



A GUIDE TO DEATH & TAXES



THE LEGAL ISSUES NONE OF US LIKE
TO THINK ABOUT (BUT REALLY SHOULD)
INCLUDING WILLS AND INHERITANCE,
LASTING POWERS OF ATTORNEY
AND PROBATE

By Elizabeth Moffitt TEP, LLB Hons & Shirah Blackwood TEP, LLB Hons

INCLUDED IN THIS GUIDE:

- Lasting Power of Attorney – if the worst happens, it's good to have a plan
- Court of Protection – how to appoint a deputy
- Wills - not having one is often not the simplest option
- Inheritance Tax – how to leave the maximum you can to your loved ones
- Trusts & Gifts – right money, right people, right time
- Probate – how to administer an estate



“IN THIS WORLD NOTHING CAN BE SAID TO BE CERTAIN, EXCEPT DEATH AND TAXES”

Benjamin Franklin

Money and death are two topics many of us feel uncomfortable thinking about, let alone discussing with others. However, considering these issues can actually give you peace of mind that you have plans in place and can be helpful in planning for your future and those of your loved ones.

THP Solicitors' Wills, Trusts & Estate Administration team have acted for many of our clients and their families for a number of generations, advising them on Wills, lasting powers of attorney, estate administration and lifetime tax planning through the setting up of trusts and other opportunities to achieve asset protection.

Our clients are at the heart of everything we do. We have a reputation for excellent client care and take the time to understand your concerns and priorities, delivering advice and documentation which is suited to your individual circumstances. We aim to create flexibility and longevity in our documents, to ensure you get good value for money.

Legal fees vary based on the facts and complexity of each case but after an initial consultation we can provide you, with no obligation, an idea of the costs that would be involved.

Areas covered in this guide:

- Wills & Estate Planning
- Powers of Attorney
- Inheritance Tax
- Trusts & Gifts
- Probate
- Court of Protection

This guide by no means covers every aspect and should not be considered a substitute for legal advice but it can hopefully help you understand some of the factors that should be considered.



WE HAVE A REPUTATION FOR EXCELLENT CLIENT CARE AND TAKE THE TIME TO UNDERSTAND YOUR CONCERNS AND PRIORITIES...

LASTING POWERS OF ATTORNEY...

If the worst happens, it's good to have a plan

Lasting Powers of Attorney (LPA) are important documents that enable you to give permission to others (attorneys) to handle your affairs and make decisions on your behalf if you are no longer able to do so, due to either a short or long-term incapacity.

It is recommended that you prepare Lasting Powers of Attorney, regardless of your age, as whilst these documents are often associated with people in their later years, they can also provide key protection for you and your family should you be involved in an accident or a sudden illness. People often think their spouse or children would automatically be able to handle their affairs. In reality however, your husband, wife and children have no automatic legal right to manage your affairs and would have to apply to the Court of Protection to become your 'Deputy' before they can deal with matters for you.

We all hope that our LPAs will never be required, but if the worst happens your family will have everything they need to care for you.

There are two types of Lasting Powers of Attorney:

- **Property and Financial Affairs LPA** - allows a person to appoint someone to look after their financial affairs e.g. money, property, shares or other assets. You can only make an LPA whilst you have mental capacity so it is good to prepare one in advance and register it with the Office of the Public Guardian. You can stipulate under what circumstances your attorney can make decisions on your behalf e.g. only if you are unable to make decisions on your own because of an accident or ill health, or when you feel the time is right.
- **Health and Welfare LPA** which gives an attorney the power to make decisions regarding the consent for medical treatment and care. It is not possible to use a health and welfare LPA until the person who made it has lost their mental capacity, through illness or accident, but it must be registered with the Office of the Public Guardian before it can be used.



WE ALL HOPE THAT OUR LPAS WILL NEVER BE REQUIRED, BUT IF THE WORST HAPPENS YOUR FAMILY WILL HAVE EVERYTHING THEY NEED TO CARE FOR YOU.

