

Webinar with Fraser and Fraser Digital Assets

with guest speaker Susan Shuttle

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Flexible Fee Options (including time spent and fixed fee)

Digital Assets

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Hosted by Fraser and Fraser's Nick Howitt

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Personal Representatives are:-

- Executors named in the Will
- Administrators where there is a Will but no named executors or the deceased died without making a Will

A Personal Representative will need to deal with the deceased's estate and administer it in accordance with the law and any Will that has been made.

This includes applying for a Grant of Probate or Letters of Administration.



Personal Representatives Duties:-

A Personal Representative's **duties** before the grant is to:

- Provide information on the estate for inheritance tax (IHT) purposes;
- Dispose of the deceased's body.

A Personal Representative's **duties** under Section 25 of the Administration of Estates Act 1925 is to:

- Collect in and administer;
- Provide an inventory and account.

A PR has a duty to provide information for inheritance tax purposes:-

- Under S216 Inheritance Tax Act 1984 a Personal Representative must provide an IHT account to certify that the tax has been paid or that none is payable; or
- Under Regulation 6 of the Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004, information about the deceased and the assets and liabilities of the estate where the estate is an excepted estate under Regulation 4

Excepted Estate:-

- There are three types of excepted estate:
- Low value estates.
- Exempt estates.
- Estates of deceased individuals who died domiciled outside the UK and had never been UK domiciled nor [deemed domiciled](#), provided certain conditions are satisfied.

Duties under the grant: section 25 of Administration of Estates Act 1925: Personal Representatives must:-

- Collect and get in the real and personal estate of the deceased and administer it according to law.
- When required to do so by the court, exhibit on oath in the court a full inventory of the estate and when so required render an account of the administration of the estate to the court.
- When required to do so by the High Court, deliver up the grant of probate or administration to that court.

Duty to collect in and administer

Collecting and getting in the estate of the deceased requires a PR to:

- Identify the deceased's liabilities and assets.
- Obtain payment of any debts due to the deceased.
- Gain control of the assets.
- Convert those assets into money (where appropriate).

Administering an estate requires a PR to:

- Maintain the assets safely, once collected.
- Pay the deceased's debts.
- Ascertain the residuary estate and properly distribute the estate (if assets remain).

Typical types of Assets

- Bank Accounts
- Shares
- Property – House/Flat
- Premium Bonds
- Investments
- Digital assets



Digital Assets

Digital assets refers to the possessions individuals access on a **digital** device such as a laptop, mobile phone, tablet or personal computer.

They are **accessed** via an online account run by a third party provider such as Google, Facebook, Netflix, Apple, Microsoft or Amazon. Examples:

1. Digital photos
2. Digital music tracks
3. Videos that are stored online email accounts
4. Conversations in social media
5. Online games.

6. Photographs and videos stored online (and sometimes also stored on a device such as a smartphone, digital camera or personal computer).
7. Blogs.
8. E-books.
9. Social media statuses and tweets.
10. Information contained in documents, such as emails.
11. Nectar card points or similar.
12. Cryptocurrency (such as Bitcoin) and other virtual currency.
13. PayPal accounts.

Two questions arise with Personal Representatives:-

- Can they access and transfer the digital assets?
- Do they have a value which will need to be disclosed under the statutory duties to HMRC?



Problems can arise in asserting legal ownership over the **digital assets** of a deceased account holder.

Although, under the law of England and Wales, personal representatives step into the shoes of the deceased and can take control of the deceased's **assets**.

Access to online accounts is governed by the contractual terms and conditions of internet service providers (ISPs).

In most cases, they do not recognise the proprietary rights that personal representatives have.

Contractual Conditions

Digital assets are subject to the standard contractual terms and conditions imposed by ISPs (which cannot be varied or negotiated) when an online account is set up.

One major exception is iTunes, where MP3 downloads are only licensed to the individual account holder and ultimate control is retained by Apple.

The most common options offered are:

- Termination of the account and deletion of all information stored on it following a period of inactivity.
- Selecting a nominee who will be allowed limited access to the account contents following death (such as Google's Inactive Account Manager and Facebook's Legacy Contact).
- Permission to access content on production of a grant of probate, death certificate, other evidence of death and verification of identity and relationship with the deceased.
- Memorialisation of content for a brief period of time following death after which information is deleted.

Apple's terms and conditions

Apple's terms and conditions indicate that, when notified that someone has died, the information on the deceased's account is automatically deleted and

Apple asserts ownership of the account holder's Apple ID.

