

## 10 years on...

### Title Research CEO Tom Curran reflects on his first decade at Title Research

When I joined Title Research in the spring of 1998, I recall someone saying to me "Wills and Probate, now there's a dry subject." I soon came to realise, nothing could be further from the truth! And here's why:

#### Changing landscape

Thumbing through past editions of *entitlement*, it's astonishing to see how much has happened in our field in just one decade: introduction of a transferable nil-rate band and Money Laundering Regulations, the advent of Civil Partnerships, The Mental Capacity Act 2005, and now a proposed European will register (see Richard Frimston's excellent piece on how this could work in England & Wales in this edition) as well, of course, as the challenges and opportunities presented by "Tesco Law".

#### The world has shrunk...

10 years ago the world seemed, figuratively speaking, a much bigger place. Cases which would have been insoluble because of geography 10 years ago rarely pose a problem now. We can find beneficiaries almost anywhere in the world - just look at the case studies on the back page to see what's possible. There is so much human interest in the cases we solve for

our clients and every one is different, presenting its own unique challenge that our cumulative experience can resolve faster than ever before.

#### We can do more for you...

A decade ago we were only finding missing beneficiaries but now we can help heirs receive more of their rightful entitlement, having added asset verification, valuation and repatriation services to our portfolio.

#### And more cost-effective and efficient than ever before...

Shortly after I joined Title Research, we stopped taking instructions to find beneficiaries on a percentage, or "contingency fee", basis. Our clients tell us that a transparent and accountable recorded-time-and-disbursements costing method is preferable as well as being consistent with their own approach - and we help them avoid the conflicts of interest inherent in the "contingency fee" approach. In addition, of course, our fees represent excellent value for money when compared with old style percentages and enable the PRs to preserve more of the estate for the beneficiaries than would be the case under the "contingency fee" method.

#### Here's to the future

So what will the next 10 years bring? Well, it would be surprising if the estate administration landscape did not change significantly between now and 2018. But death, taxes, and Title Research are still a safe bet...



Tom Curran,  
Chief Executive of Title Research

## Win a copy...

Finance and Law  
for the Older Client



Endorsed by the Society of Trust and Estate Practitioners, this looseleaf volume is designed to help financial advisers, lawyers and accountants advise their elderly clients on a range of financial and legal topics. It contains easy to access information that is both detailed and practical and a strong emphasis is placed on financial matters, such as pensions, gifts and taxation. Chapters include Will Drafting and Living Wills, Capacity and Community and Residential Care.

To purchase a copy, contact Lexis Nexis customer services on Tel: 0845 370 1234 or email [customer.services@lexisnexis.co.uk](mailto:customer.services@lexisnexis.co.uk). The volume retails for £212.

We have one copy of the book to give away. For a chance to win it, just complete the panel on the mailing cover sheet accompanying this newsletter and fax it back to us on 020 7549 0949. Closing date is 31st July 2008. The winner will be notified after this date by email.

Good luck!

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# Legal update

## The EU and the registration of wills

*"Technology does now mean that the electronic registration of wills can be extremely simple and straightforward."*



**Richard Frimston** qualified as a solicitor in 1979, as a Notary Public in 1995 and has been a partner with Russell-Cooke since 1982 and head of private client since 1993. Richard has particular expertise in dealing with multi-jurisdictional estates, especially France, and is a member of the British Institute of International and Comparative Law, the International Academy of Estate and Trust Law, STEP and

ACTAPS. He is chairman of the STEP Cross-Border Estates Group and a Committee member of STEP London Central Branch. He is Law Society representative to the European Committee of the Union Internationale du Notariat (UIN) and sits on the Law Society International Issues Committee.

### 25 years later...

#### Is it time for England & Wales to think again?

Some EU member states have a centralised system of registering wills which, in the case of Spain and Portugal, is longstanding. Although a few EU states still do not have any register, most now do have some form of registration for wills, whether centralised or not.

In Germany, wills are filed with a notary or a court, which informs the civil status officer for the place of birth of the testator so that the will's existence can be noted in the margin of the birth register entry. It is therefore possible to discover the existence of a will by contacting the registrar in the place of birth of the deceased, if this is known. Germany is now looking at converting its existing manual register into electronic form.

