

FOCUS

SWW

“THE SUCCESSION LAW EMAG”



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CONFERENCE 2023 ROUNDUP

INCASE YOU MISSED IT

LEGAL CORNER SEPTEMBER 2023

AND MORE...



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2023

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A LETTER FROM THE EDITOR

Ruby Nott

Dear Reader,

Welcome to the latest issue of Focus SWW! Thank you for taking the time to open and read this edition filled with insightful articles from our knowledgeable technical team here at the society.

After a bit of a rainy and rubbish Summer, we all came together for the SWW Conference 2023 that took place at the beginning of October. This year's theme was centred around best practice, with amazing speakers and workshops. I think it's safe to say that everyone learned a lot from our amazing speakers who kindly gave up their time to come and educate us all. It is going to be an extremely hard year to top but we are going to find a way, especially as next year will be the 30th Anniversary of The Society. We will absolutely have something special up our sleeves so watch this space!

The days are getting darker and as is customary I will always remind everyone that writing your will is one of the most important things that you will do. Making sure that your wishes are made clear will give both you and your loved one's peace of mind. Follow this link in order to find a will writer in your area: <https://www.willwriters.com/listing/>

If you have any questions about the content of this issue, please feel free to contact our office by emailing us at info@willwriters.com or phoning us on 01522 687 888 and we would be more than happy to assist.

Thank you for reading and I hope you enjoy this season's Focus SWW! I look forward to writing to you in the next issue!

R. Nott

Ruby Nott BA (Hons)
Graphic Design and Marketing
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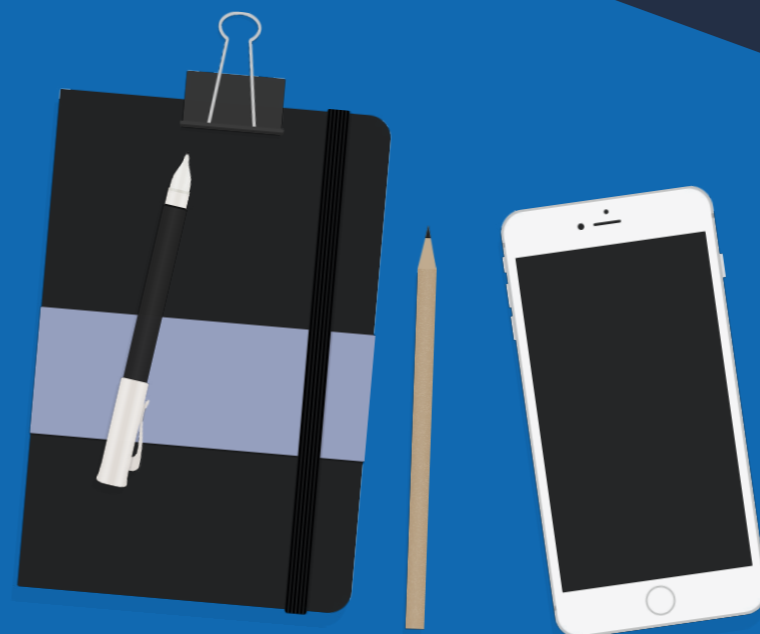


WANT TO MARKET YOUR BUSINESS WITH THE SWW?

The SWW is pleased to offer a variety of advertising opportunities within Focus SWW as well as across our other platforms.

To find out more information, or to see our media pack and rate card, please contact either info@willwriters.com or call 01522 687 888

Quarter, half and full page adverts are available within Focus SWW. All advertisement sizes and specifications are detailed in our media pack.



MEET THE TEAM

The who's who of Chancery House



ANTHONY BELCHER

DIRECTOR

Anthony graduated from the University of Lincoln with a first in Audio Production in 2016. Deciding to pursue an alternative career, he started as the Society's graphic designer that same year. His appointment to the board of directors came later in 2019. Outside of the Society he is still a keen musician and has been collecting vinyl records for over 10 years.



SIOBHAN RATTIGAN-SMITH

TECHNICAL DIRECTOR

After graduating from the University of Lincoln with a 2:1 in Law in 2014 Siobhan has dedicated herself to will writing as the head of the Society's technical team. Siobhan is also the lead tutor for The College of Will Writing, teaching our 4-day introductory course.

