News and Views

twm solicitors

ISSUE 33: **AUTUMN 2019**

Recognition for TWM in 2019 Chambers High Net Worth Guide

We are delighted to announce that we have received recognition in the new 2019 edition of Chambers High Net Worth (HNW) Guide. Both Private Client and Contentious Trusts and Probate at TWM have been ranked Band 2, and three of our solicitors have received recommendations for expertise in their field.

Commentary from the Chambers HNW Guide:

The [Private Client] team advises on wills, trust and estate administration, tax planning and powers of attorney. It also represents clients in contentious trusts and estates matters. *"They are a really great firm, and I am always delighted to send my clients to see them. They are a safe pair of hands,"* says a commentator.

"I am delighted with the help and support they provide," enthuses a source. *"They are very good with clients, in terms of speaking their language and explaining what can at times be a complex and or daunting experience in an easy-to-understand manner. They are friendly and approachable."*

Chambers HNW 2019 is a leading independent guide for law firms, specifically aimed at the international private wealth market.

Congratulations to our individually ranked lawyers:

RANKED IN Chambers HNW 2019 Allison Crossman

- **Allison Crossman**, Partner, Private Client: *"efficiency, a caring service, excellent communication, integrity and professionalism."*

RANKED IN Chambers HNW 2019 Candy Stockton

- **Candy Stockton**, Partner, Dispute Resolution: *"is very caring and looks after her client's interests".*

RANKED IN Chambers HNW 2019 Guy Perkins

- **Guy Perkins**, Partner, Dispute Resolution: *"He is sensible and takes a commercial approach,"* says a fellow litigator, who adds: *"I have a lot of respect for him."*

Fulham Good Neighbours

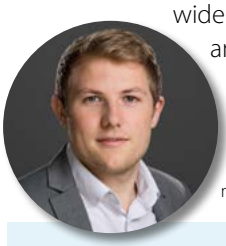
TWM was proud to support this year's Parsons Green Fair again which was held on Saturday 6 July, in association with Fulham Good Neighbours. Our Fulham team had a great time chatting to visitors and giving out free Pimm's.

We had a 'Play Your Cards Right' game on the stall and our team could often be heard saying the well-known catchphrase, 'You get nothing for a pair - not in this game!'

We raised a total of £293 in donations for Fulham Good Neighbours and we would like to thank everyone who kindly supported.

Save the Dates!

Following the continued success of our TWM networking programme in 2019, boasting great attendance levels and a wide variety of events on offer, we are pleased to announce the schedule for our forthcoming events. Save the dates in your diaries – further details will be available by email soon.



Please note, all dates are correct at time of printing but may be subject to change.

18 Sep Guildford Lunch Club

19 Sep Epsom Women in Business

25 Sep Reigate Lunch Club

24 Oct Epsom and Leatherhead Young Professionals

If you would like to register your interest and receive more information about our events, please email: **richard.bullen@twmsolicitors.com**

Cyber Security
and your online life when separating

If you are going through a separation, it is particularly important to be extra vigilant about the way you live your life online.

It is widely reported that fraudsters have successfully accessed a great deal of personal and financial information through social engineering and data breaches, but have you considered that a former partner could potentially access the same personal and financial information about you?

Cybercrime can have a devastating impact on victims. So, what can you do to avoid your personal and financial data being accessed by an ex-partner? Here are some useful tips on how to minimise this risk during a separation or family-related problem.

Email Accounts

For most of us, our email account is our most important online account. We rely on it to communicate personally, administratively and professionally, including for legal correspondence.

We suggest you:

- Ensure no one but you can read your emails, and that you remove your email account from any device you will no longer have access to, or which has shared access with an ex-partner.
- Consider creating a new email account specifically for your legal correspondence.
- Install two-factor authentication (2FA) wherever this service is available. Email providers such as Gmail, as well as apps used by banks, retailers and social media sites all offer this feature which sends a text code to your phone to further authenticate you when you log in.

Passwords

On separation, you should consider that all your passwords could be compromised and should be changed immediately on every account and app. Ensure you use complex passwords for each of your online accounts, **especially your email**, and never use the same password for more than one account. When you change or reset passwords, the link is usually sent to the email address, and that would be no use if your ex-partner still has access to this account.

Your ex-partner might know the answers to your security questions used to reset passwords. Consider resetting these to something your ex-partner will not know.

Removing yourself (or your ex-partner) from devices or products that talk to each other

Most of us have at least one mobile device and conduct a large part of our lives online. These devices allow you to set up an account which automatically backs up and synchronises your data across multiple devices. Accounts can be shared between family members or can be set to control children's accounts, including access to and paying for apps and downloads. In some cases, this ease of use can become a way for an ex-partner to track areas of a person's life they no longer wish to share. We recommend you consider disconnecting from iCloud (or similar) accounts which share onto other devices.

