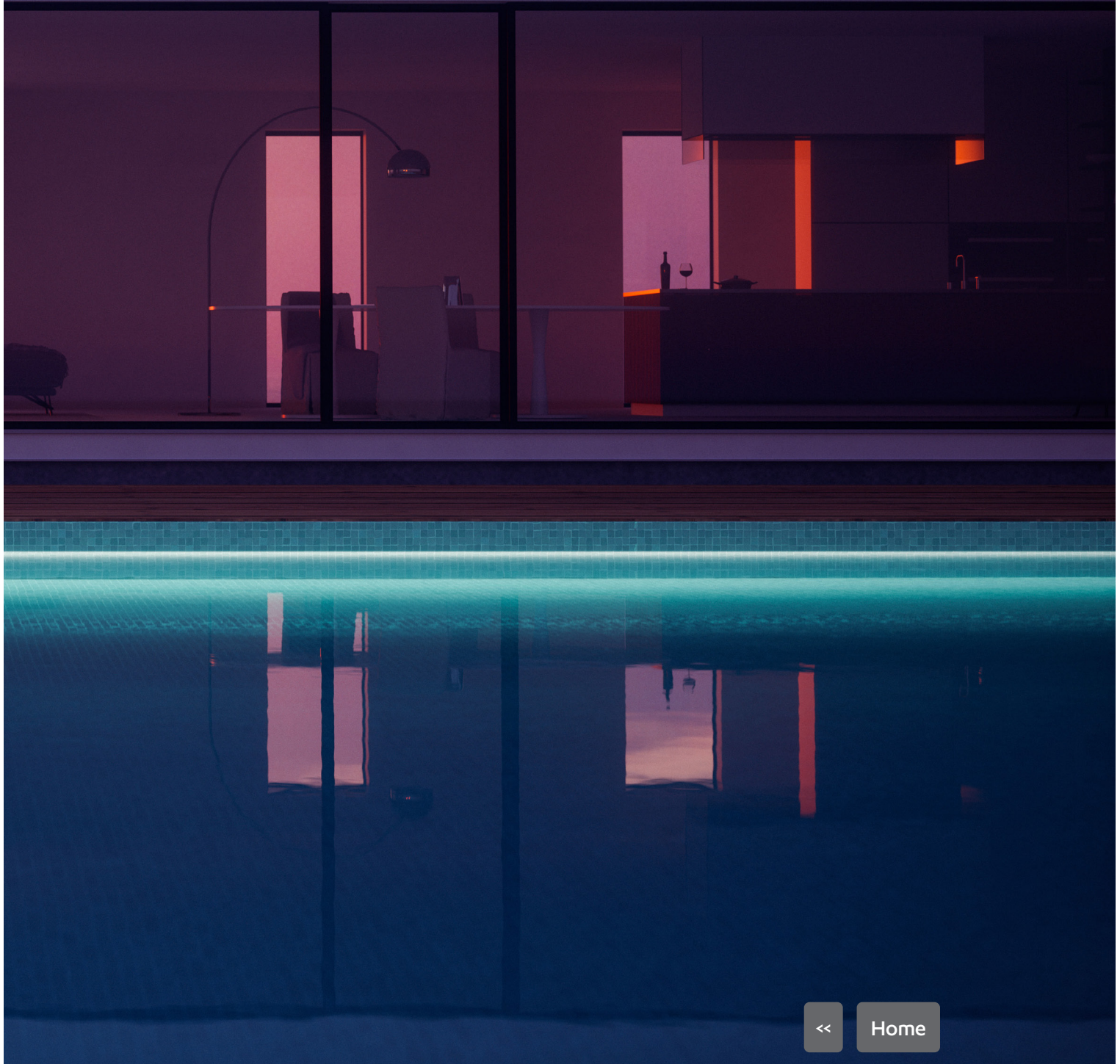


# Spotlight on private wealth

March 2024

THE LATEST  
DEVELOPMENTS  
IN THE PRIVATE  
WEALTH WORLD



# Welcome to spotlight on private wealth

This update is designed to keep you up to date with developments in the private wealth world. In this edition we explore everything from the art market to WhatsApp messages.

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.

**IF YOU WOULD LIKE TO RECEIVE A HARD COPY OF THIS GUIDE, PLEASE GET IN TOUCH WITH YOUR USUAL RPC CONTACT.**

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## Disclaimer

The information in this publication is for guidance purposes only and does not constitute legal advice. We attempt to ensure that the content is current as of the date of publication but we do not guarantee that it remains up to date. You should seek legal or other professional advice before acting or relying on any of the content.