SAM SMITH

HEAD OF MEMBERSHIP

Sam manages the membership team. He is responsible largely for member recruitment dealing with members, third parties, and looks after our 20 regional chairs. Sam is always on hand at Society events meeting and greeting. In Sam's down time he enjoys going to the gym, restoring his camper van, and playing golf.



LIBBY ROBINSON

MEMBERSHIP ADMINISTRATOR

Libby joined the team in 2018 after completing A-Levels at Sixth Form. Libby is responsible for issuing and checking annual audits that our members are subject to as well as processing applications, membership renewals and resignations, and handling enquiries from the membership and public. When she is not working, she enjoys watching crime dramas and attending spin classes.



DIANE MANDEVILLE

COLLEGE ADMINISTRATOR

Diane has worked for the Society since 2011 and ensures not only that things in the office run smoothly, but is also responsible for the organisation and day-to-day running of The College of Will Writing. This includes making sure all training courses are well attended whether they are held at the College or online. She is also responsible for organising the SWW Annual Conference each year.



SHARON NORRIS

COMPLAINTS ADMINISTRATOR

Sharon started working for the Society in 2013 and in that time has worked in the membership department and is now complaints administrator as well as being responsible for catering at the College.

NATALIE TURNER

TECHNICAL ADVISOR

Natalie joined the Technical Advice Team in November 2022 having previously worked in the Estate Planning field as a Paralegal. Natalie provides technical advice to our members, provides support on Sure Will Writer and also assists the Technical Director in the teaching of our 4-day introductory course at the College of Will Writing.



MANISHA CHAUHAN

TECHNICAL ADVISOR

Manisha joined the Society's Technical Advice Team in July 2019 having previously worked as an Employment Solicitor in Warwickshire before relocating to Lincolnshire. Manisha provides advice on technical queries daily and ongoing support on Sure Will Writer.



RUBY NOTT

GRAPHIC DESIGN

Ruby has been with the Society since 2021, after graduating from the University of Lincoln with a first in Illustration, she is now responsible for the Graphic Design and Marketing within the Society as well as assisting the members with their creative needs and editing the Society's quarterly E-Mag, Focus SWW.



MONIKA VALAUSKIENE

ACCOUNTS

Monika is a Qualified AAT Accountant and joined the Society in 2016. Since then she has been monitoring our accounts, carrying out financial analysis, tax preparation and other daily bookkeeping duties.



OUR MISSION

The Society of Will Writers is a non-profit making self-regulatory organisation which seeks to protect the public and serve the interests of those men and women who are active professionals in our field.

The Society of Will Writers was founded in 1994 by former Director General, Brian McMillan and 4 other business owners. The Society has since grown to become not only the largest but also the leading self-regulatory body governing Will Writers and Estate Planners alike. We have over 1,700 members across the UK, Central Europe and further afield in places such as Asia and Africa.

The Society has set itself two main tasks:

To promote to the public at large the real need and sense in having a valid Will.

To act as a self-regulatory body by vetting practitioners through stringent membership requirements, proficiency standards and ongoing training.

CONFERENCE 2023 ROUNDUP

I can hardly believe that another SWW Conference has been and gone. It creeps up on us so quickly every year, and after all the genuine blood, sweat and tears required to organise the event, suddenly it's over. This year's event might not have fallen on any kind of special year for the Society, but it has still been an excellent edition of the conference with some wonderful feedback which I am sure has made it for those who attended one to remember. So once more, I welcome you to my SWW Conference Roundup, a retrospective on the event and culmination of takeaways and thoughts, feelings and thank yous to everyone who helped make this event possible.



DAY 1

The format of the first day changed slightly this year, with us having a go at hosting the first-ever SWW Regional Group Open Forum. Every year we invite the SWW Regional Chairs to the conference to meet with us and the members. This year we put them front and centre so that delegates might get to know their chair and fellow regional members better, or, even if they're already regularly involved with their group, give them an opportunity to catch up with one another. There was, I'm pleased to say, a buzz about the main conference room, with some chairs even picking up some new members – so well done to all.

I touched on the importance of the regional groups in my closing remarks and will reiterate here that their impact is not to be underestimated. They give their time freely to support members locally, and their support for the Society is very much appreciated.

