RPC

Spotlight on private wealth

March 2023

THE LATEST DEVELOPMENTS IN THE PRIVATE WEALTH WORLD

The big question:

The family home – who owns what?

What's new?

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Welcome to spotlight on private wealth

This update is designed to keep you up to speed with developments in the private wealth world. In this edition we explore everything from co-ownership to costly mistakes.

We hope you find this helpful and as always, if you would like to know more about the issues covered, or anything else, please get in touch.

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The big question

The family home – who owns what?

Working out how much of the family home is owned by each half of a couple can be difficult. Couples can have sole or joint legal title to their home but the beneficial ownership does not need to mirror the legal ownership.

For example, one person may legally own the home, but the couple may each have a beneficial interest in it such that if it was sold, they would both be entitled to a portion of the sale proceeds.

If a married couple divorces, beneficial ownership is not of primary importance as the courts have wide powers to distribute property between the couple. However, when an unmarried couple breaks up the beneficial ownership is likely to determine who receives what, unless a compromise is reached.

The starting point is that if there is a written agreement about how the home should be beneficially owned, then that will apply. The standard form which is used to transfer legal ownership contains a section in which the beneficial ownership of property can be specified. It is also possible to set out an agreement on beneficial ownership in a separate document.

An express agreement does not determine beneficial ownership if there has been a mistake, one party has behaved dishonestly or what is known as an estoppel arises. This is where one party is promised property ownership, acts to their detriment in reliance on that promise and the promise is then not fulfilled "unconscionably". An example of a recent case where the court considered an estoppel is discussed later in this edition of Spotlight.

If there is no express agreement about beneficial ownership, the presumption in the case of family homes is that beneficial ownership follows legal ownership. If a couple has joint legal title to their home, then it is presumed that they beneficially own it in equal shares. This is the case even if they do not contribute equally to the purchase price for the home. This presumption does not apply if property is purchased as an investment and the presumption can be displaced if the court decides that:

- there is a common intention to own the property in unequal shares, and
- one owner has acted to their detriment in reliance on that intention.

The common intention can be express or it can be inferred from conduct. In deciding what the parties intended, the court considers a broad range of factors including how the home and household expenses were paid for, the purpose for which the home was purchased and how the owners' finances were arranged. If a couple has agreed that ownership will be shared but not the portions in which it will be shared, the court will decide the split it considers fair.

In a recent case[1], the Court of Appeal decided that one half of an unmarried couple (Ms Hathway) beneficially owned the whole of the couple's house and could keep the proceeds of a future sale. She and her partner Mr Hudson bought the house together but did not at that time have any express agreement about how the property was beneficially owned. Mr Hudson paid most of the mortgage when they were together, whilst Ms Hathway raised the children.

After they separated, Ms Hathway continued to live in the home with their two children and eventually took over responsibility for the mortgage. They reached an agreement about how the couple's assets should be split, and Ms Hathway agreed not to make any claim to Mr Hudson's shares or pension on the understanding that she would retain the home. Mr Hudson then applied to court for an order that the property be sold and that he be paid half of the sale proceeds. Ms Hathway successfully objected to such an order being granted.

The court decided that Mr Hudson had formally released his beneficial ownership in the home by agreeing in an email to Ms Hathway that he had no interest in the home and that she could keep it. The court also considered he had "signed" the release by including his name at the foot of the email, and had therefore complied with formalities set out in legislation[2].

The court went on to consider what would have been the position had there been no express release. The court decided that the couple had on any view agreed that Ms Hathway was the beneficial owner of the property. Ms Hathway had acted to her detriment on the basis of that agreement by forgoing any claim to Mr Hudson's pension and shares, even though the outcome of any such claim was necessarily contingent and uncertain. The court also indicated that taking over responsibility for paying the mortgage could also be sufficient evidence that a person had acted to their detriment.

This case highlights the benefits of couples expressly agreeing how their home is owned, and the breadth of evidence a court will consider if there is no such agreement.

1. *Hudson v Hathway* [2022] EWCA Civ 1648.
2. Section 53(1)(c) of the Law of Property Act 1925

What's new?

Court sets aside transfer to an offshore trust

In a recent case, the court set aside the transfer of assets into a Guernsey trust because it was made under the mistaken impression that there would be no inheritance tax liability.

In a recent case[3], the court set aside the transfer of assets into a Guernsey trust because it was made under the mistaken impression that there would be no inheritance tax liability.

To set aside such transactions, it must be shown that a serious mistake has been made about the tax consequences of a transaction which it would be unfair not to correct. It is unlikely that the courts will step in if the transferor deliberately ran the risk that there would be a tax liability or engaged in aggressive tax planning.

In this case, professional advisers had not recognised that the transfer would incur an inheritance tax liability of £4.6m and the transfer would not have been made if that had been recognised. The court set aside the transfer and described the utilisation of an offshore trust for inheritance tax purposes as "vanilla tax planning". It noted that it was not an "artificial form of avoidance" which it would not have set aside on public policy grounds.