Another way a security breach can occur is when a child is handed a device to play online games. The child could inadvertently access emails or read personal messages sent to a connected device that pop up on screen without the need for a password.

Photo synchronisation

Virtually every smartphone and tablet now come with a high quality camera and many of us use these cameras to record happy moments. If you have photo backups or photo sharing set up, your pictures may be viewed by somebody you no longer wish to share them with. Photo synchronisation should be switched off on any apps you are registered with, as well as any devices you own.

Intimate private photos or videos

You or your ex-partner may have private photos or videos of each other. It is a criminal offence to disclose a private intimate photo or film without the consent of the subject, in order to cause that individual distress ('the worst cases of Revenge Porn' can carry a prison sentence of up to two years). Be aware that you may inadvertently synchronise these types of photos to a device used by others, thereby making them visible.

Texts

Texts sent and received on certain manufacturers' handsets will be synchronised with the messages app on other linked devices, thereby making them visible to people who have access to that device if the account is set to auto login. This can sometimes be a way for ex-partners to access each other's messages long after they have separated.

Social media and instant message services

Consider how much you 'share' with people online. Posts and photos on social media sites such as Facebook, and instant message services such as WhatsApp, emails and text messages can all be recorded, saved and used as evidence. Using text to vent frustrations or emotions during the heat of the moment should be avoided.

Location tracking

Most mobile devices offer a GPS function, and locational data could be used by an ex-partner to check on another's whereabouts. We recommend you consider turning off location services on your smartphone.

If you own a car which provides an app that can connect your smartphone to your car, and your ex-partner has the same app installed on their smartphone from when you had shared use of the car, then details of your driving trips and where your car is parked etc. may be capable of being viewed by your ex-partner. The app might need to be reset to suit your new family arrangements.

Online finance and subscription services

Bank accounts

Much banking is done online these days. Consider ensuring you protect your finances while continuing to run the family home by restricting transactions on accounts and removing unnecessary authorised users. You may need to maintain a joint account during the proceedings, but consider keeping funds held in it to a minimum.

Impersonation fraud

Be careful with what you post online. Anyone can be targeted by cyber criminals, particularly if they have recently separated and are looking to buy a new home. This is becoming a really common threat for homebuyers with the increased risk of using email to send personal information to a solicitor. There are numerous reported cases of scammers sending victims false bank details which appear to have been sent directly by their solicitor. If in doubt, always call any relevant party directly to confirm whether an email is genuine.

Credit cards

Many people have credit cards with a second card on the account which may be used by an ex-partner. These should be cancelled after consultation where appropriate and login details changed. Also, remember that if the card details are stored in online accounts, an ex-partner may be able to access your debit and credit cards to be able to make further purchases. We recommend removing debit and credit cards registered against shared accounts and consider cancelling your current cards.

PayPal

If your ex-partner knows the login details to a PayPal account, and the linked bank account is yours, then they could be able to draw out money via this facility. Such accounts may need to be reset to suit your new family arrangements.

Amazon, Ocado and other online retailers

Families often share one Amazon account and can arrange for items to be delivered to multiple addresses. If it is your bank account registered to the Amazon account then you could be paying for goods that other people are ordering. Likewise, an ex-partner might be able to view your orders without you realising. These types of accounts may need to be reset to suit your new family arrangements.

Subscriptions, including Netflix, Spotify

Families who have shared accounts with these types of services can have multiple devices linked to the subscription(s). Netflix and Spotify all collect data about your usage which could be viewed by an ex-partner. If you are the account holder, consider resetting your login details and remove any inappropriate devices from the account(s).

Media ownership

Music, films or electronic books purchased online will be owned by the account registered with the service. This may be an account that was shared during the relationship, but one partner may not want the other to have ongoing access. However, providers such as Apple Music do not usually allow the transfer of purchases between accounts. If you are affected by this issue, let your solicitor know as they need to consider this asset as part of the resolution of finances.

Utility Bills

If you are staying in the family home and your ex-partner handled all the bills, you may need to transfer the accounts into your sole name.

Beginning your new life with a good plan in place

Whether it is business or personal, when any partnership breaks down, it is important to protect data and focus on online security. Regularly changing passwords, using VPN when on public WiFi, and never leaving smartphones unlocked when unattended are simple measures which we recommend for everyone using a mobile device.

For any further information, please speak to your usual contact at TWM Solicitors.