## The big question

### What did they say?

It is common to think of legal rights and obligations as arising exclusively from lengthy and complex documents. However, it is possible for what people say or do to change those rights and obligations without anything being recorded in writing.

This is perhaps most usual where personal or family relationships are involved. Three cases demonstrate that what someone says or does can have legal effect and override the terms of a signed will. In all of these cases the court needed compelling evidence of what was said and done before deciding on the legal position.

#### They created a trust

If someone intends to create a trust they will usually do so in writing, in a trust deed or in their will. However, it is possible for a trust to be created orally. In a recent case<sup>1</sup>, the Court of Appeal confirmed that a grandfather had declared a trust over some shares in a nursing home in favour of his grandchildren. As nothing had been written down, it was important for those alleging the existence of the trust to establish what the grandfather had said, that he had intended to create a trust and who was intended to benefit from the trust.

The grandfather had said that he held the shares for the benefit of his grandchildren “for the moment”. The court decided that though this might indicate an intention to change how he held the shares in the future, it was a clear acknowledgment that they were at that time held for his

grandchildren. The court also considered the fact that he did not make any capital investment in return for the shares, making it more likely that he was not intending to hold them for his own benefit. The grandfather had a large family, and the court requested further evidence on whether the children of certain family members, and unborn grandchildren, were intended to benefit from the trust.

#### They contradicted the terms of their will

A person’s estate will be distributed in accordance with the terms of their will unless exceptional circumstances arise. The court recently<sup>2</sup> declined to implement the terms of a father’s will which contradicted historic promises made to his children concerning how the family market garden business would be divided. The business was subsequently split up equally between the children in accordance with those promises.

A mother and father assured their three sons that if the children committed to working in the family business, it would ultimately be divided equally between them on the parents’ deaths. Following a breakdown in relations, the father made a will which gave his interest in the business to one son only.

The court noted that the context of informal assurances was important. In this case it was clear that it was intended to be a family business, the parents had spoken of the importance of equality between their children, and the assurances had been made as encouragement to work long hours for relatively low pay. The court concluded that because the sons had relied on those assurances, it was unfair for the father to renege on them in his will, such that the terms of the will which did so renege should not be implemented.

#### They said that I own the family home

As we have previously reported in Spotlight<sup>3</sup>, if there is no express agreement, there is a presumption that where a couple hold joint legal title in the family home they also own it in equal shares beneficially. This means that if the home is sold they are each entitled to half of the sale proceeds, even if they did not contribute equally to the purchase price of the home. This presumption can be displaced if there is evidence of a common intention to own the property in unequal shares, and one party acts to their detriment in reliance on that intention.

1. *Gill v Thind* [2023] EWCA Civ 1276.
2. *Winter v Winter* [2023] EWHC 2393 (Ch).
3. [Spotlight on private wealth March 2023](#).



## The big question continued

The Court of Appeal<sup>4</sup> decided that one half of an unmarried couple (Ms Hathway) beneficially owned the whole of the couple's house and was entitled to the proceeds of a future sale. Her partner (Mr Hudson) had paid most of the mortgage when they were together, whilst Ms Hathway raised the children. After they separated, she continued to live in the home with their two children and eventually took over responsibility for the mortgage.

They reached an informal agreement about how their assets should be split, and Ms Hathway agreed not to make any claim in respect of 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. The court decided that there was sufficient evidence of the agreement which had been reached between the parties such that Ms Hathway should retain all of the proceeds when the property was sold.

To reach the conclusions they did in these cases, the courts heard evidence from witnesses on what was said and done, and was ultimately persuaded that this changed the legal position. The evidence in other cases may not be so compelling. It is always necessary to consider such evidence carefully alongside the terms of any documents and the general legal rules which apply.

4. *Hudson v Hathway* [2022] EWCA Civ 1648.

## What's new?

### Court decides who gets the grant

There are rules<sup>5</sup> which set out the order of priority in which different relatives are entitled to administer an estate of someone who has not made a will. The starting point is that a surviving spouse or civil partner has priority, followed by any children.

Where there is more than one person equally entitled to administer the estate, the court has discretion as to who to appoint<sup>6</sup>. It can take into account a wide variety of factors in deciding what to do, including the conduct of the individuals, the views of those entitled to the estate and whether there is any conflict between the interests of the individuals and the estate.