In the United Kingdom, wills have historically been held by solicitors, or at the testator's bank, and now some will writers state that they also offer this service. Although it is possible to lodge original wills for safekeeping with the Probate Registry under the Wills (Deposit for Safe Custody) Regulations SI 1978/1724 and section 126 of the Supreme Court Act 1981, this rarely happens in practice, which means that wills can be very difficult to trace. With increased mobility, the problem is now becoming serious. Advertisement in the legal press is often seen, but the results this actually produces must be limited.

### Basel Convention

The establishment of national systems for will registration, and communication of information between relevant persons responsible for these registers, was encouraged by the Council of Europe within the framework of the Basel Convention of 16 May 1972 on the Establishment of a Scheme of Registration of Wills – European Treaty Series, number 77. The Convention is in force in Belgium, Cyprus, Estonia, France, Italy, Lithuania, Luxembourg, Netherlands, Portugal, Spain and Turkey.

#### Article 4 differentiates between:

- Notarial wills which **must** be registered; formal wills declared to a notary, a public authority or any person authorised by the law of that State to record them, as well as other wills deposited with such an authority or authorised person, **with** a formal act of deposit having been established; and
- Holographic (handwritten) wills which have been deposited with a notary, a public authority or authorised person, **without** a formal act of deposit having been established, subject to that law permitting such deposit. In this case the testator may **refuse** to allow registration (provided that the local law does not prohibit such refusal).

The Convention although signed and effected by sections 23-25 Administration of Justice Act 1982, has never been brought into force in the United Kingdom. Germany and Denmark and more recently the Ukraine have also signed, but not yet ratified, although the Ukraine may do so soon.

### Validity & confidentiality

There is no link between validity and registration. Non-registration does not invalidate a will. Article 10 makes it clear that the Convention does not affect provisions which relate to the validity of wills.

Confidentiality is also paramount. Article 8 makes it clear that registration shall be secret during the lifetime of the testator. On the death of the testator any person may obtain the information registered on presentation of an extract of the death certificate or of any other satisfactory proof of death. It is not the will or its contents that are registered but only the information set out in Article 7;

- The names of the testator;
- Date and place (or, if this is not known, country) of birth;
- Address or domicile, as declared;
- Nature and date of the will;
- Name and address of the notary, public authority or person who received the will or with whom it is deposited.

The contents of the will never reach the register.

Under section 23, the Principal Registry of the Family Division is the relevant registration authority for England and Wales and under section 24 is the relevant national body for the UK under the Basel Convention. Section 25 permits the President of the Family Division (with the concurrence of the Minister of Justice) to

make Regulations for England & Wales by way of Statutory Instrument as to the conditions for the depositing of a will, the manner of and procedure for the depositing and registration of a will, the withdrawal of a will which has been deposited; and the cancellation of the registration of a will; and permits the Minister of Justice to make Regulations as to the manner in which the Principal Registry of the Family Division is to perform its functions as the national body under the Basel Convention.

The Conference of Notaries of the European Union (CNUe) has undertaken to connect the registers currently in existence in some Member States. An initial trial has already taken place involving the Belgian and French registers. The Association du Réseau Européen des Registres Testamentaires (ARERT) [the European Network of the Registers of Wills (ENRWA)] has proved a considerable success and during 2008 will be extended to the Netherlands and Slovenia. Other states are very likely to follow suit.

## Connecting registers

It should be stressed that ARERT is a mechanism for registers to be connected for search purposes, and it is not envisaged that one supra-European register would be created. The majority of enquiries into a register are purely local; in France, for example, out of perhaps 450,000 enquiries, only 5,000 enquiries relate to cross border issues. It is not necessary for a state to have ratified the Basel Convention in order to join ARERT.

## Harmonisation

As and when Brussels IV (the proposed Regulation harmonising Private International Law in the field of Wills and Succession) comes into force, it is very likely that some recognition of the existing ARERT model will become the norm. It may become the place where other facts relevant to succession would also be registered; matrimonial property regimes, conditional gifts, inheritance contracts, relevant insurance contracts and possibly even relevant trusts.

