

**IN THIS ISSUE:** LEAVING A LEGACY IN YOUR WILL; FLY TIPPING; COMPANY DEADLOCK; THE END OF THE DIVORCE 'BLAME GAME'; LPAS AND CASE WORKER SUPPORT.

## DOCUMENTING DIGITAL ASSETS IN WILLS



**We live in a world of increasing digital complexity. Concerns over fraud mean we are encouraged to be extremely careful with our personal details and never to write down passwords or PIN numbers. Recent findings in online security, however, suggest that we are not always following that advice. Understandably, the more of an internet presence we have, the harder it is to recall the increasing number of login details without a written prompt.**

There are circumstances in which it can be important for passwords to be released to a trusted individual. In the event of a death, or incapacity, is there anyone who is aware of the extent of your online presence? There is no definitive definition of digital assets and these assets can take many forms. Online bank accounts are the most commonly recognised. Other examples include funds held with PayPal, eBay and even the National Lottery. Unless you keep a comprehensive offline record of these, or a note of your login details, you may find that certain assets you own are missed by executors and attorneys and lost altogether.

Be aware, in terms of some digital assets, we don't necessarily own what we think we do. When using

online services, we often blindly agree to terms and conditions, which mean that we are restricted in what we can do. Data held in social media accounts may be owned by online service providers and it may be difficult even for executors to gain access after you die. If there is anything sensitive posted to the site, the most that can be done is to turn the profile into a memorial, making it clear the owner has died, but not much more. It cannot be deleted unless a representative has your account login details. This has started to change as you can now use the Facebook Legacy button to 'Will' your account to another person.

We would always encourage you to handle your personal and financial affairs privately and securely, but you should

also consider, pragmatically, how your attorneys, under a power of attorney, or executors under your Will, would obtain an accurate idea of your estate or manage your data. It is sensible to have a list of such assets that your executors/attorneys can investigate, which may be kept with your private papers.

Should you have any concerns or queries regarding how best to access or document online profiles within a Will, please contact our Private Client Team.



**ANN-MARIE MATTHEWS**  
Private Client Team

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## FREE CONSULTATION EVENING

Thursday 18<sup>th</sup> July 2019 between 5:30pm and 7:30pm

We offer you a free 20 minute consultation covering many legal issues such as accident claims, matrimonial and family issues, funding for care home arrangements, Wills and powers of attorney, financial issues on death and property matters.

To arrange an appointment please call us on 01473 611211 or email [bg@barkergotelee.co.uk](mailto:bg@barkergotelee.co.uk)



# THE END OF THE DIVORCE 'BLAME GAME'

After much campaigning for the removal of the necessity for blame in divorce proceedings, in April 2019 the Government announced that it will introduce legislation which will call an end to what it called an 'unnecessary blame game'.

Justice Secretary, David Gauke, stated that he had listened to calls for reform of outdated divorce law, adding that he "firmly believes now is the right time to end this unnecessary blame game for good".

**Under current divorce law, there is a requirement for spouses to evidence at least one of five 'facts', being:**

1. Adultery
2. Behaviour
3. Desertion
4. 2 years' separation with consent, or
5. 5 years' separation where no consent is needed.

The second point can be particularly inflammatory, in that the spouse bringing about the divorce (the petitioner) must cite incidents of unreasonable behaviour that have occurred throughout the marriage. It can be argued that those petitioners who want to 'have their say' may not like the upcoming change in legislation. It has been recognised, however, that hostility and conflict between divorcing parents affect the children and can damage their futures.

The new legislation will remove the five 'facts' and replace them with a requirement to provide a Statement of Irretrievable Breakdown, irretrievable breakdown being the only ground on which the petitioner may rely. David Gauke emphasised that "while we will always uphold the institution of marriage, it cannot be right that our outdated law creates, or increases, conflict between divorcing couples".

The new legislation does not intend to make divorce any easier. The two-stage process of Decree Nisi and Decree Absolute will be retained, with a minimum time frame of six months from beginning to end being introduced. It remains to be seen whether the outdated use of the Latin language will be changed, as it is argued that some of the wording used in the divorce process means nothing to the lay person.

The reform will also remove the ability for the other spouse (the respondent) to defend the divorce. It is noteworthy that defended divorces are rare in this country – they are costly and are usually unsuccessful. A case last year, however, where the husband was successful in forcing his wife to have to wait until 2020 to get out of what was a miserable marriage, reinforced the view that things needed to change.

