

XXIV

BARRISTERS' CHAMBERS

2nd Annual Probate & Court of Protection Conference

Thursday 22 November 2018

14:00 to 19:30

Followed by drinks and canapés

One America Square

17 Crosswall, London EC3N 2LB

XXIV Old Buildings Probate Conference 2018

We look forward to welcoming you to our second annual Probate Conference. Our team of specialists will guide you through a range of topical issues which we hope will be of interest and practical benefit to all those attending. Speakers will be happy to answer questions either after their talks or over a drink later.



14:00 – 14:40

Welcome coffee and registration



14:40 – 14:50

Introduction – Sue Medder, Chambers Director

Chairman's Introduction – Helen Galley



14:50 – 15:20

Out of the country, out of my grasp – Elspeth Talbot Rice QC and Elizabeth Weaver

Elspeth and Elizabeth look at the problematic concept of domicile and other tricky questions that arise when there are foreign aspects to the administration of an estate.



15:20 – 15:50

Digital assets and electronic legacies – Erin Hitchens and Robert Avis

Erin and Robert consider the implications for estate planning and administration of the rise in digital assets of financial or sentimental value.



15:50 – 16:05

Deputies Limited – Heather Murphy

Heather will review the recent cases confirming the appointment of non-individuals as deputies, and the impact of appointing non-individuals as deputies and attorneys.



16:05 – 16:35

“What’s done is done.” But can it be undone? – Edward Cumming QC and Timothy Sherwin

Edward & Timothy consider the knotty issues that can surround attempts to revoke lasting powers of attorney (LPAs) and the challenges that can arise in relation to the question of lifetime gifts by the donor of an LPA.

16:35 – 16:55

Tea and coffee Break



16:55 – 17:25

Uncompromising positions – Sarah Bayliss

Sarah discusses the mechanics of settling probate disputes and shares some thoughts on potential pitfalls and how to avoid them.



17:25 – 17:40

Mediation of probate claims – a mediator’s view – Helen Galley

Which claims are suitable for mediation and how should cases be prepared to give the best chance of settlement? Pitfalls and obstacles!

17:45 – 19:30

Drinks and canapés

Speakers' Biographies

Sue Medder Sue is the Chambers Director at XXIV Old Buildings and joined in June 2014 from international law firm Withers LLP, where she was a partner. Directories acknowledge her as *"an incredible asset"* who has *"enhanced the set overall since her arrival in 2014"*. Sue is responsible for client care at XXIV, the development of members' practices and has responsibility for the clerking team. She also sits on XXIV's management committee and is closely involved in the strategic growth of Chambers.

Elspeth Talbot Rice QC Recently crowned Chancery Silk of the Year at the Chambers Bar Awards, Elspeth is well known and very highly regarded for her International trusts expertise. She acts in international trust matters for private clients and commercial enterprises across the globe. She combines a wealth of knowledge and experience with clarity of expression, practicality and supreme approachability. Chambers & Partners, Chambers Global and Legal 500 as well as Citywealth Leaders all recommend her as a leading silk. Chambers HNW rank her as a star individual for traditional chancery work, quoting a market source as saying that she is *"at the pinnacle of her field - one of the best in the business."* She has been described as *"the smiling assassin"* and Chambers and Partners' market sources describe *"An absolutely top-class advocate, who presents arguments in court beautifully ..."* *"Elspeth is a real team player as well as a true leader, who is a go-to person for complex international disputes. She is incredibly hard working, diligent, rigorous and organised."* *"Just marvellous. She can cut through the issues and has a particular ability to help clients focus on the central issue of the case."* *"She is the most compelling advocate and is unbelievably crisp and clear. The court just takes it from her."* *"She grasps the issues quickly and provides clear and effective solutions."* *"Doesn't take any nonsense and is really good on her feet. She's straightforward – if she says something, a court will be inclined to think that's the case."* *"A robust courtroom advocate, who is forceful in her submissions, always extremely well prepared and someone who has always thought things through. Her paperwork is brilliant as well."* *"A razor-sharp intellect and a forensic approach. Her mastery of detail is second to none."*

Edward Cumming QC One of the youngest QCs ever to be appointed, Edward – said by Chambers & Partners to be *"a lion in court"* – has exceptional experience of contentious probate and estate litigation, which forms a key part of his thriving mixed chancery and commercial practice. Recommended by Chambers & Partners (2018) as a 'New Silk' in no fewer than 6 separate practice areas, and by Legal 500 (2017) in 8 separate practice areas, Edward prides himself on being both a *"formidable advocate and excellent with clients"*. Recent professional highlights include: Re Z [2018] EWHC 1488 (Ch), an ongoing dispute in the Court of Protection regarding the capacity of a successful businessman and the future management of his property and affairs; acting for Viscount Weymouth in relation to the trusts that hold the famous Longleat Estate; Lehtimaki v Children's Investment Fund Foundation UK & ors [2018] EWCA Civ 1605, concerning the limits on the court's inherent jurisdiction to supervise charities; In the matter of the X Trusts [2018] SC (Bda) 56 Civ, which gives guidance on the removal of trustees and directors of PTCs; and a complex ongoing family dispute involving both proceedings relating to the ongoing administration of a family trust and claims under the Inheritance (Provision for Family and Dependants) Act 1975.

