

## Accessing medical records

Many clients who seek legal advice about the medical treatment they have received are concerned about getting hold of their medical records. Any consultation with a health professional should result in a written or computer record which may bear no relation to the client's recollection of events!

Under the Data Protection Act 1998 every patient or client is entitled to have access to their health records from NHS bodies, namely hospitals, GPs and community clinics, part of the Primary Care Trust. However, this right is subject to exemptions. Objections to release of the information are usually based on concern that the information may detrimentally affect the patient's health in some way: this is more common in cases where the patient may have been treated for mental illness.

Requests for copy hospital records are made to the Medical Records Department of the treating hospital. Requests for GP records are made to the patient's current GP who should hold all medical records from any previous GP practices as the records follow the patient.

The Data Protection Act does not give such a right of access to anyone else's records, i.e. anyone other than the patient. However, the obvious exceptions to this are: a parent can access their child's records; and a personal representative can access the deceased's records.

A patient can request sight of their original



records but these must be viewed in the GP surgery or hospital and can not be released. Copies can be supplied for permanent retention, although there is a cost for this.

The maximum which can be charged is currently £50 per set of records and x-rays. This means that if the patient wishes to see GP and hospital records, the total cost would be £100, that is £50 for each set of copied records and x-rays.

If the records are handwritten they can be difficult to read and even computer records very often need 'interpreting' as abbreviations are used along with medical jargon.

If you have any concerns about obtaining such records, reviewing them or if you feel unhappy about treatment received, our Clinical Negligence Department will be happy to assist. Please contact Jeanette Whyman on 01926 883019 or via email.

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## One by-pass you may wish to have

In today's sophisticated financial market, many people have death-in-service benefits through their employment or death benefits via their pension scheme. These benefits are generally not considered an estate asset and are regarded as free from inheritance tax (IHT). However, even though these death benefits are not treated as estate assets, there is a potential IHT problem.

Generally speaking most people nominate their

death benefit to be paid directly to their spouse or partner. As a result, because the benefit is not treated as an asset of the estate, on the first death there is no liability to IHT. However, IHT liability arises on the second death. For example, on the death of the first spouse, the death-in-service pays a lump sum to the survivor. This is outside the estate for tax purposes. Once the benefits of the policy have been paid to the survivor they become an asset of their estate.

Subsequently, when the survivor passes away their estate (which would include any death-in-service benefit monies) is subject to IHT at 40% on the value of the estate in excess of the IHT threshold.

This tax problem can be avoided by nominating the death-in-service benefit or pension death benefit into a trust. The trust is held outside the survivor's estate; (and therefore not subject to IHT on the

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# HIPs should speed up house buying process

House prices, interest fluctuations, bank lending criteria, buy-to-let – you name it, anything that affects the buying and selling of homes usually makes headline news which is unsurprising given the percentage of personal wealth invested in bricks and mortar.

This year's major change, the introduction of Home Information Packs (HIPs) has, after a rocky start, had a mixed reception. In fact, when properly executed, HIPs could actually simplify the conveyancing process and speed things up at the same time.

Since 10 September residential properties with three or more bedrooms have needed a HIP (at least to be commissioned if not completely compiled) before they can go onto the market. However, the HIP which was finally launched is a considerably watered down version of the original HIP which was intended to make the conveyancing process more transparent and less prone to hazards such as delays.

In advance of the introduction of home information



**Kim Fracchia explains why Home Information Packs should make buying a house quicker and easier for all concerned.**

packs, Wright Hassall joined forces with a group of local independent agents to review how best to deal with the production of HIPs.

When we looked at the requirements, we decided that not only could we produce them online but, in doing so, we could also achieve the government's original objective of simplifying and streamlining the conveyancing process.

To do this, we have invested in a web-based system, VisualHIP, which assembles the constituent parts of the HIP electronically. This means that the compulsory elements of the HIP, including the Evidence of Title, Searches and the Energy Performance Certificate, are automatically requested at the press of a button. The whole process can be started by the local estate agent, responsible for marketing the property, via a link to Wright Hassall's VisualHIP website, as part of the normal sales procedure. The whole process is undertaken by us from initial instruction from the client or from the estate agent acting on the sale via a direct weblink already installed. Once the information



*On the move: Home Information Packs are designed to help, not hinder, moving home.*

requested is available, the results are automatically collated and made available to the client and agent who are able to download the contents of the HIP.

The HIP, with all the necessary elements, can then be viewed on-line via a unique code which is given to the seller, the agent and prospective buyers. Obviously a paper copy can be printed if necessary but, due to the sheer size of the document, we are encouraging people to view on-line.

The additional advantage of this system is the ability to go beyond the compulsory requirements of the HIP and compile the entire history of the property (such as the planning permissions, fixtures and fittings and guarantees) online. We can collate all the information that is normally requested by a prospective purchaser's solicitor ahead of time so that, when an offer is made, the seller will be ready to exchange. Furthermore, in future all parties will be able to view the collated information on-line and track the progress of the transaction using the unique code given when the HIP was originally commissioned.