BUSINESS LAW

Advertising your product or service

Promoting your product or service through advertising is an important part of any business, whether that be done via traditional methods, such as newspapers, magazines or on the radio or via relatively modern methods, such as by using social media channels like Facebook, Instagram or Twitter. Whichever way you choose to do it for your business, it is important to get it right for so many reasons, not least legal ones.

But, when it comes to advertising your product or service, just how well informed must the average consumer be in order for your advert to comply with the law and not be misleading?

Well, this very question has recently come before the courts in the case of *R (CityFibre Ltd) v Advertising Standards Authority [2019]*, and the judgment provides an interesting answer for those who provide a product or service to consumers.

CityFibre, a provider of full fibre broadband, had previously won the right to seek judicial review of a decision by the Advertising Standards Authority (ASA), which concluded that the use of the term "fibre" in broadband advertisement for part-fibre services was not misleading to consumers i.e. providers of part-fibre broadband were not required to differentiate their products from full fibre services when advertising them.

CityFibre's primary claim was that the ASA had erred in law because, in reaching its decision, it applied the wrong test for determining the meaning of the "average consumer" under the Consumer Protection from Unfair Trading Regulations 2008. While it was accepted that the average consumer is assumed to be reasonably well-informed, the parties disagreed about the degree of knowledge required.

CityFibre argued that the average consumer must be reasonably well-informed about the "features" of the relevant product or service in the advert (in this case, having a higher level of understanding to be able to distinguish between full-fibre and part-fibre broadband).

However, whilst the High Court judge did accept that full-fibre broadband was technologically superior to part-fibre broadband, he rejected CityFibre's argument that the average consumer must be reasonably well-informed about the "features" of the relevant product or service and upheld the ASA's decision.

The judgment, which was delivered on 15 April 2019, confirmed that it was not sensible for the average consumer to have a level of understanding about every feature or characteristic of the product or service in the advert. It would also be difficult to define what constituted a relevant "feature".

When advertising your product or service, the average consumer therefore only needs to be reasonably well-informed about the product or service more generally and not about every feature or characteristic of it.

Our experienced Business Law Team is able to assist you and your business with preparing contracts for the sale of products and/or services, whether to consumers or other business customers, and would be happy to assist you with any business issue that you may have. For further information, please contact us.

Nick Ball:
nick.ball@twmsolicitors.com

read more...

EMPLOYMENT

Enforcement of post termination non-compete restrictions

The Supreme Court heard the appeal in *Tillman v Egon Zehnder Limited* at the end of January. The judgment has recently been handed down and has significant implications for the law of non-compete clauses in employment cases.

Non-compete clauses

In an employment context, a non-compete clause is a restriction prohibiting an individual from competing with their former employer's business. Although such a restriction will be implied by law during employment, issues can arise if an employer aims to restrict an individual after their employment has ended. This is because such restrictions often prevent individuals from working in their chosen occupation. Therefore, to prevent inappropriate restraint of trade, non-compete clauses and other similar restrictions are subject to strict limitations. If these limitations are not adhered to, the clause can be rendered unenforceable. These are as follows:

1. the restriction must seek to protect a 'legitimate interest' of the employer, for example, their goodwill, confidential information or client connections; and
2. the restriction must go no further than is reasonably necessary to protect that legitimate interest.

Non-compete clauses are common in other circumstances, such as in business acquisitions, where they are used to prevent sellers' from setting up in competition with their former business. Non-compete clauses are also used to restrict partners after they retire from a partnership. However, because employers are seen to have greater bargaining power over employees, non-compete clauses are generally harder to enforce against employees than against business sellers or retired partners.

Space and time

A non-compete clause may be held to go further than necessary if it is not limited to a reasonable geographical area. For instance, in *Office Angels Ltd v Rainer-Thomas*, a non-compete clause had the effect of prohibiting Ms Rainer-Thomas from setting up a competing business in almost the entire City of London. The court considered that to prohibit such activity in this 'particularly fertile area' for employment agencies would go further than was reasonably necessary to protect Office Angels interests. It should be remembered, however, that restrictive covenant cases are fact-dependent. A territory considered too wide in one case might be deemed reasonable in another. In fact, there have been cases where worldwide restrictions have been upheld.

Similarly, a non-compete clause needs to be reasonably limited in duration. They are typically limited to a period of months after employment ends. When considering whether the period is reasonable, the courts will evaluate what the restriction is seeking to protect and whether the period of restriction reflects this. For example, if the legitimate interest being protected involves client connections, it may be relevant to the duration of any restriction that clients contract with the employer on an annual basis.