The Benefits of having an LPA

An LPA allows you to appoint individuals who you trust to assist with your property and financial affairs and health and welfare decisions if you are ever in the position of not being able to make these decisions yourself. Preparing them ahead of time will allow you to decide who is appointed to act on your behalf and discuss your wishes with your attorney in person.

Careful consideration should be given to the range of powers you wish to give your attorney – we can help clients appoint attorneys and ensure that the wording in powers of attorney is sufficiently precise to protect our clients' interests.

If you do not have LPAs in place and then lose mental capacity, your family and loved ones will need to apply to the Court of Protection for a Deputyship Order, whereby the Court chooses who to appoint on your behalf. This is a more costly and drawn-out process and takes the choice out of your hands as to who will act on your behalf. This could even be a 'panel deputy' from the Court's panel of professional deputies who does not know you and will charge for their time.

Business LPA

If you are a sole trader, company director, shareholder, or a partner within a partnership it makes sense to have two LPAs one to handle personal finances and one to run the business. You need to consider what would happen if you became ill, had a serious accident, lost mental capacity or were abroad for an extended period of time. Would the company

be able to continue to operate in your absence? Who could you trust to look after the company finances and to make business decisions on your behalf?

The consequences of a senior business owner within a company not being able to fulfil their duties could be far reaching – with no one having access to funds to pay bills, sign cheques, service a business loan or pay salaries, business activity could quickly grind to a halt. This could be devastating for individuals who are reliant on income from a family business.

Should you become incapable of making decisions or undertake responsibilities, then it is illegal for someone else (even a fellow owner/director) to act on your behalf without having been appointed to act as your attorney in accordance with a business LPA. Other directors or partners cannot simply assume your role, nor can spouses or family relations.

If you have a business LPA in place you can choose someone that you trust and who understands your business to act on your behalf should it prove necessary, with minimal disruption to everyday operations. Within the business LPA you can include instructions and guidance to your attorneys in relation to the running of your business, and the attorneys you appoint will be legally accountable for the decisions that they take.

Where a business Lasting Power of Attorney is required but has not been made, an application to the Court of Protection to appoint a deputy would have to be actioned. This is a costly and time-consuming process and can lead to financial havoc with banks freezing accounts, calling in loans and ceasing overdraft facilities.

HOW WE CAN HELP

Our Wills, Trusts & Estate Administration team can discuss how LPAs work, explain your options and help you put your Lasting Powers of Attorney in place. If you are appointed as an attorney under an LPA, we can assist with advice on the day-to-day administration of the attorneyship, together with advice on the maintenance of your records and compliance procedures.

COURT OF PROTECTION...

How to appoint a deputy

If an individual has started to lose or has lost mental capacity, it can be very difficult for their family to help them and making decisions concerning their finances and welfare if they do not have a Lasting or Enduring Powers of Attorney in place.

In these circumstances, the Court of Protection that exists to safeguard vulnerable people who are unable to make decisions for themselves regarding their finances or health and welfare, has the power to appoint a deputy to make decisions for them.

Deputyships & The Office of Public Guardian

Any Deputyship order the Court does make, will set out the deputy's specific powers and there remains an ongoing duty for the deputy to assess whether the person has capacity to make each separate decision as it arises. Several members of the team at THP Solicitors have acted as professional deputies over many years and together have considerable experience of this complex and challenging area of law.

The Office of the Public Guardian protects people who lack capacity by setting up and managing a register of Lasting Powers of Attorney (LPA); Enduring Powers of Attorney (EPA); or supervising deputies.

- **Property and financial affairs.** If you have a loved one who has lost mental capacity and needs assistance with their property and financial affairs, you will need to make an application to the Court of Protection. A solicitor can prepare a detailed application which confirms the financial position for the person involved, commission a report to assess capacity, and ask the Court to appoint a deputy to manage their property and financial affairs on an ongoing basis.
- **Health and welfare decisions.** It is possible to apply to the Court for permission to make decisions about a person's health and welfare on an ongoing basis, but such applications are complex and rarely approved by the Court. Normally applications are made on a one-off basis.
- **Associated applications.** Other applications that deputies may make to the Court are for permission to make gifts, statutory Will applications, permission to buy and/or sell property and applications for a deputy to retire.