PRs who are unable to access a deceased's Apple devices will need to make a Part 8 application to the County Court for an order requiring Apple to give access to log in details.

Check online accounts

- Find out what accounts the deceased held online.
- .Check the terms and conditions of each ISP to see what proof of authority (such as a death certificate or grant of probate) they require from personal representatives before access is granted to accounts.
- After receipt of permission from ISPs, access accounts to assess their contents and download any information necessary for the administration of the estate (for example, details of PayPal accounts or Bitcoin).
- Consider whether there should be a delay in notifying some ISPs of the death. Notification of death triggers automatic shutdown and deletion of some online accounts

Memorialisation

- Consult the deceased's family about memorialisation of social media accounts (such as Facebook). Alternatively, some social media accounts may need to be shut down immediately to prevent malicious posts from third parties (for example, Twitter or Facebook).
- Check whether the deceased left instructions about any messages to be posted on social media for the benefit of friends and family. Consider whether it is possible to post these messages online after death (this may involve negotiations with the ISP involved).



Consideration of deceased's will or intestacy rules

- Check the terms of the deceased's Will to see whether digital assets are dealt with under a personal possessions legacy or under the terms of a gift of IP rights.
- In the absence of an express reference, digital assets with little or no IP value are likely to form part of residue.
- Check the Will to see if personal representatives are given additional powers to administer digital assets.
- Check whether the deceased has left instructions for dealing with digital assets in a letter of wishes.
- Where the deceased died without making a Will, digital assets will **not** fall within the statutory definition of personal chattels that pass to the surviving spouse under the intestacy rules

Deceased's PC, laptops and other devices

- Check whether any devices were supplied to the deceased by his employer. If so, contact the employer for instructions about returning the device, which may contain commercially sensitive information.
- Check the Will to see if any devices are the subject of a specific gift. If there is no express reference to devices in the Will, they are likely to pass under a general personal possessions.
- If devices pass under residue and no beneficiary wants them, ensure they are securely recycled once information on the hard drive is wiped after being copied.

Mobile Phones

- Check whether a mobile phone was supplied to the deceased by his employer.
- Check the Will to see if any devices, such as mobile phones, are the subject of a specific gift. If there is no express reference to phones in the will, they are likely to pass under a general personal possessions legacy.
- Where there is no general possessions legacy, the phone will form part of residue.
- Check the terms and conditions of the contract with the mobile carrier to see whether the contract terminates automatically on death.
- Check the terms and conditions to see what notification of death the mobile carrier requires from personal representatives.
- Check for any outstanding payments for the handset or air time used that will be debts of the estate.

Cryptocurrency

- Secure details of the deceased's digital wallets containing public and private keys to enable any cryptocurrency to be accessed.
- Check to see whether any of the deceased's devices have been used as a cold wallet to store cryptocurrency records.
- Check the terms of the Will to see if cryptocurrency is the subject of a specific gift. If there is no express reference to devices in the Will, holdings of cryptocurrency, as an intangible movable asset are likely to fall outside a specific gift of personal possessions so that they form part of residue
- Cryptocurrency held by the deceased is tradeable on an exchange.
- If the deceased retained cryptocurrency within an exchange, contact the exchange to obtain a date of death valuation.



Cryptocurrency (Continued)

- If the deceased did not retain cryptocurrency within an exchange, obtain a date of death value, based on the exchange rate with fiat currency, from a UK registered exchange. If a value is obtained from a non-UK registered exchange, convert the valuation into sterling at the date of death exchange rate to report the value on the IHT400 inheritance tax return.
- If a cryptocurrency holding forms part of residue, depending on the available powers, consider whether a particular residuary beneficiary would be interested in receiving the holding by appropriation in full or partial satisfaction of their entitlement. If so, given the volatility of cryptocurrency, ensure that the beneficiary is willing to provide an indemnity.
- **HMRC categorises it as a capital asset that will be subject to capital gains tax when disposed of and subject to inheritance tax in the normal way when the subject matter of a chargeable lifetime transfer or transfer of value on death.**

Advising clients in Wills

- Any digital assets should be dealt with in the Will by specific gifts in the Will.
- It might also be sensible to include a specific power for PRs to deal with digital assets in the Will in view of the RUFADAA legislation in the US. Although the statutory hierarchy in the US legislation only applies to residents in a US state that has adopted this law, PRs will be able to make more progress with ISPs if they can point to express authority in the will.



Working Example

Louise dies intestate leaving a husband and two children.

Her estate consists of:-

1. House
2. Current account
3. Facebook account
4. iPhone
5. Crypto currency
6. Nectar points
7. iPad





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