In a recent case<sup>7</sup>, the deceased's two sons were equally entitled to administer the estate but had fallen out. One alleged that the other stole money from the deceased's house and the other "joked" that he made a bonfire using his brother's old school reports.

In the light of their fractious relationship, the court decided that it was in the best interests of the beneficiaries for an independent professional to be appointed to administer the estate, rather than either of the sons.

### WhatsApp messages prove key in a will dispute

In a recent case<sup>8</sup>, a testator signed a new will in 2019, which left most of her estate to her brother. Her children challenged the will on the basis that the testator did not know or approve of its contents, as she had intended to leave everything to them in accordance with her previous will. The court agreed.

The evidence showed the testator had a "clear and fixed intention" to leave everything to her children and did not know what was in the latest will when she signed it. This evidence included WhatsApp messages and recordings of conversations between the deceased and her children, in which she provided assurances to her children about their inheritance. The court found it particularly useful to listen to the recordings so it could understand the tone and nuance of what was said.

The court was also influenced by the unusual circumstances surrounding the execution of the later will. No draft was prepared and there was no clear evidence that the deceased had read the will. The deceased's name was spelt incorrectly throughout, and her initials appeared to be signed in an unusual manner. The deceased was known to be meticulous, and this suggested she had not read or initialled the will herself.

### Cryptoassets – HMRC provides new voluntary disclosure guidance

HMRC has launched a new service for taxpayers to disclose voluntarily any unpaid tax relating to cryptoassets, such as exchange tokens, non-fungible tokens, and utility tokens.

HMRC's guidance on this can be viewed [here](#) and for details on how to pay tax on cryptoassets, you can view HMRC's guidance [here](#).

5. Non-Contentious Probate Rules 1987.

6. s.114(1) of the Senior Courts Act 1981.

7. *King v King* [2023] EWHC 2822 (Fam).

8. *Ingram & Anor v Abraham (Re Estate of Joanna Louise Abraham)* [2023] EWHC 1982 (Ch).

## RPC asks

### Can you stop someone from challenging your will?

Certain individuals can make a claim for reasonable financial provision from a deceased's estate<sup>9</sup>. This typically occurs where an individual considers that they have not been sufficiently provided for in a will.

It may be possible for the terms of the will to prevent a person who brings such a claim from being entitled to receive a gift under the will.

In a recent case<sup>10</sup> the court decided a wife was not entitled to receive a cash gift under her husband's will because that gift was contingent on her not making a claim to challenge the will.

The court decided that the wife had not behaved appropriately to her husband in the final months of his life, and in those circumstances it was reasonable for him to attempt to avoid any delay in the administration of the estate and associated litigation by including this provision in his will.

However, the judge ultimately decided that the wife was not sufficiently provided for by her husband's will as she was left without somewhere to live. The court decided that, whilst she was not entitled to the cash gift under the will, a property should nonetheless be purchased in which she could live rent-free.

### Virtual billboards: the future of immersive advertising?

Imagine you're walking down London's Regent Street wearing a new set of smart glasses for the first time.

Where there once was a blank wall, you now see a virtual billboard displaying advertising from your favourite brand, fully interactive and potentially even personalised specifically to you. This vision of the future is not as far off as it might seem. With immersive technologies rapidly developing and poised to become the norm in our everyday lives, the build of the infrastructure behind fully operational 'virtual billboards', including the 'Property Digital Rights' which underpin them, is already well underway thanks to ground-breaking AR gurus, Darabase.

Together with Darabase, RPC has published a white paper focusing on augmented reality through the lens of immersive advertising and the key legal issues that apply. Read more [here](#).



9. Inheritance (Provision for Family and Dependents) Act 1975.

10. *Sim v Pimlott and others* [2023] EWHC 2296.

## And finally in the art world...

### 2023 in overview

Art Basel, the global platform for collectors, gallerists and artists, has again partnered with financial services firm UBS to produce their Survey of Global Collecting 2023. The publication dives into the buying patterns of high net worth individuals across the collecting sector, frequently setting its findings against the backdrop of the wider economic climate. We have picked out our top findings from the report below.

#### The high-end market appears to be trending downwards

Following higher levels of spending in 2021, the volume of purchases in 2022 fell in both the \$100,000-plus and \$1 million-plus categories. Survey results from early 2023 showed signs of improvement. However, the high-end market is still down on 2021 and preceding years, indicating greater caution in these price brackets in recent years.

