



Family Matters

Issue 2

Are you still free to choose who benefits from your Will?

Partner, Mark Leeson featured on Sky News commenting on a landmark contentious probate case, with the Court of Appeal ruling that a disinherited daughter should be awarded a one third share of her mother's estate despite the mother's express wishes to the contrary.

The case has significant implications on the law relating to Wills and encroaches heavily on the principle of testamentary freedom. In this case, Mrs Jackson, who died in 2004, left all of her estate equally between three charities. Following a long feud with her daughter, Mrs Jackson expressly stated her daughter should not benefit from her estate. She explained her reasons and asked her executors to fight any claim her daughter might bring after her death. The daughter had no further contact with her mother for 35 years.

The case is one of a number of recent cases that have increased the ability of adult, able-bodied children to claim reasonable financial

provision from their parents' estates if disgruntled with what they have been left. The case highlights that there must be a good reason for disinheriting a child and that a person must have a connection with the beneficiaries that they choose to benefit under their Will; in this case Mrs Jackson had no specific connection with the charities she chose to benefit.

The case highlights problems with preparing Wills without the assistance of a solicitor who can properly advise about what steps can be taken to reduce the risk of a future claim by a disgruntled child. The type of Will prepared is important and certain types of trusts can help, as well as accompanying letters explaining

the rationale behind a particular decision.

It is important to take professional advice if you plan to disinherit your children in your Will. If you are the disinherited child, you might want to take advice at an early stage to explore whether you may still be able to benefit. If you do take specialist advice about beneficiaries in your Will, it is still possible, despite this recent case, to ensure your chosen beneficiaries benefit and your estate passes as you would like.



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What's news?

Meet Justine Sloover

Justine Sloover has recently joined Brachers as a Senior Trust Manager with over 25 years' experience of dealing with trusts of various levels of complexity and value, including high net worth family trusts.

She has an in depth understanding of trust related tax issues including Inheritance Tax, Capital Gains Tax and Income Tax and also deals with the completion of all associated tax returns, inheritance tax accounts and the audit of annual trust accounts. If you have any queries relating to trusts please contact Justine.



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Brachers Trust Corporation Limited

We are delighted to announce the launch of Brachers Trust Corporation (BTC), an efficient and cost effective way of appointing a professional trustee of your family trusts. BTC can also act as an independent executor under a Will in the administration of an estate, or as an attorney or deputy in administering the financial affairs of people lacking capacity.

The directors of BTC are partners of the firm, assuring continuity as no issues arise from the absence, death or retirement of an individual trustee. Brachers will continue to be engaged to provide legal services to BTC and its co-trustees and a specialist lawyer will act for the trustees through BTC, providing personal contact with a known individual. BTC will be able to take decisions effectively and with the underlying experience of a team who already manage 300 other trusts at Brachers.

There are no additional charges for BTC acting compared with an individual partner in this firm. Our fees will be paid in the normal way from the trust fund. If you have any questions about BTC, please contact Wendy Buchan.



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One for the road

Anybody buying a property might be a bit baffled by all the searches carried out by their lawyer. One of the most important searches that will be done is a Local Authority Search which, as the name suggests, is a search against the records held by the Local Authority specific to the property in question.

The search covers a variety of records held including planning and building regulations, planning designations and proposals and roads. The question of roads came up in a recent case where the High Court found that a Local Authority was liable to a buyer when they failed to disclose that they were investigating whether part of the property was in fact a highway maintainable at public expense.

The buyer relied on the search result confirming that no part of the property was a highway maintainable at public expense thus confirming that the property was private and as a result of this incorrect reply in the search, the buyer suffered a loss in the value of the property. This case highlights just how important searches can be when making a decision to buy a property.



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New LPA forms

July 2015 saw the Office of the Public Guardian publish new Lasting Power of Attorney (LPA) forms and whilst the motivation for this change was to simplify the previous process, the new forms are unfortunately still longwinded and complex.

We recommend that clients who need Powers of Attorney (particularly those with business assets), seek advice from one the members of our specialist private client team to help complete the new forms and put a LPA in place. For further information please contact Christopher Eriksson-Lee on 01622 776456 or email christophereriksson-lee@brachers.co.uk.



Boom or bust for property market after General Election?

Ahead of the May General Election, speculation was rife on how the property market would fare following one of the most uncertain battles Westminster had seen for years. Would mansion tax and tougher tax regulations be brought in to 'crack down' on wealthy home owners? Or would landlords suffer from stricter controls resulting in a possible slump in the rental market?

With a somewhat unexpected Conservative Government taking over Number 10, it would seem that the new leadership is having a tumultuous effect on the property market.