HOW WE CAN HELP

The Court of Protection requires stringent compliance by the deputy to the administrative standards set by the Court. Our team can help you if you need to make a deputyship application to the Court of Protection including its preparation, progression, issue at Court and ensure that the people who must be notified about the application are told in good time. We can assist deputies with ongoing compliance, the preparation and submission of the annual return, and maintenance of the deputy's security bond.

WILLS - NOT HAVING ONE IS OFTEN NOT THE SIMPLEST OPTION

If you don't have a Will, you could leave loved ones in uncertain or complicated circumstances when it comes to administering your affairs after you die. The Rules of Intestacy would determine who inherits your money and possessions, not you, and it may take much longer to resolve issues and pass your estate on to beneficiaries. Having a valid Will gives peace of mind to you and those close to you and will ensure that your wishes will be accurately reflected.

Your Will is therefore a key document that will specify who benefits from the assets of your estate. It's a good idea to think about some of the areas your Will may cover in advance, for example:

- **Your executor** – who would you like to be responsible for winding up your affairs and distributing your estate in line with the terms of your Will.
- **Funeral wishes** – whether you would like to be buried or cremated, what music you would like to be played at your funeral etc
- **Legal guardians** – if you have children under the age of 18, who should step in as their legal guardian in the event both parents die.
- **Establish what is in your estate** – think about what makes up your estate such as property, money, pensions, insurance policies, large items like cars and personal possessions
- **Name your beneficiaries** – decide who you would like to benefit from your estate. This may have inheritance tax implications.

A solicitor can assist you with drafting a valid Will that accurately reflects your wishes, can advise on executors, beneficiaries and help you manage and pass on your wealth in the most tax efficient manner. A full estate planning

exercise can be carried out to enable clients to plan effectively for now and for the future using legitimate tax mitigation strategies to pass on wealth and minimise or eliminate the effects of tax. Where appropriate solicitors can also work with existing or other financial advisors and accountants to ensure that everything is 'joined up' and clients have the best and most efficient estate plan possible.

Updating your Will

If you already have a Will in place, it ought to be reviewed every 3-5 years to check that you and your family's personal circumstances have not changed and that it is up to date and still valid. If you do wish to amend your Will, a codicil (a legal document which makes an alteration to an existing Will) is often all that is needed but that has to be drafted, signed and witnessed in the right way to be valid.

HOW WE CAN HELP

Our team at THP Solicitors will take the time to understand your requirements and priorities and can produce bespoke documents ideally suited to your circumstances. We consider all situations and circumstances with an objective eye, pointing out pitfalls and concerns that you may not have considered. Many members of the team have undergone specialist training to become full members of the Society of Trust and Estate Practitioners (STEP). This means clients can have confidence that the team has the specialist knowledge and skills required to advise you and your family.

INHERITANCE TAX – HOW TO LEAVE THE MAXIMUM YOU CAN TO YOUR LOVED ONES

Inheritance tax (IHT) is levied on a person's estate when they die and on certain gifts made during an individual's lifetime. There are opportunities for minimising the impact of inheritance tax, but it is important to obtain specific legal advice appropriate to your personal circumstances.

It may be possible to reduce or eliminate this tax liability with careful planning. You may therefore be able to:

- Keep assets within your family
- Reduce beneficiaries' inheritance tax liability
- Protect your assets from the need to fund long term care in later life
- Protect your estate if you were to die and your partner re-marry
- Protect assets passed to children / grandchildren from the risk of them becoming bankrupt or divorced

Nil Rate Band

On a person's death, inheritance tax of 40% is charged on the value of their estate over the inheritance tax threshold, known as the nil rate band (NRB), which currently stands at £325,000. A further residential nil rate band (RNRB) of £175,000 has been added as a 'top up' in respect of one residential property. Both this and the nil rate band will be frozen, (so the RNRB won't be index linked and we'll have to see what happens in 2026 if inheritance tax still exists in its current form). However, as is often the case, there are restrictions which include:

- The residence must pass on death to a direct descendant (i.e. children or grandchildren).