The ability to see exactly what is going on in the conveyancing process will help to dispel many of the problems that accompany the sale of a property – nothing will be hidden as the facts will be there for all involved to see. This will save considerable time raising, and replying to, the many enquiries between solicitors which will in turn reduce the time between finding a buyer and exchange of contracts which is so important in fixing a commitment. The future is electronic!

For more information about HIPs or Wright Hassall's conveyancing procedures, please contact Kim Fracchia by calling 01926 880791 or via email.

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## The financial benefit of taking bypass action

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survivor's death) however the survivor can be a beneficiary of the trust and receive funds. Even more beneficially the trust can be drafted with power to loan monies to the survivor. As a result the survivor will have the full use of the funds to invest or spend, or live off the income as they see fit. However, as a loan has been made from the trust a liability has been created which can be paid out of the survivor's estate on their death thereby reducing the value of the estate for IHT purposes.

By using a spousal by-pass trust, not only can the survivor have the full benefit of the monies payable but an IHT saving can be made at the same time!

Spousal by-pass trusts are not limited to death-in-service benefits and pension benefits. They can be used in conjunction with any form of life insurance. Therefore anyone with any type of term life insurance or mortgage protection insurance should consider placing the benefit of the policies into such a trust. The surviving spouse can still be a trustee and therefore control how the funds are used. This way considerable IHT savings can be made.

Many pension and life insurance companies offer precedent trust documents. Whilst some of these contain the necessary powers to make loans, not all standard form trusts have the necessary powers and are limited in their usefulness. If you decide to use these standard forms, do make sure they are completed correctly as putting the wrong name in the wrong box can cost you literally tens of thousands of pounds in IHT.

Alternatively Wright Hassall can draw up a "made to measure" trust for you incorporating the appropriate powers tailored to your own personal circumstances.

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# The hidden benefits of home insurance

One of the most common insurance policies taken out by home owners is buildings and contents insurance. In addition to covering obvious losses, such as flood damage, policies frequently include a less well known, but very useful, benefit – legal expenses insurance cover.

One of the major concerns that most people have when seeking advice in relation to a legal dispute, such as a personal injury claim, is the question of legal costs. Many clients are more concerned about avoiding a legal bill than they are about recovering compensation.

Solicitors' fees are generally calculated on the basis of an hourly rate and although the precise work to be carried out will vary from case to case even the smallest dispute can result in a considerable amount of work and hence not inconsiderable legal costs. Indeed in smaller cases the legal costs can exceed the value of the claim simply because of the work necessary to pursue the matter to a conclusion.

In England and Wales the general rule in a legal dispute is that the loser pays all of the legal costs reasonably incurred in the case and that means not only their own legal costs but also the legal costs incurred by all the other parties to the dispute.

If the claim is successful the client is able to recover, from their opponent, the reasonable legal costs incurred by their solicitors, in addition to any compensation which may be due. However difficulties arise where the claim is unsuccessful and the client is left facing substantial legal bills.

Home and motor policies frequently include



*Home insurance policies often include legal expenses which can be extremely useful when you come to make a claim.*

legal expenses cover as an additional benefit and if such cover is available the insurer will, subject to the terms of the policy, indemnify the client in respect of any liability they would otherwise incur, in respect of their own solicitors' legal costs and the opponents' legal costs, in the event of the claim being unsuccessful. As a result a client whose claim is unsuccessful escapes from having to pay anything in respect of legal costs.

One word of warning – if legal expenses cover is available the insurers will frequently refer the client to one of their own solicitors. Although

insurers are able to insist, at any time prior to the issue of court proceedings, that if the client wishes to use the legal expenses cover they must use the insurers' choice of solicitor they cannot prevent the client from instructing their own solicitors to deal with the claim outside of the legal expenses policy. If you are unfortunate enough to be involved in an accident and your insurers refer you to their own solicitors please let us know – we may well still be able to help. For more information, please contact Adam Brain on 01926 880721 or via email.

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## Interesting and unpredictable times

**The last few months have been interesting for investors. We have seen increases in interest rates followed by problems with the US credit market causing fixed interest funds to drop backwards. Equity markets were equally also badly hit by the fallout from the US sub-prime lending debacle, with general loss of confidence and mutterings over US employment figures and whether they indicated the start of a recession. However, most equity markets have in general risen slightly over the period of the last six months.**

The UK property markets first felt the impact of increase in UK interest rates and then of a squeeze on the money available to lend. Coming after a run of falls in rental incomes and occupancy rates, we started to see prices slide in some areas and sales fall off in most. Meanwhile long queues outside Northern Rock branches were matched by queues of people on the internet trying to learn advanced

economics and the role of the Bank of England in monetary supply.

