

# PRIVATE AFFAIRS

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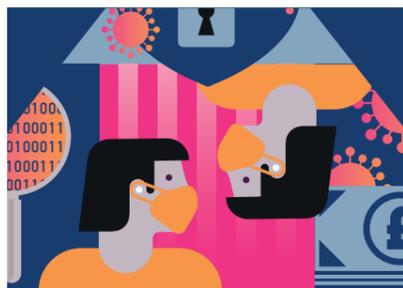
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## Welcome from Andrew Playle



**Andrew Playle**  
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Welcome to the second edition of our new look Private Affairs. We hope this online edition finds you and your loved ones safe and well as we start to see the new shoots of recovery and emerge from lockdown.

We have taken the decision to only produce Private Affairs online. Of course, there is an environmental aspect to our decision, but we also feel that you are all now far more used to reading publications online. I for one have shifted my own reading largely online over the last year or so. I would however, welcome your thoughts. Do you prefer to receive something in the post? Please do email me or answer a [short survey here](#).

In this edition we look at international issues for couples wanting to move in together, get married or form civil partnerships. What wealth protection do they need to consider for both them and their families? There have also been some interesting cases in the past few months that are worth you being aware of, plus my colleague Matthew Hansell looks at the current state of the economy and the tax implications for us all.

I'm also delighted to tell you that we have been joined by an internationally renowned family lawyer Zoe Fleetwood. She joined the team just before Christmas and is especially well regarded for handling complex cases involving children. You will find a profile of her on page 12.

We always try to bring you an insight into one of our clients too, and this time we shine the spotlight on Tom and Ed Graham from Claverley Publishing. They are second generation directors of a family run business in the Midlands. They share what it is like to be part of a thriving family business, especially during such turbulent times.

As always, if you would like to discuss any of the issues covered in this edition, please get in touch with either the author of the article or your usual Mills & Reeve contact.

And finally, we are running a series of webinars "Private Affairs comes to life" where we talk in more detail about some of the topics covered in our latest edition. [You can watch the webinars here](#) (along with all our other webinars) and register for future sessions [here](#).



# Immigration, marriage and protecting your wealth

Couples planning to live together or marry need to think carefully if one or both are living or working abroad. We explore the issues and opportunities when one party is immigrating to the UK from abroad.

Jane and Nicolas met during her year abroad in Argentina whilst studying Spanish at university. In order to progress their relationship further Nicolas decided to move to London to live with Jane. As an Argentinian national, Nicolas required a visa to relocate permanently to London. Jane and Nicolas decided that the only option would be for them to get married.

A couple of years earlier Jane's parents had sold their family business in Bristol for £20 million. They took wealth planning advice from the Private client team at Mills & Reeve and decided to place £5 million in a Family Investment Company (FIC) with Jane as one of the shareholders. They also gifted Jane £1 million and planned to give considerable further sums to Jane as lifetime gifts.

Jane's parents contacted the lawyer who had assisted them with the wealth planning and they referred Jane to a colleague in the Family team who immediately consulted our immigration specialists.

## Immigration Issues

Marriage sounds like an easy option, but nothing is ever straight forward where the UK immigration rules are concerned! We flagged to the happy couple that if they planned to marry in the UK, Nicolas would first need to apply for a fiancé visa, Jane needed to prove that she had her own income of at least £18,600 per annum (or liquid capital at her disposal of at least £62,500), Nicolas needed evidence of his English language skills (a degree taught in English or an IELTS or similar test), and full details of their relationship along with wedding booking receipts. Although arrangements could be changed once Nicolas was in the UK, to give them further time to plan and reflect, their nuptials would need to be complete within six months of Nicolas entering the UK, but with no right for him to work until after the wedding.

We suggested possibilities which would enable Nicolas to base himself in London, allow them to live together, their relationship to develop, and give them time to plan their wedding.