Elizabeth Weaver Described as *"a sheer delight to work with"* (Citywealth Leaders List) and praised for being *"excellent, both on paperwork and on her feet"* (Legal 500, Chambers) Elizabeth has extensive experience and expertise in trust and probate litigation. Her work often has an offshore or overseas dimension. Elizabeth's recent probate work including acting for executors in a complex estate administration involving offshore companies, acting for interim administrators, advising in Inheritance Act claims involving assets held abroad, advising on the interpretation of disputed wills and related professional negligence claims. Elizabeth was Legal 500 Trusts and Probate Junior of the Year 2018.

Helen Galley Helen is recommended in Legal 500 2017 for private client trusts and probate as *"personable and efficient"* and also recommended in the Citywealth Leaders List 2017 as a Prominent Contentious Trusts Barrister. Helen has a particular interest and wide experience in trust issues, including hostile claims against trust assets, offshore trusts, constructive trusts relating to freehold property, cases which raise issues of conflict of laws and undue influence. Helen has acted in many contentious and non-contentious probate cases including claims in the Court of Protection. She has extensive experience of claims pursuant to the Inheritance (Provision for Family and Dependants) Act 1975. She also prepares trusts deeds and ancillary documentation, wills and post-death deeds of variation for Inheritance Tax planning purposes.

Speakers' Biographies

Sarah Bayliss Sarah is noted as a “fantastic barrister” and “a good tactician with a sharp mind for complex issues”. Sarah’s practice encompasses a broad range of contentious trust, succession and estates work in the UK as well as substantial international private client disputes. Sarah’s extensive experience in financial services and insolvency matters serves as a useful adjunct to her private client work. Recent cases in the UK include several claims under the Inheritance (Provision for Family and Dependants) Act 1975 and applications for the construction of trust instruments including *Re Kurzyniec Will Trusts* [2017] High Court/Business and Property Court and *Re Charles Willis Harrison 1924 Settlement* [2018] 1 WTLR 299. Sarah is presently engaged in international litigation to recover assets on behalf of members of the Perry family with proceedings presently on foot in England, the Cayman Islands, the BVI, Liechtenstein, Curacao and Delaware

Erin Hitchens Erin regularly acts and advises on a wide range of trusts, probate and commercial matters. Recent probate claims include for rectification, applications for removal of executors and under the 1975 Act. She frequently appears in the High Court and County Court and represents clients at mediations. She has been instructed in relation to proceedings in several offshore jurisdictions including the Cayman Islands, Jersey, the BVI, Anguilla and the DIFC relating in particular to trusts and funds. Erin has twice undertaken secondments with solicitors’ practices advising on contentious trusts and succession with an emphasis on charity beneficiaries.

Heather Murphy Heather has a rich and varied commercial chancery practice, involving both advisory work and regular court appearances. She specialises in contentious trusts and estates and her recent work includes advising on the question of domicile and the Wills Act 1963, representing minors via their litigation friend in a 1975 Act claim, and successfully resisting an beneficiary’s application for a High Court injunction against the executors. Heather has a particular interest in Court of Protection matters. She regularly advises on the appointment and revocation of attorneys and deputies and acts for attorneys in OPG investigations. She also advises appointees as to the scope of their powers, particularly in relation to gifts, and the nature of P’s property, particularly when it is jointly owned with another. Heather also brings considerable insolvency and company law experience to trust and estate questions and therefore is well placed to advise on estates or trusts comprising shares, insolvent estates and the death of bankrupts.

Robert Avis Robert joined XXIV Old Buildings in 2014 and has a broad chancery and commercial practice. He has particular experience of contentious trusts and estates disputes and was recently seconded to the trusts and estates litigation department of a leading international firm. Robert is currently instructed in relation to a trust dispute in the DIFC and a protracted family business dispute in the Commercial Court. He has acted as junior counsel both to senior members of chambers and to family and commercial practitioners, whilst frequently appearing in his own right, in the County Court, Family Court and High Court, both at first instance and appellate level.

Timothy Sherwin Timothy has considerable experience of succession and probate disputes, as well as Court of Protection matters. As part of his busy chancery practice, Timothy has recently been involved in several Inheritance Act applications, acting for applicants, respondents and PRs; he has advised on and appeared in probate concerning the formal and substantial validity of wills; he has dealt with applications for the removal of PRs; and he has advised on a number of cases raising difficult cross-border succession issues. Timothy is also currently instructed on a very large and complex Court of Protection dispute, dealing with a number of interlocking questions of capacity, the validity of LPAs, and access to protected parties; and he is frequently instructed on cases which raise similar issues. In addition, while on a recent 5-month secondment to a leading contentious trusts and probate department in a major law firm, Timothy handled a wide variety of contentious and non-contentious succession and Court of Protection cases. He is therefore comfortable in dealing with all manner of estates cases, whether on his own or as part of a team. Timothy also writes regularly on estates, succession and Court of Protection issues, with recent articles published on the validity of lifetime gifts by attorneys, donations mortis causa and the removal of fiduciaries.