



Spotlight

on private wealth

the latest developments in the private wealth world



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Welcome to spotlight on private wealth

This update is designed to keep you on top of developments in the private wealth world. In this edition, we explore “the Moth Case”, reforms to the law on wills, and secret trusts.

We hope you find this update helpful and interesting. As always, if you would like to find out more about the issues covered or discuss anything else, please do get in touch.

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

The Moth Case: buyers and sellers beware?

Caveat emptor or “buyer beware” is one of the oldest principles in English law and it has recently been examined by the court in a case known as the “Moth Case”¹.

The basic facts are these. A mansion in Notting Hill was sold for £32.5m. After moving in, the buyers discovered a massive moth infestation in the wool insulation between the walls of the house. The problem was so bad that, at times, the buyers were exterminating 100 moths each day. To remove all traces of the infestation would have required a huge scheme of remedial works costing millions of pounds. However, instead of trying to remedy the infestation themselves, the buyers sued the seller and asked the court to force him to take the property back.

Unravelling the court’s decision

The buyers were successful. The court decided that the usual principle of caveat emptor did not apply because the seller had made false representations to the buyers during the sale process.

When asked whether the property had ever been affected by a “vermin infestation” the seller answered “no”. Similarly, he asserted that he had never obtained any reports in relation to “vermin infestation” at the property, and that he was not aware of any defects that would not have been apparent to the buyers upon inspection. These statements were all found to be false.

A buyer who has relied on a false representation by a seller when entering a contract is entitled to have the contract rescinded,

and for the parties to be restored to the position they were in before the contract was completed.

In the Moth Case, the court found that the seller had known that his statements were untrue – and it transpired that he had previously made various attempts to eradicate the infestation before he sold the property.

The seller tried to raise various defences during the trial. For example, he asserted that: (a) moths were not “vermin”; (b) he did not make the statements to the buyers (but rather their solicitors); and (c) the claim should fail because the parties could no longer be restored to their original positions. However, the court had little sympathy for these arguments.

After the dust settles

The case is a reminder that pre-acquisition enquiries are an important part of the conveyancing process. Whilst it may be tempting in certain circumstances, the provision of misleading responses to a buyer’s questions, or stretching the natural meaning of language to suit one’s own purposes, is unlikely to be in a seller’s best interest. As the Moth Case illustrates, sellers who adopt this approach are exposing themselves to serious legal and financial consequences.



1. *Iya Patarkatsishvili and Yevhen Hunyak v William Woodward-Fisher* [2025] EWHC 265 (Ch)

What's new?

Rethinking wills: new protections and freedoms proposed by the Law Commission

The Law Commission of England and Wales has published its long-awaited report which proposes sweeping reforms to the law governing wills, marking the first comprehensive review since 1837. The recommendations aim to ensure the law remains fit for purpose in modern society, balancing testamentary freedom with increased protections for vulnerable individuals.

Supporting testamentary freedom

Measures supporting testamentary freedom - the right for individuals to decide how their estate is distributed - are central to the reforms. Key proposals include a new “dispensing power”. This would allow courts to validate wills that did not meet the strict formal requirements, if the testator’s intentions were otherwise clear. The report also recommends allowing children under the age of 18 to make wills, lowering the minimum age for from 18 to 16, with courts empowered to authorise will-making by younger children in exceptional circumstances.

Protecting vulnerable testators

To counteract the risks of undue influence and financial abuse, the Law Commission recommends that courts have the power to infer undue influence when there is evidence which provides reasonable grounds to suspect it. This would shift the evidentiary burden from those seeking to challenge the will to those seeking to uphold it. The rules invalidating gifts to witnesses are to be extended to include their cohabitants and those signing on behalf of the testator, further safeguarding against conflicts of interest. Notably, the Commission recommends abolishing the rule that marriage or civil partnership automatically revokes an existing will, addressing concerns about “predatory marriage” (marrying someone knowing that will revoke a will they have made leaving property to their children from a previous relationship).

Increasing clarity and certainty and embracing technology

The report advocates for adopting a statutory presumption of and test for capacity. A code of practice for assessing capacity is also proposed. Provision for electronic wills is recommended, provided robust security measures are in place, reflecting the digital evolution of legal documents.

