



# Viewpoint

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## Welcome to the Winter edition of Viewpoint



Whilst the recent dramatic events on the world stage continue to unfold, closer to home the season of wrapping up warm and stoking the fires to protect against frosty days and nights is here again. It is also time for our Winter edition and annual prize hamper draw. We greatly value your feedback and comments on Viewpoint, so I hope you will complete the attached questionnaire and enter, for a chance to win a luxury hamper.

We have seen the arrival of two new members to our Private Client team this autumn. Partner, Rachael Francis and Associate, Jennifer Morries joined our Birmingham office and have been busy, travelling between our London, Bristol and new Watford offices, meeting clients and the rest of the Private Client team.

We are pleased to feature the first article from our Family and Matrimonial Partner, Sam Hickman, who joined us in the Spring. As part of our regular real estate column, we also share our top tips on preventing property fraud.

Finally, if your thoughts are turning to New Year's resolutions and getting round to some of those jobs that never disappear from your 'to-do' list, I hope you will find some helpful suggestions on how to ensure your legal affairs are in order inside this edition.

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## Appointing an Attorney

### What you need to consider

We frequently receive requests for 'back to basics' guides on putting your legal affairs in order. In this issue, we cover Lasting Powers of Attorney (LPAs).

An LPA enables someone to authorise a person of their choosing (their Attorney) to make decisions on his or her behalf.

#### What type of LPA do I need?

Of the two types available, you can opt to have just one, or both.

**Health and Welfare LPAs** concern decisions relating to medical matters, living arrangements, day-to-day care and the wider social well-being of the person (known as the donor) who has appointed an Attorney.

“ LPAs are important tools in protecting the interests of a vulnerable person. ”

Most of us would want to be cared for by people we trust at times of vulnerability in our lives. This type of LPA allows an Attorney to make such decisions to the extent that the donor is not able to make them. Wherever possible, an Attorney must, by law, enable and assist the donor to make their own decisions insofar as they can manage to. It is only at the point where the donor cannot decide for themselves, that the Attorney will step in to act.

**Property and Financial LPAs** give an Attorney authority to decide and act in property dealings, bank account withdrawals or transfers, completing income and tax returns, claiming benefits and pensions, as well as on wider financial matters. This LPA is used to protect the financial interests of the donor.

With both types of LPA, an Attorney must act in the best interests of the donor.



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#### Will I be giving too much control away?

LPAs are important tools in protecting the interests of a vulnerable person. A donor can often be more reluctant to appoint a Health and Welfare Attorney than a Property and Financial Affairs Attorney, because welfare decisions can include deciding about the donor's medical care, and weighty issues such as whether the donor should go into residential care.

If any concerns are raised about an Attorney's actions, the Court of Protection can intervene and investigate. Ultimately, the Court can remove the Attorney from post if it considers this to be necessary.

In practice, any such concerns should be alleviated by the donor's choice of Attorney. A donor is advised to appoint an Attorney whom they know and trust, such as a close relative or friend. With the right arrangements in place, LPAs can provide great peace of mind by ensuring that the donor has help when needed.

#### What if I don't have an Attorney?

Problems arise if no Attorneys are appointed and a person loses capacity, as the alternative process of applying to Court to have a Deputy appointed is a much more expensive and restrictive process.

This can be avoided by taking timely and appropriate advice on the appointment of an Attorney.

Appointing an Attorney could well save you time and money in the long run.

# Choosing not to work destroys a daughter's Will dispute



**Julia Hardy - Associate**  
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Another case of a daughter disputing her parent's Will (*Ames v Jones*) has been in the news recently. This follows the much-publicised case of Heather Ilott's successful claim against her late mother, Melita Jackson's estate.

In this new case, Danielle Ames, aged 41, failed to persuade the court to award her any money from her late father, Michael Ames' estate after he died.

Danielle's story was that her parents, Michael and Carleen, divorced when she was young, after which Michael remarried Danielle's step mother, Elaine. They enjoyed a long marriage and on Michael's death he left all his £700,000 estate to Elaine.

## Danielle's Claim

Unhappy, Danielle applied to court for a share of the estate. All children, whether minors or adults, are automatically entitled to apply to court to request financial provision from their parents' estate, under the Inheritance (Provision for Family and Dependents) Act 1975. Whether they are successful in receiving any award depends on several factors.

Danielle argued that she had two teenage children, and because she did not work, she had an income deficit of around £2000 each month. She asked for nearly half of her late father's estate - a sum of £300,000.

## Elaine's Defence

Elaine, on the other hand, was 63 and in relatively poor health and could not work. Her income was largely made up of her pension and was only just sufficient to maintain her. The court agreed with Elaine that she should not be required to

## Each case is different

These cases turn on their own individual facts, which is neatly demonstrated by the very different results achieved by Danielle Ames in this case compared with the success achieved by Heather Ilott in her claim against her late mother's estate.

