for Fiscal Studies says the sharp rise in wealth and inheritances among the elderly was the result of higher home ownership and rising house prices.

The proportion of individuals who have received or expect to receive an inheritance has also risen rapidly across the generations.

Of those born in the 1970s some 75% either have received or expect to receive an inheritance, compared with 68% of those born in the 1960s. This compares to 61% of those born in the

1950s, 55% of those born in the 1940s and less than 40% of those born in the 1930s. The share of individuals who have received or expect to receive an inheritance has therefore doubled between those born in the 1930s and those born in the 1970s.

The Institute for Fiscal Studies indicates that the wealth of younger generations looks set to depend more on who their parents are than was the case for older generations. Today's elderly have much more wealth to leave to their children than their predecessors did, primarily as the result of higher homeownership rates and rising house prices.

However today's young adults will find it harder to accumulate wealth of their own than previous generations did, due to the sharp fall in homeownership for that group and the stagnation in their incomes. Consequently, tax planning by their older relatives, and consideration of different options, such as skipping a generation in their Wills, is becoming ever more important.

Property Portfolio Shares indirectly owned by a Trust

A property portfolio that was owned by two companies whose shares were owned by a trust was not a direct asset of the trust and was therefore subject to different rules.

Proceedings against the companies had to be dealt with by the companies' directors, and the trustee of the trust was obliged to familiarise itself with what was being done by the directors and to intervene if that was not in the trust's best interests.

It was held that the directors of the property portfolio should deal with the property portfolio in the manner most favourable to the trust's best interests. An unwillingness by the directors to so act could lead to intervention by the trustee. The Court explained that there was no reason in principle why a trustee should not intervene in a trust's best interests, by using the trust's voting power, if the trust would prefer the directors to take a different reasonable view.

The case highlights that trustees have a responsibility to keep under review any arrangements made in relation to a trust, and a duty to exercise their power of intervention if necessary to ensure decisions made in relation to the trust are in the trust's best interests.

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

HMRC to Introduce Quarterly Digital Record Keeping Requirement



[Helen Deady](#)
Trainee Solicitor

The House of Commons Treasury Committee has published a highly critical report on HMRC's Making Tax Digital (MTD) project.

MTD will force small businesses, landlords and the self-employed to keep digital records of income and outgoings and report them online every quarter. HMRC claims it will make businesses more efficient, although it will force all of them to use customised software to keep their business records constantly up to date.

The results of a survey by Chartered Institute of Taxation

members has shown that 95% of respondents opposed the programme. Respondents stated: MTD would create extra costs and administrative burdens on businesses; that it was being introduced too quickly; and that it should not be imposed on the smallest of businesses and the self-employed.

HM Treasury committee's report agrees that MTD's costs and administrative burdens will drive some small firms out of business. The speed with which MTD is being implemented has resulted in insufficient engagement and consultation with the business community.

The report suggests an introduction date of April 2018 is unachievable and an extensive piloting exercise should be undertaken. A modest pilot is already under way, but it consists of volunteer firms, so is likely to give an over-optimistic result, especially as HMRC's tight schedule constrains it to a few months. Instead, says the committee, pilots must be designed to gather information over the entire reporting cycle - four quarterly updates and an end of year reconciliation. This should be followed by a full evaluation.

Furthermore, the committee's report states that HMRC needs a fully functioning market in appropriate software, including adequate free software for smaller and less complex businesses.

If you would like tax advice, please contact Helen Deady on 01604 233233 or [click here](#) to email Helen.

Charity Commission Postpones Extension of Charity Trustee Barring Rule



[Martyn Robinson](#)
Solicitor

The charities regulator for England & Wales has postponed the planned extension of the automatic disqualification regime for charity trustees to senior staff within charities convicted of certain crimes.

Persons convicted of certain serious criminal offences have been barred from charity trusteeship for some time, but the range of offences that trigger an automatic ban was significantly extended in the recent Charities (Protection & Social Investment) Act 2016.

New disqualifying conditions include dishonesty convictions, offences of money laundering, lying in court, making a false witness statement, or being designated under a terrorism freezing order. Moreover, notably, the ban will now extend to charity staff as well as trustees.

The Charity Commission was well aware that these changes were unpopular with some charities €“ especially those that assist ex-offenders €“ both because they believe them to be 'unnecessary' and 'ineffective', and because they will cause staffing problems. Therefore the bill allowed a transition period before the measures would come into force. The commencement date was originally planned for April 2017, which was thought would give time for the newly disqualified to cease acting and to be replaced, or to apply for a waiver.

However, the charity sector has warned it is not being given enough time. There are tens of

thousands of small non-professional charities operating in England and Wales, and the danger is that their trustees and staff will not be aware of the change in the law and will end up working illegally.

The Charity Commission has now confirmed that the commencement date is being put back to September 2017 at the earliest.

If you would like further advice please contact Martyn Robinson on 01223 532708 or [click here](#) to email Martyn.

Trustee in Bankruptcy Claim against Deceased's Ex-Wife Dismissed in England and Wales Court



[Eleanor Rutherford](#)
Solicitor

The trustee in bankruptcy of the late Jonathan Elichaoﬀ has failed to establish a claim against Mr Elichaoﬀ's former wife, Sarah Woodall.

Sarah Woodall filed for divorce against Mr Elichaoﬀ in November 2008, just two months before one of Mr Elichaoﬀ's creditors served a statutory demand on him. His inability to pay resulted in a bankruptcy petition being presented against him in March 2009.

In June 2009, the couple agreed a consent order stating that Mr Elichaoﬀ would pay his wife and daughter maintenance of £24,000 per annum each, and would repay £1.4 million he had borrowed from Woodall, although there was no written agreement to that effect. This consent order was approved by a district judge the following month. However, between these two events, Mr Elichaoﬀ was formally made bankrupt – a fact that was not drawn to the judge's attention.

In 2015 Mr Elichaoﬀ's trustee in bankruptcy applied for a declaration that the 2009 consent order was void because it had not taken into account his bankruptcy. He applied for an order requiring Sarah Woodall to pay a lump sum equivalent to Mr Elichaoﬀ's debts. Sarah Woodall defended these demands in a hearing in February 2016.

The result of the hearing was that the registrar declared that all of Mr Elichaoﬀ's dispositions under the consent order were void. However, he also struck out the trustee's applications relating to an order requiring Sarah Woodall to pay a lump sum equivalent to Mr Elichaoﬀ's debts, and ordered the trustee to pay most of Sarah Woodall's costs.

The reason for this decision was that Mr Elichaoﬀ had died – having committed suicide in 2014. Registrar Jones considered the available legal authorities which implied that Matrimonial Causes Act 1973 claims can only be pursued by the spouses themselves, and the relevant rights 'do not extend beyond joint lives'.

The trustee in bankruptcy appealed to the High Court, which has now ruled against him. Mr Robin Dicker QC agreed with previous courts that the death of the bankrupt brought to an end his rights under the Matrimonial Causes Act 1973, and the trustee could have no greater claim than that of the bankrupt.

Robin Dicker QC confirmed that Matrimonial Causes Act 1973 applications by spouses ceased when one of them died.

If you need contentious probate advice, please contact Eleanor Rutherford on 01604 463340

or [click here](#) to email Eleanor.

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