

## INSIDE:

**Family Mediation**  
- an alternative to  
Court Proceedings.

**Contentious Probate**  
- pursuing a claim.

**A Simple Will?**  
- our guide to making  
the correct choice.

**Your Property**  
- carrying out works

# Welcome!

Welcome to our Newsletter No 8! This year has passed very quickly and no doubt everyone is beginning to think about Christmas!

We hope you enjoy reading the various articles which cover a range of topical issues in probate, litigation and family law.

If you have any queries or comments on the Newsletter we would welcome these. Indeed, if you have any topics that you would like us to consider covering in future editions, please do let us know.

**Paul Wild.**

## Firm news

As many of you will be aware, the Partnership became an LLP earlier this year.

All at Barrett & Co would like to wish all our present and future clients a very happy Christmas and our best wishes for the new year.

As is customary, we will not be sending cards out to our clients but will be making donations to Barnardos and the Duchess of Kent Foundation.

Each charity is important to members of Barrett & Co with each charity playing an important role in supporting local services.



## Family Mediation an alternative to Court Proceedings

I recently attended an eight day mediation course in Bristol with the intention of being able to provide present and future clients with a further alternative to Court proceedings when dealing with relationship breakdown, separation and divorce. The purpose of the course was to assist us as Solicitors to consider how to talk and listen to parties.

Under the Family Proceeding Rules 2010, which came into force in April 2011, parties must now consider the option of mediation before issuing any Court proceedings. It is therefore important for parties to understand what mediation can offer and what it might mean for them. Mediation provides an important opportunity for separating and divorcing parties to discuss many of their issues in a safe and appropriate environment. Parties can have one or two mediators (referred to as co-mediators) at such meetings.

The key to mediation is that it is a voluntary process. Parties will meet with the mediator at agreed times with a view to agreeing those issues in dispute without the need for Court intervention. Such agreements are not legally binding until the parties decide to jointly apply to the Court for such arrangements to be approved and so it is still possible for each party to obtain separately, independent legal advice.

The mediator remains impartial throughout the meetings. The mediator cannot advise either party and must not take sides although the mediator can provide the parties with information. An issue could potentially spiral into an intractable dispute. However, mediation can more easily help to resolve such issues much sooner because of the flexibility of being able to meet and a dialogue remaining between the parties.

Rather like Collaborative law, where appropriate, mediation can place the parties' children at the centre of their discussions which can hopefully assist both parties in the approach that they take during the mediation sessions.

Having now qualified as a mediator I am also a member of Reading Family Mediation which covers the Reading and wider area. **If you require any further information please e-mail me at [paul@barrettandco.co.uk](mailto:paul@barrettandco.co.uk).**

## Probate litigation RSPCA v Gill

There was an interesting case earlier this year regarding a claim by a daughter who had not inherited a farm under her mother's will. For more than 30 years, Christine Gill had helped her parents run a farm worth around £2 million. She was their only child and assumed that she would inherit the farm.

She bought an uninhabited farm next door in order to be close by. Her father died in 1999 and she then spent more time looking after her mother, Joyce, and running the farm. However, when her mother died in 2006, she discovered that her parents had prepared mirror wills in 1993 leaving their estates to each other and then to the RSPCA.

Christine Gill issued a claim under the 1975 Inheritance Act. Under the Act, any child who feels that they have not been adequately provided for in their parent's will can ask the court to make financial provision for them by changing the will.

Generally, such applications are only successful if the child is still financially dependent on the deceased. Self-supporting adults will find it more difficult to prove that they need that financial support. Christine was self-supporting but claimed that her parents had made repeated assurances to her over the years that the farm would be left to her when they died.

She also claimed that her mother, Joyce, was coerced into making the will by her father and that Joyce had medical conditions which affected her ability to make decisions. The first court hearing decided that Joyce's will was invalid, because it was the product of undue influence exerted by her domineering husband.

The court found that Joyce suffered from severe agoraphobia and an anxiety disorder. She disliked meeting people and was unusually dependent on her husband, who was described as domineering and short-tempered.

The RSPCA appealed the decision and the Court of Appeal also found in favour of Christine Gill, but for different reasons. The Court of Appeal agreed with expert medical evidence that Joyce's anxiety disorder would have prevented her understanding what happened at the solicitor's office. In the absence of any evidence (the solicitor's files had long since been destroyed) the court found that there was a lack of knowledge and approval of the will by Joyce.

This case demonstrates that if you have any reason to dispute a will then it is always worth taking some legal advice.

**For more information please contact Justin Sadler.**

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## Contentious Probate

Have you expected to benefit after the death of a relative or friend, only to find that you are not mentioned in the Will? Or are you the beneficiary of an estate who is surprised by how little money remains for distribution? Do you know of a case where a person left a Will which appears to be contrary to their expressed wishes or which you doubt they had the capacity to make?

If these issues have troubled you then you may wish to take advantage of our fixed fee arrangement, enabling you to spend an hour with us exploring the issues of concern, at a fixed fee of £100.00 inclusive of VAT.

Pursuing a claim in a disputed probate matter is not something which should be undertaken lightly. These cases can take months to resolve and can prove very expensive, particularly if pursued through the courts. However, by taking advantage of our fixed fee interview, we would be able to advise you as to whether you are likely to have a valid claim and the options open to you by way of remedy.