- The relief is only available for a dwelling house which has been the person's residence whilst it was part of the person's estate.
- There is tapered withdrawal of the residence nil rate band for estates with a net value of more than £2 million (after deducting any liabilities but before reliefs and exemptions). The residence nil rate band is reduced by £1 for every £2 that the amount exceeds the £2 million threshold.
- This means that spouses and civil partners who own residential property, are now able to gift up to £1 million to their direct descendants with no inheritance tax payable on their estate. However, whilst the residence nil rate band is welcomed to reflect the increase in residential property prices, the mechanism by which it is offered is still unfortunately complex. Some couples may still need to consider lifetime gifts to reduce estates below the £2m threshold. Testators should also consider who the beneficiaries are in their Will – if their direct lineal descendants do not inherit, testators could be missing out on these important inheritance tax benefits.



**ON A PERSON'S DEATH,
INHERITANCE TAX OF 40%
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THRESHOLD.**

A surviving spouse may be entitled to an increase in the residence nil rate band if the spouse who died earlier has not used, or was not entitled to use, their full residence nil rate band. The calculations involved are potentially complex, but the increase will often result in a doubling of the residence nil rate band for the surviving spouse.

The residence nil rate band may also be available when a person downsizes or ceases to own a home on or after 8 July 2015 where assets up to the value of the residence nil rate band are passed on death to direct descendants.

If there are charitable causes close to your heart it might also be worth leaving a charitable legacy in your Will. Not only will it provide much need funds to those in need but it can potentially cut the inheritance tax rate on the rest of your estate from 40% to 36% depending on the amount you leave.



THE CALCULATIONS INVOLVED ARE POTENTIALLY COMPLEX, BUT THE INCREASE WILL OFTEN RESULT IN A DOUBLING OF THE RESIDENCE NIL RATE BAND FOR THE SURVIVING SPOUSE.

HOW WE CAN HELP

Inheritance tax planning should be tailored to your specific situation, taking into account your personal circumstances and aspirations. Other taxes need to be considered carefully but there can be scope for substantial savings which may be missed unless professional legal advice is sought.

It's a good idea to get the advice of a solicitor who specialises in estate planning who can ensure that any tax on your estate is mitigated, and the people and causes you love get the maximum benefit. If you have recently received or are likely to receive an inheritance in future, we can also advise on the best way to maximize this tax planning opportunity through the use of deeds of variation.

TRUSTS & GIFTS – RIGHT MONEY, RIGHT PEOPLE, RIGHT TIME

Trusts are a way you can protect some of your assets within your Will, or during your lifetime, to help control your wealth for the benefit of your family now and in the future. Trusts are often set up if a beneficiary is vulnerable, e.g., young, disabled or unable to manage their own affairs or because inheritance tax planning is required e.g., for business property assets or where capital gains tax needs to be considered.

Trusts enable people to place assets under the control of others, so that they have full responsibility to manage those assets for the benefit of whoever is chosen, according to a set of instructions. There are many different types of trusts and a solicitor can advise you on the different benefits of each type to assess which is appropriate for your circumstances. Trusts are treated separately for tax purposes and are assessed independently for inheritance tax, capital gains tax and income tax.

Trusts often come to a natural end but sometimes a decision may be made to wind up a trust early by the trustees. It is essential that the trustees consult the trust deed and our experienced team can help advise on how to carefully adhere to these procedures. The winding up of a trust can create significant tax liabilities and it is essential that professional advice is obtained to ensure that everyone is aware of their liabilities, and where they can be mitigated if possible.