A similar decision was made in another recent case[4], in which the court set aside two deeds of appointment which created significant inheritance tax liabilities. The mistake was sufficiently serious to justify setting aside the appointments which were also "vanilla" transactions.

3. *Abadir v Credit Suisse Trust Ltd* [2021] EWHC 2573 (Ch).
4. *Hopes v Burton* [2022] EWHC 2770 (Ch).

Estoppel – what next?

An estoppel arises where one party is promised property ownership, acts to their detriment in reliance on that promise and fulfilment of that promise is unconscionably denied. The Supreme Court has considered this principle for the first time.[5]

A dispute arose between a son and his parents over the family farm. The son had worked on the farm for 32 years and had relied on his parents' promise that on their deaths he would inherit a substantial share of the farm. However, their relationship broke down and the parents amended their wills to disinherit their son.

It was decided that an estoppel had arisen because the son had acted on his parents' promise to his detriment. The court noted that whilst the usual remedy for an estoppel is to enforce the promise, payment could be made instead if it would be unjust to enforce the promise.

The court decided to compensate the son with a lump sum payment because he had been promised the future benefit of inheriting the farm upon the parents' deaths. The payment was discounted to reflect the fact that the son would benefit from the promise earlier than he would have done had the original promise, of inheriting the farm upon his parents' death, been fulfilled.

Joined-up thinking: HMRC uses data linking

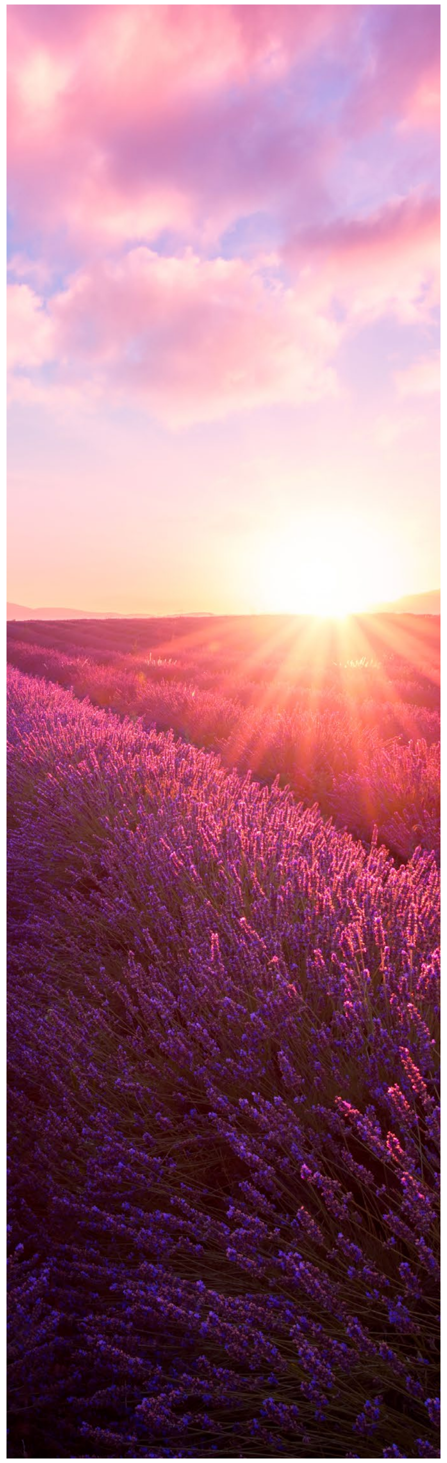
Enhanced transparency in relation to corporate and trust structures has been a global trend in recent years. In the UK, certain transparency initiatives such as the trust registration service require information to be submitted directly to HMRC.

However, other regimes (such as the register of overseas entities and the persons with significant control register) require entities to file certain information with other government departments (such as Companies House). HMRC's latest 'nudge letter' campaign demonstrates the use of data linking between government departments, with HMRC making use of data provided to Companies House.

Since 2016, UK companies have been required to declare information to Companies House about individuals who qualify as 'persons with significant control' (PSCs) in relation to the company. This includes individuals who hold more than 25% of the shares in a company. Recently, HMRC has used the information on the PSC register to identify individuals who: (a) were previously listed as PSCs at Companies House but are now no longer so listed (indicating that they may have disposed of their shareholding in the company); and (b) have not reported any share disposals in their tax returns. In letters to such individuals, HMRC advises the recipients to amend their tax returns (and to pay any overdue tax) if appropriate.

This campaign demonstrates that HMRC is drawing inferences from wider information available to them in order to maximise tax compliance.

5. *Guest and another v Guest* [2022] UKSC 27.



The FTX fallout and what may come next

RPC considers the collapse of FTX Trading Ltd here.

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RPC asks

When can an executor be removed?

Executors are appointed by a person making a will. An executor can be removed by the court if there are special circumstances such that it is expedient to appoint someone else to administer the estate.

