



# Viewpoint

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## Welcome to the Summer 2017 Edition of Viewpoint



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The summer months have been eventful ones on the UK's political stage. One year on from Brexit and after two general elections in as many years, there will no doubt be plenty to keep abreast of in the autumn months ahead.

Meanwhile, our summer has been busy too, with the announcement of our collaboration with niche private client law firm Seabourne Lawleys, which specialises in residential property, family, cohabitation, Wills, probate and trust advice. Partner, Megan Seabourne and Solicitor, Natalie Nero have joined us and are now based at our Watford office. They are looking forward to meeting many of our clients in the forthcoming months.

The articles I have selected for this edition include my analysis of the much-publicised case of *Ilott v Blue Cross & others*, some useful key pointers for anyone who is considering investing in property and, further to your requests for an article on this topic, our guidance on how to protect against the risk of identity theft.

I hope that you enjoy this edition and as always, I welcome your feedback on Viewpoint.



### Mary McCrorie - Partner

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## The Perils of Dying Too Rich

The new 'residence nil rate band' (RNRB), reducing inheritance tax for some estates is great news for those with estates under £2 million but less so for those with estates over £2 million.

I can explain this best by looking at two different families, the Bennets and the Darcys, to see the differences.

### The Bennets

Mr & Mrs Bennet's house is worth £500,000 and they have savings of £300,000. Their Wills leave their estates to their children, after they have both died.

Before 5 April 2017, there would have been inheritance tax at £60,000 to pay on the second death. This is because individuals have an automatic £325,000 tax-free allowance (nil rate band). For married couples or civil partners, this meant a combined £650,000. Any assets over that amount were taxed at 40%.

eg a couple must have lived at some stage in the property and the property must pass to their children. So, if the Bennets' property had been an investment property (and not their own home) the new RNRB tax-relief would have been denied.

Another issue for those families leaving estates to their children valued at over £2 million is that the RNRB will be subject to tapering off rules and lost altogether for estates in excess of £2.7million.

### The Darcys

Mr & Mrs Darcy have combined estates of £3 million. The inheritance tax bill on the second death will be £940,000 as a result of the tapering off rules - zero relief after £2.7million.

So what can be done for people like the Darcys? If, for example, they had made lifetime gifts to their children, reducing their estate to £2 million, both their

**" Beware. Making lifetime gifts is not always straightforward. "**

However, since 5 April 2017 and onwards, there will be no inheritance tax to pay on the Bennets' estates when they die because of the additional £100,000 RNRB, (£200,000 together) tax-free allowance.

However, beware these pitfalls.

The RNRB will rise incrementally each tax year until 2020 - peaking at an additional £175,000 per person or £350,000 per married couple or civil partnership. This sounds good but requires complex calculations to determine how much relief is available depending on the size of the estate.

Secondly, there are strict eligibility criteria for estates to qualify for the new allowance,

estates would benefit from their combined RNRB tax reliefs, reducing the tax due by £140,000.

However, beware. Making lifetime gifts is not always straightforward. If the wrong assets are given away, a capital gains tax bill could be triggered and it is vital to ensure that sufficient assets are retained for the parents' own needs.

To ensure that your estates are making all the tax-savings they can correctly qualify for, it is vital to seek professional advice when preparing your Wills and to regularly review the position with your advisor.

**For specialist advice in this area, please contact Mary McCrorie.**

# Stolen Identity - What to Do if You're the Victim

Identity theft is on the rise in the UK and reached record levels last year. The financial and reputational costs can be high and identity theft can take many forms.

Some imposters create fake social media pages using another person's details so they are then free to post inappropriate content, causing serious damage to the victim's reputation. Identity theft can also affect your financial liability and credit ratings.

## So, What Should You Do if You Have Fallen Victim?

In the first instance, report the identity theft to your bank and any other financial institutions likely to have been affected by fraud. You should also report the matter to the police for investigation.

request to the host. Most social media sites have 'report abuse' processes. However, if removal via the host is not an option, there are a number of different legal grounds to bring a civil claim in identity theft cases, depending on the particular facts. These include:

- **Defamation**

Where false statements are made about you that cause serious harm to your reputation, you can seek damages for the harm caused.

- **Harassment**

If the imposter's behaviour causes distress, and is repeated on more than one occasion, this can amount to harassment.

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information without your consent and you have a 'reasonable expectation of privacy' in respect of the published information, you may be able to claim on the grounds of misuse of your personal information.

- **Breach of intellectual property rights**

If an imposter has published photographs for example online in which you own copyright, a claim based on breach of copyright could be a route to securing their removal.

## Identifying an Imposter

This is likely to prove a challenge. However, most imposters eventually slip up, leaving clues as to their identity. It is possible to seek court orders against third parties who are caught up in (but are not culpable for) legal wrongdoing - such as internet host sites or retailers, who can be ordered to provide information helping to identify the imposter. In a recent case, we obtained a High Court order against Google as part of an investigation to uncover the identity of an internet 'troll'.

