



Hewitsons Private Wealth LEGAL UPDATE

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Avoid Inheritance Tax – Have You Planned Effectively?



Rachel Hawkins
Senior Solicitor

Financial experts have warned that HMRC is adopting a more rigorous approach, with bereaved families being targeted for more Inheritance Tax.

According to latest figures, HMRC has brought in an extra 6% year-on-year, with almost £2 billion being taken from estates in the space of just three months (April – July 2017). The government body is known to be inspecting estates closely and challenging claims for reliefs.

Inheritance Tax is charged at a rate of 40% on estates worth more than £325,000. With house and asset prices rising, more families are set to be caught by the tax. This, coupled with extra scrutiny from HRMC, means those who haven't taken professional legal advice and planned effectively could be facing a surprising amount of Inheritance Tax.

This is a highly complex tax with many pitfalls; fortunately, there are simple ways to legally avoid the duty.

If you would like advice about Inheritance Tax please contact Rachel Hawkins on 01604 463165 or [click here](#) to email Rachel.

Indecently Assaulted Children Fail in Claim on Mother's Estate



Kate Harris
Solicitor

The Ball family consisted of 11 children. In 1991, 3 of them reported their father for assaulting them while they were minors, leading to a prosecution and suspended prison sentence.

Their mother strongly disapproved of their decision to involve the police and excluded them from her will later that year. She died in 2013 and the disinherited children challenged her will on the grounds of lack of capacity and undue influence.

The evidence at trial was that Mrs Ball accepted that there was some truth to the allegations made by her three children but that she considered them to be exaggerated. She was also annoyed that the matter had been made public when it had previously been discussed and settled within the family. The children argued that Mrs Ball had made the will as a result of a serious mistake, namely that she believed her husband to be innocent, and that this caused her to lack testamentary capacity. In the alternative, they said that their father must have unduly influenced her into making the will as she did.

Both arguments were rejected in the High Court. Even if Mrs Ball had made a mistake, this must have been caused by an insane delusion or a failure in memory which made the testator incapable of making a will. There was no evidence of this. Additionally, just because the children did not agree with their mother's choices did not mean that she had been subject to undue influence; she was free to dispose of her property as she wished. (*Ball v Ball*, 2017 EWHC 1750 Ch).

If you would like advice in relation to challenging the validity of a will please contact Kate Harris on 01223 532762 or [click here](#) to email Kate.

Estate Planning – Do It Now, Not Later



Ciara Wanstall
Senior Solicitor

Whilst estate planning is commonly thought to occur in later years, life can be unpredictable and you never know when provisions could be required to be in place.

Media reports recently covered a particularly upsetting case highlighting this. Described as being one of the youngest cases doctors have witnessed, 31-year-old ski instructor Becky Barletta was diagnosed with dementia in 2016. Her condition deteriorated rapidly; she now requires 24-hour care and has been told she has just years to live.

With life being so uncertain, it is important to plan and prepare for all eventualities. While it is a difficult subject to think about, it is best to consolidate your wishes with a will and lasting powers of attorneys. This acts as a safety net and minimises the risk of decisions being made contrary to your wishes later down the line.

If you have not yet made a will or LPA please contact Ciara Wanstall on 01604 463101 or [click here](#) to email Ciara.

Daughter Successful in Claim on Estranged Father's Estate



Kate Harris
Solicitor

Stanley Nahajec died leaving his entire estate to his friend, Stephen Fowle. He did not provide for his children as he had not seen them for over 18 years and they were independent. Daughter Elena, aged 31, had little contact with her father since he left when she was 11. She had tried to rekindle their relationship on many occasions, to no avail. She claimed for reasonable financial provision under the *Inheritance (Provision for Family and Dependants) Act 1975*. Mr Fowle defended the claim and argued that the will should be upheld.

When deciding a claim under the *1975 Act*, the Court is required to look objectively at the deceased's testamentary dispositions (or lack thereof) and to take into account a number of different factors to decide whether reasonable financial provision has been made for the Claimant. In all cases other than those made by a surviving spouse the award made will be what is reasonable for the Claimant to receive for the purposes of their maintenance. The definition of maintenance has recently been considered by the Supreme Court in *Illot –v- The Blue Cross*.

In this case, the Court considered that Elena had made genuine attempts to reconcile with her father and, despite what had been stated about her financial independence, was living a frugal existence and was in need of financial provision from the estate. The Judge weighed up the factors under the *1975 Act*, including the needs of the other beneficiaries, and awarded Elena £30,000 from the estate. This was roughly 11.3% of the estate and was designed to provide Elena with a capital sum to allow her to complete a further education qualification which she would otherwise have been unable to afford. The Court considered this to be reasonable financial provision for her maintenance (*Nahajec v Fowle* [2017] EW Misc 11).

If you would like advice in relation to a claim under the *1975 Act* please contact Kate Harris on 01223 532762 or [click here](#) to email Kate.

Proposed Will Writing Reforms and Implications



Alex Turtle
Solicitor

The law on wills is largely derived from the *Wills Act 1837*. These antiquated laws could be deterring people from writing a will, with 40% of adults dying each year without one. There is then no guarantee estates are distributed as they intended. Significant changes in society, technology and medicine have therefore prompted the Law Commission of England and Wales to hold a public consultation to modernise this area.

Proposed changes include dispensing with strict formalities when the deceased's intentions are clear, a new mental capacity test taking into account modern understanding of conditions like dementia and lowering the age for making a will from 18 to 16. Electronic wills are also being considered to help make the process easier, cheaper and more convenient.

Some professionals fear these changes could give rise to more will challenges, offering dissatisfied relatives additional avenues to prove the deceased intended to favour them more. The Commission must therefore take precautions to protect the true wishes of will-writers while promoting flexibility.

The public consultation is open until 10 November.

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

Client Seminar - Estate Planning and Wealth Preservation

A seminar for clients only is being held near Olney on the evening of Thursday 16 November. If you have not received an invitation and would be interested in attending, please contact us for your name to be added to the list and we will contact you confirming a place after 12 October.

If you would like to add your name to the list please contact Sobia Ahmad on 01604 463382 or [click here](#) to email.



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