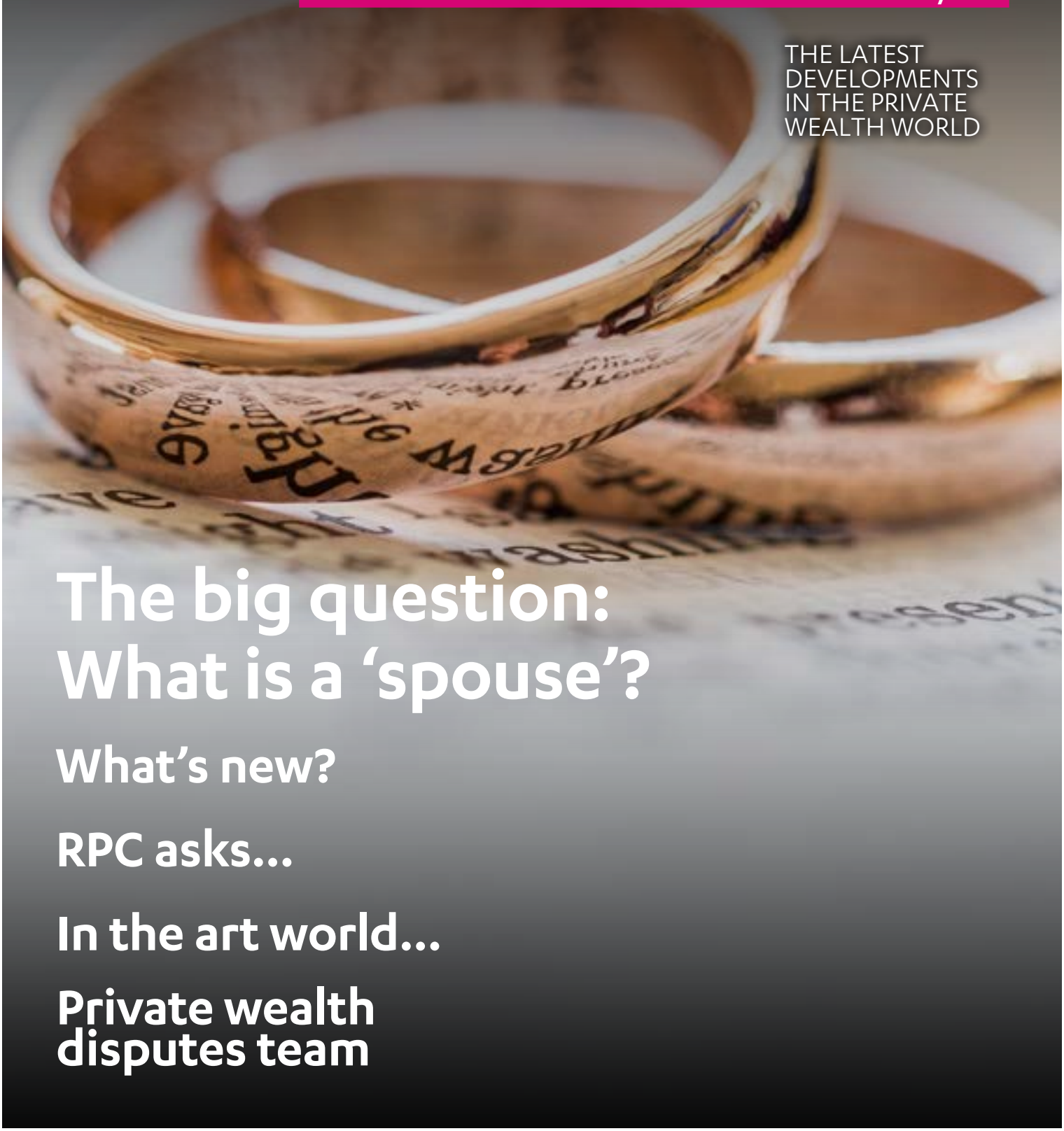
RPC

Spotlight on private wealth

February 2022

THE LATEST DEVELOPMENTS IN THE PRIVATE WEALTH WORLD



The big question: What is a 'spouse'?

