

Entitlement

Summer 2019

Risk management:
How insurance can help

Plus:

- Heledd Wyn explores **mental capacity and the individual**
- **Brexit:** companies transfer UK operations to the EU
- Challenges in estate administration: **How to best advise your clients**



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Welcome to Title Research's quarterly news digest – **Entitlement.**

The official start of summer has arrived and so has the summer edition of Entitlement.

In this issue, we welcome an article from Jeff de-Rhune of Trust & Probate Insurance. Jeff discusses how insurance can help you mitigate risk in estate administration. With Jeff's knowledge and experience of insurance within the industry, this article is definitely a must-read.

We are also pleased to feature a discussion on 'mental capacity and the individual' from Heledd Wyn, Associate Director at Gregg Latchams. One of Heledd's specialisms includes making applications to the Court of Protection on behalf of those who lack the capacity to make decisions for themselves - therefore Heledd is the perfect person to discuss this topic.

We also explore how the ever-looming Brexit is causing global and British companies to move their assets and offices abroad, boosting their EU operations.

Additionally, we share how you can best advise your clients when outsourcing specialist aspects of estate administration.

As always, we continue to support our solicitor clients and travel all across the country to meet them face-to-face at conferences. We are pleased to be sponsoring the Professional Conferences series of 'Wills, Probate and Advising the Elderly' conferences this year. Speakers such as Professor Lesley King, Gill Steel and Helen Clarke are all renowned for their informative and practical style of presentation.

Title Research offers fast, fixed fee access to specialist genealogical research and asset repatriation services. The services available to you include dealing with North American and UK shareholdings, locating missing beneficiaries, reconstructing family trees and much more.

Our Client Services Team are the first point of contact to discuss how we can help accelerate the estate administration process. Call +44 (0) 345 87 27 600 or email info@titleresearch.com for more information.

We hope you enjoy this edition of Entitlement!

Anthony Allsopp
Head of Business
Development



Risk management: collecting, gathering in and administering: **how insurance can help**

By **Jeff de-Rhune**, Trust & Probate Insurance

Jeff de-Rhune is a solicitor and Director of Trust, Probate & Estates at Trust & Probate Insurance – part of Legal & Contingency Ltd, a specialist insurance intermediary and Lloyd's of London Coverholder.

www.trustprobate-insurance.co.uk

Personal Representatives (PRs) are under a duty to collect, gather in and administer according to the law, all the real and personal estate of their deceased. In many cases, this might be a straightforward exercise. The chances are, however, that readers will have been professionally involved in at least one estate where it has not always been plain sailing.

First things first: is the estate testate or intestate? If there's a Will, are the PRs sure it's the deceased's last Will? If the estate

seems intestate, but friends and/or relatives claim that there's a Will somewhere, what can be done? A missing Will indemnity could help by enabling the Executors to prove the existing Will, or the Next of Kin to extract Letters of Administration. If a Will (or later Will) turns up after the estate has been distributed, the "old" PRs will be indemnified in respect of any sums due to new beneficiaries named in that Will.

So, once we know whether we're proceeding per the terms of a Will or as on intestacy, what about collecting, gathering in and administering? A typical estate will own at least a few stocks and shares and these will need valuing and, usually, selling. It's not so unusual for share certificates to go missing, which in itself is not such a big problem but can be time consuming to deal with. Registrars will usually request an indemnity from the PRs. If the holding is modest, the PRs might be happy to give such an indemnity themselves. Where the holding is substantial, however, the registrars may ask for an acceptable insurer to join in the indemnity by countersigning it.

Similar considerations apply with regard to life assurance policy documents. Sums assured are usually at least in the tens of thousands of pounds, if not greater. As with share certificates, should the policy documents go astray, the life company may request an indemnity before paying out. The PRs can obtain insurance which will indemnify the life company for loss incurred as a result of paying out the proceeds of the life policy without the production of the original policy documents. This can avoid the need for the PRs to provide an indemnity direct to the life company and thereby incurring further potential personal liability.



When preparing for distribution, have the statutory section 27 notices been placed? If not, consider insuring against unknown creditors coming forward at a later date. Likewise, are the PRs sure that there are no potential Inheritance Act claims? Insurance could expedite matters and offer peace of mind against any such unknown claims.

Moving on to distribute the estate, do the PRs know who, and where, all the beneficiaries are? Once they've taken all the reasonable steps necessary to locate missing heirs and have drawn a blank, a missing beneficiary indemnity could help. Cover is available where there are

known beneficiaries who can't be found, or where a genealogist's report indicates there are no known missing heirs but cover is required for peace of mind prior to distribution.

When instructing a genealogist in such cases, care should be taken to ensure that the genealogist's research will be suitable for the purposes of obtaining insurance in respect of any missing beneficiaries or for peace of mind cover. An acceptable professional probate genealogist's report will be an important part of the insurer's underwriting process and will form part of the insurer's best practice approach to mitigating risk.

