



Hewitsons' Private Wealth LEGAL UPDATE

March 2017

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Probate Court Fees



[Alex Turtle](#)
Solicitor

In some cases, the fee payable to the Probate Registry on an application for a Grant of Probate will increase shortly from £155 to £20,000. In other cases the increase will be lower but still very significant. The increased fees are due to take effect from May 2017 (date as yet unspecified).

To explain, the Probate Court fee is currently £155 where the application for the Grant is made by Solicitors, regardless of the value of the estate (£215 for personal applicants not using Solicitors).

At the end of February 2017 the Government announced, following a consultation, that it intends to increase the Probate Court fee from May 2017. The proposed increase is significant. There will no longer be a single fee. Rather there will be a banded system, with the fee based on the value of the deceased's estate at the date of death.

The proposed new fee structure, intended for Probate Court fees from May 2017, is set out below (and is subject to parliamentary approval).

Table 1: New fee structure Value of estate (before Inheritance Tax)	Proposed Fee
Up to £50,000 or exempt from requiring a grant of probate	£0

Exceeds £50,000 but does not exceed £300,000	£300
Exceeds £300,000 but does not exceed £500,000	£1,000
Exceeds £500,000 but does not exceed £1m	£4,000
Exceeds £1m but does not exceed £1.6	£8,000
Exceeds £1.6m but does not exceed £2m	£12,000
Above £2m	£20,000

The increase in fees is particularly controversial as the consultation revealed that the Probate Registry is already self-supporting and the extra income will be used to subsidise the rest of the court system. The proposal to base Probate Court fees on the value of the estate received strong opposition. The Ministry of Justice's consultation response shows that only 63 out of 829 respondents agreed with this proposal. Some responses suggested that as the fees are above the cost recovery levels, they effectively constitute a form of taxation.

As well as affecting the estates of those who die in the future (other than those whose estates are below £50,000), the increase will also affect the estates of those who have already died but whose executors do not apply for the Grant of Probate before the increase takes effect.

There may be steps that can be taken to limit the effect of the increased fees, depending on the particular circumstances. There is a parliamentary petition against the increased fees, set up by Solicitors For the Elderly, which can be accessed [here](#).

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

Supreme Court decision returns inheritance to three animal charities



[Hauke Harrack](#)
Solicitor

Melita Jackson died in 2004 leaving the majority of her estate to the Blue Cross, the RSPCA and the RSPB. She had excluded her daughter Heather Ilott. The mother and daughter were estranged, and Ms Jackson had drafted her Will and Letter of Wishes to ensure that her daughter would not receive anything.

Ms Ilott challenged the Will under the Inheritance (Provision for Family and Dependents) Act 1975 on the basis that her mother had not made reasonable provision for her in the Will. She was awarded £50,000 from the estate in the High Court. The charities appealed on the basis that Ms Ilott should not have been awarded anything, and Ms Ilott appealed on the basis that the award of £50,000 was insufficient. On appeal, the Court of Appeal held that reasonable provision had not been made for Ms Ilott in the Will, who was living on benefits and had five children. Ms Ilott was awarded £143,000 to buy the rented home she was living in and £20,000 for additional income.

The three charities appealed and the Supreme Court unanimously overturned the Court of

Appeal decision, restoring the original ruling which had awarded £50,000 to Ms Ilott. The Supreme Court decided that The District Judge who heard the case at first instance had not erred in law and had correctly taken into account the nature of the relationship between Ms Jackson and Ms Ilott in deciding to award her the lower sum.

The ruling upholds the principle of testamentary freedom, and affirms that a Testator's wishes as to his choice of beneficiaries are an important consideration for the Court. The decision confirms it cannot be ignored that an award under the 1975 Act is at the expense of beneficiaries chosen by the Testator. Some useful guidance has also been supplied as to what an adult child will need to be able to show in order to succeed in a claim under the 1975 Act but there are still uncertainties and the importance of weighing up, at the time of drawing up a Will, the merits of potential claims that might be made against an estate after death still remains.

If you think there is a possibility of a claim against your estate by a disappointed beneficiary, the circumstances should be considered when the Will is prepared and there may be steps that can be taken to reduce the possibility of a claim. To review your Will, please contact Hauke Harrack on 01604 463131 or [click here](#) to email Hauke.

The right to bring a claim for financial provision ends with the death of the person entitled to bring the claim



[Lucinda Brown](#)
Partner

The High Court has ruled in *Roberts v Fresco* (2017 EWHC 283 Ch) that the right to make a claim under the *Inheritance (Provision for Family and Dependants) Act 1975* ends with the death of the person who held that entitlement.

Mrs Milbour died in January 2014, leaving an estate of nearly £17 million and left her husband, Leonard Milbour, the sum of £150,000 together with the income from a fund of £75,000. She appointed her only child, Luanne Fresco, and her son-in-law, Carlos Fresco as her Executors.

Mr Milbour did not bring a claim for greater financial provision from his wife's estate under the 1975 Act following his wife's death, and he then died in October 2014. Mr Milbour left his estate of £320,000 to his daughter (from a previous marriage) Laurel Roberts, and his granddaughter Francesca Milbour.