The President of the Law Society, Christina Blacklaws, has welcomed the Government's decision saying that, "for separating parents, it can be much more difficult to focus on the needs of their children when they have to prove a fault-based fact against their former partner. Introducing a no fault divorce will change the way couples obtain a divorce – for the better".



The new legislation is set to be introduced as soon as Parliamentary time allows. Should you have any questions about the new legislation or any other divorce-related enquiries, please contact a member of our family team.



**CAROL ROBINSON**  
Family Team

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## FLY TIPPING



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All too often, we see piles of waste dumped on the roadside verges or in woodland areas. This is usually the result of fly tipping – the illegal and uncontrolled disposal of waste. Fly tipping is a criminal activity that can damage the environment as well as cause harm to wildlife and people. From an aesthetic perspective, it also has a negative effect on our local landscapes and neighbourhoods'.

A little known fact is that fly tipping can cost taxpayers and landowners up to £150 million per year to clean up! Fly tipping is, more often than not, the illegal dumping of household waste, such as old white goods (fridges, washing machines etc.) and old sofas, which may consist of hazardous components, thereby putting the local environment at risk of pollution. If you are a landowner, it is likely to fall to you to remove the waste and dispose of it legally. If you are able to

identify the person who tipped the waste, however, you may be able to seek to recover costs from them associated with its removal and disposal.

**If you are affected by fly tipping issues or require any further information on how to deal with such material on your land, please contact Jane Haviland.**

# LPAS AND CASE WORKER SUPPORT

A Lasting Power of Attorney (LPA) is a legal document that lets someone appoint one or more people (attorneys) to help them make decisions or to make decisions on their behalf, should they become incapable due to accident or illness. Often this will be friends or family members, but where someone does not have family available to take this role, a solicitor can offer to hold Power of Attorney instead.



As attorneys, solicitors can assist with many affairs on their clients' behalf. For example, liaising with care agencies, assisting with choosing a care home and helping with the move to a care home, as well as applying for benefits. These are in addition, of course, to the legal planning of Wills and trusts.

Whilst some day-to-day decisions need to be made by a solicitor, there are other activities, such as meeting with estate agents, or arranging a boiler service, that are assigned a caseworker, who will be on hand to help.

At Barker Gotelee our case worker supports a team of solicitors who decide what work needs their legal expertise and what more general help can be carried out by the case worker instead.

At a time when many vulnerable people are not necessarily receiving all of the help they need, we feel that it is extremely important, as well as more cost-effective for our clients, to offer this additional service.



**ROSWYN BRADSHAW**  
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# LEAVING A LEGACY IN YOUR WILL TO YOUR LOCAL CLUB

Many people are members of a local club or association run by volunteers. When recognising a club in our Will, some of us may want to leave a modest cash bequest or possibly some specific items as a thank you, to support the future of the club. That raises some interesting legal questions because of the way in which most clubs are formed, and so it is important to include the correct wording in your Will.

In practice it is rarely an issue, because your executors, family and the club will carry out your wishes without a second thought; but problems can arise due to most clubs being unincorporated associations. That means they do not have a separate legal personality, unlike companies or trusts. Whilst some clubs are registered as Community Amateur Sports Clubs (CASC), this is a Government Scheme to



provide tax relief, and does not alter the club's legal status.

In order for your gift to be both usable and beneficial, it is important to ensure the way in which it is gifted is appropriate. As an example, if you leave a legacy of some sporting equipment to a club for its general purposes, that legacy may fail as being 'an invalid non-charitable purpose'. Alternatively, leaving

a £100 legacy to the club can be ambiguous: one or more club members may argue you intended this to be a personal cash legacy between all the members individually to spend as each of them chooses.

There are also tax issues. Many clubs are not registered charities, although some may be registered as a CASC. A legacy to a registered charity or CASC

is exempt from inheritance tax, whereas a legacy to any other club is not exempt from inheritance tax.

Incidentally, you should remember that if you are a member of a club that is an unincorporated association, you and the other members may also be personally liable for its liabilities. It's always worth considering whether the club's status should be changed to deal with this.