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This included exploring the following options, some of which have opened up or are opening up with the new UK immigration system in place from 1 January 2021:

- Was Nicolas a dual national? As an EU national (if he had Spanish heritage, for example), he would have the right to apply for pre-settled status under the EU Settlement Scheme, if he had spent time in the UK in the later part of 2020, providing him with the right to live and work in the UK, without needing a visa. As a commonwealth citizen with a UK born grandparent he could apply for an ancestry visa, giving him an absolute right to live and work in the UK. As a national of certain defined countries (Canada, Australia, Japan etc) he could apply for a Youth Mobility visa which would allow him to live and work in the UK for up to 2 years, and then potentially switch to a Skilled Worker visa.
- Was he working for an international company which has a sister company in the UK, able to sponsor him to work in the UK under the Intra-Company Transfer visa route?
- Was he a skilled worker (with the requisite English language skills) enabling him to be granted a working visa under Skilled Worker visa route or under the Tier 1 Global Talent arrangements?
- Was he interested in further study in the UK? As a university student on a Master's degree or Ph.D course with a Student visa, he can study, but also work up to 20 hours per week during term time, and full time in the holidays, with the opportunity to switch to a Graduate visa, allowing him to work for two years after his graduation.
- What is his employment role? As an academic, a medic, teacher or other professional who might be able to arrange an exchange under the Temporary Worker - GAE (Government Authorised Exchange) arrangements recognised by the Home Office.
- Could he arrange a paid internship for up to 12 months, with a sponsoring business, and a government recognised internship organisation, in order to secure a Temporary Worker visa?
- Was he himself or his parents/grandparents independently wealthy and prepared to settle monies on him, to support an Investor visa – at least £2 million?
- Was he an entrepreneur who could set up an innovative business in the UK - something that's different from anything else on the market – if so the Start-up visa might also be an option.

Jane and Nicolas did not want to wait and so they decided to get married and we supported Nicolas with his fiancé visa application.

#### Family Law Issues

It was important for Jane, and her wider family, to ensure her wealth was protected if the marriage broke down. Jane was aware that the marriage was taking place sooner than it ordinarily would due to the circumstances.

The law regarding pre-nuptial agreements in England and Wales is now clear following a landmark case called *Radmacher v Granatino* in 2010. If marital agreements are entered into freely, with a proper understanding of their consequences and, crucially, are not obviously unfair to one of the couple, they will be upheld if challenged in court.

**It is important that any clients with a pre-nuptial agreement ensure it is enforceable in the destination country before they relocate.**

As Jane and Nicolas had plans to move to Argentina at some point during the marriage, and in light of his nationality, it was important that any agreement was enforceable in both jurisdictions. It is important that any clients with a pre-nuptial agreement ensure it is enforceable in the destination country before they relocate. This will often be dealt with by a mirror agreement that transfers the terms whilst still meeting local legal formalities.

We worked with colleagues in Buenos Aires who specialise in local Argentinian family law and were able to provide their expertise. The final agreement was translated into Spanish to assist with enforceability.

This is a good example of how joined up working within our Private wealth sector and with best friend international firms can deliver clients bespoke solutions seamlessly.



Ben Reeves

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#### CASE UPDATE

## The forfeiture rule

The forfeiture rule is a rule of public policy which prevents someone who has unlawfully killed another from acquiring a benefit from the death. Judges can, however, modify the effect of that rule where they are satisfied that “the justice of the case requires” it.

*Amos v Mancini* piqued the interest of both the public and legal professionals for its tragic and sensitive facts, and the application of this difficult area of law.

Mr and Mrs Amos set off from their home in Wales intending to attend the funeral of his sister in Canterbury. Mrs Amos was driving, but they eventually turned back after they became lost. After nearly 10 hours on the road, Mrs Amos made a fatal error causing the car to crash into another vehicle. 81 year old Mr Amos died shortly after, with his wife at his side. Mrs Amos was charged with the offence of causing death by careless driving. She immediately pleaded guilty and received a suspended sentence.

Mr Amos's Will left his entire estate to his wife as she had survived him. However, if the forfeiture rule applied, she would receive nothing.

Mrs Amos brought an application to the High Court for a declaration that the forfeiture rule did not apply; or if it did apply, that the rule should be modified.

The Judge considered the existing case law and took the view that the forfeiture rule did apply. This meant that the application turned on the second question; conduct and other material circumstances were critical, in his determination.

