



Viewpoint

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Welcome to the Autumn 2019 Edition of Viewpoint



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As summer exits stage left and autumn enters stage right, we can all agree that the dramatic events on the legal and political stage, whatever your views, have rarely been as momentous.

Turning our focus to the autumn season ahead for us, we are delighted to welcome Jayne Udall and Peter Heath from Inheritance Matters, who joined us earlier in the summer as consultants. Rachael Armstrong in our Birmingham office has been busy meeting and reviewing Wills for those clients.

We are also delighted to welcome Nigel Mears, our new Partner in our Birmingham office who will work alongside Lucy Barr and Sam Hickman, further strengthening our family law offering. Daniel Church has joined our Watford office as a Partner working alongside Megan Seabourne, specialising in Wills, estates and tax planning.

We are also delighted to share the news of Fiona Lawrence's promotion to Partner in our Contentious Trusts and Probate team.

What happens to your digital assets when you die? This is an ongoing debate and pertinent when it comes to making a Will and we include the latest results of our second survey on this in this edition of Viewpoint.

Finally, if you have made an LPA or are thinking of doing so or you have been appointed as an attorney for a family member or close friend, please do come along to our free LPA workshops this autumn, where we would be delighted to meet you. Your attorneys are also welcome.



A Battle of Wills - Loving Husband or Coercive Wife?

Everyone has the right to leave their estate to whomever they choose in their Will. But what happens if evidence comes to light after a person's death suggesting that they did not have capacity to make a Will in the first place, or were coerced into making it?

At VWV, we have recently helped a client challenging the validity of her friend and former partner's last Will, on the basis of his lack of capacity.

The Love Story

Mr W was a wealthy businessman with assets in several different countries around the world. He and Mrs Y lived together as partners for 16 years, until 1996.

Shortly after their relationship came to an end, Mr W met and fell for a Brazilian lady, 30 years his junior, and they married in January 1997. The marriage did not last and they subsequently separated. Mr W and Mrs Y remained close friends.

In December 2006, Mr W and his wife were in the process of negotiating how to divide their substantial assets when Mr W was hospitalised for severe mental health problems. Suddenly, Mr W's wife appeared back on the scene, taking over control of his care and finances, and ensuring that contact with his friends and Mrs Y was severed.

The Wills

Mr W died in 2012, leaving behind two Wills:

- The first was made in October 2006, before his hospitalisation and left 90% of his residuary estate to Mrs Y.

- The second was made eight months later, following the hospitalisation, and left the entire estate to his wife

As you can imagine, given Mr W's poor health, his earlier estrangement from his wife and the dramatic change to his Will in a short space of time, Mrs Y's suspicions were aroused and she contacted us for legal advice.

How Did VWV Help?

We undertook a full investigation, including obtaining Mr W's medical records and expert medical reports. We then issued court proceedings, challenging the validity of Mr W's last Will, on the basis that he lacked capacity to make it and that he did not know and approve of its contents.

Just weeks before trial, we obtained evidence that Mr W's wife was threatening to abandon him if he did not make a new Will. In light of this, we amended our original court application to include undue influence.

Armed with this evidence, we entered into negotiations with Mr W's wife and negotiated a multi-million pound settlement on behalf of Mrs Y, avoiding the cost of a full trial.

What Should You Do in This Situation?

Challenging a person's Will is not straightforward and speed is often of the essence. You should therefore seek expert advice to ensure your position is protected whilst investigations are carried out.



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What Happens to Your Digital Assets When You Die?

Virtually all adults in the UK hold some form of digital asset, whether in the form of an email account, social media or digital photographs.

As digital assets become a greater part of everyday life, what happens to them on death is becoming more of an issue. We carried out a survey this summer to find out what digital assets people have, and what plans they have made for them when they die.

We found that virtually all respondents had an email account (**97%**) and online photographs (**95%**). WhatsApp or other messaging apps were used by **80%**. **71%** had social media accounts and **55%** had digital documents such as presentations or novels. **5%** of respondents had cryptocurrency.

Although every respondent had some kind of digital asset, fewer than a quarter of respondents (**24%**) said they were confident that they knew which digital assets formed part of their estate (ie were owned by them). In addition, although more than **80%** of respondents had a Will, only **6%** of those included reference to digital assets in their Wills.

So What Should You Do If You Want to Pass on Digital Assets?

The first thing to do is to work out which digital assets you actually own and what rights you have over them.

Many so called 'assets' are not assets at all, including e-books, such as those on your Kindle, and music downloaded via streaming services such as Spotify and iTunes.

Even where you do have some ownership rights, passing them on can be surprisingly difficult. For example, iCloud's terms of service state that, unless a court order is obtained, items stored in the Cloud will be deleted. This can include, for example, digital photographs.

The best policy is to ensure that your loved ones are able to access the accounts. The problem is how to do this legally and securely, as disclosing log-in details may breach user agreements.