Lifetime Trusts and Gifts

There may come a time when you decide to make some lifetime gifts to your children, family or friends. Lifetime gifts are made for a variety of reasons: sometimes to help with a deposit for a house, or for the pleasure of giving a gift in lifetime and then living to see

the recipient enjoy it, or perhaps for inheritance tax planning purposes.

Gifts between spouses during their lifetime or on death are exempt from inheritance tax and many gifts made more than seven years before death will escape tax. Therefore, if you plan in advance, gifts can be made tax-free and result in a substantial tax saving. However, careful consideration needs to be given to gifts, for example, a gift that saves inheritance tax may create an unexpected capital gains tax liability.

Whatever your reasons, a solicitor can advise you on the best way to make your gift tax efficient by reviewing the types of trusts available and recommend which will be most suitable for your circumstances. They will consider your Will and other factors and advise on the options and pros and cons of outright gifts or gifts into a trust.

HOW WE CAN HELP

Trusts are a complex subject and the timing, beneficiaries and wording can be very important when setting one up. Our Wills, Trusts & Estate Administration team can help with the setup of trusts, advise how to deal with HMRC and advise as to the costs of setting up a trust and running it in the long-term.

Administering a trust successfully can be time consuming and daunting and our solicitors can help you with your duties as a trustee or help you look after your trust correctly. We can advise on the full range of lifetime gift options, making full use of relevant exemptions or other reliefs.

PROBATE – HOW TO ADMINISTER AN ESTATE

Probate is the legal and financial process of dealing with the administration of an estate (property, money, and possessions) of a person who has died. The administration will often break down into four stages, some of which may overlap:

- **Probate** – The process from the death of an individual up to the application for a grant of probate, will involve establishing details of the assets of their estate and obtaining valuations of those assets, completing an inheritance tax return and where appropriate paying any inheritance tax that may be due on the estate before the application for the grant of probate may be made.
- **Gathering the assets** – Registering the grant of probate once it has been issued by the Court with the various asset holders and cashing in the assets of the estate and gathering them together; bank accounts, shareholdings and any property to be sold.
- **Tax and Administration** – The executors will need to pay the debts of the estate and deal with various complex administrative matters, in particular liaising with HMRC in relation to tax affairs.
- **Winding up and distribution** – Once all of the assets of the estate have been gathered and the liabilities and tax affairs resolved then the executors can wind up and distribute the estate to the beneficiaries. To do this they will need to prepare the estate accounts showing the assets and how they have been dealt with, ready for distribution.

The administration of the estate of someone who has died is a complex area and no two cases are the same. It can be a complex and time-consuming process, with a significant level of risk attached. An executor who gets it wrong may find themselves having to pay out of their own pocket to rectify mistakes and/or recompense beneficiaries or HMRC. It requires having details of everything the deceased person owned and how much this is worth, as well as their outstanding debts. If you have to administer an estate there are number of legal, tax, property and estate administration tasks that need to be carried out including:

- dealing with banks and financial institutions
- identifying and settling liabilities
- reporting the inheritance tax position of the estate
- applying for the grant of probate or grant of letters of administration
- finalising the income and capital gains tax position of the estate
- producing such documents as are required to mitigate or remove any capital gains tax liability
- liaising with the beneficiaries to distribute and finalise the estate
- producing full estate amounts to ensure transparency in the administration

If you want to hand over the process to an experienced pair of hands, a solicitor can handle all of these steps and provide regular updates on progress, or they can provide you with just the assistance as and when required e.g. review the estate at the outset, to identify who is going to complete each specific task and prepare a detailed case management plan to ensure that the full estate is administered correctly.

What about if someone dies without leaving a Will?

When someone dies without leaving a Will their estate is 'intestate' and you may require a legal document called a grant of letters of administration in order to deal with their estate. A grant of letters of administration is a legal document issued by the Court to prove who has legal authority to deal with the estate of the person who has passed away.