He decided that the loss of inheritance would be significantly out of proportion to Mrs Amos's culpability in the offence. He also noted that the beneficiaries who would receive the estate if her gift was forfeit had not contested the claim, which he described as “significant”.

Of great relief to Mrs Amos, the rule was modified to allow her to benefit.

CLIENT PROFILE

“

The saying ‘two heads are better than one’ is true of me and my brother. We take comfort in the support we give each other.

”

In each edition of Private Affairs, we speak to an inspiring leader (or this case leaders) about their business. In this interview we talk to brothers Ed and Tom Graham of the Claverley Group, a midlands-based publishing group. The fifth-generation board members tell us about working in this incredibly challenging and fast-paced business, and about the need to adapt to meet the needs of their customers.



**About the company**

The Claverley Group is an independently owned, family-run business built around news and information. The group operates daily newspapers including the *Shropshire Star* and *Jersey Evening Post*, runs a digital marketing agency, a printing business, develops technology that supports publishing companies, operates a children's magazine publisher with over 30 titles and finally, a creative design and print procurement agency. You could say that they operate everything around the written word!

**How did you first get involved in the family business?**

**ED:** During the holidays I was encouraged to spend time in different departments of the newspaper business. After university I cut my teeth at the *Daily Mail*, *Sydney Morning Herald* and the *Wall Street Journal* before returning to the bright lights of Wolverhampton to join the family firm.

**TOM:** It was always expected that I would follow suit and join the business. After training as a reporter, I gained experience at other organisations before joining the family firm. I worked as a reporter for the Kent Messenger Group followed by a post as a political reporter in the House of Commons. I then joined the Press Association in London, and finally did a year and a half at the *Sydney Morning Herald* in Australia before coming back to work at Claverley in 2010. The move from Sydney back to Wolverhampton was as hard as it sounds!

**What were the biggest challenges you faced when you joined?**

**TOM:** Succession is always quoted as the number one challenge in family businesses. Ed and I are very lucky that we have a small and supportive family, so there was less chance of any shareholder conflict. My father has always been very good at not treading on our toes, and he gave us plenty of space to make our own way.

When I joined in 2010 there was huge structural change already taking place. Newspaper circulation was in sharp decline, and traditional advertising pillars were under pressure from global players such as Facebook, Google, and classified platforms like eBay, Autotrader and Rightmove. The business was still highly cash generative, but we were constantly having to take cost out of the business in order to remain competitive.

**What was it that made you want to be part of the family business?**

**ED:** Besides from our father beating the drum and his passion for the industry, it was undeniably a wonderful and stimulating opportunity, and a privilege to be part of a family legacy. I've always understood the power of the news. Everyone is

interested in some aspect of it, whether that is current affairs, sport or what is happening in your community. Our father would frequently take us around different departments to see how each division was an integral part of the newspaper jigsaw puzzle. Putting a daily newspaper together before a rapidly impending print deadline requires so many elements to fall into place under huge time pressures; it's an exciting and dramatic experience.

**What's it like working with your family? What's it like working with your brother?**

**ED:** Not many people get to say this, but it's been a pleasure working with my family in the business so far. I'm very close to my brother and we bounce a lot of thoughts and ideas of each other.

The saying "two heads are better than one" is true of me and my brother. We take comfort in the support we give each other. We also have our cousin, Paul, who is an important member of the main board and integral to managing our pension scheme. We never really had the opportunity to work alongside our father and our uncle, however, I'm honoured to be following in their footsteps. Tom and I are attempting to secure the business in turbulent times, acting as custodians before passing the baton to the next generation.

**What are the main challenges facing the business now?**

**ED:** Like most businesses at the moment, there are many. As consumer habits shift from reading traditional "paid for" print media to online, the industry must somehow convince people that news is a valuable commodity that has a price attached to it and generate income from it.

Outside of operational matters, managing the pension scheme is the company's biggest challenge, it's like the sword of Damocles hanging over us and there is only so much we can do.