What's new?

RPC asks...

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Private wealth disputes team

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 tax reform to non-fungible tokens.

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

What is a 'spouse'?

This is one of the questions the court answered in a recent case – the latest in a series of decisions about the meaning of wills and trusts in the context of equality and human rights legislation[1].

The trustees of a trust established to benefit the employees of the children's book publisher Walker Books, asked the court to construe the terms of the trust deed to decide who could benefit from the trust. In particular, they asked whether the term 'spouse' in the trust deed included civil partners and partners in same-sex married couples. The deed was signed before same-sex partners could form a civil partnership or get married.

The courts are obliged to find the objective meaning of terms used in a trust deed, by considering the factual background known to the parties at the time and the purpose of the trust. The Human Rights Act 1998, also obliges the courts to act in a way which is compatible with the European Convention on Human Rights and to read legislation in a manner which is consistent with the Convention. The Convention protects the right to respect for private and family life (under Article 8) and the right to non-discrimination (under Article 14), which together protect same-sex couples from discriminatory treatment.

The courts have considered the impact of the Convention on the interpretation of legislation and documents in previous cases. They have decided that the word 'children', used in a will, included adopted children, as it was contrary to the Convention to treat adopted children less favourably than natural children[2]. Similarly, it has been decided that a trust deed included illegitimate and adopted children as beneficiaries, despite the literal reading of the deed[3]. Before same-sex partners could enter into civil partnerships or get married, the court also read the term 'spouse' in legislation to extend to same-sex partners living as a married couple[4].

In this case, the court decided that the purpose of the Walker Books trust was to incentivise and reward employees for their efforts, including by benefitting their dependants. As such, the court decided that 'spouse' should be read as including civil partners and married same-sex couples. The court described the trust deed as a 'living' long-term employee trust, but implied that it may not have been possible to construe a private family trust in the same way.

The court also decided that the term 'children' did not include 'step-children' on the basis that it had been open to the drafter of the deed to make explicit provision for step-children. Differentiating between children and step-children also reflected their different relationship with the parent and is not itself discriminatory.

The court then considered the impact of the Convention. Although it had already decided that civil partners were included in the definition of 'spouse', the court confirmed that it would not have been obliged to include them within this definition by virtue of the Convention because legislation had drawn a clear distinction between married couples (spouses) and civil partners, and so it was not possible to interpret the terms as being synonymous with each other.

It is unlikely that this is the last case in which the wording of a trust established before the advent of equality and human rights legislation falls to be considered by the court, though this case provides a welcome steer on the approach the court is likely to take in such cases.

1. *Goodrich and others v AB and others [2022] EWHC 81.*
2. *Re Hand's Will Trust [2017] Ch 449.*
3. *Re JC Druce Settlement [2019] EWHC 3701.*
4. *Ghaidan v Godin- Mendoza [2004] 2 AC 557.*

What's new?

The politics of tax relief

The Court of Appeal has recently confirmed that donations made to political parties are not subject to the inheritance tax (IHT) gift exemption where the receiving party does not have an elected MP[5].

A Between October 2014 and March 2015, British businessman and co-founder of the LeaveEU campaign, Mr Banks, donated nearly £1 million to the UK Independence Party. As the party did not have any elected MPs at the time of the donation, HMRC charged IHT on all the donations.

The purpose of the IHT legislation is to provide tax relief on donations made to political parties represented in the House of Commons and therefore participating in parliamentary democracy. The gift exemption applies when, at the last election preceding the donation, the party either had at least two MPs or one seat and 150,000 votes.

The court decided that Mr Banks had suffered discrimination because he was a supporter of a party that had not secured any seats in the House of Commons at the 2010 general election. However, HMRC had proved that this discrimination was justified. As a result, relief from IHT was denied.

Royal secrecy continues... or does it?