If you are concerned that you may be affected, we have a specialist team of dispute resolution lawyers who can advise on identity theft claims and assist with identifying the imposter.

Please contact Ben Holt on 0117 314 5478.

## “ The easiest way to get malicious online content taken down is to make a request to the host. ”

However, limited police resources may mean that the matter cannot be pursued as a criminal prosecution. You may need to take further action yourself to remove offensive online content, recover stolen funds or obtain compensation.

Often the easiest way to get malicious online content taken down is to make a

- **Data Protection**

Legislation prohibits the processing of another person's data in an unlawful way. This includes information like an address and date of birth.

- **Privacy**

If someone has published your personal

## Residential vs Commercial Property - Where Should You Invest?



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Here are four things you should consider:

- **Return on Investment**

Is your priority to achieve a good income, or capital growth, or both? We suggest you seek valuation advice, as the return on capital and income can differ greatly.

- **Length of the Lease**

The length of leases on residential properties tend to be for 6 months or a year. Whereas, commercial leases tend to run for 5 or 10 years.

- **Legal Structures**

Residential properties are typically let on Assured Shorthold Tenancies whereas commercial property is governed by the Landlord and Tenant Act 1954. The ability to

obtain possession at the end of the tenancy depends on getting the paperwork right at the beginning. If you get it wrong, it could prove very expensive and inconvenient in the long-run.

- **Taxation Regimes**

It is not possible anymore to offset the loan interest against tax to buy a residential property, whereas tax relief is available in full for commercial property. There is an extra charge of 3% Stamp Duty Land Tax on residential, but not on commercial property. VAT may apply to commercial but not residential property.

The law in this area can be complex. So take proper advice before proceeding.

# If I Disinherit My Children, Can They Claim Against My Estate?



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We have reported before in Viewpoint on one particular family dispute that has received a lot of attention from the press and that ended up being decided by the highest court in the land in the spring of 2017. This was an estranged daughter's claim against her mother's estate.

## Heather Ilott's Claim

Heather Ilott was completely left out of her mother's Will, who instead left her estate of approximately £500,000 to three animal charities that she had no connection with during her lifetime.

Mrs Ilott brought a claim under the Inheritance (Provision for Family and Dependents) Act 1975, claiming that her mother's Will failed to make adequate provision for her.

**“ If you are thinking of disinheriting a child, you should always take specialist advice. ”**

The case was originally heard by a District Judge who awarded Mrs Ilott £50,000. The Court of Appeal tripled the award on appeal giving Mrs Ilott £143,000 to buy a house and a further £20,000. In March 2017, 10 years after the case was originally heard, seven Supreme Court judges reinstated the original award of £50,000.

## So, Has the Law Changed?

Despite various media reports suggesting the contrary, this case has not changed the law. It is not easier or harder to bring these sorts of Inheritance Act claims. An adult child who has been left out their parent's Will should seek specialist advice early on to establish whether their financial circumstances bring them within the range of awards a court is likely to make.

The basic test is whether they can show what might be reasonably required for their ongoing maintenance. The court has a wide discretion when making awards. That is what makes it difficult to predict how much the award will be, but importantly not whether an award is likely to be made, save for borderline cases.

If you might be thinking of disinheriting a child, our advice is do not be lulled into thinking that it is now easier to do this. It is not as simple as saying that Mrs Ilott's case represents a victory for re-establishing the principle of having the freedom to leave your estate on death

to whomever you choose without fear of challenge. There are steps you can take to make it harder for a disinherited child to challenge your Will, but you cannot put this beyond doubt. In other words, you cannot opt out of the Inheritance Act legislation.

## What to Do if There Are Tensions in a Family?

We advise that you regularly review and update your Will to take account of the changing nature of family relationships and the financial circumstances of your children. If you are thinking about disinheriting a child, even one that might be estranged, you should always take specialist advice. The cost of taking timely, measured and most importantly expert advice will be a fraction of the costs your

estate will potentially face if it becomes embroiled in lengthy and costly litigation caused by a badly drafted Will or a Will that fails to take account of changing family circumstances.

**If you have been left out of a Will or are thinking of disinheriting a child, contact Michelle Rose.**

## Find out More About Our Services

Please contact Michelle Rose if you would like to receive a copy of the below:

- Lasting Powers of Attorney - Losing Mental Capacity Could Happen to Anyone, at Any Time
- Family Matters - Guidance on Matrimonial and Family Issues
- Five Good Reasons to Review Your Will
- Ten Good Reasons Why You Should Choose VWV to Prepare Your Will
- Private Wealth Planning for You and Your Family

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If you would like to receive Viewpoint by email rather than hard copy, please contact Michelle Rose on 0117 314 5246 or at [mrose@vww.co.uk](mailto:mrose@vww.co.uk)

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