If I can draw some conclusions from the last three months they would be:

- if you try to time markets you will invariably fail;
- whether equities are due for a big fall or have stabilised and will continue to rise is as much a mystery to the experts as it is to you;
- diversification is vital however, remember that there may be times when all asset classes fall as well as times when all asset classes rise;
- residential property is no more the universal panacea than technology companies were;
- take lessons from those who teach life goals and, before you invest, work out what success in investing really means for you and then work back from this to determine how best to achieve it;
- if you can achieve success without risk then

don't take the risk – if you can't, then accept the fact that risk means there will be times when the value of your investments goes down and so don't be surprised when it does;

■ banks will never hold enough ready cash to pay back all their savers, if they did, nobody would get a mortgage;

The final quarter of the year will prove to be interesting if nothing else, the question is whether we will see the collapse of the UK housing market, the collapse of world equity markets, the collapse of a major UK bank or a slide into the traditional pre-Christmas scramble for the toy of the moment with memories of the "crisis" fading rapidly.

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# Divorce settlements undone by bankruptcy

Bankruptcy can have far reaching and often adverse implications for divorcing couples as shown by two recent cases heard by the Court of Appeal. Both demonstrated the conflict that can arise when different areas of law overlap.

In *Avis v Turner & Another* 2007, the appeal questioned the powers of the Court when a trustee in bankruptcy had applied for an order to sell the former matrimonial home in which the bankrupt (Edmund Avis) had an interest. This was in spite of an order having already been made to postpone the sale of the house until further notice.

Charles Turner (the trustee) had applied to the Court in the bankruptcy of Mr Avis. However, in 1985, as part of the financial aspect of the divorce proceedings, the ownership of Mr and Mrs Avis's property was varied so that Mrs Avis would own two thirds of the property and Mr Avis, one third. He would receive his one third share in the event of Mrs Avis remarrying, cohabitating, deciding she wanted to sell the property, or if she died.

Mr Avis subsequently became bankrupt and his one third share vested in the Trustee under Section



**Divorce settlements can come unstuck when a partner is declared bankrupt. Gillian Jackson reports on two recent cases to come before the Court of Appeal.**

306 of the Insolvency Act 1986. In 2005 the Trustee made an application to sell the property so that Mr Avis' one third share could be realised.

Mrs Avis was still living in the property and both she and Mrs Avis opposed the application.

The District Judge considered that the presumption that the interests of the bankrupt's creditors outweigh all other considerations was subject to the important wording "unless the circumstances of the case are exceptional". Mrs Avis appealed the Order of the District Judge to the High Court stating that none of the events specified in the 1985 order had occurred and, therefore, the application should have been dismissed.

The High Court Judge agreed and sent the matter back to the District Judge to determine the remaining issues, in particular whether there were exceptional circumstances to displace the statutory assumption that the creditors should take priority.



**Bankruptcy can lead to complications even when divorce proceedings seemed to be settled.**

The matter was appealed to the Court of Appeal where it was also dismissed. The lower court now needs to decide whether the circumstances of this case are exceptional, overriding the assumption that the interests of the bankrupt's creditors outweigh all other considerations. If Mrs Avis does not succeed in proving exceptional circumstances, the property will be sold unless she can buy out her former husband.

In another case, *Hill and Another v Haines* 2007, the Trustees appealed an Order made by a District Judge in 2003 when, as part of divorce proceedings, the family home was transferred to Mrs Haines. Two years later, her ex-husband was declared bankrupt and so, in order to target Mrs Haines' assets to repay Mr Haines debts, the Trustees' case was that the property was transferred to the wife at an undervalue. The Court of Appeal held that the District Judge (within the bankruptcy proceedings) was wrong to conclude that the transfer of the property pursuant to the Order made in favour of Mrs Haines within the matrimonial proceedings was not a transaction at an undervalue. The appeal raised matters of pure law. The Court held that it was a transaction at an undervalue and they allowed the appeal. The wife lost the property despite the Order in her favour.

These two cases demonstrate the cross over of various statutes. In both the two innocent parties, i.e. the former wives of the bankrupts, having believed that they had obtained what were effectively final property adjustment Orders within their divorce proceedings, both find themselves in the position where they are likely to lose their homes.

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## Experts line up for moving seminar

Squab Storage would like to invite you to a free evening seminar on Tuesday 13th November 2007 at Wright Hassall LLP. Entitled *Revolutionising House Moves*, there will be guest speakers from Evans Hardy Bromwich and Wright Hassall LLP. The seminar offers the perfect opportunity to address the team of experts with any burning issues you may have about moving house or property investment including the implications of Home Information Packs.

For more information please contact Jenny McKeown on : 01926 468702 or [jenny.mckeown@burgisbullock.com](mailto:jenny.mckeown@burgisbullock.com).

## Inheritance Tax update

The recent announcement that IHT nil rate band is transferable between spouses and civil partners means:

- technically no increase in an individual's nil rate band;
- surviving spouse/civil partner can utilise proportion of deceased's nil rate band where this has not been fully used;
- not applicable to co-habiting couples;
- will trusts remain a useful planning tool for married couples with joint wealth in excess of two nil rate bands, individuals owning business/agricultural property and those with complex family circumstances.

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