Defective drafting

If a non-compete restriction goes further than is reasonably necessary to protect an employer's legitimate interest, it will be unenforceable. In *Tillman v Egon Zehnder Limited*, The Court of Appeal decided that restricting the employee from being "or interested in" a competing business after termination rendered the entire non-compete clause, of which it was a part, unenforceable. The Court decided that the words "interested in" could include, for example, owning a minority shareholding in a competing company on an investment basis. The Court held that the clause therefore went further than was reasonably necessary to protect Egon Zehnder's legitimate interests.

The appeal in the Tillman case raised a question as to whether the offending words 'or interested in' could be deemed removed or 'severed' from the clause and thereby make it enforceable. The Court held that severance would be allowed if the following tests were complied with:

1. that if the offending words were removed it would not require amending other wording within the clause. In Tillman, the words 'or interested in" could be removed without requiring any modification to the remainder of the clause.
2. that following severance, the clause continues to be supported by consideration. This would not be an issue where the employer is seeking severance but has been the case where an employee is seeking severance. The employee needs to show that following the severance of the offending term, he still provides some service for the contract he entered into.
3. That the removal of the offending term would not generate any major change in the overall effect of all the post-employment restraints in the contract. Again, in Tillman, the removal 'or interested in' did not generate any major change in the restriction concerning non-compete nor the other post-termination restrictions in the contract. On that basis, were a Court to be looking at a contract which contained post-termination restrictions similar to those in the Tillman case, severance would be allowed and the restrictions enforceable.

Restrictive covenants in employment contracts is a complex area and one where the implications of getting it wrong can be severe. Care must be taken to strike a balance between adequately protecting the employer's business interests without being more restrictive than necessary.

Our Employment Law team is experienced in advising employees and employers about restrictive covenants and representing them in disputes. Please contact us if you require advice.

Patrick Stewart:
patrick.stewart@twmsolicitors.com

read more...

RESIDENTIAL PROPERTY

Property issues on separation, divorce or dissolution of a civil partnership

Our conveyancing teams work closely with our Family team when it comes to advising or dealing with the family home. This may relate to the protection of rights where one party is not on the title of the family home, dealing with a transfer of equity or sale or advising on other aspects such as Stamp Duty Land Tax.

A transfer of any property subject to a mortgage will require the lender's consent. It is common place these days for the mortgage lender to have a note entered on to the title which prohibits any transfer or dealing without their written consent. When a relationship breaks down it is important to find out what the lender will or will not agree to at the outset. The Family Proceedings Rules require a lender to be served with any Court application involving a property subject to a mortgage.

The Stamp Duty Land Tax (SDLT) rules are complex and often have an effect that a person was not expecting.

For example, a married couple separate but do not embark on formal proceedings to end their marriage. The family home is in Mr A's sole name which he is going to continue to retain. Mrs A decides to purchase a flat worth £250,000. Mrs A has never owned property registered in her name. Mrs A believes she is a first time buyer and can claim relief, meaning a SDLT bill of zero. She is mistaken. The Finance Act 2003 states that a purchaser will be liable to pay a surcharge on a purchase as her spouse would. Mrs A is "connected" to Mr A by virtue of marriage, therefore Mrs A would be liable to the higher rate which is a SDLT bill of £10,000.

Further, if an interest in a property is held by a child under 18 (which necessarily has to be under a trust) then that interest is treated as if it were bought or held by the child's parents which can also have adverse tax consequences on the parents sending them into the surcharged rate if they purchase a property and are not replacing their main residence.

Claire Fountain:
claire.fountain@twmsolicitors.com

read more...

COMMERCIAL PROPERTY

Frustrated by Brexit?

Though perhaps not reflecting the views of millions of people up and down the country, in the property world at least, the High Court has held that Brexit is not a frustrating event.

In *Canary Wharf (BP4) 1 Limited and Others v European Medicines Agency* [2019] EWHC 335 (Ch), the European Medicines Agency ("EMA") sought a declaration from the court that Brexit would frustrate its 25 year lease of its headquarters in Canary Wharf. If successful, the EMA would relieve itself of an estimated £500 million of rental liabilities and open the floodgates to parties up-and-down the country in claiming that Brexit frustrated their own commercial contracts.

Frustration is a doctrine of English law which discharges contractual obligations where something occurs which renders it physically or commercially impossible to fulfil the contractual obligations or where the obligation to perform becomes radically different from that undertaken at the commencement of the contract. Examples include the frustration of a licence to use a room to view King Edward VII's coronation procession which was then cancelled or where a contract to export machinery to Poland was frustrated by the outbreak of World War II.