“ **The court ruled that Danielle should not be awarded any money from her late father's estate.** ”

supplement her income by selling or re-mortgaging her home.

The court also found that the estate of £700,000 was not large enough to support both Danielle and Elaine.

## The Court's Decision

At court, the Judge was not impressed with Danielle's evidence. He considered that it was exaggerated in its nature and that, as she was capable of working but chose not to as a 'lifestyle choice' she ultimately had some control over her own financial destiny.

The court ruled that Danielle should not be awarded any money from her late father's estate and Elaine retained the whole estate.

Although watch this space as Heather Ilott's claim is currently under review at the Supreme Court.

Our Private Client team comprises specialist practitioners in both contentious probate and non-contentious matters. The team can provide practical advice to individuals facing these types of claims, as both claimant and defendant, having resolved many disputes over the years.

The team is experienced in advising on the pitfalls of choosing to exclude a key family member from a Will and can advise on how to reduce the risks of a potential claim being brought against an estate.

## Property Fraud - 4 things you should do to protect yourself



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The Land Registration Act 2002 was meant to help the advance of electronic conveyancing, the aim being to cut out the old fashioned paper process.

Many of the reforms have been beneficial but some have encouraged fraudsters to take advantage of the new electronic systems.

However, there are things you can do to reduce the risks:

- Paper 'Title Deeds' no longer exist. It is possible for a property to be sold without the 'seller' ever producing original documents. Be careful about identity theft.
- If you rent out a property or own a holiday home, make sure that the

Land Registry has your up to date correspondence address, not the address of the property that may be sold or re-mortgaged without your knowledge.

- If you do not live at the property, you can register a 'restriction' against the title that no sale or re-mortgage of the property is to be registered without a certificate signed by a conveyancer who is satisfied that the person who executed the document is the same person as the owner.
- Be wary of fake emails! If you are notified of a change to a solicitor's bank details, always telephone the solicitor and speak to someone whose voice you recognise to check this.

# Gone With the Wind

Beware the spouse that comes back to bite



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There has been a recent update to one of the longest-running romance and divorce cases seen by the courts, which has all the ingredients of a classic rags-to-riches tale.

Young sweethearts Mr Vince and Ms Wyatt met early in life when they did not have a penny between them. They married in the early 1980s and lived off state benefits. Ms Wyatt had a child from a previous relationship and the couple also had a child together. At that point, no one could have predicted that Mr Vince would go on to become an eco-warrior multi-millionaire.

However, before Mr Vince embarked upon his business success, the couple separated, a little after two years of marriage and their divorce was finalised much later in 1992. Crucially, the couple did not take

Wyatt's case was sent back to the High Court by the Supreme Court to decide matters.

## The Outcome

We will never know what the High Court would have ordered, as Ms Wyatt and Mr Vince recently reached their own out-of-court settlement whilst awaiting the High Court hearing. In a judgment dated 10 June 2016, Mr Justice Cobb confirmed that the final order settling the proceedings should be made public.

The long-overdue Consent Order provided for Mrs Wyatt to receive a lump sum of

This case is a sharp reminder why it is crucial to receive professional advice when separating or divorcing, to ensure that an ex-spouse does not come back to bite years later.

## Our Literature

We can provide informative brochures which you may find of interest, including:

- 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 VVW to prepare your Will
- Private Wealth planning for you and your family

If you would like to receive one or more copies, please contact Michelle Rose on 0117 314 5246 or at [mrose@vww.co.uk](mailto:mrose@vww.co.uk)

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“ This case is a sharp reminder why it is crucial to receive professional advice when separating. ”

the trouble when they divorced to agree a formal Consent Order on their financial settlement, dismissing any financial claims against one another.

Fast forward to the late 1990s and Mr Vince's green energy wind farm business had really taken off. His company, Ecotricity, was said to be worth at least £57 million. Mrs Wyatt, on the other hand had enjoyed no such similar rise to riches; she lived in a former council house and was still on state benefits as her earnings were so low. She had two more children by this time but had not re-married.

## The Court Applications

In 2011, nearly 20 years after their divorce, Ms Wyatt applied to court for financial provision from her ex-husband. After applications and appeals being made on both sides, for technical reasons, Ms

£300,000 in full and final settlement of her claims, in addition to payments she had received for costs.

## The Risks of Divorcing Without an Agreed Financial Settlement

This decision highlights the risks of leaving matters unresolved at the time of separation or divorce. Questions arise as to what the financially weaker party has to lose in bringing an application against a wealthy ex-spouse, especially if their costs are being met.

Likewise, the incentive will be strong for a wealthy spouse, who is paying his or her own legal fees and those of their ex-spouse, to make an offer to settle any impending court proceedings, even if their ex's application is weak, because it is likely to be cheaper than funding litigation through the courts.