The traditions of the civil law mean that, in practice, it has been the European notarial professions that have developed the registers in response to the needs of their clients. On 1 January 2007 the Dutch Royal Notary Body took over responsibility for the running of the Dutch will register from the Dutch Ministry of Justice. Technology does now mean that the electronic registration of wills can be extremely simple and straightforward. Estonia and New South Wales are immediate examples.

## Time for a register in England & Wales

I do believe that it is now time for professionals in England & Wales to press the President of the Family Division and the Ministry of Justice to establish an electronic will register under the Basel Convention. This does not require primary legislation but a statutory instrument to implement sections 23-25 Administration of Justice Act 1982. Following the Dutch model, delegation to an appropriate non-profit making body,

controlled by a suitable mix of the Law Society of England & Wales and STEP could establish such a register for the use of those professionals who would see the advantage for their clients. It would also need to be open to individual testators to register direct.

I believe that ARERT would be delighted to see a voluntary will register for England & Wales joining ARERT, on the basis that any testators with cross border issues would see the benefits in the existence of their wills being voluntarily registered not just in England & Wales but also in other relevant member states and thus being locatable on a Europe-wide basis. Other testators, with no cross border issues, might also consider voluntary registration on a purely English internal basis. ARERT does genuinely wish to encourage the establishment of new registers and the widening of ARERT throughout Europe.

## Costs

The costs of registration significantly reduce as the system grows. The cost of registration in Belgium (where usage is smaller) is currently €120, whilst in France it is €10 and in the Netherlands €8. Enquiries are usually free.

## Competitive pressure

With the prospect of the Brussels IV White Paper being published by the middle of 2009 and perhaps in force by 2012, pressure for an EU-wide system of will registration will grow. If clients can register their wills by lodging them with notaries in France or Spain, but not in England & Wales, they may start voting with their feet. To compete, we need to be able to offer a form of registration here.

## The necessary mechanism

If the Family Division and the Ministry of Justice can be persuaded to consider the issue seriously, it may also be worth considering the ratification of the Washington Convention on International Wills 26 October 1973. The Convention was signed by the United Kingdom and effected by sections 27 & 28 Administration of Justice Act 1982 but has also never been brought into force. It attempted to establish a form of international will, which would be universally recognised. An international will must be signed by two witnesses and a notary or solicitor and signed by a testator. It can be in any language and there is a form of certificate for the solicitor or notary to give to validate it. The convention is in force in France, Belgium, Italy, Portugal, Ecuador, the Canadian English Provinces, Libya, Niger, Slovenia and Bosnia and Herzegovina and thus for these jurisdictions the international will is recognised. Under the convention, notaries are usually the relevant lawyer to sign a certificate.

If the Ministry of Justice could be persuaded to ratify (which again would not require primary legislation) then it could be provided under Article VII of the Washington Convention that international wills made in England must be registered on the ARERT register. The Ministry of Justice might feel that this would also provide a benefit to those Commonwealth member states that have ratified.

Even if the Ministry of Justice does not agree to ratify the Basel or Washington Conventions, it would still be open to the profession to establish its own independent voluntary register for the benefit of its members and their clients, which could still be linked in to ARERT and provide the cross border benefits.

From our preliminary discussions, some others agree with me that the time may now be ripe.

It would be very useful to have as much feedback as possible, and the Law Society has already conducted an e-survey for this purpose. I hope that others may see the benefits of these proposals, and that we can establish a joint Law Society / STEP working party to establish the feasibility of such a project.

*Do you agree with Richard? Please take part in our reader survey on the faxback sheet that came with this edition of entitlement.*

## Online prize draw

*Don't forget to enter our online competition. We have a copy of Matthew Hutton's "Tolley's UK Taxation of Trusts - Seventeenth Edition" to give away to the first name pulled out of the hat.*

*To enter, just go to our website at [www.titleresearch.com](http://www.titleresearch.com), register with the site, if you haven't already done so, and then follow the link to the competition from the home page.*

*Closing date is 31 August 2008 - Good luck!*



## And the winner is...

*Congratulations to Marion Neeves of Jones and Co solicitors in Bawtry, Doncaster, who won a copy of Tolley's Administration of Trusts in the spring edition entitlement competition.*

# Research update

One of the most fascinating aspects of our work is that at the outset we have no idea where our research will lead us. Here is just a small selection of the many and varied cases we have solved for our clients in recent months.