The mood has shifted from stagnant and unpredictable to increasingly buoyant, with a flood of properties being added to estate agents' portfolios. The pre-election uncertainty is now over and confidence is starting to grow.

This is especially true of the luxury market where a significant number of properties have changed hands now that the propositions for mansion tax have (for the time being) been muted. Just recently, 230 unbuilt apartments for a new residential tower block in Canary Wharf sold out in one morning, showing that property is being snapped up quickly.

So why the sudden resurgence?

David Cameron has pledged to support first time buyers by "building 200,000 starter homes which will be

sold at a 20% discount, and will be built exclusively for first time buyers under the age of 40".

Alongside this is the promise to commit to the Help to Buy scheme to assist first time buyers so more achievable deposits can be provided. Perhaps the 2014 change in Stamp Duty Land Tax has also allowed a more flexible approach to pricing by abolishing the 'slab-approach', which caused a false divide between the lower and higher ends of the market, and now provides for a more fluid and transparent price structure. Furthermore, the influx of foreign investors seems to be on the rise, pumping money into various new build developments and improving the turnover and volume of sales.

However, Mark Carney, Governor of the Bank of England, has issued his latest warning over mortgage rates, which looks to upset this recent boost.

Both prospective and current homeowners will be subject to interest rates that are set to rise for the first time in eight years, marking the end of the

longest period of unchanged Bank Rate since the Second World War. This may have a significant impact on first-time buyers, who are already deemed to be at a disadvantage.

Homeowners who have not yet experienced the pain of a rate rise will also suffer and entering in to a fixed rate mortgage would be an obvious option. Although the rise may be 'limited and gradual', planning for the future is advisable to avoid feeling the pinch in years to come.

It therefore remains to be seen as to whether this revival will be permanent or not. The effects of the 2007/2008 crash are still being felt by many, but with its longevity yet to be determined, one would hope that the property market will remain resilient for at least the foreseeable future.



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Attorneys and mental capacity

A loss of mental capacity can affect people of all ages, not just the elderly. Nima Stepney, Solicitor in our Private Client team answers some of the questions our clients often ask.

What is a Lasting Power of Attorney?

Lasting Powers of Attorney (LPAs) are documents where you can appoint people that you trust to make decisions about your financial affairs or to make decisions about your health and welfare.



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Who should make an LPA?

Everyone. LPAs are not just for the elderly. Anyone could have an accident and lose capacity so waiting until you think that the document may be needed is a risky strategy. LPAs should be seen as an insurance policy. You pay for car and home insurance year on year and for the vast majority of people you never make a claim. With an LPA, there is a one off cost for a lifetime of cover.

Who can be appointed as an attorney?

Attorneys can be anyone over the age of 18 who has full mental capacity and is not an interim or undischarged bankrupt. If you appoint a spouse or civil partner, the appointment ends should you divorce or annul a civil partnership. You can appoint professional attorneys, for example Brachers Trust Corporation Limited. The most important consideration when appointing an attorney is to choose someone you trust implicitly. LPAs are powerful documents as your attorney can have full control of your assets and all aspects of your welfare. A spouse or partner is an obvious choice but you should consider additional attorneys, perhaps someone from a younger generation.

What powers does an attorney have?

Under the LPA for your financial affairs the attorney will be able to do anything you could have done in relation to your finance and property, provided there are no restrictions in the document. This includes buying or selling property, opening, closing or operating any bank, building society or other account and dealing with your tax affairs. Under the LPA for your health and welfare, unless the document restricts the attorney, they will be able to make decisions about your health care, which includes where you should live and who you should live with, your day-to-day care and consenting to or refusing medical treatment.

When does an LPA take effect?

LPAs have to be registered with the Office of the Public Guardian before your attorneys can act. Once registered the LPA for your financial affairs can be used both when you have capacity and lack capacity. When you have capacity the LPA for financial affairs can only be used with your consent. The LPA for your health and welfare can only be used if you lack capacity to make the decision in question.



Planning to generate income from a holiday let?

Is planning permission required to use a residential property as a holiday let? Property expert Lee May summarises when you need to obtain planning permission.

Commercial holiday letting has long been a source of income for those with second homes or owners of cottages as part of a wider land holding. The growth of the internet, and more recently apps designed specifically for letting property for holidays, has made it easier than ever to make the most of these opportunities.

Where an existing house is to be used as a holiday let this can usually take place without the need to apply for planning permission to change the lawful use of the property. However, as the Court of Appeal case of *Moore v Secretary of State for Communities and Local Government* (2012) has demonstrated there are circumstances where consent will be needed.

