



*Andrew Willetts TEP*

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*Practice Overview*

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Andrew is a chancery practitioner specialising in contentious and non contentious trust and probate work and regularly provides advice to executors, trustees and beneficiaries under will trusts and other settlements. Andrew has also written widely on the subject of trusts including for Westlaw and the New Law Journal. Andrew is a member of the Chancery Bar Association and STEP (the Society of Trust and Estate Practitioners).

Andrew is also a fully qualified and accredited civil and commercial mediator and is available to mediate a wide range of disputes including personal injury, property disputes and chancery actions.

Andrew is a member of the Western Circuit and sits as a Recorder in the County Court (in civil, family, care and crime) on the Midland Circuit.

## *Qualifications and appointments*

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- BSc Econ Hons (Politics & Law) UCW Aberystwyth 1996
- Awarded the Calcutt Pryce Prize for Land Law 1996
- Called to the Bar: Inner Temple 1997
- Tenant at Chambers in Birmingham until 2001
- Seconded Crown Prosecutor 2002
- Joined 27 New Walk, Leicester July 2002
- Pupil Supervisor 2006
- Appointed Recorder dealing with Civil matters on the Midland Circuit; May 2009
- LLM (Medical Law) Northumbria University 2010
- Civil & Commercial Mediator (March 2012)
- Member of STEP (2013)

## *Probate, Succession & Trusts*

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Andrew undertakes the full range of Probate, Succession and Trust work , in particular:

- contentious and non-contentious probate;
- providing advice to executors, trustees and beneficiaries on estate matters and the execution of trusts generally;
- Will trusts;
- applications under the Inheritance (Provision for Family and Dependents) Act 1975; and
- applications under the Variation of Trusts Act 1958.
- applications under section 50 of the Administration of Justice Act 1985 (to remove or substitute executors) and the Court's inherent jurisdiction to remove trustees under the principles established in *Letterstedt v Broers* (1884) 9 App Cas 371.
- applications for *Beddoe* orders.
- applications under section 57 Trustee Act 1925.
- applications under section 64 Settled Land Act 1925.

Andrew is also a member of STEP (the Society of Trust and Estate Practitioners) and contributor to Westlaw's UK Insight on the variation of trusts, the doctrine of renvoi and the power of advancement.

## *TOLATA*

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Andrew advises on all aspects of family and co-habitee property disputes concerning trusts of land which includes drafting all relevant applications under CPR Part 7 or Part 8 and accompanying witness statements. Andrew also advises trustees and beneficiaries of their respective rights and duties under a trust of land including under the Trustee Act 1925 and applications under the Variation of Trusts Act 1958. In some cases Andrew will be able to advise on whether a trust of land is in fact settled land within the meaning of the Settled Land Act 1925

## Court of Protection

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Andrew advises on all aspects of the Mental Capacity Act 2005 and the Court of Protection which in many ways are strikingly similar to the jurisdiction of the Chancery Division in respect of trusts, trustees and fiduciaries. In that way Andrew can bring to bear his considerable experience as a trust and estate practitioner in specialist Court of Protection work. Andrew can also, in his capacity as a fully accredited civil and commercial mediator, accept instructions to act as an independent mediator in Court of Protection disputes.

## Cases of Note

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### Re W Estate

Advised executors as to whether the doctrine of ademption would apply under the provisions of the will and the terms of an application to the Chancery Division of the High Court under CPR Part 64 for a declaration to protect the executors position on final distribution.

### Re M Estate

Instructed to advise estate as to the extent of the power afforded to the proving executor to recover estate property when opposed by the co-executor under the will whose power so to act was reserved under the grant of probate.

### Re M L Estate

Advised as to whether a 'pro forma' will had been validly executed under the Wills Act 1837 with regard to the cases of *In the Goods of Gunston Blake v Blake [1881-85] All ER Rep 870* and *Re Groffman [1969] 2 All ER*.

### Re S Estate

Advised in an action for an inventory and account of an intestate estate and a potential claim in devastavit.

Re F W Will Trust This concerned a discretionary trust established in a will and the power of trustees to make a final distribution under section 158(1) Law of Property Act 1925.

### Re E C Estate/Re L Trust

Advice as to merits of an application under section 41 Trustee Act 1925 for substitution and in the alternative removal of a trustee under the court's inherent jurisdiction as set out in *Letterstedt v Broers [1881-85] All ER Rep 882*. The trust instrument only contained provision for identifying a substitute trustee in the event the appointed trustee was "unable" to act.