Moving into the talks for the day, it was once more my pleasure to open the conference and provide the Society's annual update. Touching on membership trends, plans for the College and the future of the Society itself including a top-down overhaul of our image, this year's presentation was packed with changes. Rounding off with a brief look at what's happening in the wider sector, I gladly handed over to the Chairman of the SWW Professional Standards Board, Antony Brinkman for his annual address to the conference.

Antony covered completed, ongoing and future projects of the PSB, including the all-new best practice guidance, affiliate membership review, the launch of the mentoring scheme pilot, the all-new fellowship upgrade pathway and upcoming changes to the Society's governance and compliance procedures for members. The PSB certainly have been busy this year and there's still more to come, so make sure to check in on their socials and keep an eye out for presentations to your regional group too.

Finishing up the morning Nick Ash took to the stage to give a more in-depth look at the work the SWW PSB have been doing on the proposed governance and compliance measures for insertion into the SWW Code of Practice, which are due to be launched in the new year. These new measures come about at an important time in our profession with the CMA's current investigation and are designed to empower the Society and the PSB to further investigate allegations of bad practice, including misleading advertising and acts of consumer detriment – whether they be reported to us by consumers or other professionals.

After a short break, we handed over to Richard Orpin, Director Regulation and Policy from the Legal Services Board. Richard kindly gave delegates an update on the LSB's ongoing Reshaping legal services project as well as sharing findings from their mapping of the unregulated sector, before giving way to an extensive Q&A session

for delegates. A thoroughly valuable session, not least as it's always important that members take an opportunity to meet with representatives from key industry stakeholders, regulators and decision-makers within the wider legal sector.

With two sessions left in the day, we were thrilled to host Neil Denny of Chattertons, who is no stranger to SWW Conference and supporting the Society. Neil led a workshop on the second day of last year's conference and due to popular demand was brought back for a talk on the first day this year about the art of how to price brilliant work. An experimental, evocative and perhaps at times controversial talk, Neil went into great detail about different charging methods, and, in a first for a SWW Conference, held a live auction for a loaf of his homemade sourdough bread – the winner being the Society's very own Technical Director Siobhan Rattigan-Smith. Not a fix, we swear!

Rounding off the day's talk we hosted Mark Abrol, Mark Terrar And Emma-Louise Green of Meridian Private Client LLP. This talk or rather, a short roleplaying session, gave delegates an insight into a real-life contentious probate scenario caused by bad drafting and missing information relating to will writing. Delegates were provided with some practical information and useable takeaways from the session to help prevent scenarios such as this one from cropping up in future. I must say as well that Mark Abrol didn't look too bad in his wig either!

DAY 2

The second day of the conference has always been designed to be more hands-on. Delegates are split up into smaller groups for a series of interactive workshops, each designed to provide them with some practical knowledge, often around developing their business and client offering. It also serves as an excellent springboard of sorts to showcase new speakers, which often opens up wider opportunities for further training and support through the Society later down the line.

Mike Roberts, Simon Dyer, Chiwi Lee, and Cindy Wong ran this year's workshops.

Mike's, titled Igniting Your Online Presence gave delegates a look at the secrets of LinkedIn and how to utilise AI tools such as ChatGPT to enhance content creation. Mike is no stranger to working with the Society, having delivered countless free online sessions for members in recent years – also an expert on all things e-signatures and encryption, it was great to have him with us in person for the first time.

Simon opened delegates' eyes to the world of crypto assets, including currencies and NFTs. Members are now encountering clients who possess them, and it's important that they have an understanding of what they are, how they work, and how

to ensure they're accounted for under the terms of someone's Will. Whilst this may have only been an exploratory session, the Society will pursue additional training opportunities on the subject for members in the near future.

Chiwi and Cindy joined us from Singapore and Hong Kong respectively. The Society has for many years had a link with EPPL thanks to Brian McMillan and it was a pleasure to put that on display at this year's conference. This workshop looked at the intricacies of estate planning in relation to Asia, with a case study on the estate administration for a British person dying in Singapore, as well as guidance for Asian clients living in the UK, and British clients living abroad. Members are more frequently encountering clients with foreign assets and it's important that where possible the Society continues to provide support, training and guidance to help deal effectively with this.