The Town and Country Planning Act 1990 states that planning permission is required for the making of a material change in the use to which land or buildings is put. The Use Classes Order 1987 groups a number of the most common uses of land into classes and states that planning permission is not required in order to move between uses within a particular class.

Residential dwelling houses are within Class C3. It does not matter whether the property is the occupiers' sole or main residence provided that its use is by either:

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents; or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than as a house in multiple occupation).

If the use of an existing dwelling house does not fit within those parameters then it is likely to constitute a material change of use, requiring planning permission. Failure to obtain consent may result in enforcement action being taken by the Council.

In the Moore case the property could accommodate up to 20 people and the lettings were often to groups of people who came together as a result of their shared interests; for example yoga or cycling or for the purposes of reunions or parties.

It was also found that the pattern of arrivals and departures, with associated

traffic movements was different from that for a single household. There would often be large groups, party type activities and the potential lack of consideration for neighbours. The court decided such use did not satisfy the criteria of occupation as a 'single household' and, as such, did not fall within Class C3. Accordingly planning permission was required for the change of use.

Whilst the Moore case helped to define the boundaries, it did not alter the principle that where a dwelling house is let out on a commercial basis to families or to groups who can occupy as a single household then this can be done without the need to obtain planning permission for a change of use.

Provided that sound advice is taken on the scope of what can be done within Class C3, this should come as some comfort to those wishing to generate income from their property.



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Following the Bit-crumbs of divorce

One of the hot topics surrounding Bitcoins is whether this will be the latest technique used by divorcing spouses to hide their assets. This should come as little surprise given the mere fact of Bitcoin's anonymity which lends itself to being used in some less than scrupulous activities.

Bitcoin was created in 2009 and is estimated to have now attracted around \$500 million of investment. Not bad for a virtual currency with a starting value of nil. Unlike traditional currencies, Bitcoins are not issued by a central bank or backed by any Government, and there is no regulated monetary authority involved with all the rigour it demands.

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In financial proceedings in a divorce, both parties are expected to give 'full and frank' financial disclosure which relates to both facts and documents.

Family lawyers must now consider whether the other party has made use of any digital banking service, such as Bitcoins, in an attempt to frustrate the court's ability to make provision for the other spouse.

Part of the Bitcoin draw is that a

Bitcoin transaction is much swifter than the traditional banking and third party payor methods. If one's wealth is held in Bitcoins, it can in theory be accessed anywhere in the world where there is internet connection. For those specialising in financial remedy proceedings, questions such as "does the court have right of access to a husband's (or wife's) Bitcoin wallet?" should come as little surprise. The complexity and obscurity of the Bitcoin system means that it appeals to those with a more ulterior purpose in mind, namely shielding assets from due process.

Of course the issue of one spouse failing to disclose assets is not new, but the methods afforded to those trying to do so are evolving. If one party is prepared to hide assets, Bitcoins may provide such an individual with the strategy to turn this temptation into reality.

Following a paper trail would be the first port of call. Converting assets into Bitcoins may leave a trail of crumbs, including transfers from bank accounts, allowing the other party the opportunity to make an application to the court for

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further disclosure or to set aside the original transfer.

When faced with an attempt to hide assets it is important that the innocent spouse takes early and decisive action as a delay will make it that much harder to trace the funds.



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A new law for cohabitants gets closer

The Cohabitation Rights Bill got one step closer to becoming law after the Bill had its second reading in the House of Lords and passed through to Committee stage. If passed, the Bill would give cohabiting couples similar, but not all, rights as those currently enjoyed by married couples on separation.

Currently cohabiting couples have little protection when they separate. Couples still hold the incorrect assumption that they are protected on separation and have similar rights as married couples as they are 'common law' partners, which is a legal myth.

Resolution, the national organisation of family lawyers committed to non-confrontational divorce, separation and other family problems, have been campaigning for a change in this area of law for a number of years.

Steve Kirwan, who leads Resolution's work on cohabitation law reform, comments:

"Ultimately, the law needs to reflect the standards of modern society, and in the case of cohabitation, it does not. More couples are living together than ever before, with an estimated 2.8 million cohabiting households in Britain – that's a significant portion of the country who are currently served by outdated and unfair laws. The current law on cohabitation is in desperate need of change and we believe that even Lord Marks' Bill, whilst welcome, does not go far enough to address the inequality in the current system."

Whether the Bill will be passed into law remains to be seen, but the passing of the Bill to the Committee stage is a welcome step in the right direction.