**What challenges has the Covid-19 pandemic presented to the business?**

**TOM:** Along with every other organisation, the coronavirus pandemic has been the biggest challenge our business has faced in its 146-year history. In the space of a few weeks revenues fell off a cliff. Our legacy businesses (regional newspaper publishing and contract magazine printing) were hardest hit, but the Government's furlough scheme really helped us and our staff.

In terms of our diversification strategy, Covid-19 actually slowed us down. We had three targets for acquisition pre-lockdown and were at due diligence stage, but for obvious reasons these were postponed so we could focus on readjusting the existing business. However, we have now resumed the process, and hope to acquire two more businesses before the end of 2021.

Kirsty McCollum

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CASE UPDATE

# One size fits all bonds are not always best

Reasons of asset protection and tax efficiency often drive clients to create trusts as part of their overall estate planning. Trust validity is essential for this to be effective, and the recent case of *Bowack v Saxton* demonstrates just how easy it is to get things wrong.

The facts are not particularly exciting. Mr. and Mrs. Bowack each bought an offshore bond for £325,000. They attempted to place their respective bonds into a separate discretionary trust using a 'one size fits all', tick-box style trust form issued by the bond provider. For each trust, they and their daughter, Ms. Saxton, would be the original trustees.

Shortly thereafter the following deficiencies were identified on each trust form:

- 1) They were undated
- 2) The details identifying the bonds were incomplete
- 3) The signature of the third trustee, Ms. Saxton, had not been witnessed as required

Consequently, a question arose as to the validity of each trust.

Failed attempts to engage the bond provider in the matter of trust validity caused the Bowacks to resort to the Courts for a determination, which sadly meant that they had to commence litigation against their own daughter!

Fortunately for the Bowacks, despite obvious gaps in the documentation, the Judge ruled that the trusts were valid. He was satisfied as to their respective intention to create a valid trust and so points (1) and (2) above would not invalidate the trust. He also remarked that although "sloppy" the fact that Ms Saxton's signature was not witnessed did not prevent the deeds being validly made by Mr. and Mrs. Bowack as Settlers and Trustees.

The Judge described the trusts as "not everyday corner-shop transactions for pennies, but life-changing estate planning exercises which involve hundreds of thousands of pounds". Mr and Mrs Bowack were lucky in this case, which highlights amongst other things the importance of attention to detail when completing documents. Taking professional legal advice may have resulted in a bespoke, correctly executed, watertight trust document which would have saved a lot of time, stress and upset.



Neil Smyth

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# Managing risk during a pandemic

During these testing times many of our clients have taken the opportunity to look into a variety of personal estate planning initiatives that assist their wealth preservation. But while this may be an obvious starting point, advice on protecting wealth is not just the preserve of the Private Client lawyer. Neil Smyth a partner and head of our restructuring team looks at the key areas you should review.

## Reputational risk

Challenging economic conditions have intensified scrutiny from both the media and the public on private and family wealth, with behaviours under the spotlight more than usual.

This unwelcome attention concentrates the minds of individuals, families and businesses on reputational risk, impact on privacy and the potential effect on professional standing. Timely advice and decisive action can help to successfully manage such risks.

We advise on protection of information, privacy, reputation and brand, with discretion at the forefront of our approach.

## Stability and security

Resilience in the face of disruptions affecting the stability and security of businesses and investments begins with good planning. Having strategies in place to deal with such threats will help soften the impact and prepare for what may come in the months ahead.

## Relationship breakdown

Pre and post-nuptial agreements, and cohabitation agreements can prove indispensable tools in wealth planning. Certainty about the financial affairs of the family as well as the consequences of divorce or separation, provide families with much needed reassurance.

In addition, Family Constitutions can be drawn up which those wishing to share in family wealth are required to enter into. The considered use of Trusts and/or Family Investment Companies may also assist in preventing certain assets from falling into the 'matrimonial pot' on divorce or separation, with the aim of preserving wealth for future generations.

## Fraud

Recent figures suggest that wealthy individuals, their families and business interests are 35% more likely to be the target of fraud than their less affluent counterparts. With such crimes on the rise, vigilance is key.

Implementing strategies to prevent or mitigate the risk of fraud, bribery or Cyber-crime is essential, but if it is too late then swift and discreet action should be taken as soon as possible.