Insurance cover will normally last in perpetuity and the beneficiaries of an estate can be indemnified as well as the PRs. Escalator clauses can be included to reflect potential interest on a beneficiary's share of an estate, in the event of a claim.

Underwriters will always try to provide a bespoke solution for other problems that crop up and cover can often be offered to fit the particular circumstances of a case, no matter how unusual.



HELEDD WYN EXPLORES

Mental capacity & the individual

ABOUT HELEDD WYN, GREGG LATCHAMS

Heledd qualified as a solicitor in 2006 and since then has worked in a variety of roles where she has developed expertise in estate planning, long term care and asset protection. Heledd also has experience in Inheritance Tax planning, NHS Continuing Health Care Funding and complex Court of Protection applications.

Heledd provides full consultancy services relating to estate planning, long term care and asset protection. She also specialises in making applications to the Court of Protection on behalf of those who lack the capacity to make decisions for themselves. Her clients range from business owners to individuals and is happy to have discussions with anyone to see if she can help.

With the 10 year anniversary of the Mental Capacity Act 2005 (MCA) behind us – let us take a look at the impact of this legislation on the lives of those whose capacity is impaired – through illness or injury.

The Mental Capacity Act 2005 is underpinned by five key principles:

1. Capacity must be presumed until shown otherwise
2. People should be supported to make their own decisions wherever possible
3. It is perfectly acceptable to make unwise decisions where there is capacity to do so
4. If it is deemed that there is a lack of capacity, then any decisions that are made on behalf of the individual who lacks capacity must be made in their best interests
5. Where a decision is being made in best interests, then that decision must be made in the least restrictive manner possible

The MCA also introduced Lasting Powers of Attorney for property & financial affairs and health & care issues, as well as formalising the new Court of Protection and creating the role of the Public Guardian.

One of the most important aspects of the MCA is that capacity is task specific. Someone may not understand that they own a property and how to manage a large financial portfolio – but will still be able to make their views clearly known about how they want to live their life on a day to day basis. A phrase taken from the dementia awareness community is that “every dementia is different because every person is different”. This applies to anyone who has impaired capacity and it is really important to abide by the principles of the MCA when considering whether this person has capacity to make certain decisions.

The principles behind the MCA are extremely important to bear in mind when working with individuals who have an illness or injury and are making decisions about their estate planning.

Do they want to make Lasting Powers of Attorney? Perhaps they want to update their Will. They may even want to do both.

However, it is important to remember that when it comes to assessing capacity, the principles of the MCA do not supersede the test for capacity to make a Will. This is the rule set out in ‘Banks v Goodfellow (1870) LR 5 QB 549’ which confirms that the person making the Will:

- understands the nature of making a Will and the effect of the Will when it comes to be administered
- understands the extent of their assets (including property) which is being disposed of under the Will



- understands the people who might reasonably expect to receive assets under the terms of the Will; and finally

- not be experiencing any ‘delusion of the mind’ that would prevent them giving assets to these individuals.

So, making a Will is something where capacity needs to be considered. It is task specific and one that comes with its own capacity test.

It is interesting that with such a change in the law about capacity to become more task specific, that there is still such a strict test for making Wills.

For anyone working in this field – it is important to balance the competing areas of mental capacity tests and how they apply to the individual depending on their particular requirements. However, while the ‘Banks v Goodfellow’ test only applies to Wills, the principles of the MCA are like a thread which is woven throughout all the interactions we have with our clients. It is only going to become more complex in the decades to come.

Challenges in estate administration: **How to best advise your clients**

By Title Research

When you're handling estate administration on behalf of your clients, you may need to outsource specialist aspects of the process from reconstructing a family tree on intestacy to administering overseas assets. It can sometimes be difficult to approach this subject with your client as they could be worried that it will slow down the process and cost too much. That's why this article explores how to best advise your clients when involving a third-party in the administration of an estate.



Speed up the process

As you're aware, outsourcing the specialist aspects of estate administration can speed up the process and allow distribution sooner. Providers of these services – such as Title Research – have the knowledge and experience to make the task or project progress more smoothly and quickly than if you were to carry out the work yourself.

For example, at Title Research we deal with North American shareholdings on a daily basis and are aware of all the potential pitfalls that can catch people out. Most of our clients do not see these problems as frequently. When we are reconstructing a family tree, we know what to look out for and can navigate the ever-increasing complexities in family make up to ensure that all the entitled beneficiaries are accounted for.



In an unregulated industry, look to other accreditations

There is a wide range of choice for providers of specialist services. Your client could make a decision based solely on price, but in an unregulated industry, such as for genealogy and people tracing, looking for other independent accreditations can be very helpful.

For example, does the provider hold the internationally recognised ISO accreditation for quality and information security? What arrangements do they have if they need to engage a third party outside of the UK? Do they hold professional indemnity insurance? These are all points to consider that may affect the advice you give to your client.



How transparent is the provider's pricing - will it offer good value for the work involved and help maximise the estate for beneficiaries?