Sponsors

I've said it before, both at the event and in blogs here, and I stand by the fact that it simply wouldn't be possible to run the conference on the scale we do without the support of its sponsors. Whilst the financial impact they have on the conference is important, what they bring to the table for the delegates is of far greater value. We always aim to host

sponsors that can genuinely offer those who go to the conference something that will either enhance their business or the services that they can offer their clients. Whether it's software, marketing support, or additional legal services, the conference has something for everybody and with us showcasing even more than before this year, I think that really rings true.

This year's conference was proudly supported by:

Marsh Commercial, The Estate Planner's Toolkit, Estate Planning Practitioners Limited, SWW Trust Corporation, The National Will Archive, The National Will Register, Lime Solicitors, WillSuite, Meridian Private Client LLP, Today's Wills & Probate, Legal Growth, The Law Superstore, Capacity Vault and Finders International.

You can find out all about the sponsors here, as well as catch up on all the latest posts from them under the conference category on the news page.

Gallery

We were delighted once more to have the excellent Dan Wray with us at the conference, who spent the entirety of the first day and the evening taking pictures of all the goings on. We've uploaded a selection of photos, including highlights of some of the speakers mentioned above to the 2023 Conference Gallery.



Wrapping Up

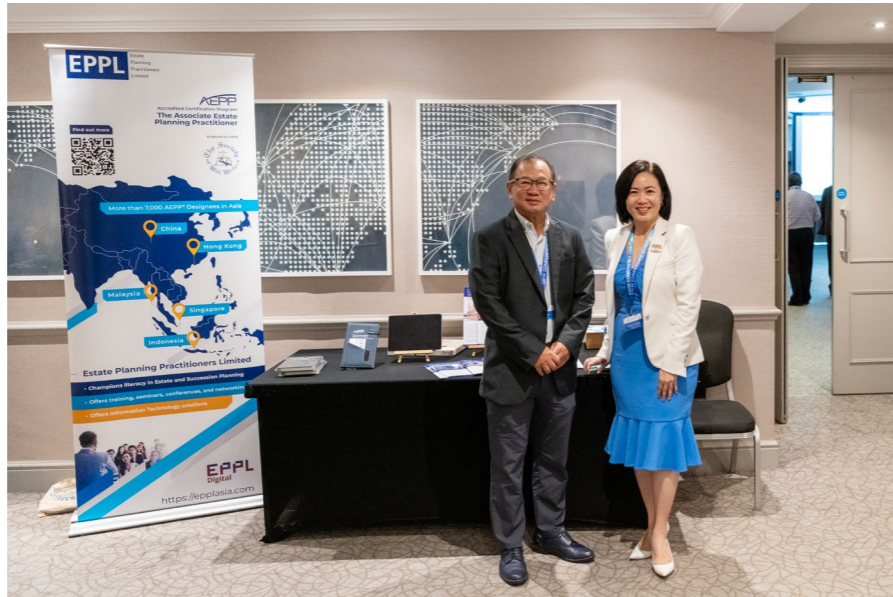
That's it for another year then. Another excellent conference and I'd just like to say thank you once more to everybody who came to the conference, whether to work or participate. It really is the highlight of the year in the Society's calendar for me, and I know the team enjoy it as much as I do – it was great to see you there, and I look forward to hopefully seeing you at the next one! 2024 is the Society's 30th year in business, so next year not only are we planning a special conference like that of 2019's 25th anniversary, there are other special plans and ideas in the works as well so keep an eye out for more information.