Our advisors have experience of advising on strategies, the worldwide recovery of stolen assets, defending those accused of global fraud and assisting those who find themselves the subject of investigations by State Agencies.

## Financial distress

Financial distress arises when it becomes a struggle or impossible to meet financial obligations. Though not necessarily of direct impact, it may affect your family, business interest or those who you interact with.

Dependents who find themselves in this situation should take specialist advice early on as to planning, protection and resolution, with a focus on minimum complexity and adverse attention.

The same applies in respect of the financial distress of others, with timely advice on the collection of monies owed, bringing business relationships to an end or managing financial relationships in a discreet and private manner to avoid unwanted publicity.

## Conclusion

Covid has brought into sharp focus threats on numerous levels for those with private and family wealth to protect. Taking appropriate advice from specialists in different legal disciplines can assist to manage, assuage or extinguish such risks.

Find out more in our [Risk management hub](#).

# 60 seconds with... Zoe Fleetwood

**Zoe Fleetwood**

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Just before Christmas 2020 we were joined by Zoë Fleetwood a leading family and children lawyer in London. Zoë is named as a leading individual by legal directories *Chambers* and *The Legal 500*. She specialises exclusively in family law, and is renowned for her particular expertise in representing children in often complex proceedings.

Zoë heads the firm's national children practice and focuses on private law children cases, often with an international element. Accustomed to working with cases which involve very serious aspects, Zoë has experience dealing with child abduction, relocation, wardship, special guardianship and adoption, including inter country adoption and Hague inter country adoptions. We had a chance to catch up with Zoe as she settles into her new role...

#### **What led you to specialise in family and children law?**

I trained at a High Street practice and sort of fell into family law. I really enjoy the huge amount of client contact and problem solving involved.

#### **Can you tell us about some of the cases you are most proud to have worked on?**

There have been so many interesting and challenging cases I have been privileged to be involved in. I represented a 14 year old who was losing her life to cancer and wanted to be cryogenically frozen. There were many considerations for the court; the parents, the hospital and The Human Tissue Authority, as to what was possible. The careful and humane approach of all the professionals involved was remarkable.

Another case that I particularly remember was when I acted for the father in an international relocation case, which still remains the lead authority on these type of cases. This precedent

sets out that the correct approach to be adopted by the court in assessing whether a child's welfare is best met by a relocation, or not, is to carry out a 'holistic evaluative analysis'. I enjoyed the rigorous approach taken in these cases to what are fundamentally life changing decisions for children and their families.

#### **What drew you to Mills & Reeve?**

It is well-known that Mills & Reeve is a stand out employer in terms of staff wellbeing and valuing diversity. The firm's dynamic practice areas seemed to be a good fit for my children practice which frequently contains families whose situations are at the cutting edge of law reform and human rights.

#### **What's the most important aspect of your job?**

Listening.

#### **What is the best piece of advice you have been given?**

Don't buy too many clothes.

#### **What is the best piece of advice you could give a client?**

Play the long game. You need to preserve your life-long relationship as a co-parent.

#### **How has it been joining a firm during lockdown?**

I have received such a wonderfully warm welcome by so many it has been really lovely. That said, I do miss seeing people, colleagues and clients, in person, as we are meant to.





Matthew Hansell

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# What's down the line for capital taxes?

The Chancellor's 2021 Budget was very much one of economic stimulation and for growth. We are not yet out of the pandemic (although hopefully the end is in sight!) and the Chancellor knows that to increase taxes too soon would cut off the recovery. However, there will come a time when the Chancellor will introduce tax rises to help pay back some of the huge sums borrowed during the past year. But, what might this mean for Capital Taxes in the future?

Some hints are contained within some recent reports. The first two were on potential changes to Inheritance Tax and were by the Office of Tax Simplification and by an All Party Parliamentary Group. For a detailed view on these please [see our webinar](#).