The report is accompanied by a draft bill. If enacted, these reforms will bring about greatest change in wills law in nearly 200 years. The Law Commission’s recommendations now sit with the government – watch this space!

HMRC may be underestimating tax avoidance by the wealthy

A recent report by the National Audit Office (NAO) indicates that tax avoidance and evasion among wealthy individuals in the UK may be more prevalent than previously estimated by HMRC.

In 2023–24, individuals earning over £200k annually or with assets exceeding £2m, contributed £119bn in personal taxes, representing 25% of total personal tax receipts. However, HMRC’s compliance yield, the additional tax collected through enforcement efforts, has doubled from £2.2bn in 2019–20 to £5.2bn in 2023–24.

This increase suggests that the tax gap among the wealthy could be significantly higher than the previously estimated £1.9bn. The NAO report also highlights concerns over offshore tax evasion, noting that HMRC’s 2018–19 estimate of £300m in lost revenue likely understates the full extent of offshore non-compliance.

The NAO urges HMRC to improve transparency and develop a clear strategic vision to ensure that all tax legally due is collected.

The NAO’s report can be viewed [here](#).



RPC asks

What is a secret trust?

A secret trust is one of those intriguing quirks of English law. Someone writes a will, apparently leaving everything to a particular person. But behind the scenes, there’s an understanding: the recipient is actually meant to hold the property for someone else’s benefit. The trust is “secret” because it isn’t mentioned in the will itself.

For a secret trust to be valid, three things must be established:

1. the testator’s clear intention to create a trust (using imperative, not just wishful, language),
2. communication of this intention to the person they are leaving the property to
3. acceptance of the trust by the recipient of the gift.

In a recent case², the Court of Appeal decided that allegations that a secret trust had been created should be determined at a court hearing, when a judge had previously decided that the claim was too vague to go ahead. The testator had left his entire estate to his civil partner. His brother claimed that the testator had left property to his partner to avoid inheritance tax, on the understanding that she would then make gifts to his siblings. He claimed that there was a secret trust and that the civil partner held half of the estate on trust for the testator’s siblings.

The court noted that the evidence was patchy, but that documents hinted at a “plan” between the testator and his partner. The partner and witnesses had not yet provided detailed evidence which would be needed to decide if there was a secret trust. It ordered the hearing of the claim to go ahead.

The statutory residence test and exceptional circumstances – what are they?

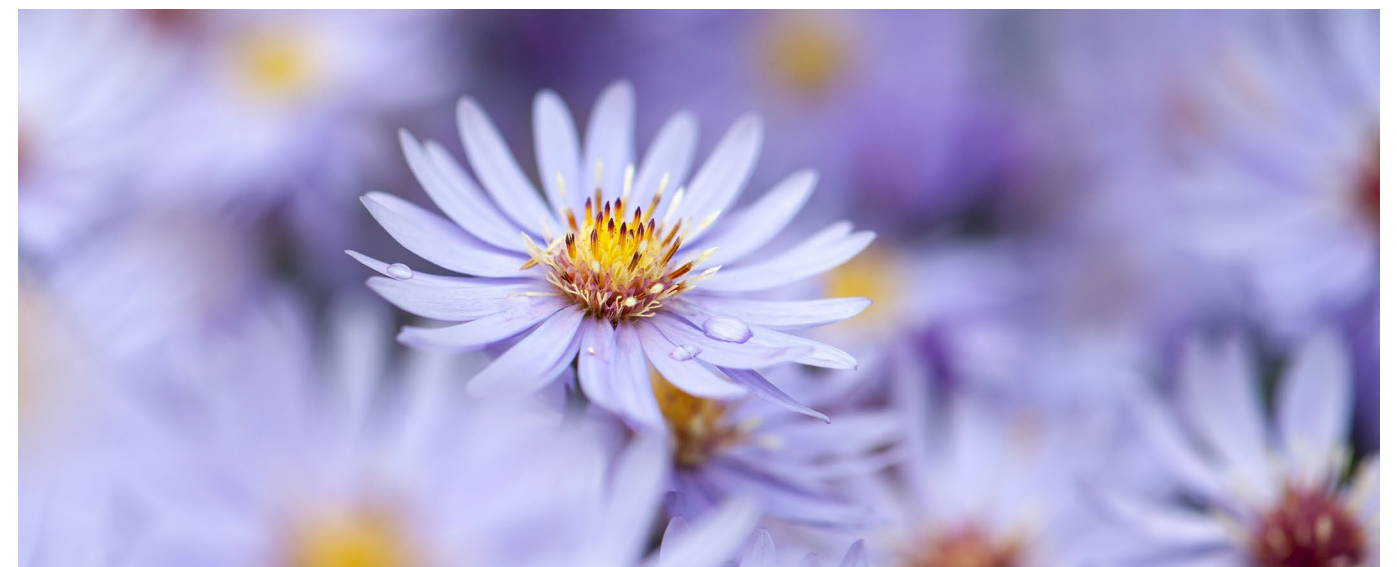
A court recently allowed a taxpayer’s appeal and agreed that the “exceptional circumstances” exemption for the statutory residence test was satisfied. Read all about it [here](#).