CONFERENCE 2023 ROUNDUP

CONFERENCE 2023 HIGHLIGHTS



CONFERENCE 2023 HIGHLIGHTS

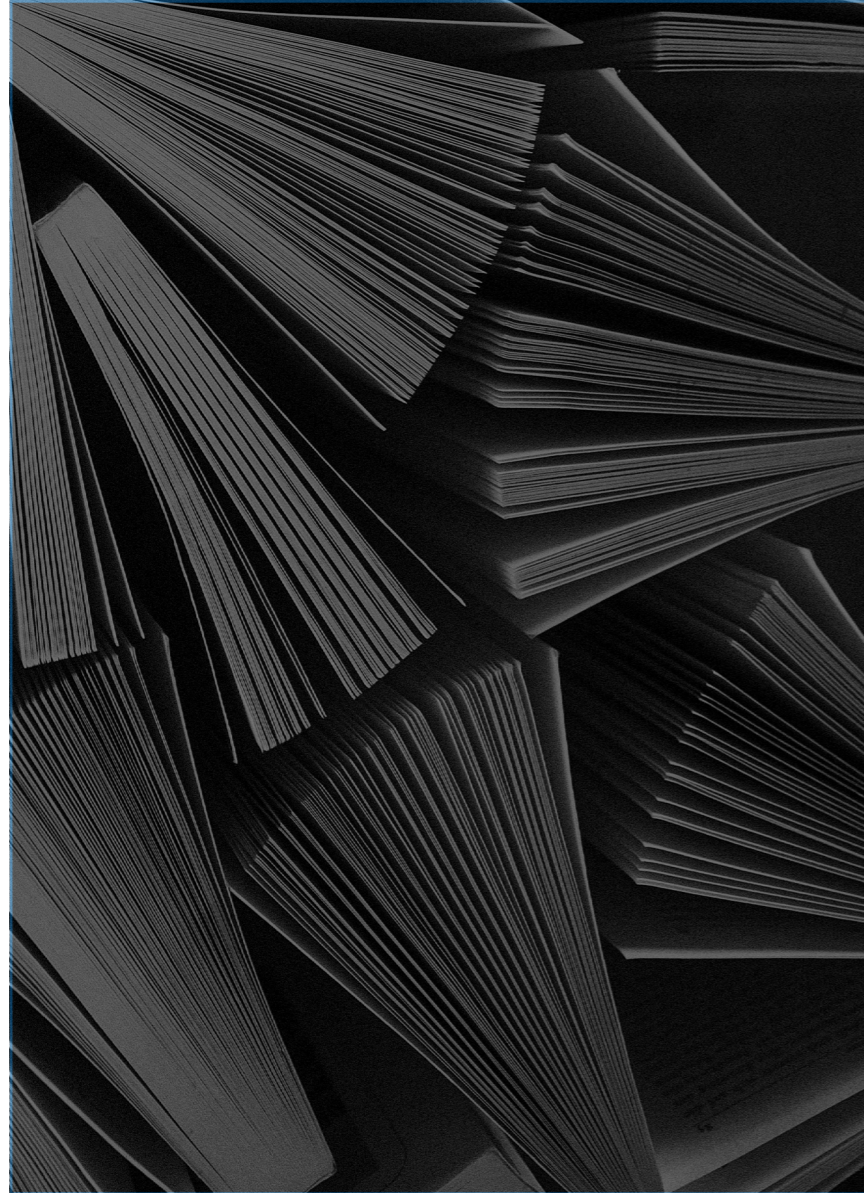


CONFERENCE 2023 HIGHLIGHTS



CONFERENCE 2023 HIGHLIGHTS





LEGAL CORNER: SEPTEMBER 2023

Once a month the Technical Team publish a selection of interesting recent queries received from our Members.

All queries and responses are anonymised so some details may be slightly changed to protect the identity of Members and their clients. To the right is a selection from September 2023.

Q: Lady has sadly had to go into Care. Her partner who she is not married to has moved out of the house for some reason so the Local Authority have said the house is to be sold to pay the costs of her care.

My main question is although they are not married, if he was living in the property, could the property be still disregarded for means-tested purposes? Does she qualify as a dependant relative even if they are not married?

If he decided to move back in, could we stop the process and have the house ignored or is that far too transparent?

A: If the home is being occupied by an unmarried partner as their sole or main residence then the property is disregarded from the means test. Unfortunately, we believe it is too late for him to move back in now to stop the process as they need to have been living in the property before the process of moving into care has started.

In circumstances where a relative moves into the property after the person has moved into care the local authority do have discretion to still disregard the property, but as a discretionary power it is of course up to them if

they exercise it. Statutory guidance tells them they need to consider "all relevant factors" about why they have moved back in, and if it is solely to preserve a family inheritance or avoid sale then they won't opt to disregard.