Some of the more startling highlights are:

- Abolition of the principle of potentially exempt transfers (PETs), where unlimited gifts can be made to an individual which are exempt from IHT provided the donor survives by seven years or more. This would be replaced by an annual gift exemption of £30,000
- Pension Funds would be taxed as part of your estate and become subject to IHT
- Business Relief, Agricultural Relief and most other Reliefs and exemptions would be abolished but Spouse Exemption and Charity Exemption would be retained

The OTS also issued a report on CGT. [See our webinar](#) for details of the changes, our view on the likely implementation and timing of these and steps we recommend you should consider. A few highlights:

- CGT Rates to be aligned with income tax rates (ie potentially a significant increase)
- Re-introduce a Relief to address gains caused by inflation
- Retained profits in small companies to be subject to income tax rates on a sale or liquidation
- Reduce annual exemption to £4,000 or less

- No uplift on death if no IHT payable due to a relief or exemption applying (and in which case the beneficiary would inherit the base cost of the deceased and there would be a CGT charge when they subsequently disposed of the asset)
- Abolish Entrepreneurs' Relief and replace that with some form of Retirement Relief

We believe it is a racing certainty that CGT rates will go up, and the increase could be significant if the rates are harmonised with those for income tax. The lesson will surely be to bring forward gifts and disposals so as to trigger a CGT charge at what will, with historic hindsight, be considered to be relatively low rates.

It is harder to have any certainty around future changes for IHT. However, it is worth remembering that the current regime is very favourable in the sense that lifetime gifts can be made (potentially exempt transfers or PETs) which are completely free of inheritance tax once you survive those gifts by seven years. If the APPG proposals were accepted and introduced that rule would disappear and annual gifts before tax would be limited to £30,000 only.

The lesson again must be to take advantage of the current, relatively favourable, IHT regime whilst you know that that opportunity still exists. One thing for certain, with the Chancellor's need to raise taxes, is that the regimes are likely to get tougher, and with the Chancellor raising significantly more tax through both CGT and IHT.



**Nigel Shepherd**

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# No fault divorce

**After 30 years of campaigning by Resolution, the organisation that champions a non-confrontational and constructive approach to separation and divorce, and our own Nigel Shepherd, long-time partner and now consultant for Mills & Reeve, “no fault divorce” is here.**

The Divorce, Dissolution and Separation Bill gained Royal Assent on 25 June 2020. With it came the biggest change to our divorce laws since 1973. From Autumn 2021, separating couples will no longer have to assign blame through adultery or unreasonable behaviour, or otherwise live apart for up to five years in order to obtain a divorce. Our current divorce laws have been criticised for many years for being outdated and unnecessarily stirring up conflict between couples.

Under the new laws, a divorce will be granted purely on the ground that the marriage has irretrievably broken down without any need to “prove” how or why the marriage has broken down. Not only do the new laws do away with the so-called blame game, for the first time couples will also be able to apply jointly for a divorce where the decision to separate is a mutual one.

The momentum to change the law was no doubt accelerated by the much publicised 2018 Supreme Court case of *Owens v Owens* where Mills & Reeve represented the only third party intervener, Resolution. When Mrs Owens sought to divorce Mr Owens on the basis of his unreasonable behaviour, Mr Owens defended the divorce, arguing that the examples of his behaviour that Mrs Owens was relying on were not strong enough to justify a divorce. He said she had failed to show that he had behaved in such a way that she could not reasonably be expected to live with him.

Despite every judge involved in the case acknowledging the marriage had come to an end in all but name and having huge sympathy for the wife, Mrs Owens was unable to obtain her divorce forcing her to wait until February 2020 to obtain a divorce based on five years’ separation instead.

The resulting pressure on Parliament has culminated in a radical overhaul of our divorce laws, a change welcomed by all family lawyers.





**Sarah Hunter**  
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## Family fortunes

A case which involved a family torn apart by a dispute over a farm attracted a good deal of press coverage last year. It highlights the complicated issues facing family-owned farms, and what farming families can do to avoid similar problems.

88 year old Marian Horsford mounted a legal challenge over the 540 acre family estate in Huntingdon, Cambridgeshire – which is worth £6million – when her 54 year-old son Peter laid claim to the entire land, insisting he had been promised it would “all be his one day”.