Many people would not wish to pursue a matter at length but do want to take advantage of our expertise to put the record straight and set their minds at rest. Members of this firm have in the past been appointed by the Court as Administrators to steer an estate through to a successful conclusion in place of an Executor who has failed in their duties.

Our experienced team can guide you through the pitfalls and should major litigation become necessary, we are experienced in ensuring that an administration is conducted efficiently and accurately.

**For further details please contact Hilary Buckle, Justin Sadler or Emma-Jane Kurtz.**



## A Simple Will?

Many people who contact us about making a Will say that they just want 'a simple Will'. But is that what they should be asking for? Second marriages, co-habitation and a variety of difficult family situations mean that 'a simple Will' is often not suitable and could in fact cause problems for the future. If a "simple Will" is executed but is inadequate, or if there is no Will at all, a claim may be brought against the estate by a disappointed beneficiary and this may delay the administration and incur legal costs thus reducing the value of the funds available for distribution.

Below are a number of scenarios where our clients needed carefully drafted Wills to take into account their particular circumstances:

### Scenario 1

Mr A & Mrs B - a couple in their 60s, both previously widowed, now co-habiting and not intending to marry. Mrs B owns the house where they live and is a few years older than Mr A. Both have children and grandchildren from their respective marriages.

They both need Wills specifically drafted to ensure that their respective estates eventually pass to their own children. However, Mrs B wants Mr A to be able to continue to live in the property for the rest of his life, so her Will needs to include a trust providing for this. They both wish to leave gifts to their own grandchildren and the Wills must clearly state this. They must also choose Executors who they trust to deal with their estates, particularly Mrs B, because if she dies first, her Executors will need to understand Mr A's rights and responsibilities concerning the property.

### Scenario 2

Mr C and Miss D - a couple in their 30s, not yet married but intending to do so in the next couple of years. Mr C has a child from a previous relationship. They have just bought their first property together, but Miss D has contributed nearly twice as much as Mr C.

There are a number of points to consider here. Firstly, as they plan to get married after making their Wills, a statement must be included confirming this, otherwise the Wills would be automatically cancelled by their marriage.

They have contributed unequal amounts to the purchase of the property so we would recommend that, as well as making Wills, they consider making a Declaration of Trust, a document which sets out their respective shares in the property and confirming how the proceeds of sale would be divided between them if the property were to be sold.

They would also need to consider what would happen to the property if one or both of them died. Do they wish to leave their shares in the property to each other or do they wish to ensure that ultimately, the capital passes to any children they might have together in the future? For example, Miss D may be concerned that, if she died first and left her estate to Mr C, he might find a new partner and change his Will which he would be free to do. Consequently the children that Mr C and Miss D have together may not inherit anything at all from Mr C. This is another occasion where a trust could be included in the Will to allow the survivor of the couple to live in the property during

their lifetime but ultimately ensure that the property passes to the children. Finally, what about Mr C's child from his previous relationship - does he intend to leave any part of his estate to that child? This will all need careful consideration when drafting the Will.

This scenario shows a number of common issues which our younger clients have to consider as their relationships develop.

### Scenario 3

Mr & Mrs E are in their late 50s. They own their property in their joint names and they have some savings, life insurance and both have pension plans. They have three children, ranging in age from 19 to 26 years. Their two eldest children have obtained good qualifications and have started out on their careers, but their youngest son is severely disabled and requires constant care and it is expected that the amount of care he will need in the future will increase.

Mr & Mrs E's first instinct understandably is to ensure that their son will always have the care he requires, however they do not wish to leave their other children out of their Wills altogether. Their son is unlikely to have children and may have a reduced life expectancy, but there is no guarantee that he will not outlive his siblings.



Without knowing exactly how much care their son will need or for how long, it is difficult for Mr & Mrs E to decide what to put in their Wills. In this scenario a Discretionary Trust is useful, because it is very flexible and allows the trustees to look at the circumstances of the beneficiaries at the time of Mr & Mrs E's deaths and decide how to allocate the monies. Mr & Mrs E should carefully consider who to appoint to run the trust and should consider leaving written guidance with their Wills explaining how they would like their estate to be used to provide for their children.

We understand that many of our clients would like a straight forward Will and although a more complicated Will can seem daunting, there are good reasons to make sure that your Will is correctly drafted based on your family circumstances and the needs of those you wish to benefit. If you have been considering making a Will, but have been putting it off because you think your situation is very complicated, contact one of the solicitors in our Private Client department to discuss your situation and what type of Will would be best for you.

**For more information please contact  
Hilary Buckle or Emma-Jane Kurtz.**

## Your Property - Carrying out works

There is much legislation around works that are carried out to residential properties. It can all be a bit bewildering for a house owner. However, there are many useful websites you can use to obtain information.



### Replacement windows and glass doors.

To find out more visit the FENSA website at [www.fensa.co.uk](http://www.fensa.co.uk)

### Electrical installations

The Royal Kingston local authority have produced a useful .pdf in relation to domestic electrical requirements at: [www.kingston.gov.uk/rbk\\_part\\_pguidance.pdf](http://www.kingston.gov.uk/rbk_part_pguidance.pdf)

### General Planning and Building Regulations

There is a very useful and informative website at: [www.planningportal.gov.uk](http://www.planningportal.gov.uk)

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