In this case, the EMA argued that its lease was frustrated on two grounds: (1) frustration by *"supervening illegality"*; and, (2) frustration of the common purpose.

On both points the court rejected EMA's arguments. On the first, the court held that although the EMA were obliged under a 2018 EU Directive to relocate its headquarters to Amsterdam post-Brexit and so were unable to remain located in Canary Wharf, the EMA retained legal capacity to contract in a third country post-Brexit Britain and no principle of international law required an international agency to be located within a state party to the relevant treaty. On the second point, the court held that although Brexit was not reasonably foreseeable when the agreement for lease was entered into in 2011 and that, notwithstanding the negative effects of Brexit on the EMA (e.g. in losing its diplomatic protections and triggering its relocation to Amsterdam), the common purpose of the parties remained the same: the EMA required bespoke premises with flexible terms (including the ability to assign and underlet) and the landlord required a long-term tenant at the highest possible rent. That purpose would remain post-Brexit with the inclusion of alienation provisions in the lease allowing the EMA to assign and underlet the lease strong evidence that the EMA had contemplated leaving the property at some point during the term (albeit not in the volatile world of Brexit).

The decision of Mr Justice Marcus Smith does therefore come as a relief to landlords with the narrow constraints of frustration saving landlords (in this instance) from the risk and cost of Brexit becoming the first event to frustrate a lease in English law. In the wider context, the decision brings increased legal certainty to other areas of law (such as commercial contracts) and highlights the importance of considering the wider commercial environment and its potential impact on a transaction before entering into binding commercial arrangements.

Shanice Golder:
shanice.golder@twmsolicitors.com

read more...

LENDING

Changes in the buy-to-let market: portfolio incorporation

"No one can see a bubble. That's what makes it a bubble" [The Big Short]. But is buy-to-let one such bubble?

In January 2019, This Is Money reported, "How Britain's £239bn buy-to-let bubble burst: Our devastating report reveals landlords ruined by tax penalties - and their pension plans hit". Yet, our experience, and that of our specialist lending clients, suggests that the market remains active and investment is looming. It is true to say that the volume and vanilla buy-to-let lenders have seen volumes drop but this, in our view, coincides with the rise in opportunistic, savvy investors transacting across portfolios, complex buy-to-let (such as Houses in Multiple Occupation) or property carving (creating two flats from a terraced house, for example).

The same This Is Money headline exclaimed, "Existing landlords are offloading around 3,800 properties a month". The flip side of this coin is that there must be acquisitive landlords to take them on, and, therefore, supportive lenders looking to provide debt to those doing so.

In recent research published by one of our clients, Foundation Home Loans, we saw that the last 3 years' lending applications for buy-to-let have been at consistently stable levels and just sitting below the 10-year highs before the global financial crisis. The general lending curve has been measured and successful. They report that, "the majority of landlords will purchase their next property through a limited company", and that, "portfolio landlords are even more likely to purchase via a limited company, with almost 7/10 landlords who own more than 11 properties in a portfolio, intend to do so in this way."

Complex buy-to-let is consolidating. UK Finance: Mortgage Trends Update March 2019 reports "There were 4,800 new buy-to-let home purchase mortgages completed in February 2019, 7.7 per cent fewer than in the same month in 2018. There were 14,400 remortgages in the buy-to-let sector, 2.1 per cent more than in the same period last year. While buy-to-let house purchases continue to contract due to tax and regulatory changes, buy-to-let remortgaging has increased as borrowers move from fixed rate mortgages and lock into new attractive rates."

With landlords now settled on the impact of the Government's market dampening exercise in 2015 (the Stamp Duty Land Tax increase, the loss of mortgage interest relief and the wear and tear allowance deductions) the rise of the portfolio investor has been noticeable in the last two quarters. We have found such investors looking to put their houses in order as their current fixed rates end, and the competitive specialist lending market has made it financially attractive to do so. These same specialist lenders can also tackle the incorporation of portfolios (moving titles from private individual ownership to limited company ownership) and we regularly train lending teams and clients on the efficient methods of doing so.

The key to any successful incorporation will be considering:

- Tax implications for Stamp Duty Land Tax and Capital Gains Tax purposes
- Evidencing (for the lender's underwriters) how the exchange of value works (they will want to see that this value matches the property valuation) - and such value to have been formalised and
- Preparing corporate authorisations.

The lender will look for these in addition to assessing the security offered (the property) and the underlying ownership of the company. A partnership ownership model is the most obvious starting point, as that will give weight of evidence to the two key reliefs which make such portfolio incorporations financially viable on Day 1: the Sum of Lower Proportions and Incorporation Relief.