For many family lawyers, when advising cohabitants, it is often the case that one party has no financial claims. Even when the parties have been together for many years and where property rights are evident, the resolution of the claim can be extremely complex, as it often requires consideration of comments and financial contributions made many years ago.



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Cohabitation Agreements What do they cover?

Until the Bill is passed and the law becomes clear, couples thinking of cohabiting, as well as those already living together, should put in place a Cohabitation Agreement.

This can cover a wide range of issues including:

- who owns what and in what proportion;
- how property, its contents, personal belongings, savings and other assets will be split

should the relationship break down;

- how you and your partner will manage your day-to-day finances while you live together, such as how much each contributes to rent or mortgage and bills, and whether you will take out life insurance on each other;

- arrangements for a couple's children, particularly in the context of a relationship breakdown; and
- matters such as child maintenance

payments as well as determining when the children will spend time with each parent.

It is important that the agreement is properly effected – which means both parties getting independent legal advice on the agreement.



Comments on the Budget: Inheritance Tax Changes

The Chancellor’s announcement to raise the Inheritance Tax (IHT) allowance to £500,000 per person is welcome news indeed, particularly as the present IHT allowance has been frozen for a number of years despite increases to property prices and the value of people’s estates.

Whilst the proposal itself is welcome, the devil, as always, is in the detail and the change here is to supplement the existing IHT allowance, currently £325,000, with an additional allowance of £175,000 available against a person’s main residence.

This will potentially give married couples a combined IHT allowance of £1 million and will be a huge boost to most families whose main or significant asset is the family home. Through the changes, the family home can potentially be passed to the next generation free of IHT, avoiding the need for certain properties to be sold.

The measures are not due to fully come into effect until 2020/2021, so if you want your children to benefit from George Osborne’s gift, you and your spouse will have to wait until then. In simple terms if the second of you dies after 5 April 2021 owning the family home and it is worth up to £1 million then your children could inherit it tax free.

The house must be your main residence and it must go to your direct lineal descendants. If you have downsized from a £1 million house in your lifetime you can still qualify for the allowance. The allowance starts going down for houses worth more than £2 million and it is not yet clear if you can leave your

house in trust for your children. The new allowance will be phased in in stages, beginning in April 2017 at £100,000. It then increases a further £25,000 in years 2018, 2019, 2020 and finally reaches £175,000 on 6 April 2021. After then, it will increase in line with the Consumer Price Index.

For most people, it will be worth reviewing their circumstances in light of these changes as and when the legislation is enacted to make sure that they are able to take advantage of this additional IHT allowance.



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“ The changes to the Inheritance Tax allowance will potentially give couples a combined IHT allowance of £1 million and will be a huge boost to most families whose main asset is the family home. ”

Non payment of Child Maintenance to damage credit rating

The Child Maintenance Service, formally known as the Child Support Agency, will be able to share information about the payment history of their clients with credit reference agencies if parliamentary approval is obtained.

Separated parents who refuse to pay child maintenance and who have accumulated arrears could find that their applications for mortgages, credit cards and loans, as well as other forms of financial credit, are rejected.

Information may be shared once a Liability Order is made against the defaulting parent. Liability Orders are granted after an application is made to a court for legal recognition of a debt.

It is hoped that the new powers will act as a deterrent to those who otherwise choose to evade maintenance payments and will serve to ensure maintenance reaches children and families who need it.

While the majority of non-resident parents do contribute towards the maintenance they owe – with

compliance reaching a high of 86.2% in June this year – this new measure is aimed at targeting the minority who fail to pay.

Steve Webb, the child maintenance minister, said “For too long, a minority of absent parents have got away with failing to pay maintenance, leaving families without that financial support. The Government is determined to take action to tackle this kind of irresponsible behaviour. I would hope that we see this power used very little, because the deterrent effect of a possible negative mark on a person’s credit rating will convince those who have previously failed to pay towards their children’s upbringing to do the right thing.”

The powers will also mean that parents with a good payment record can also ask that this information is shared if they feel that it could boost their ability to get credit.

“For too long, a minority of absent parents have got away with failing to pay maintenance, leaving families without that financial support. The Government is determined to take action to tackle this kind of irresponsible behaviour.”



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Latest Brachers news

Brachers shortlisted for national legal award because of dedication to local Kent market

Brachers is delighted to announce it has been shortlisted for the coveted Law Firm of the Year prize at this year's national Halsbury's Legal Awards.

Halsbury is one of the oldest, most respected and iconic legal brands, Halsbury's Statutes being the authoritative source of statute law in England & Wales.

The Awards celebrate the annual achievements of law firms throughout the country, with winners selected by independent judges from across the legal spectrum.