So What Is the Best Way to Store Passwords and Other Information about Digital Assets?

A starting point is to make an inventory of digital assets. This should be easy for your executors to find but should not be disclosed to your executors before death.

One possible solution is to use a password manager. These are growing in popularity and may be worth investigating.

Some online providers have attempted to address problems by allowing users to express preferences for how their account should be dealt with after death. For example Google has an inactive account manager. Facebook allows individuals to nominate a legacy contact.

What About Your Will?

Our advice is to include a clause in your Will appointing a digital assets manager. This person can act in much the same way as an executor, but with the role limited to digital matters. There are cases where it may be useful to appoint someone who is not a family member as a digital manager, for example if you have sensitive or confidential material stored online.

At present, we cannot guarantee providers of digital content will accept such an appointment as consent to disclose account information to the manager, or to allow the manager to reset passwords.

There is therefore no guarantee that the service providers for your digital assets will allow the appointed digital assets manager to act in the way envisaged. However we hope that the law will develop over time so that the rules might be clearer.

Letter of Wishes

A letter of wishes can be stored with your Will stating what you would like to happen to those assets that you are able to control after death. For example, if there are certain photographs you want preserved, or if there is certain email content that should be deleted, then this is the place to do this.

Conclusion

Digital assets are here to stay. As the law in this area continues to develop it is not entirely clear what action individuals should take to ensure that their digital estate is administered as efficiently as their tangible one.

What is clear however is that taking no action is not a good idea, and that planning and preparation for your assets will help ensure that your digital estate has the best chance possible of passing as you wish.



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Free LPA Workshop This Autumn

Are you an attorney under an LPA or are you considering making a homemade LPA?

Formal investigations into the actions of attorneys and deputies by the Office of the Public Guardian soared by 45% in 2017/2018 from the previous year, confirming these problems that we see frequently arise with homemade LPAs.

Creating an LPA without expert advice could lead to thousands of pounds of costs later down the line to correct mistakes and can leave people vulnerable to abuse or expose well-meaning attorneys to unknown risks.

Common stumbling blocks include attorneys not knowing the solutions to issues surrounding gifts, payment for expenses and time, and record keeping.

Come along to one of our specialist free LPA Workshops this autumn where we will answer these questions and more. We will help guide you if you are considering making an LPA or if you are an existing attorney.

Please find further details on the enclosed invitation.

Busting the Common Law Marriage Myth

The number of cohabiting couple families has increased by over 25% since 2008, and has overtaken the number of couples getting married.

For first-time buyers, starting out together in a new home, it is an exciting time and a big milestone on the relationship's journey which may or may not lead to marriage later down the line.

However, for many people (46% of people in England and Wales), they believe that they will acquire legal rights within a cohabiting relationship because of what is referred to as 'common law marriage'. This myth is founded upon the belief that if you are essentially living 'as man and wife' you assume the same legal rights as married couples.

Unfortunately, the tough reality is, there is no such thing as 'common law marriage'. Meaning that cohabiting couples do not have the same legal rights as married couples.

This harsh reality often comes to be realised at the time of relationship breakdown or on the death of one of the couple. Both are times which are stressful enough, without worrying about your financial security. A common problem we see, is that one of the couple dies without a Will naming their partner. Then they are not automatically entitled to their assets or to stay in the shared home (unless the assets or home were jointly owned).

Similarly, a cohabiting father would not have the same automatic rights as a father married to their child's mother (if not named on the birth certificate).

What Can I Do to Protect My Rights?

- Talk to each other to establish how you would both want protection if unforeseen events were to happen.
- Ensure that assets utilised by both of you, such as bank accounts and properties, are held in joint names. This means that both parties will have an interest in the asset should the relationship break down or one person die.

- Seek legal advice and enter into a cohabitation agreement. Such an agreement sets out the nature of your financial relationship and establishes your rights should that relationship break down.
- If you wish to pass assets to your partner on your death, make sure that you have a Will in place.
- Regularly review both your cohabitation agreement and your Will particularly at key milestone times, such as having children, buying another property, inheriting wealth or if you do decide to get married.

Regular reviews ensure that the documents still appropriately address your needs and deal with all of your assets, not just some of them. Not many people know, for instance, that a Will automatically becomes worthless if you marry after making it, unless the marriage is specifically provided for in the Will itself.

A Conversation Worth Having

Recognising that having a frank discussion now could save you both a lot of distress and cost further down the line is worthwhile, and our expert lawyers are able to guide you through this sensitively and practically.



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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
- *A Guide for Attorneys* - learn more about your duties as an attorney
- *Family Matters* - guidance on matrimonial and family issues
- *Five Good Reasons to Review Your Will*
- *Ten Good Reasons Why You Should Choose VVW to Prepare Your Will*
- *Private Wealth Planning for You and Your Family*

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