Q: Is it possible to make a beneficiary's inheritance conditional upon them still being married to a particular person at the time the testator dies?

A: A testator is free to make a gift in a will that is conditional on the intended beneficiary doing something or meeting a certain prerequisite, with the most common example being an age condition. However, care needs to be taken with drafting conditions as conditions may be void if they are too uncertain, against public policy, or "in terrorem" of the beneficiary. Conditions in restraint of marriage are void. Conditions requiring the separation of spouses are also invalid. So it's generally against public policy to impose a condition that prevents somebody from marrying or requires their separation but not, as far as I am aware, to require that a beneficiary is still married to a particular person at the

time the testator dies for the gift to take effect.

Q: I have a client who wants to make sure that should any of his beneficiaries die before him (they are either children or step-children) their share of his estate passes to their own estate to be distributed in accordance with their own Wills or intestacy. I could simply remove the Survivorship Clause that I usually include but want a more 'belt and braces' approach to avoid any confusion over his intentions. Do you have any wording that I can include that makes it crystal clear that he intends a deceased beneficiaries share to pass into their own estate rather than falling back into my client's estate?

A: I do have a clause for this:

GIFT OVER TO PERSONAL REPRESENTATIVES

I DECLARE that if [name] shall die during my lifetime or if this gift shall fail for any other reason the share of residue [legacy of ...] hereby given to [him] [her] shall not lapse but shall in that event pass to [his] [her] personal representatives as part of his estate.

Technical advice is an exclusive benefit of Full Membership to The Society of Will Writers (Member grade MSWW[^]) and is provided by email only. For more information about accessing our technical advice service, please see here.

It's time for "In CASE you missed it", where we examine a recent judgement that's relevant to the will writing and estate planning industry. This time it's an unusual case that demonstrates the perils of mutual wills; *Colicci & Others v Grinberg & Another* [2023]

Background & Claim

Ernesto and Josephine Colicci were married in 1982, later founding and managing a prosperous ice cream and catering enterprise called ECSI Limited ("ECSI"). They divorced in 2011, at which point they entered into a shareholders agreement in relation to their shared business.

In 2016, Ernesto and Josephine executed a deed stipulating their joint commitment to bequeath their ECSI shares to their joint children and to formalise this intent through respective wills.

Ernesto and Josephine both later met new partners and had further children. Subsequently, in 2017, they and their children established a new shareholders agreement that allocated some shares to their children, promoted Roberto to directorship, and notably included a clause that affirmed that the 2017 shareholders agreement superseded "any previous agreement between them relating to the subject matter they cover".

Ernesto passed away in 2021 leaving a will that bequeathed all ECSI shares to Nora, Ernesto's wife at the time of his death.

Josephine and her children with Ernesto brought a challenge against Ernesto's will. They sought to enforce the 2016 deed and uphold Ernesto's commitment to leave his shares to their joint children. Nora, however, defended the will on grounds that the 2017 shareholders agreement invalidated the 2016 deed.

The Law

Mutual wills are very distinct from mirror wills. While they are both types of will made usually by couples a mirror will is only named so because each will is a reflection of the other. Mutual wills on the other hand are legally binding on both parties. Mutual wills are usually made by spouses or partners and contain provisions reflecting an agreement between them regarding the distribution of their assets upon their deaths. Unlike typical wills, mutual wills include an understanding or contract that the terms of the wills won't be altered or revoked without the consent of the other party involved.

In essence, mutual wills bind the parties to a contractual arrangement that dictates how their assets will be distributed. This arrangement is legally enforceable, and once one of the parties dies, the survivor is generally not allowed to change the terms of their Will.

The main features of mutual wills include:

Binding Agreement: The individuals making mutual wills have a binding agreement not to alter the terms of their respective wills without the other's consent. This commitment is formalised in writing, usually by an express clause in the will but sometimes in a separate document.

Limitation on Testamentary Freedom: Traditional wills grant individuals the freedom to change the terms of their wills at any time before their death. However, mutual wills restrict this freedom for the surviving party, ensuring that the agreed-upon distribution of assets is upheld.

Enforceability: Mutual wills are generally considered legally enforceable contracts. If one party attempts to alter their will after the other party's death in a way that goes against the mutual agreement it can be challenged in court. They are usually enforced by way of constructive trust.