How can you get rid of a trustee?

Most professionally drafted trust deeds include express provisions for the removal of trustees. If no such provisions exist, or the trust has arisen other than by a deed, the law provides other routes to remove trustees, and the court can intervene.

In a recent case³, the Earl of Yarmouth brought a claim to remove and replace two trust corporations. Following a breakdown in family relations, the Earl alleged that the trustees were siding with his parents which posed a risk to the proper administration of his family’s £85m estate.

The court ultimately dismissed the claim on the basis that it was not “well founded” and decided that the trustees had acted in accordance with both their duties and the trust deed. The court said that the Earl’s view of the trustees was simply a “feature of the damaged and fractured” relationship with his parents which was not sufficient to justify their removal. It reiterated that the trustee’s removal from office must be required for the welfare of the beneficiaries generally or necessary for the protection of the trust. It emphasised that there must be evidence of misconduct by the trustee, which is a high threshold for an applicant to meet.



2. [Lorenz v Caruana](#) [2025] EWCA Civ 606

3. [Seymour v Ragley Trust Company Ltd](#) [2025] EWHC 1099

And finally in the art world...



Art dealer prosecuted under the Terrorism Act: a warning signal for the art market

The recent conviction of art dealer Oghenochuko Ojiri under the Terrorism Act 2000 is the first prosecution of its kind in the UK and has sent shockwaves through the art world. Ojiri a familiar face from BBC's Antiques Road Trip, was sentenced to two and a half years in prison for failing to declare sales of artwork to Nazem Ahmad, a suspected financier of Hezbollah, an organisation proscribed as terrorist by UK authorities.

Ojiri's case is a stark reminder of the risks facing art market participants in today's regulatory landscape. Despite being aware that Ahmad was sanctioned by US authorities in 2019, Ojiri proceeded with multiple secret sales, even omitting Ahmad's name from paperwork. The judge found that Ojiri's actions undermined efforts to detect terrorist financing, highlighting the critical role of due diligence in the sector.

Since January 2020, art dealers, galleries, and intermediaries trading in works of art valued at €10k or more have been brought into the regulated sector under the Money Laundering Regulations 2017. This means they are now subject to stringent anti-money laundering and counter-terrorist financing measures including customer due diligence, record keeping, and mandatory reporting of suspicious activity. Ojiri, as a regulated art dealer, was found guilty of offences of failing to disclose information during the course of business in the regulated sector when knowing, suspecting or having reasonable grounds for suspecting another person has committed or attempted to commit an offence under sections 15 to 18 of the Terrorism Act 2000.

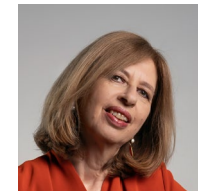
The case underscores the importance of "knowing your client" in the art market. Art dealers must be vigilant, not only to protect their businesses but also to avoid inadvertently facilitating criminal or terrorist activity. In February last year, the National Crime Agency issued an amber warning highlighting the use by criminals of art storage facilities to store art, as a capital asset, that can appreciate over time and be liquidated when required.

With law enforcement increasingly focused on the art market, robust compliance is no longer optional. Regulated individuals in the art market must familiarise themselves with anti-money laundering guidelines and ensure all staff are trained to spot red flags. To assist art dealers in complying with their regulatory requirements the British Art Market Federation published [these guidelines](#) which have been approved by HM Treasury.

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