### Re F O Trust

This concerned the distribution of various charitable legacies applying *Re Slevin [1891] 2 Ch 236*. It fell then to determine whether the bequests could be applied *cy-pres* by the direction of the Crown under a Royal Sign Manual Direction or by the court under its inherent jurisdiction over trusts applying the decision in *Re Bennett, Sucker v Att-Gen [1960] Ch 18*.

### Re D W Trust

The trustees sought advice as to whether the purchase of an annuity with a life policy would be permissible under the trust. Annuities had previously been considered a potentially unauthorised transaction (*Fitzgerald v Pringle (1825) 2 Mol. 534*). An application for clarification under *Public Trustee v Cooper [2001] WTLR 901* with an alternative application under section 57 Trustee Act 1925 was considered.

## Cases of Note (Contentious)

Porter & Appleton v Hambly, High Court Chancery Division, Bristol District Registry, July 2015 Application to revoke Letters of Administration and to prove a will in solemn form. Heard before HHJ McCahill QC who revoked the administration but granted probate in common form adjourning generally the application to prove in solemn form as there were outstanding allegations of fraud. To protect estate property in the interim the judge granted an order for co-proprietorship between named executors under the will and the dissenting beneficiary.

Bath v Escott, High Court Chancery Division, Bristol District Registry, August 2014 Successful application to remove executor and trustee under section 50 of the Administration of Justice Act 1985 and under the Court's inherent jurisdiction in accordance with the principles established in *Letterstedt v Broers* (1884) 9 App Cas 371.

White v Appleton, Town & Town, Exeter County Court, August 2014 (HHJ Cotter QC) Successfully defended claim against estate brought by estranged adult child of the deceased within the meaning of sections 1 (1) (c), 2 of the Inheritance (Provisions for Family and Dependents) Act 1975. The Judge undertaking the objective 'balancing exercise' under section 3 of the Act found that the hardship that would be caused to the beneficiaries if the Claimant were to succeed outweighed any modest benefit to the Claimant if an award was made.

Seward v Seward & Anor [2014] All ER (D) 168 (Jun)

Trial before Simon Monty QC sitting as a Judge of the Chancery Division concerning the equitable doctrine of proprietary estoppel. The doctrine was successfully invoked and a trust imposed to satisfy the equity arising from the breach of a promise that the Claimant would inherit his parents farm (*Gillett v Holt* [2001] Ch 210, *Thorner v Major* [2009] 1 WLR 776 and *Jennings v Rice* [2002] EWCA Civ 159 applied).

Re Flux Will Trusts, Bristol District Registry November 2013 (HHJ McCahill QC) Successful application under the Variation of Trusts Act 1958 to sanction variations to Will trusts in favour of the testator's daughters. The application was heard before His Honour Judge McCahill QC sitting as a High Court Judge who approved the 'arrangement' for the benefit of the children under section 1 (1) (a) of the Act.

## Publications

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**"Language Barrier"** The STEP Journal November 2016 issue. An analysis of the UK Supreme Court decision in *BNY Mellon Corporate Trustee Services Ltd v Lloyds Banking Group Capital No 1 plc & Anor* [2016] UKSC 29 and its implications for interpreting trust instruments including the weight to be given to the circumstances at the time the trust is created and subsequent developments.

**"Advancement (trusts)"**. An overview of the power of advancement for Westlaw's online encyclopedia UK Insight (published December 2013).

**"Renvoi"**. An overview of the Doctrine of Renvoi for Westlaw's online encyclopedia UK Insight (published June 2013).

**"Variation of Trusts"**. An overview of the **Variation of Trusts Act 1958** for Westlaw's online encyclopedia UK Insight (published February 2013).

**"Under Contract"**- The New Law Journal 5/8/2011. Which considers the development of the law of restitution in contract from **Butterworth v Kingsway Motors [1954] 2 All ER 694, [1954] 1 WLR 1286**, to the more recent case of **Giedo Van Der**

***“What the electrician heard”***- The Solicitors Journal 1/8/2011. Which considers the standard of proof and evidential matters involved in proving a lost will to probate following the case of **Ferneley v Napier and others [2010] EWHC 3345 (Ch)**.

***“Re T (A Child; murdered parent) and Injunctions in the Family Courts”***, The Family Law Week 16/6/2011.