



Viewpoint

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Welcome to this Special Edition of Viewpoint



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How the world has changed since I wrote my last Viewpoint introduction.

After the March lockdown switched-off normal life overnight, a new surreal way of life began for us all. Three months on, the narrative has evolved to how we can all adapt to the new normal.

With signs of life now returning to the economy, the housing market re-opening and some classes back at school, we are now starting to take tentative steps towards a return to what already feels like the 'old' way of life.

We hope to help you with this and have featured articles on topics we consider most pertinent; from the challenges you may face if you are negotiating finances on divorce or separation during these difficult times, to what to avoid when making or reviewing a Will in different family circumstances.

It has always made sense for people of all ages to make a Will, but the surge in Will-making since coronavirus seized the world has potentially increased the chances of Will disputes later down the line. It is incredibly easy, particularly with the current social distancing requirements, to sign your Will incorrectly and therefore, invalidly. So we have included an article on this topic to help guide you through the legal maze.

I hope you find these articles helpful and that you all stay safe and well.

As ever, I welcome your ideas and feedback or suggestions for future topics.



How to Avoid Making an Invalid Will During the Coronavirus Pandemic

The spike in Will-making since coronavirus (COVID-19) took the world in its grip was inevitable. Making a Will has never been more important for many.

But with home-made Wills, it's easy to take one wrong step in the way it is witnessed or signed, with potentially disastrous consequences.

The outcome, at best, can be to make your intentions hard to follow when the Will comes into effect and at worst, can invalidate the Will entirely. The *Wills Act 1837* governs Will-making in England and Wales and unsurprisingly, this 19th century legislation did not contemplate facilities like Skype and Zoom.

A legal requirement is that your witnesses should be with you (ie present) when they watch you sign your Will, so signing on a Zoom call, with your witnesses watching from another location, does not count.

Can Someone 'Witness' a Will Through a Window or over a Fence?

It is possible, as long as you fulfil the legal requirements to the letter. Witnesses should maintain an uninterrupted line of sight with you the whole time that you sign the Will. Signing and passing the document over the fence to your neighbour to record they have witnessed your signature, if they have not actually seen you sign would result in an invalid Will.

We generally advise that you avoid witnessing your Will that way to avoid the risks of an invalid Will. The best option is to witness your Will in an outside space, with clear visibility, whilst observing social distancing.

Who Can Be a Witness?

Another frequent error we see with home-made Wills is choosing the wrong type of witness. The *Wills Act* prohibits your witnesses from being beneficiaries of your Will, so the people you are isolating with are unlikely to be appropriate choices, if you intend to leave them something in your Will. But your neighbours

and friends may be anxious about coming close enough to you to act as witnesses. It's a tough conundrum.

Why Hasn't the Wills Act Been Updated?

Outdated as the *Wills Act 1837* may be, Wills are strictly legislated to guard against risks. These include a person making a Will without due consideration to its contents, or at the worst end of the spectrum, because a person may be under duress to make a Will they would not otherwise choose to. This can be the cause of many Will disputes.

At the moment, with so many elderly or vulnerable people being unable to see their close ones, the opportunities for people to prey on them has potential only to increase.

How Can I Reduce the Risks of Challenged or Invalid Wills?

There is great value in reviewing Will provisions very carefully and following the strict rules for signing to the letter. You should also consider whether there is the possibility of any Will challenge arising, particularly if there are concerns about the capacity of the person making the Will or of potential undue influence upon them.

To avoid the sorts of disputes we see regularly, we strongly recommend that you seek professional advice when making a Will so you have the peace of mind that your Will cannot be challenged. Our Private Client team has specialists in both contested Will disputes and in Will-drafting.

If you need support with drafting your Will, or have concerns that your current Will may be invalid, please contact Fiona Lawrence at your earliest convenience.



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Making a Will in Light of Coronavirus? What to Consider...

The coronavirus pandemic has caused many people to review their Wills, to check everything is in order should the worst happen.

For a surprisingly large number of families, it is important that parents' wealth does not pass straight into the hands of the next generation. We examine six scenarios in which having a Will leaving everything to your spouse/partner, and then onto the children when the second of you dies, may be unhelpful.

A Child with Autism

If your child would find it difficult or stressful to manage a large amount of money, their inheritance should be held for them.

Your Will can appoint trusted friends or family to hold funds as trustees, on the basis that money will be drip-fed to your child to meet their needs as they arise, without the responsibility of managing the funds themselves.

A Child with a Business Venture

Passing funds straight to an entrepreneurial child needs thinking through carefully, as there is a risk of funds being lost to creditors if an enterprise fails.

Again, if your estate passes to your trustees they can consider the situation at the time of your death, and see whether some or all of the funds should be kept back. Trustees have to make decisions unanimously, so your child could, if you wish, be one of the trustees, to keep them involved in the decision-making. Assets held in a 'discretionary trust' do not belong to the trust beneficiaries and cannot therefore be claimed by creditors in an insolvency.

A Rocky Marriage

If divorce or separation is a scenario you can imagine for your child, it may not be sensible for your estate to pass directly to them, as it will form part of the wealth available to be divided up on divorce.