The court has recently unpicked some knotty issues arising in the administration of an English and Indian estate worth over £35 million.

The usual rule is that wills are published unless it is 'undesirable or otherwise inappropriate'. In the last edition of Spotlight, we reported that the court had decided that Prince Philip's will should be kept confidential for a period of 90 years. The court considered there was inherent public interest in protecting the dignity and privacy of the Queen and her close family, which enabled her to fulfil her constitutional role.

The court made its decision following a private hearing which was attended by the attorney general and Prince Philip's executor. Media organisations were not told about the hearing in advance and were not permitted to attend.

The Guardian newspaper has now argued that the case should be reheard because the court failed to give proper consideration to whether the press should have been allowed to attend the hearing or make representations. It claims that there was a serious interference with the principle of open justice. The Guardian's claim is to be heard by the Court of Appeal - so watch this space!

5. *Banks v HMRC [2021] EWCA Civ 1439.*

RPC asks...

Is tax reform on the horizon?

The latest developments in tax legislation compel taxpayers to disclose information on specific tax related arrangements and on tax avoidance schemes. Reform of capital gains tax (CGT) and inheritance tax (IHT) is also on the horizon.

Consultation on mandatory disclosure rules

The government has announced that it will implement the OECD's 'Model Mandatory Disclosure Rules for Common Reporting Standard Avoidance Arrangements and Opaque Offshore Structures'. These require taxpayers and intermediaries to disclose information on such structures to HMRC. The aim is to deter non-compliance, support HMRC in developing tools to address perceived loopholes, and assist HMRC in challenging evasion. The consultation closed on 8 February 2022.

Report on marketed tax avoidance schemes

With £1 billion estimated to have been lost to marketed tax avoidance schemes between 2018 and 2020, HMRC has toughened its enforcement action against promoters and is using an educational campaign to target would-be users and alert them to the risks of such schemes. The Finance Act 2021, enabled HMRC to take quicker action against promoters, and the Finance Bill 2021-22, which was published on 4 November 2021, is likely to introduce further sanctions against promoters.

Response to reports on IHT and CGT

Following the Office of Tax Simplification's (**OTS's**) first (2018) and second (2019) reports into IHT, the OTS has published two CGT reports; the first contains high level views on the future of CGT and its simplification, the second discusses the technical detail and practicalities of CGT. The government accepted 5 of the OTS's 15 suggestions for CGT reform, including improving HMRC guidance, expanding rollover relief for reinvestments that enhance land already owned and extending the no gain no loss window on separation and divorce. The remaining suggestions have either been rejected or require further consideration as they involve wider policy trade-offs.

The government is continuing to progress the recommendations made in the IHT reports and since 1 January 2022, over 90% of non-taxpaying estates will not need to complete IHT forms. In its recent response to the OTS's reports, the government decided not to implement additional IHT reform: the nil-rate band and residence nil-rate band are to be maintained at their 2020-21 levels up to and including 2025-26.

Channel Islands – in or out?

The Court of Appeal has decided that assets in Jersey can be governed by a will which refers to 'UK assets' where there is evidence that the testator's intention was for the will to be construed in such a way[6].

Jersey is not part of the UK. The testator's will stated that the will only had effect in relation to his UK assets, though he had assets located in Jersey and did not make a separate will dealing with those assets.

The court noted that there are some contexts in which reference to the UK can encompass the Channel Islands. It decided it was unlikely that the testator intended to die without dictating who would receive his Jersey assets, and so he must have intended to make a will which dealt with them. In the draft of the will prepared by the testator, he stated that the will was to deal with his UK property and that he intended to make specific legacies of his Jersey assets, which can only be reconciled if he intended that reference to the UK included Jersey. In the months prior to his death, the testator also took steps to have 'incl. Jersey' added to the will but the changes were not made before he died. As such, the court decided that it was clear that the testator had intended his Jersey assets to be covered by the will.

6. *Partington v Rossiter [2021] EWCA Civ 1564.*

And finally in the art world...