Our nomination for the top Law Firm of the Year prize venerates the firms forward-thinking approach to development initiatives in the face of tough market conditions.

The firm's shortlisting acknowledges Brachers' commitment to our clients and the Kent business

community and comes hot on the heels of our acquisition of Maidstone-based solicitors Watson Nevill in June 2015.

Joanna Worby, Managing Partner, commented: "Firmwide gratitude goes to each of our clients and staff who continue to propel us forward. To be shortlisted as Halsbury's choice of Law Firm of the Year is thrilling – and it's an opportunity that has only come to us because of the quality of work our clients give us and the dedication of our teams in serving them."



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Brachers announces charity of the year

Brachers is proud to announce Blackthorn Trust, based in Maidstone as its charity of the year.

Based in Maidstone, Blackthorn Trust supports people with mental or physical health difficulties or learning disabilities to build confidence and self-esteem and to develop life and work skills. The charity offers medical care, specialist therapies and rehabilitation, delivered in the beautiful surroundings of the Blackthorn Garden.

As our charity of the year, Blackthorn Trust will directly benefit from the fundraising efforts of Brachers employees. In the past three years, our staff have raised over £35,000 for Kent charities; an amazing achievement that reflects the firm's commitment to giving back to the communities we serve.

To find out more about the charity and their work, please visit www.blackthorn.org.uk.

Alternatively, the Blackthorn Garden, Cafe, Plant Nursery and Charity Shop are open to the public Monday to Saturday 9.30am-3.30pm.



Mesothelioma UK

Brachers are sponsors and supporters of Mesothelioma UK, a national charity dedicated to providing mesothelioma sufferers with specialist information, support and improved care and treatment.

Mesothelioma is a cancer caused by the inhalation of asbestos fibres, affecting the membranes lining the chest wall.

Throughout the year our team host free legal clinics for families and sufferers. Asbestos disease victims have the chance to meet members of the specialist asbestos claims team to see if they could assist with obtaining compensation.

The team also provide information about support services such as access to health advice, welfare benefits and support groups.



“A very professional and efficient service provided in a kind and considerate manner”

Mark Fosbery, Client



Spotlight with Christopher Eriksson-Lee

Christopher Eriksson-Lee is a Partner in our Private Client team, with particular expertise in Inheritance Tax planning for clients with businesses and agricultural assets.

How long have you been a lawyer and what was the route you took to becoming a lawyer?

I have been a lawyer for just under 10 years, qualifying as a solicitor specialising in Private Client law in 2007 after completing a two year training contract. I originally completed a university degree in history and then undertook a post graduate diploma in law which allowed me to progress to become a solicitor.

What made you want to become a Private Client lawyer?

During my training contract I worked in private client, court of protection, litigation and property. Being a people person, it became clear to me during this time that working with individuals and their families allowed me to deal with lots of different people from various walks of life.

The varied nature of the work also appealed to me and what is striking about private client as an area of practise, is that no one day is ever the same.

For example, a typical day may see me go from advising a farming family on the best way to pass down the farm to the next

generation, to advising individuals on the advantages and disadvantages of making lifetime gifts, to advising young parents on who best to appoint as the guardian for their young children in their Will.

I may also deal with the administration of an estate or the setting up of a trust as a means to tax plan, or the completion of a declaration of trust to regularise the beneficial ownership of property.

Who are your influences?

Professionally, my biggest influence was my father who sadly passed away last year after a 50 year career as a solicitor.

Outside of work I love the outdoors and find it a great way to unwind so probably someone like Ranulph Fiennes or Bear Grylls.

How do you make sure you get the right result for your clients and what are the challenges?

The key to this is to make sure that you know your clients' background circumstances and take time to understand what they want to achieve. The difficulty in getting results is managing client expectations. This is particularly true when there are external factors at play for example when dealing with HM Revenue & Customs on a tax dispute.

Tell us more about drafting the world's highest Will at a height of 5,364 metres on a trek to Mount Everest Base Camp!

Suffering slightly from the effects of altitude, I am not sure whether the Will in question was the best I have ever drafted but being with a couple of solicitor friends who went with me, we decided we wanted to mark reaching the high point of our trip in some small way.

Before leaving we read about ways that others had done it (for example ironing a shirt, playing snooker etc) and decided that the preparation of a legal document seemed most appropriate.

I hand wrote the Will myself for one of the group, who as it turned out almost had need of it suffering the next day from a severe case of altitude sickness, needing to be brought rapidly down the mountain!

This publication is for information only and does not constitute legal advice. All content correct at the time of print September 2015.