A solicitor can advise on the inheritance laws called the "rules of intestacy" which determine who is allowed to apply for the grant. These rules place the deceased's relatives in order of priority and the person that is highest up on this list is the person that should make the application. Our team can also help prepare and make the application to Court for a grant of letters of administration, complete the Inheritance tax returns and calculate any tax that needs to be paid to HMRC.

Deeds of variation

During an estate administration, the beneficiaries have an opportunity to benefit from inheritance tax planning themselves. Where their own estate already has an inheritance tax liability, they may choose to divert their new inheritance to their children or another beneficiary, thus avoiding a double inheritance tax liability. A solicitor can advise on the inheritance tax position and produce the necessary documentation to effect these changes.

HOW WE CAN HELP

The task of administering an estate after the death of a loved one can often feel overwhelming. If you decide to seek assistance with this process, our team at THP Solicitors has extensive experience of all sizes of estate and we would be happy to provide the support you require, such as applying for grant of letters of administration, which inheritance tax forms you will need to complete when liaising with HMRC, or get an accurate value of the estate to establish if any inheritance tax is due.

Where there is a Will, we can advise on the terms of the Will and where there is no Will, we can explain the intestacy provisions so you can be sure you understand how the estate will be distributed.

WHY THP SOLICITORS

We have experience in all areas of Wills, Trusts and Estate Administration including:

- **Wills**
- **Powers of Attorney**
- **Inheritance Tax Planning**
- **Trusts**
- **Gifts**
- **Probate & Estate Administration**
- **Court of Protection applications**
- **Deputyship and Office of the Public Guardian**
- **Wills & Inheritance Disputes**

THP Solicitors offer practical and cost-effective guidance, clearly explaining to clients what their legal options are and helping them put plans in place to give them peace of mind.

WHY THP SOLICITORS

We provide a personalised and tailored service which fits with your individual requirements and circumstances, and our highly-qualified and experienced lawyers consistently deliver outstanding service and support. Our specialist solicitors work with a broad range of clients, from those just starting out who just want to put the basics in place for their security, to others who have more complex requirements or high value estates.

Our team includes members of the leading professional bodies, including the Society of Trust and Estate Practitioners (STEP) and Solicitors for the Elderly (SFE) and many have also completed the Alzheimer's Society's Dementia Friends training programme.

We have easily accessible offices in Reading and Henley-on-Thames but also have clients throughout the UK and are experienced in working with our clients remotely using video and telephone consultations. If we requested, we are also able to make home visits.

Contact our Wills, Trusts & Estate Administration team today to tick those niggling things off 'Life's To Do List', like making or updating a Will or drafting Lasting Powers of Attorney.



SHIRAH BLACKWOOD TEP

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Shirah qualified as a solicitor in 2004 and became a full member of the Society of Trust and Estate Practitioners, the global professional association for those who specialise in family inheritance and succession planning, in 2009.

She is able to advise on a wide range of matters including Wills, inheritance tax planning, estate administration and Court of Protection applications. She also advises on Lasting Powers of Attorney and supports attorneys with their roles, duties and responsibilities when they are called upon to act.

Shirah's approach is friendly and thorough, and she takes the time to get to know her clients and their circumstances before she makes any suggestions on what would be best suited to a client's needs.

Shirah is a full member of Solicitors for the Elderly, a specialist group of lawyers to support and make a difference to older and vulnerable people.



ELIZABETH MOFFITT TEP

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Elizabeth is a qualified solicitor and Trusts and Estates Practitioner. She specialises in Wills, estate tax planning, Lasting Powers of Attorney, trusts and estate administration including intestate estates, deeds of variation to Wills, discretionary and pilot trusts.

Elizabeth also has expertise with Court of Protection applications for deputyships both in property and financial affairs but also the rarer applications for health and welfare decisions.