The Judgement

The court concluded that the 2016 deed bound Ernesto and Josephine to a legally enforceable obligation against altering the disposition of their ECSI upon death, thus restricting their testamentary freedom. The court defined the 2016 deed as a "mutual promise" that created testamentary obligations on them both.

Furthermore, the court determined that the 2017 shareholders agreement did not supersede the 2016 deed. The former pertained to "rights and obligations as shareholders," while the latter imposed "obligations as testators" and "conferred benefits upon the adult children as beneficiaries" so the wording in the shareholders agreement stating it superseded any previous agreement could not be referring to the 2016 deed as the subject matter the covered was their rights and obligations as shareholders only.

The court also held that the 2017 shareholders agreement could not be logically interpreted as superseding the 2016 deed as it expressly mentioned the 2011 agreement but failed to mention the 2016 deed. The court suggested that if the intent was to annul the 2016 arrangement, it would have been expressly stated.

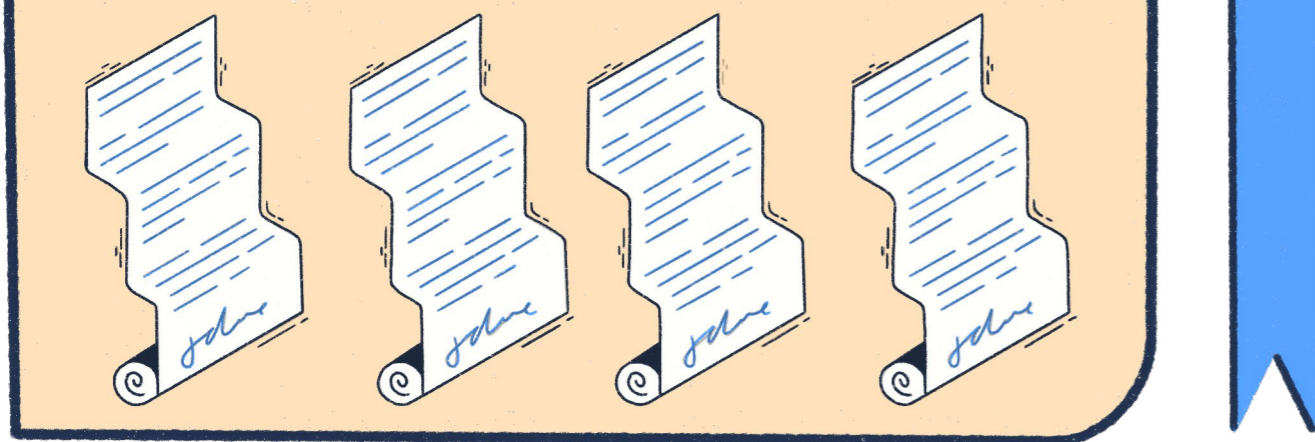
As a result, the court ruled that ECSI shares should be transferred to Roberto and Rosanna, as dictated by the 2016 deed, rather than Nora under Ernesto's will.

Conclusion

This is yet another case demonstrating the potential dangers of mutual wills. They are a tool that strips a person of their testamentary freedom and that the court will uphold, but as was the case here it may take lengthy and potentially costly litigation to reach that point. A person seeking to make a mutual will should very carefully consider the impact of them and how this may limit them or the other party should their situation change once it becomes too late to alter the agreement.

The full judgement can be accessed for free on Bailii here:
<https://www.bailii.org/ew/cases/EWHC/Ch/2023/1177.html>





COMMON ESTATE PLANNING MISTAKES

In this article, we will discuss some of the common mistakes that people make with their estate planning.

Thinking you don't need a Will

How many times have we heard people say things like 'I don't need a Will, my wife will just get everything' or 'I don't need a Will, I don't have any money'? Every person over the age of 18 should have a Will, no matter what the value of their estate is. Failing to make plans for your estate can cause a number of issues for your loved ones when you die.