The incoming debt will be used to repay any existing debt and to probably raise additional capital, but the lender will treat this transaction as a purchase irrespective of the commonality of underlying ownership. So, the balancing sum (to make up the purchase price as declared) must be seen to be represented by, for example, cash, convertible equity or director loan. Our role at TWM will be to support this with the corporate authorisations (board resolutions, minutes and loan agreements) to evidence the structure.

These incorporations are likely to become more regular as the tapering of mortgage interest relief ends in 2020. Our lender clients are preparing accordingly to meet this demand, both in terms of capital requirements and in product criteria, working with TWM as strategic partners to deliver best in class advice.

Julian Sampson:
julian.sampson@twmsolicitors.com

read more...

FAMILY

Assisting separated parents is not the role of the judiciary, cautions the President of the Family Division

On Friday 5 April 2019, the President of the Family Division, The Rt Hon Sir Andrew McFarlane, gave his keynote address at this year's National Conference, hosted by Resolution, a national organisation of some 6,500 family lawyers and other professionals. The premise of which, was to address reform and improvement to the family law justice system.

Resolution, is committed to the constructive and non-confrontational approach to the resolution of family disputes.

It also actively engages in campaigning for reform and improvements to the family law justice system. Indeed such vigorous campaigning has undisputedly contributed to the bringing about of one of the biggest changes to divorce law in over 50 years, as recent headlines claim here (Moving Divorce into the 21st Century).

In delivering his address and examining other areas for reform, the President sought to emphasise that there had to be a "better way" to help separating couples requiring help and support with their children. The President gave a strong indication that use of the family courts as a "pitch and referee" to resolve seemingly straightforward, non-abusive relationship difficulties between parents who separate, is likely to be seen as costly and an inefficient use of the courts' resources and inevitably exacerbating acrimony between parties.

He added, however, that the identification, development and funding a "better way" to help separated couples co-parent more effectively, is not the role of a judge, but a matter for society, policymakers, government and parliament itself.

The President proposed improvements to co-parenting and recommended a "solutions-based process", with parties engaging in a "dispute resolution alliance" of local services, with court reserved only for such cases which have a "justiciable problem".

He highlighted that a recently appointed working group on private law children cases, chaired by Mr Justice Stephen Cobb, had been meeting regularly to address the issues, and look at ways of diverting an already unsustainable caseload away from court. The group is set to publish an interim report in May.

Proposals for improvement could include a requirement for both parties to attend mediation information and advice meetings and to meet a CAFCASS officer during the new dispute resolution stage.

The President commented that recent attempts to restructure other areas of the family law justice system had been successful. The digitising of the divorce application process has resulted in reduced error rates, having previously increased the administrative burden upon the court and delays to applications. The President indicated that the rest of the process (decree nisi and decree absolute) would proceed with moving online in the second half of the year.

Whilst many of the reported and proposed changes are not necessarily original, it is hoped that the current steps and stages, including those which are intended to be rolled out, will prove to be beneficial to parties, enabling family lawyers to more swiftly and better help their clients at such a difficult time in their lives.

Notwithstanding, the need for further reforms, the Court's overriding objective in relation to applications made by separating parents as regards child arrangements, will always be the needs of those children and their best interests.

If you have any concerns regarding contact issues with your children, or any other family matters, please contact the Family department at TWM Solicitors, who will be pleased to assist you.

Sarah Houston:
sarah.houston@twmsolicitors.com

read more...

PRIVATE CLIENT

A home for life - providing for your pet's future

If a dog is a man's best friend then making sure that they (or any other pet) are provided for if something happens to you will be a priority for all animal lovers.

The good news is that you can make provision in your Will for what will happen to your pet when you die. However, it is not possible to make a gift to your pet, so it is important to take advice so that a correctly drafted clause can be included in your Will to name someone you would like to take care of them.

The first consideration is who you would like to look after your pet. Once you have decided this, it is sensible to discuss with that person whether he or she would be happy to take on this responsibility.

Another consideration is funding the care of your pet for the rest of their life including food, pet insurance and future veterinary and boarding costs. It is possible to make a gift to whomever you have requested to look after your pet, to cover the costs of their future care. This gift can be conditional on that person taking over responsibility for your pet. However, professional advice should be sought to ensure that the correct wording and clauses are used.

Additionally, you should consider providing in your Will not only for your current pet but also any pets you may have at the time of your death. It is also possible to name a substitute beneficiary to care for your pet in the event that your first choice is unable to do so, or dies before you.