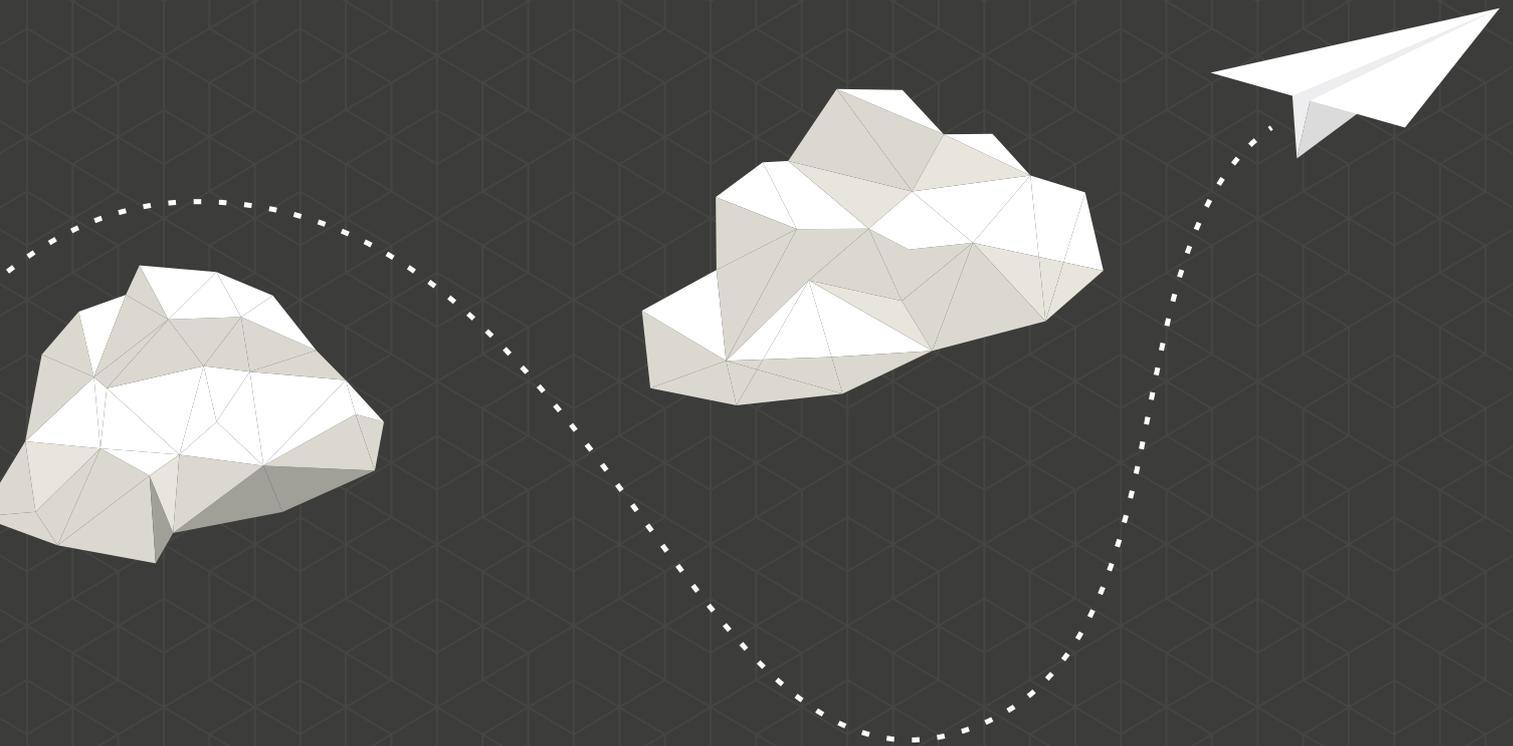
Elizabeth initially qualified as a solicitor in family law, and then became a well-respected solicitor specialising in property matters. She brings a wealth of knowledge from these two areas of law to her work as a Wills, trusts and estate solicitor.

Elizabeth has followed the training to become a Dementia Friend, the Alzheimer's Society scheme to raise awareness of the challenges faced by families living with dementia.



CONTACT US TODAY

WE CAN SUPPORT AND GUIDE YOU THROUGH THE LEGAL PROCESS AND FIND THE ROUTE WHICH IS BEST FOR YOU.



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