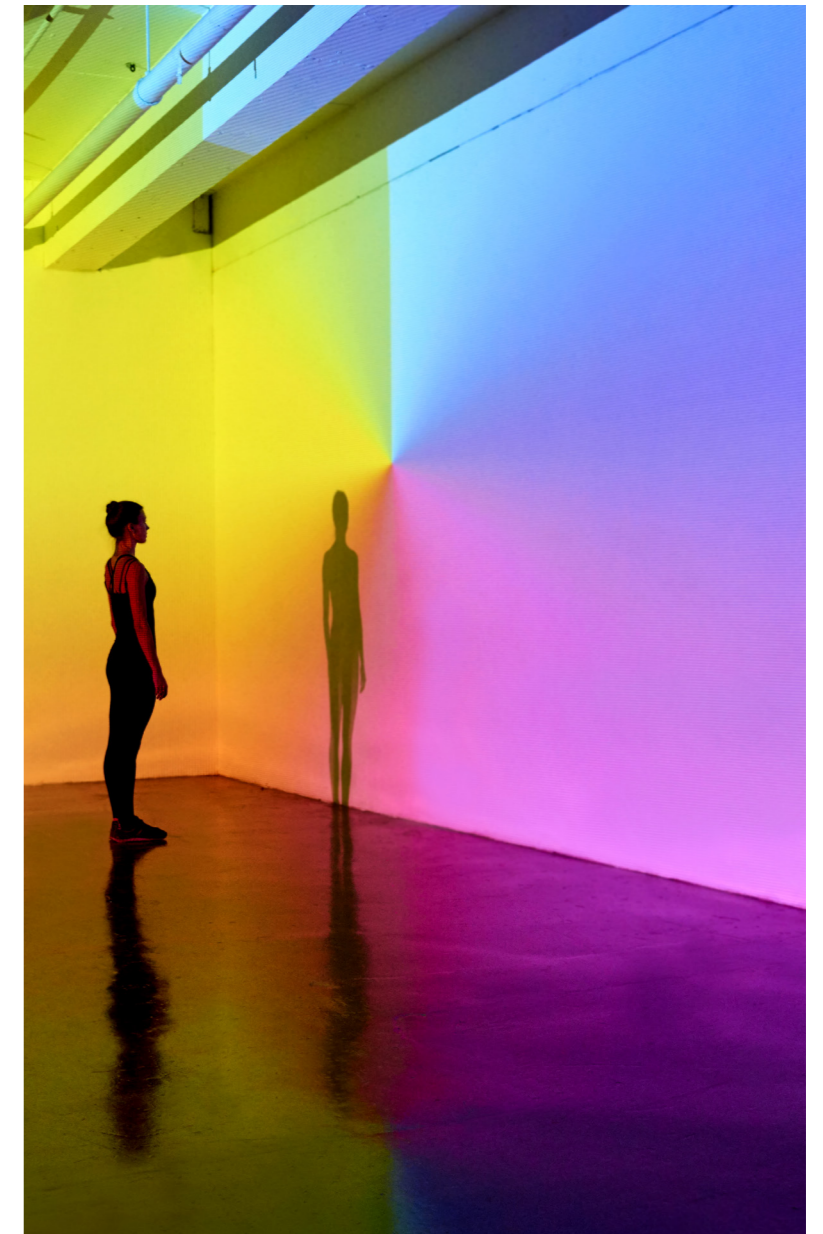
#### In-person buying remains popular

While the pandemic years may have opened collectors' eyes to the possibilities of e-commerce acquisitions, most purchases through dealers in 2023 were made at a dealer's gallery. More than half of collectors also reported purchasing at art fairs in 2023, a similar proportion to the 2021 results (following a bumper figure of 74% in 2022).

#### New observations on buying on credit

For the first time, the report drilled down into the practice of buying artwork on credit. The report observed that collectors from two markets with typically lower levels of household debt, Germany and Japan, reported the highest levels of purchases on credit, appearing to buck regional trends. The report also noted that more established collectors tended to use credit to finance higher proportions of their collections.

The full report is available on [Art Basel's website](#). Keep an eye on Spotlight for updates on developments in the art world throughout the year- including the continued growth of fractional ownership and the influence of AI.



## 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.

### Key contacts



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