Inheritance Tax to Pay

The inheritance tax (IHT) due on your estate will depend upon who your assets pass to. Assets left to your spouse or to charity pass free of IHT. Where 10% of your estate passes to charity, a reduced rate of IHT can apply to the rest of your estate. An additional tax free band may be available if you are giving a property you have lived in, or the proceeds of its sale, to a descendant.

Without a crystal ball, we cannot know what IHT rules will be in place at the time of your death, and how your estate should be divided to mitigate the tax due. Having a discretionary trust will allow your trustees to divide your estate in the most tax-efficient way, in light of your family's circumstances and the tax rules in place at that time.

Having the right Will in place will allow the next generation to benefit from your estate in the most helpful way and ensure that their inheritance will not be counter-productive to their needs.

“ Even in the midst of a global pandemic, your Will needs thinking through carefully, to make sure it is right for your family. ”

A Spouse with Alzheimer's or Dementia

A Will is often prepared and then forgotten about for years. If by the time of your death your spouse/partner is suffering from Alzheimer's or dementia, it may not be helpful for the funds to pass directly to them.

If your Will creates a trust, your trustees can look at the circumstances at the time of your death and pass funds onto the family members who can benefit from them. You can give clear guidance in a 'letter of wishes', explaining where you wish the assets to go in different circumstances.

Inherited wealth can be treated differently to assets built up by the couple during the marriage. However, if the funds are required to meet the needs of either spouse or any children, it may effectively end up in the hands of the ex. Again, a Will which gives assets to a discretionary trust can provide some protection.

Means-Tested Benefits

When funds pass directly to a person who is entitled to means-tested benefits, they may lose their entitlement to receive them and any 'passported' benefits relied upon.

If your Will passes your estate to a discretionary trust, the assets do not belong to the beneficiaries of the trust, and any entitlement to means-tested benefits will not be lost.

Even in the midst of a global pandemic, your Will needs thinking through carefully, to make sure it is right for your family.

If you're concerned about a Will, contact Michael Knowles for specialist legal advice at your earliest convenience.



Michael Knowles - Partner
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Free Executor Workshop This Autumn

The role of an executor is a demanding one and carries with it onerous duties and responsibilities.

Have you been appointed as executor under a Will and are unsure of what your role is and whether you can enlist help? Or perhaps you are yet to make a Will and need some guidance about who you should appoint.

Come along to one of our specialist free executor workshops where we will provide the answers to the questions you have as well as guide you through the administration process which can often seem daunting.

Birmingham: 11 November 2020 (3.00pm - 5.30pm)

Bristol: 12 November 2020 (3.00pm - 5.30pm)

London and Watford: 18 November 2020 (3.00pm - 5.30pm)

Please contact our Events team on 0117 314 5294 or at events@vww.co.uk for more details and to book your place.

Negotiating Finances in Divorce During Coronavirus

The pandemic has sent financial shockwaves throughout the world. For those negotiating finances on separation, the current climate may pose some challenges. We explore some key points separating couples may want to consider.

Where Do I Start?

Firstly, be assured that solicitors, mediators and the court continue operating remotely to support you.

The first step in reaching a settlement is to exchange financial details with your spouse. Usually done using a 'Form E', you are required to disclose detailed information about your assets, liabilities, pensions and income.

Financial Uncertainty

Financial implications of the pandemic are being widely felt. In relation to divorce, significant challenges are presented when it comes to valuing assets.

Whilst all valuations are a snapshot in time, the current uncertainty is more significant than usual fluctuations. The value of shares and investments are likely to have decreased, the property market is uncertain and income may be unknown for the self-employed or those facing potential job losses.

Reaching agreement about the family home is likely to be particularly challenging; valuations may not be carried out in person, mortgage capacity may have changed for those needing to buy a new property and many banks have raised the amount of deposit required. This will undoubtedly affect your negotiations.

Whilst the future of the economy is uncertain, separating spouses will need to carefully consider the timing of obtaining valuations. If already obtained, some may consider updating valuations, whilst others may seek to delay this.

We encourage parties to seek independent financial advice and consider the impact of the current economic climate on your finances during negotiations.

Separation Agreements

If you are confident that the current market will not affect your financial negotiations, you should seek legal and financial advice and look to finalise the settlement.



However, some separating couples may decide to enter into a Separation Agreement, instead of formalising a settlement at this time. A Separation Agreement typically sets out:

- who will issue formal divorce proceedings and when;
- who will pay the bills; and
- what will happen with the home, bank accounts and investments.

It can also detail childcare arrangements.

They can be highly persuasive with the courts. When the time is right, these agreements can form the basis of a formal financial settlement in a Consent Order that is approved by the court.

If the value of assets or either spouses' income changes significantly before a Consent Order is approved, further negotiations may be necessary to ensure both parties' needs are met and the settlement is still considered 'fair' by the court.

We do not recommend transferring any asset with substantial value, eg the family home, prior to lodging a Consent Order with the court.

My Settlement Doesn't Seem Fair Anymore

In some very limited circumstances, you may apply to the court to vary a financial order. We have reported on this in our article 'Challenging Divorce Settlements in Light of Coronavirus', found on our website.

If you need specialist legal advice on negotiating your finances, please contact Sam Hickman.



Sam Hickman - Partner
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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*
- *What Happens to Your Digital Assets When You Die?*

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If so, please contact Laura Loveridge on 0117 314 5371 or lloveridge@vww.co.uk.