Laurel and Francesca then brought a claim against Luanne Fresco as the executor of Mrs Milbour's estate. They brought the claim on behalf of the late Mr Milbour under s1(1)(a) of the 1975 Act (the spousal claimant section of the 1975 Act).

Deputy Judge Monty considered that the case of *Whytte v Ticehurst* remained good law. In this case it was held that no cause of action could survive the death of a surviving widow who had made a claim under the 1975 Act and died before the first substantive hearing. Deputy Judge Monty noted that although the *Law Reform (Miscellaneous Provisions) Act 1934* had abolished the previous common law rule that personal actions die with the person, a claim did have to qualify as a 'cause of action' to be enforceable. This could not be the case unless an order was made before the death of the surviving spouse.

If you would like to discuss the implications of this case, please contact Lucinda Brown on

01223 532721 or [click here](#) to email Lucinda.

Woman jailed for Power of Attorney and Will abuse



[Antonia Cooper](#)
Senior Solicitor

A woman has been jailed for five years after manipulating a 90-year-old man into granting her a Power of Attorney over his finances, stealing an estimated £240,000 between November 2011 and December 2013, and changing his Will.

The elderly man was in ill-health and lived alone. Ms Weston claimed to be the man's carer and befriended him. She convinced the man to grant her a Power of Attorney over his affairs and to change his Will. She also persuaded him to transfer his home into her name. Ms Weston sold the man's home and moved him into a care home far away from his family and friends. Ms Weston did not meet the care home fee payments and the man was due to be evicted from the home.

The care home staff and social services became suspicious, alerting Sussex Police. The police then conducted a criminal investigation into Ms Weston and she was charged with six separate offences under the Fraud Act 2006. She was convicted of five of these offences and sentenced to five years in prison. Detective Constable Ian Dearling said "This was a calculated crime against a particularly vulnerable person for which Weston has shown no remorse. She claimed to have had the victim's best interests in mind at all times, when in fact, over a period of time, she isolated him and took control of his finances, and then his life".

Lasting Powers of Attorney, both for Property and Financial Affairs and Health and Welfare, can be extremely valuable in ensuring that those you trust deal with your affairs if you lose capacity to do this yourself or need help in the future. However, it is important that all aspects are fully considered and that safeguards are put in place where appropriate.

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

Adopted children's right to inherit upheld



Two adopted children were able to use the European Convention of Human Rights (ECHR) to inherit part of their grandfather's estate.

Henry Hand died in 1947. His Will left the residue of his estate to his three children in equal shares for life, with the remainder to be shared equally among their children at the age of 21. Succession law at the time did not require adopted children to be treated as natural children.

Henry Hand's son, Kenneth Hand, adopted two children,

[Carolyn Bagley](#)
Partner

David and Hilary. They argued that whilst they would not be included in their father's share of the inheritance under domestic law, they should be treated as natural children for the purposes of their grandfather's Will by relying on Article 14 and Article 8 of the ECHR. Henry Hand's natural grandchildren defended the claim, saying that the ECHR could not be used to interpret a Will that was executed before the ECHR was in force. They argued that if their grandfather had wanted to include adopted grandchildren, he could have done this, and that in fact, he used wording that excluded adopted grandchildren.

David and Hilary's claim would have failed under the law in force in relation to adoption in 1946 when the Will was prepared, which was the Adoption of Children Act 1926. This stated that "children" did not include adopted children unless there was an express intention that it should include adopted children. However, the High Court ruled that the adopted grandchildren could not be discriminated against as this was contrary to their ECHR rights, and that they were to be treated in the same way as natural grandchildren.

Careful drafting of your Will can avoid family disputes after your death and make your intentions clear.

If you would like advice on your existing Will or the preparation of a new Will, please contact Carolyn Bagley on 01908 247015 or [click here](#) to email Carolyn.

Three women jailed for forging elderly man's will



[Eleanor Rutherford](#)
Senior Solicitor

Three women have been jailed for forging the Will of their 89-year-old neighbour, giving them a share of his estate worth £320,000.

Jim Wilmot lived alone in South Wales and died in October 2014. The three women claimed to have helped Wilmot during his last year. They claimed that they had found his Will when cleaning his home. Two of the three women, Karen O'Brien and Gemma Gauci, were named as his executors and beneficiaries, and the third, Leanne Collins, was a beneficiary.

The two executors obtained a Grant of Probate. They then took money for themselves from Wilmot's savings, pension fund and the sale of his home. Forensic analysis was carried out on the Will, and it was shown that his signature had been traced onto the handwritten Will.

All three were jailed for conspiracy to commit fraud by false representation: O'Brien was jailed for four and a half years, Gauci for four years and Collins for one year.

When we prepare Wills for our clients, we usually store the Will safely on our client's behalf and provide the client with a copy of the Will. This can be an important safeguard.

If you would like further advice, please contact Eleanor Rutherford on 01604 463340 or [click here](#) to email Eleanor.

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