**Please speak to our Private Client Team should you have any concerns or queries as to how best to leave a gift to a club.**



**NICK PALMER**  
Private Client Team

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# THE DIFFICULTY OF A COMPANY DEADLOCK

When two people decide to set up in business together and establish a limited company to operate it, their first priority may not be to think about what will happen if, at some point in the future, there is a disagreement between them. Over time, however, they may develop differing views about the identity or future of their business.



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In a typical deadlock scenario, the same two people will both be directors of the company, each with one vote, and 50:50 shareholders, with an equal voice in determining matters that are reserved for shareholders to decide. Generally, the decisions they take, either as directors or shareholders, will require at least a majority vote, so if they cannot agree, there is a deadlock between them.

It is helpful if the shareholders have agreed in advance what should happen in the event of a deadlock so that they both understand where their discord

might lead. It is possible to provide for what is to happen either in the company's articles of association and/or a shareholders' agreement, depending on what is most suitable in the circumstances.

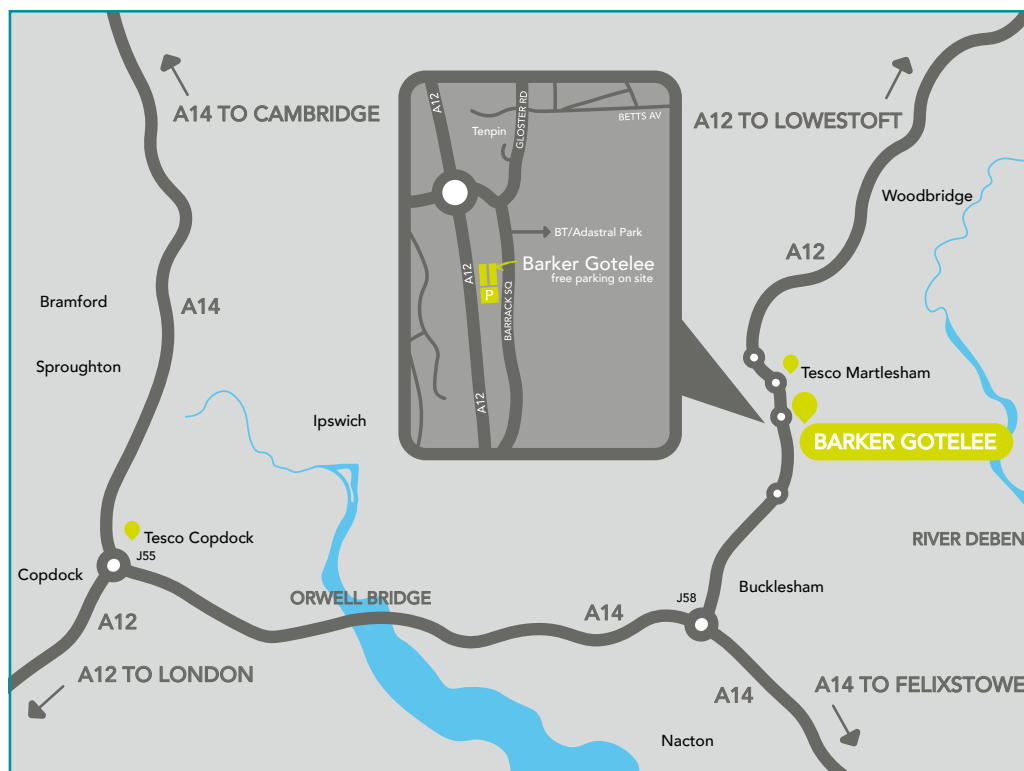


In light of any such provisions, they may, after further discussion, agree a compromise and continue in business together. Or, if the disagreement between them is

more profound and cannot be resolved, they may agree to sell or wind up the company on terms they both find acceptable. Alternatively, they might agree that one of them (or the company) will buy the other's shares, or that the shares may be sold to another person. In the most difficult deadlock situations, however, the shareholders cannot agree how to end their business relationship, and the company's articles or shareholders' agreement do not provide for how the situation can ultimately be resolved. In these cases, it may be that the only way forward is for one of the parties

to apply to the Court for an order winding up the company. The costs involved in such an application, however, and the potentially damaging effect that such an order might have on the value of the company (if granted), make this route unacceptable for many, who may prefer to return to the negotiating table and attempt further discussion.

**For any queries or concerns regarding business issues or disputes, please contact a member of our business services team.**



## BARKER GOTELEE

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If you would like to discuss our services or talk to an experienced solicitor in one of our teams, please contact us.

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