## Some you win, some you lose ⑥

An executor had come across a pile of share certificates in the deceased's effects and approached us to see whether they were worth anything. We established that two of the holdings were now worthless, but registrars in Trinidad & Tobago confirmed that the holding in Ansa McAl was still valid, although two share certificates were missing. The Singapore registrars of Bukit Sembawang confirmed that this holding was also valid, although still registered in the name of the deceased's mother. We arranged for all the necessary paperwork to be signed and delivered to the courts in Trinidad & Tobago and Singapore and resealed the English grant of probate in both jurisdictions. We subsequently sold the shares and forwarded the funds to the executor - some £15,000 in total.

## From Kidderminster to Kiev ⑦

Olivia Busmark died testate in Worcestershire leaving a residuary legacy to her stepson and pecuniary legacies to her niece and her husband. Our client needed current addresses in Ukraine, proof of identity and bank details for all three before transferring money into their accounts. We made contact with the beneficiaries and provided the necessary information to our solicitor client, all within 3 months.

## All abroad ⑧

Our solicitor client was already in touch with all the paternal heirs of his Scots intestate deceased, and instructed us to trace the maternal family. The research revealed that one maternal uncle had emigrated to South Africa and, having married in Cape Town, had three children. An aunt had emigrated to Canada and subsequently to New Zealand, where she married and had a child. Another aunt had settled in Vancouver, married and had three children, one of whom had relocated to Washington, USA. Another aunt had also emigrated to Canada, where she married and had six children. In total, our case consultant located all 34 surviving beneficiaries in Canada, USA, New Zealand and South Africa - crucially obtaining all the documentary evidence our client needed to complete the administration.

## Pieces of eight ①

Following the death of the life tenant, we were instructed by our client to locate two of eight nieces and nephews named in a will trust created in 1956. Both ladies were now thought to be living in Michigan, USA. We quickly discovered that one niece had died just 18 days before we were instructed, and the other some six years earlier. Under the terms of the will trust their estates would benefit, so we located their personal representatives in America and reported back to our client, all within a few weeks of taking instructions.

## Heir apparent ②

Our solicitor client was not in touch with any of his intestate deceased's next of kin, so instructed us to locate someone entitled to the grant who could instruct him in the administration - without exposing him to unrecoverable costs or charging the located heirs a commission. Happy to oblige, we established that the statutory next of kin was in the class of the siblings of the whole blood and, where predeceased, their issue. First we located a niece of the deceased who agreed to act as administratrix and instruct our client. Our subsequent research identified and located a further 10 beneficiaries - one of them in Mozambique.

## Under cover ③

Sometimes we're asked to conduct research without directly approaching the subject of the enquiry. In one particular case, a trustee asks us every year to report on a discretionary trust beneficiary in France. Our agent in that part of the country makes discreet enquiries and, thankfully, this year we were able to confirm that the subject is doing even better than last year.

## Out of sight... ④

Our client needed help in locating a missing legatee named in a will. We had very little information to go on - only a last known address in Zimbabwe - but we still managed to find him, despite having the beneficiary's wrong middle name and a partially incorrect address.

## Second bite of the cherry ⑤

One of our case consultants currently has two ongoing cases, which are entirely unrelated, apart from the remarkable coincidence that two people are beneficiaries to both estates - two brothers who are maternal first cousins once removed on one estate, and paternal first cousins on the other estate. Both brothers were astonished and very pleased to be contacted by us - twice!

To reseal grants, register deaths and transfer bank accounts or property, verify and value share portfolios, obtain duplicate share certificates or letters of indemnity, locate missing beneficiaries, obtain birth, adoption, marriage, registered civil partnership, death certificates, copies of decrees absolute, registered civil partnership dissolutions, wills and grants, carry out bankruptcy searches or find missing title holders - worldwide, contact:

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