The court does not need to decide that the executor has committed any wrongdoing; it only considers whether it would be in the best interests of the beneficiaries for the executor to be replaced. A breakdown in relations between an executor and the beneficiaries making it difficult or impossible to administer the estate can justify a removal.

In a recent case[6], the court decided to remove the executor of an estate because he had fallen out with almost every other individual involved in the estate. The executor had made complaints to the police and the Law Society about the other parties and had asked the judge to recuse himself from hearing the case because he had previously made an unfavourable decision. The executor had also made "highly troubling" claims about the validity of the will, pursued hopeless applications in the proceedings and not complied with court orders. The court removed the executor because it decided that he could not act objectively.

The executor also had a conflict of interest because he was a beneficiary of a trust established by the deceased and intended to bring claims against the estate. The court decided this was not itself a sufficient reason to remove him as an executor because he had been deliberately placed in that position by the person who had made the will. Similarly, the court did not consider that the fact that the executor had made mistakes about the scope of his powers when taking over the administration of the estate to be significant.

What is a resulting trust?

A resulting trust arises when a legal owner of property makes a gift of that property, but the law presumes that they do not intend to give away their beneficial interest in it.

For example, if someone transfers funds to another to purchase property, it is usually presumed that those funds are still beneficially owned by the person that transferred them unless it is clear those funds are a gift. A resulting trust can also arise when someone intends to set up a trust of property but the trust fails. In those circumstances, the beneficial ownership of property remains with the person who established the trust.

In a recent case[7], the court decided that shares held in the name of a director of the company, which had been paid for by the director's father-in-law, were in fact beneficially owned by the father-in-law's surviving family. The father-in-law had not intended to give the shares as a gift, and the shareholder did not expect to be the beneficial owner of the shares. The court also decided that the shares were held on an express trust as the result of an exchange of emails.

The director holding the shares had suffered a gambling addiction and withdrawn significant sums from the company. The other two directors held back dividends on the shares and offset these against the sums which had been withdrawn from the company. The directors were aware of the claim to the shares so although they had not acted dishonestly, the directors were liable for the losses suffered by the father-in-law's family.

6. *Re Estate of McDonald (Deceased)* [2022] EWHC 2405 (Ch).
7. *Von Westenholz v Gregson* [2022] EWHC 2947.

When is a gift to a spouse unreasonable?

In certain circumstances spouses can bring a claim seeking reasonable financial provision from their deceased spouse's estate[8]. Such a claim was rejected in a recent decision because the wife was independently wealthy.[9]

The wife was a beneficiary of a trust established by her husband's will and the trustees, one of which was the couple's daughter, had the power to decide how much, if anything, she would benefit and when. Her husband had produced a letter of wishes, expressing his desire that his wife should be able to maintain her current lifestyle and remain in their home, unless she remarried or did not need the income. The trustees were not obliged to follow this letter. The relationship between the wife and daughter was strained. The wife was concerned that she would not receive sufficient payments from the trust and so wanted a fixed payment.

However, the court decided that because the wife had significant assets of her own, the will made reasonable financial provision for her even though she was not guaranteed any payments from the trust. Accordingly, the court decided that she was not entitled to any fixed payment from her husband's estate.

Introducing Sports Ticker

Bringing a fresh perspective to game changing developments within the sporting world, from the commercial to the regulatory – across all sports. RPC combines blog style updates with articles for leading publications, always with a twist. See here for the latest edition of RPC's Sports Ticker.

8. Under section 2 of the Inheritance (Provision for Family and Dependants) Act 1975.
9. *Ramus v Holt* [2022] EWHC 2309.

And finally in the art world…

A bumper year at auction

Both Christie's and Sotheby's made over $8bn in sales in 2022; records for both auction houses. Christie's recorded sales of over $8.4bn in what is a record figure for the art market; consisting of auction sales valued at $7.2bn and private sales accounting for $1.2bn.

Whilst Sotheby's also had a bumper year, its fine art sales were 9.5% lower than 2021. Christie's also reported that guarantees (where there is an agreement to pay a specified amount for a work, regardless of whether it sells) were up 86% in 2022, suggesting that clients are seeking certainty in a challenging economic climate.

Both auction houses commented on the importance of Asian collectors and the younger generation in boosting their sales. Whilst spending in Asia was down 20% according to Christie's figures (likely due to maintained Covid restrictions), Sotheby's report that individually, collectors in Asia spend 20% more per person than collectors elsewhere. 40% of millennial buyers in 2022 came from Asia – with millennials accounting for 21% of buyers globally. Christie's and Sotheby's both intend to expand their digital reach to encompass the growing interest from a younger, more tech savvy generation of buyers.

The figures show the resilience of the art market during economic uncertainty with Sotheby's chief executive commenting that auction houses tend to see a "flight to quality" at these times.

Private wealth disputes team

Disputes can get complex. As one of the few top law firms handling private wealth litigation, our large team of lawyers has an impressive track record of handling disputes both in and out of court. We act for trustees, family offices and other asset and wealth holders and commonly act against HMRC.

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