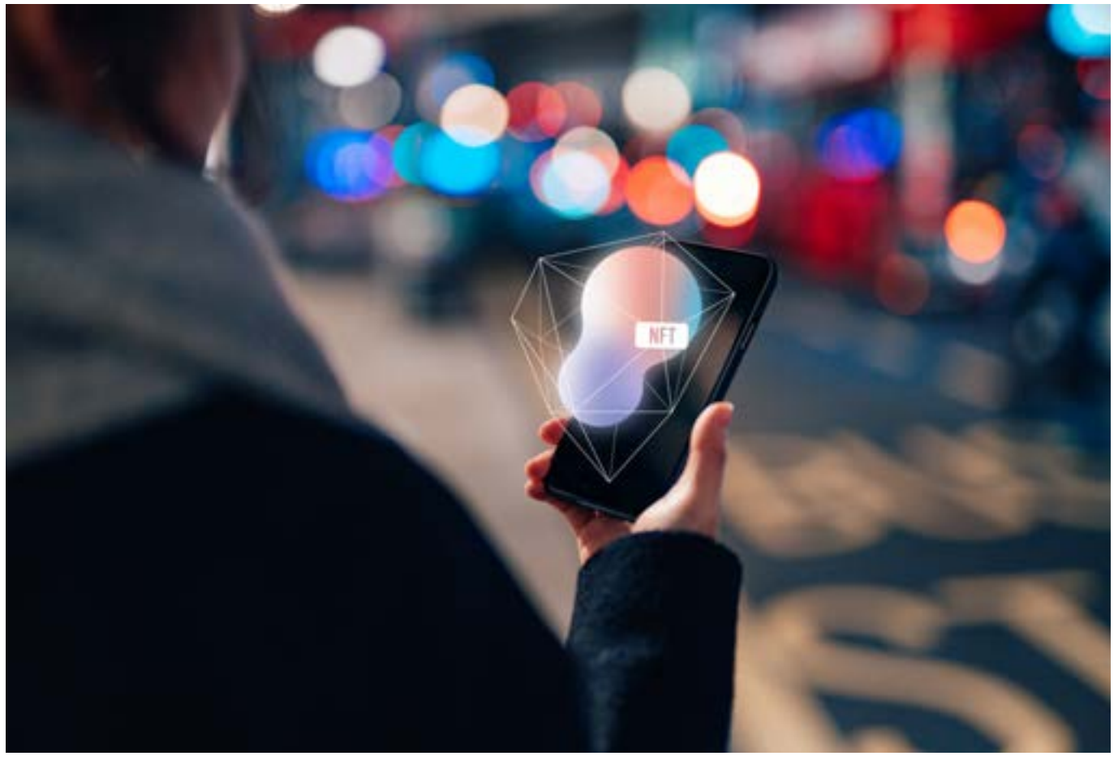
Are non-fungible tokens taking over?

Non-fungible tokens (NFTs) are having a big impact in the art world. NFTs act both as digital stamps of ownership and as works of art themselves. Works of art that only exist digitally can now be treated as assets even where there is no physical version.

So far, younger generations appear to be the keenest to embrace them. Beeple's 'Everydays' was sold at auction at Christie's for US$69 million. 64% of the bidders for the piece were either millennials or Gen-Z. NFT buyers' average age has been calculated as 38 years old.

The majority of NFTs exist on the Ethereum blockchain. This is similar to Bitcoin in that it is a decentralised, open-source ledger. However, Bitcoin's primary purpose is as a currency. Ethereum also has its own currency, ETH, but its possible uses are far more extensive. The Ethereum blockchain is increasingly used to underpin smart contracts and is a key part of the NFT market.

There was a large increase in the overall value of NFT sales from US$65 million throughout the whole of 2020 to US$1.2 billion in the first six months of 2021. More widely across the art market, the surge in expenditure on NFTs contributed to a stronger than expected bounce back for contemporary art auctions in 2021, as sales increased to an all-time high of US$2.7 billion. It is difficult at this stage to predict whether the interest in NFTs is a flash in the pan or an indication of a more profound shift. Regardless, it is certainly an area which anyone with an interest in art will want to keep a close eye on.