Yes, it is true that your spouse or civil partner is first in line in the laws of intestacy to inherit your assets, however, it is not always as simple as that. If you have no children together, your spouse or civil partner would inherit your estate. However, if you have children, this is where it gets a little bit more complicated. Your spouse or civil partner would receive the first £322,000, all personal possessions and half of the remainder of your estate and your children would share the other half. This could cause a number of issues, one of them being you may not wish for your children to receive their inheritance at age 18 (which they would under intestacy rules) as it might not be in their best interests to do so.

Drafting your own Will

Having a DIY Will sounds like a good option in theory, however there are certain formalities that must be adhered to for a Will to be valid.

One of the main risks of doing a Will yourself is that any mistakes you make could potentially make your Will invalid, and your wishes may not be fulfilled. This could mean that your family is left with legal and financial issues on your death that could have been easily avoided. Most DIY Wills do not consider what should happen if any beneficiaries predecease the testator which can lead to a partial or full intestacy of the estate. If someone inherits through intestacy that is a minor, they will automatically be entitled to their inheritance at age 18, whereas if the testator had sought out advice from a will writer, the Will could have contained a trust that held the inheritance until they were older and could use the money more wisely.

One of the biggest issues with DIY wills, however, is in relation to the execution of the Will. In order for a will to be valid it must have been signed or acknowledged in the presence of two witnesses. A minor can act as a witness provided that they are mature enough to understand their act, however it is best to avoid this if possible. Ideally, witnesses should be completely independent, but this is not possible in certain circumstances. It is acceptable for family members to witness the signing of the Will as long as they are not named as a beneficiary or a spouse/civil partner of a beneficiary as they will forfeit their gift. Witnesses must also have the mental capacity to understand their action.

Instructing uninsured estate planners

It is extremely important to do your research when finding an estate planner and make sure you check their credentials before engaging them for their services or handing over any money. As will writing is unregulated, there are will writers out there who do not have any professional training or qualifications, or any fundamental knowledge of estate planning. This can lead to a number of issues such as incorrect or outdated advice, Wills that are invalid or a whole or partial intestacy of an estate.

The Society of Will Writers is a non-profit making self-regulatory organisation which seeks to protect the public and serve the interests of those men and women who are active professionals in our field. The reasons for using a Society member are as follows:

- Members continue to train on a yearly basis doing a minimum of 24 hours
- Members hold professional indemnity insurance with a minimal level cover of £2 million
- Members must adhere to our code of practice and complaints procedure
- Members are only admitted to the Society after completing a stringent and robust application process
- Members are entitled to use our technical advice service, run by our Technical team
- Members offer a statutory cooling-off period of 14 days in accordance with the Consumer Contract Regulations

All SWW members carry a photo ID card, and you can check their membership status at any time by looking them up on our 'Find a member' page, or by calling head office for us to check our database for you.

Not being specific enough

Gifts in Wills can fail due to uncertainty if they are too vague. A Will must clearly state what is being gifted and who the beneficiary is. This may sound like an obvious point, however we still see mistakes being made. Some real examples we have seen are:

"The bulk of my estate"

"Some of my best linen"

"I give £1000 to each of my friends"

All of these examples would be too uncertain and would therefore fail. There is no clear definition of "the bulk of" or "some of". Using classes of beneficiaries is fine as long as they are clear and can be defined such as "my children", whereas there is no way of identifying everyone who would be someone's friend.

I only have one beneficiary

If you only name one beneficiary and they die before you, or cannot inherit for any reason, then your estate will fall in line with the rules of intestacy. This could mean that your estate goes to a distant family member or the Crown, which may not be what you want. Therefore, it is always best to name a reserve beneficiary. Charities are always a good option as everything passes free of inheritance tax.

If you are interested in speaking to someone regarding your estate planning, please visit our Find a member page to search for a SWW Member nearby or call the office on 01522 687 888 and a member of the team will be more than happy to help.



If you have any questions about Wills, or any of the content in this magazine, please contact
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Web: www.willwriters.com



Who is your Will Writer?



- All SWW Members will provide up to date advice in line with current legislation.
- All SWW Members adhere to our Code of Practice.
- All SWW Members complete compulsory annual CPD.
- All SWW Members carry at least £2m of insurance cover.

If you have doubts about an SWW member give us a call on 01522 687888.
If you would like to join the SWW then please email info@willwriters.com
for our information pack or application forms.