If you cannot think of anyone who could look after your pet, there are many animal charities that run free schemes to rehome and provide for them. If this is something you are considering, we can work with you and your chosen charity to incorporate the right clause into your Will to reflect your wishes. Some charities also have schemes that you join independently of preparing your Will, in relation to the future care of your pet.

Providing for your pet(s) in your Will is the best way to ensure that they will be looked after when you die. However, consideration should also be given to what will happen to your pet if you become unwell or lose mental capacity. Preparing a Lasting Power of Attorney for your property and financial affairs is essential for this, as it allows you to give authority to your attorney to manage your affairs and finances. This means that making provision for your pet and tasks such as paying for vets' bills or for temporary care can be dealt with by your attorney.

We will be pleased to advise and assist with any aspect of matters mentioned above.

Charlotte Mandy:
charlotte.mandy@twmsolicitors.com

read more...

DISPUTE RESOLUTION

Does your Will reflect your will and is that morally right?

As a contentious trust and probate practitioner I have come to understand how emotive the whole issue of inheritance is. Should your parents leave their worldly wealth to you? What provision should you make for your second time spouse in preference to the children of your first marriage? Should you treat your children equally? Should you prefer charities or close friends over family?

These are but a few of the dilemmas faced by us when deciding how to leave our estates on our death.

The whole issue has become super heated in consequence of people increasingly making their retirement plans on the basis of expected inheritances, the proliferation of second marriages and people living longer and increasing incidences of dementia.

Many of my clients who might be classified as "disappointed beneficiaries" find it hard to accept the concept of freedom of testamentary disposition – that is freedom of people within this jurisdiction to leave their property as they decide and see fit. Many clearly feel that some sort of moral imperative should apply in order to recognise familial relationships. They assume and expect that Courts might apply such moral imperatives in aid of challenging a Will which they feel is unfair.

The reality is however that the Courts are not Courts of morals they are Courts of law. If a Will is valid (properly constituted, made free of undue influence and with full understanding etc) then the law dictates that the deceased's estate will be distributed in accordance with the terms of that Will.

Many civil law jurisdictions in Islamic countries and countries such as France, Italy, Spain and Japan have what are known as forced heirship laws. Such laws dictate that a person's estate or at least part of their estate is required to be left for the benefit of certain family members and dependents. Critics of such laws question whether it cannot be any less repugnant to force a deceased person to distribute their assets in a certain manner on their death than it would be to tell them how they may do so during their lifetime.

Does forced heirship represent a better way? Well the truth is that in this country we have a degree of forced heirship by what might be described as "the back door".

First of all if you die without making a Will then your estate will be distributed in accordance with what are known as the Intestacy Rules. These statutory rules prescribe exactly how one's estate will be dealt with if you have not made a Will. They essentially provide for the division of your estate in favour of family members – in effect applying the devolution of your estate by hierarchical structure.

Secondly, certain categories of people can bring claims against a deceased person's estate on the grounds that their Will or the intestacy provisions did not make reasonable financial provision for them: claims under the Inheritance (Provision for Family and Dependants) Act 1975. Spouses, ex spouses, dependents and children fall within the categories of persons who can make such claims. The right to bring a claim does not of course mean that a claim will be successful. The law relating to such claims is beyond the remit of this short article but suffice it to say claims by deserving spouses who have not been properly provided for have a high incidence of success as do claims by minor children. Claims by adult children are much harder to formulate and progress successfully.

The best way of approaching these difficult moral decisions and the best way of seeking to ensure that strife does not follow death is to consider most carefully what provision one should make for those who might have some reasonable, proper and indeed moral expectation of an inheritance. As a contentious practitioner in this field I can only emphasise that money spent in obtaining and listening to good legal advice prior to executing a Will is money well spent because if disappointed beneficiaries pursue claims for reasonable financial provision against the estate or claims challenging the validity of a Will then very significant legal costs will be incurred to the detriment of all.

Guy Perkins:
guy.perkins@twmsolicitors.com

read more...

TAX

Making sure you get the most of your personal annual tax exemptions

Giving thought to how best to use your annual tax exemptions now means that later in the year, you can benefit from all the appropriate exemptions and reliefs that are available to you. You will avoid having to rush things when 5 April looms, or worse, finding then that you are not in a position to make the most of your tax free allowances.

You may have seen reports that the Office of Tax Simplification are recommending a review of the current annual Inheritance tax allowances. This is because the allowances are considered by many to be overly complex, therefore it is important to be aware of what they currently are, how they apply to you and whether you can utilise them.