Finally, it is worth considering the transparency of the price you are being quoted. If it is a fixed price for a piece of work, check what is and is not included within this. For example, is the use of databases included or is this charged as an additional disbursement? If a time and expense quotation is provided, ask what the hourly rate being used is likely to be. Title Research applies various hourly rates depending on the experience level of the person undertaking the work – much as you may do within your firm – and can inform you of the average rate used.

Contingency or commission fees can seem attractive to lay people, as it is often presented in a way that suggests that it doesn't cost the estate anything. However, you may wish to advise your client of the STEP guidelines published on this subject which urge caution. It is also worth calculating the approximate fee that would be paid using a percentage fee and comparing that to an hourly rate or fixed price quotation.

Title Research provide fast, fixed fee access to genealogical research and asset repatriation services, making us the safe choice for the resolution of complex estate administration cases. If you want to find out more, get in touch with our Client Services Team by calling +44 (0) 345 87 27 600 or emailing info@titleresearch.com.



Brexit: companies transfer UK operations to the EU

By Title Research

The proceedings of Brexit have been making headlines since June 2016 and almost two years on, the uncertainty of when and how the UK will withdraw from the European Union (EU) remains high.

We don't know when and we don't know how, but what we do know is local and multinational companies are reacting in a big way. All across the UK, global and British companies are moving assets and offices abroad, boosting their EU operations. These significant changes to business operations raise new considerations for your client's estates. In this article, we will discuss the potential impacts these departures have on estates and highlight how Title Research can assist at the point of estate administration.

Aviva Insurance, the Royal Bank of Scotland (RBS) and Barclays Bank are just a few companies taking action to transfer UK operations to the EU market. In February of this year, England's High Court gave Britain's second largest and Scottish incorporated insurer, Aviva, approval to transfer around £7.8bn in assets to Ireland. In approving this transfer, Justice Richard Snowden said: "The evidence of [the transferor] is that the uncertainty over the Brexit negotiations means that if it delayed further and did nothing, there is a real risk that substantial numbers of policyholders would be materially

prejudiced in event of a hard [no-deal] Brexit by the loss of [the transferor's] EU passporting rights". Mr Justice Snowden's view is that a hard Brexit would mean Aviva couldn't service policies through its overseas branches or more concerning, pay policyholders' claims in the EU.

Earlier this year, RBS lodged an application with Scotland's Supreme Civil Court to move a third of its Investment Bank clients and £6bn worth of assets to Amsterdam. Less than two months following RBS's Court approval, Barclays Bank applied to transfer £166bn worth of assets from the UK to Ireland. The High Court has approved Barclay's 'Part VII Scheme', whereby Barclays will use their "existing licensed EU-based bank subsidiary to continue to serve our clients within the EU beyond 29 March 2019 regardless of the outcome of Brexit". The 'Part VII Scheme' affects non-UK resident Private Banking and Corporate and Investment Banking clients. If your client is a UK joint account holder, there is potential that the account is in the Part VII scope to transfer to the Irish operations¹. In these instances, Barclays has confirmed they will "continue to provide services to you as a UK resident in relation to your joint account from BBI [Barclays Bank Ireland] at no extra cost".

Should Brexit proceed, when administering future estates we would advise asking your client whether the deceased lived in the

EU for any time and whether they have accounts, policies or shares with any of the organisations transferring their UK operations. A list of these companies can be found online by [searching here](#).

Administering estates with foreign assets is complex. Each jurisdiction has its own set of rules and regulations that must be followed in order to repatriate the funds to the UK for distribution. At Title Research, we specialise in overseas asset repatriation. We have the know-how and proven processes required in order to verify, transfer or sell assets on behalf of your clients when located overseas. If you want to find out more, get in touch with our Client Services Team by calling +44 (0) 345 87 27 600 or emailing info@titleresearch.com.



¹ Preparing for Brexit – Private Bank & Overseas Services



Specialist support for estate administration

At Title Research, we provide trusted genealogical research and asset repatriation services to legal professionals.

The experience we've gained over five decades means that we know where to find the people you need to trace and how to navigate even the most complex international processes. We believe it's our task to remove uncertainty so that you can complete your job with confidence.

A commitment to clarity runs through everything we do at Title Research and helps us provide legal professionals with the best possible service. Our fees are transparent, our processes straightforward and our reporting unambiguous.

Everything we do is designed to streamline estate administration, to take the effort out of locating the correct people or assets, and to mitigate against the risk of future dispute or complications.

- Locating missing beneficiaries
- Reconstructing family trees
- FamilyChecker™
- Probate valuation and verification
- Missing beneficiary insurance
- Worldwide bankruptcy searches
- Locating Wills, addresses and missing documents
- UK share sales with a nine-day turnaround
- Obtaining overseas grants and resealing UK grants overseas
- Dealing with North American assets
- Administering foreign shares and funds
- Research for a Statutory Will

Our proven expertise can help you with any estate administration challenge – at home or overseas. Call one of our team today on **+44 (0) 345 87 27 600** to find out more.

Ensuring accuracy, eliminating risk



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