Export ban on Tipu Sultan throne finial causes controversy

HMRC has announced it will launch a new 'nudge letter' campaign that will target UK taxpayers who may have failed to pay tax due in respect of their cryptoassets.

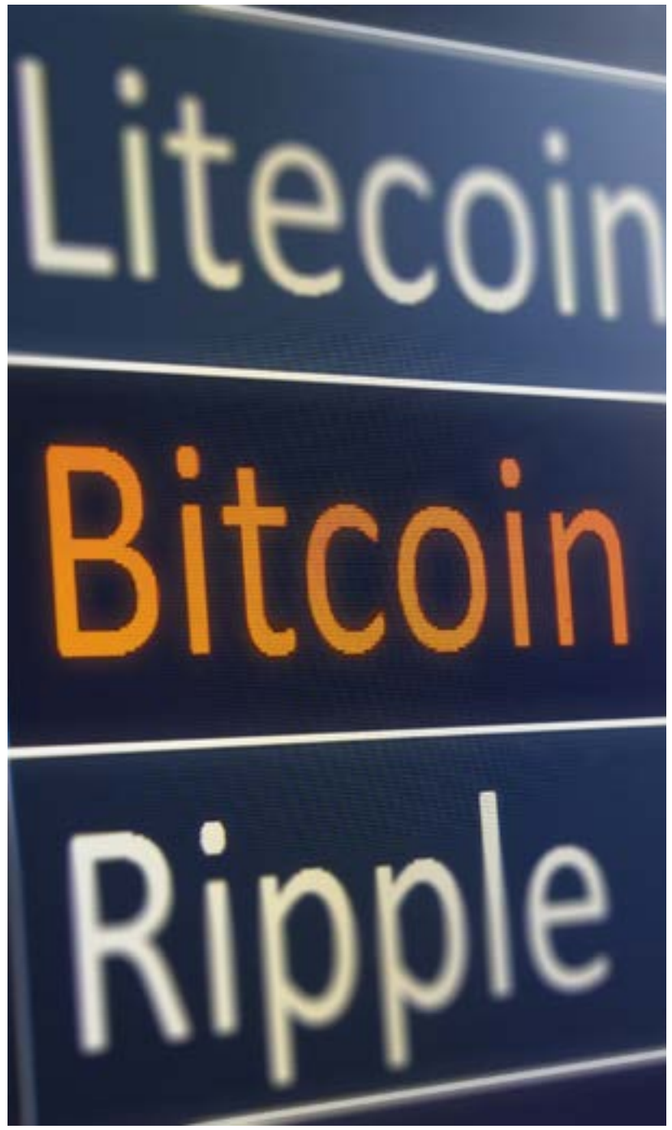
The Secretary of State for Digital, Culture, Media and Sport has placed a temporary export ban on a jewel-encrusted gold tiger's head finial on the recommendation of the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest on the basis that it is of national importance.

The finial was one of 8 finials from the throne of Tipu Sultan, the ruler of Mysore in south India in the late 18th century until he was overthrown. Known as the 'Tiger of Mysore' after defending himself against a tiger whilst hunting he famously stated: "Better to live one day as a tiger than 1,000 years as a sheep". The finial, valued at £1.5 million, is a rare example of 18th century south Indian goldsmiths' work.

The purpose of the export ban is to allow an opportunity for a UK institution to acquire the piece, to keep it in the UK. The decision to impose the ban was made on the basis that Tipu Sultan is of historical importance to Britain's imperial past.

The ban has generated some controversy over whether the artefact should be regarded as part of British history given its Indian provenance, and that it arrived in the UK because of violent looting which destroyed the throne itself.

There are six other items currently under a temporary export ban. the most valuable of which is a 19th century portrait of The Earl of Dalhousie by John Singer Sargent, valued at £7.6 million.



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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