Marian and her estranged husband, Davis, had bought the majority of the farm in 1967 and had worked the land together. They had three children of whom only Peter was actively involved with the farm. He had joined his parents’ farming partnership in 1987.

Following Marian and Davis’s separation after 50 years of marriage, Marian and Peter entered into a written partnership agreement. The agreement – which was expressly said to supersede any earlier agreements – included retirement provisions.

The dispute began when Marian served her notice of retirement. Peter served a notice to purchase his mother’s share. A valuer assessed Marian’s share to be worth £2.52 million but Peter did not pay his mother. Marian was left with little choice but to bring court proceedings to get her money.

As well as disputing some elements of the land valuation and who should pay the valuer’s fees, Peter defended the claim and issued a counterclaim for proprietary estoppel on the grounds that he had been promised by his parents that he would inherit the entire farm on their deaths.



Peter argued that he had been assured by his parents - since childhood - that the farm would be his on their death and that he had been encouraged to work on it and to attend agricultural college to ensure he would be best placed to manage it. However, perhaps the most relevant point in this case was the effect of the written partnership agreement. Peter's proprietary estoppel claim related to assurances and promises that had been made prior to the written partnership agreement. The agreement made no reference to these promises and, of course, had been expressly stated to supersede any and all earlier agreements.

The judge was not convinced by Peter's argument that he did not need to buy out his mother's share of the partnership because the farm had been promised to him. Rather, the judge found that Marian was fully entitled to retire under the terms of the partnership agreement and that she should receive her £2.52million.

Peter's counterclaim was dismissed and he was ordered to pay his mother £2.52million over the next five years.

It is not unusual in farming families for members of the family to work long hours for a low wage, sometimes over many years because one day, the farm will be theirs. Indeed, proprietary estoppel cases are becoming increasingly common in the farming sector.

With the increased value in farmland and fewer, larger farming enterprises, a family farm is often worth fighting over. And the high profile nature of these cases – farming cases invariably involve an interesting back story with soap opera like storylines which attracts press coverage - informs potential litigants of the options open to them. Apparently it was reading about Eirian Davies, the so-called "Cowshed Cinderella" that led farmer Lucy Habberfield to make a successful £1.17million proprietary estoppel claim against her mother.

But what lessons can other farming families learn from these unhappy situations?

- Disputes often arise when succession has not been provided for or clearly communicated to all the family, or an event occurs which turns the expected course of events on its head
- There is no substitute for sitting down and talking about the future and understanding the needs and expectations of all those involved. This is not necessarily a one-off conversation; needs and expectations may change over time
- A mutually agreed succession plan helps avoid future disputes.
- Written agreements and written partnership agreements help achieve clarity and certainty
- An up to date Will and advice about tax planning is essential

Succession planning is not always easy but finding the time to do it could save farming families a significant amount of stress and turmoil in the years ahead.



### What is proprietary estoppel?

Estoppels operate where one person has been persuaded to do something on the basis of a promise made by another person, and then that other person tries to retract the promise. Where an estoppel is established, it will usually bind the person to their original promise. There are different types of estoppel.

Proprietary estoppel involves the acquisition of an interest in the property of another person. There are three requirements for a claim for proprietary estoppel:

- there must be an assurance or promise given
- that promise must have been relied upon by the person claiming proprietary estoppel
- that reliance must have been to their detriment



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# Attention trustees! New regulations now in force

**Until recently, only trustees with a UK tax liability had to register their trust with HMRC Trust Registration Service.**

The law relating to the registration of trusts with HMRC trust registration service has now changed. As a result, many trusts which were not previously caught will now have to register even if they are not liable to UK tax.

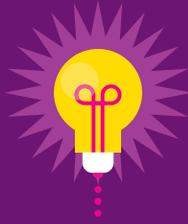
Although the HMRC software is not yet in place to allow for registration of non-taxable trusts, the latest updates from HMRC suggest that it will be by summer 2021. Trustees will then have a year from this date to register their trusts.

If you are a trustee, but you are unsure whether your trust will have to register, please do make contact with us sooner rather than later. Our team of specialist trust practitioners will be able to advise you on whether the new rules apply to your trust.



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