In terms of Inheritance Tax planning, you can make use of:

- your annual gift exemption of £3,000 (plus a further £3,000 if you did not use that exemption last year)
- the small gifts exemption of £250 per individual
- the marriage exemption: this is £5,000 for a child, £2,500 for a grandchild or greatgrandchild and £1,000 for anyone else
- charity exemption on gifts to charity and/or
- normal gifts out of your surplus income.

Looking at Income Tax and Capital Gains Tax, this could be:

- ensuring you fully utilise the ISA allowance of £20,000, as you will not pay Income Tax on the income or Capital Gains Tax on any gains generated by the assets held within the ISA going forward
- placing the Junior ISA allowance of £4,368 into a Junior ISA for each of your minor children or grandchildren
- contributing £3,600 per year to a stakeholder pension for each of your children or grandchildren, irrespective of their earnings and whether they are employed and/or
- transferring assets to your spouse if they are subject to Income Tax at a lower rate.

Needless to say, tax is not the only thing to consider when you are giving assets to children or grandchildren or transferring assets between you and your spouse. It is a good time to review your income and expenditure needs in later life, and also to consider the impact any gifting or ownership changes will have in relation to your estate on death and the terms of your Will.

We offer free Will review appointments and can discuss with you the basics of any gifting for Inheritance Tax planning purposes at that meeting. Any tailored advice that may also cover Income Tax and Capital Gains Tax would be charged based on providing a report for an agreed fixed charge following an initial information-gathering meeting.

Caroline Foulger:
caroline.foulger@twmsolicitors.com

read more...

London Nightrider 2019

While most of us were sleeping on Saturday 8 to Sunday 9 June 2019, some of our team were up to the challenge of an epic 100K ride overnight on a route around London, in aid of Kent, Surrey & Sussex Air Ambulance Trust, our partner charity. Our cyclists set off from the iconic Lee Valley VeloPark at 10.48pm – just as their body clocks were saying it's time to wind down. The first few stages of their ride went through the lively streets of London with its busy nightlife as well as learning to share the streets with the silent danger of whisper-quiet hybrid and electric cars. After reaching the Imperial War Museum, the team made their way over to the West London loop through the quiet residential areas of Westminster, Pimlico, Belgravia, Kensington, Earls Court, Fulham, Chelsea and Millbank.

A quick stop for a break at the Imperial War Museum, and then the team got back on their trusted bikes and headed to the hillier South London loop through Vauxhall, Oval, Brixton, Hearn Hill, Brockwell Park, Crystal Palace, Nunhead, Peckham and Elephant and Castle.

Just as dawn began to break across the skyline of London, the team were on the final leg of their journey back to Lee Valley VeloPark. This stage of the ride included some iconic landmarks in London including South Bank, County Hall, crossing over Westminster Bridge to Parliament Square, Birdcage Walk, Horse Guards Parade, Buckingham Palace, The Mall, Admiralty Arch, Trafalgar Square, riding through London's West End, Lincoln's Inn Fields, St Paul's, Bank Tower, across Blackfriars Bridge to Southwark and then over Tower Bridge – London is particularly stunning and tranquil at this early hour of the morning, and this was such a unique way to enjoy its splendour.

The final few miles followed Cable Street to Limehouse, then North through Mile End and arriving back at Lee Valley VeloPark at 5.37am. 100+ km (62+ miles) covered, plenty of stops and

starts with various red lights and crossings, plenty of words of encouragement shared, plenty of calories consumed and the team were still buzzing after a really long night in the saddle.

Well done to everyone who took part and thank you to everyone who supported – the team have raised a total of £943.09 for Kent, Surrey & Sussex Air Ambulance Trust.

Pictured L to R: Stephen Morris, Daniel Jenking, Stuart Downey, Rita Hilla and Matthew Truelove.

News and Views is TWM's quarterly newsletter for clients and contacts. The articles included in this publication are necessarily brief, and because the law may change subsequently, it is essential that legal advice is obtained prior to proceeding.

TWM Solicitors is a full service law firm. Our office network covers Surrey, SW and Central London. Our approach centres on achieving success for our clients.

If we can help with a legal issue, please do not hesitate to contact one of our team:

Cranleigh	Victoria Adams	01483 273515
Epsom	Anne Fowler	01372 729555
Guildford	Matthew Truelove	01483 752700
Leatherhead	Mark Stevenson	01372 374148
London	Claire Fountain	020 7736 6277
Reigate	Demelza Patricio	01737 221212
Wimbledon	Eileen Barry	020 8946 6454

Proud Lead Education Sponsor

WIMBLEDON BOOKFEST

3-13 October 2019

Information contained in this document is correct at time of publishing (23/8/19) but may be subject to change.

Follow us:

@twmsolicitors