

Lost... and found?

A recent article in the Oxford Mail offered the opportunity for archaeology enthusiasts to become involved in a three year project, including taking part in archaeological digs in parts of East Oxford (on the edge of medieval Oxford). This is likely to generate an increased interest in archaeology, and you may be tempted to dust off the metal detector you got for Christmas in the hope of discovering your own hoard. However, what happens if you do discover something of value, or if someone finds something on your property?

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Firstly, ‘treasure’ is defined by the Treasure Act 1996 and part of that definition states that – in order to be regarded as treasure – an object must be at least 300 years old and must be least 10% gold or silver in content. This term also covers any individual find (except coins) which are substantially made from gold or silver but which are less than 300 years old, provided that they were ‘deliberately hidden with the intention of recovery and whose owners or heirs are unknown’.

Whilst the Treasure Act previously stated that any finds had to be reported to HM Coroner within 14 days of finding treasure (or of realising that a find was treasure), the Coroners and Justice Act 2009 (passed in November 2009) includes measures to reform the Treasure investigation system. In practice, this bypasses local coroners by referring cases to a national Coroner for Treasure. In addition, it is now the duty of the possessor of any item which is (or which might be) treasure to report it within 14 days of acquiring it or becoming aware that it might be treasure (whereas it used to be the responsibility

of the finder). If they fail to do this, they will be guilty of a criminal offence, punishable by a fine of £5000 or even imprisonment!

The Coroner will then contact the British Museum (if appropriate), who has the opportunity to acquire the treasure, although local museums will be made the same offer if the British Museum declines. Should a museum elect to acquire the find, its full market value (as established by an independent Treasure Valuation Committee) will be paid to the finders and landowners (usually in equal proportions unless

the landowner objects – usually on the grounds that the finder was trespassing). However, if a find is declared ‘not treasure’, it will be returned to the finder. Under these circumstances, any items found ‘under the ground’ are deemed to be part of the property and they will belong to the landowner. If an item is discovered ‘on the ground’, the finder has a right to keep it unless the landowner has fenced off the land and made it clear that he had an intention to keep all items found on his land (by the erection of appropriate signage).

If you are a landowner, we would recommend that you consider entering into a written agreement with any archaeologists or metal-detector users wishing to carry out a search on your land. Your agreement will need to ensure that the basis for splitting a reward for treasure is clearly set out, and – if a find is not deemed to be treasure – that it will remain the property of the landowner.

Is a post-death community care claim appropriate?

Elderly people increasingly have to pay for their care as they lose the ability to look after themselves. Family members can pay carers, or take over this role themselves. Others may need residential care, for which they are charged.

However, such individuals can often be unlawfully charged for this care, although it is possible for these charges to later be substantially reclaimed by executors.

Even when care has been provided at home by a paid carer or (occasionally) by a relative, the NHS can still be responsible for the

costs of that care provided that the level of care is more than it could be expected social services to provide. In many cases, not only can the estate be reimbursed, but related legal costs can be reclaimed too.

If you believe that this might apply to you, or to a relative, please contact us so that the merits of a potential claim can be considered.



Jane Robinson,
associate

The spotlight on... Patricia Grout



Patricia joined Henmans in 2007 after working for the diocesan secretary of the Diocese of Oxford. She is an associate member of ILEX, and started working for Henmans in their property department before joining the private client team in October 2009.

Patricia works with Veronica Cowdrey in the elderly client team, assisting with day-to-day financial management

for clients with a physical or mental disability. She also handles the registration of and management of affairs under enduring and lasting powers of attorney. We asked Patricia to answer the following questions:

1. What was your favourite subject at school?

English literature - I loved reading books and then writing about them.

2. If you could visit any place in the world, where would it be?

I definitely would have said the Maldives a few years ago but with climate change they have built walls around most of the islands to stop them disappearing. I would now probably have to say the Great Wall of China.

3. What do you enjoy most about your job?

Getting to meet a wide variety of people, and especially my elderly clients.

4. What was the last film you watched?

Narnia, Prince Caspian. My children loved it!

5. What's the most interesting legal fact you know?

The most unusual Will was one written on an egg shell – any surface will do (although this is not recommended!)

HMRC website – a reliable source?

You may have come across the recent case of *B&J Shopfitting Services v HMRC [2010]*, where a tribunal found that a taxpayer had submitted a 'reasonable excuse' for filing a late partnership self-assessment return, by relying on a misleading statement on HMRC's website. The tribunal found that it was reasonable for a taxpayer to rely on statements made by HMRC's online manuals, where the statements were ambiguous.

“Do not be afraid to ask us to review the underlying legislation if in doubt!”

In this case, B&J Shopfitting Services was a partnership which employed a tax agent to complete their tax return. The agent reviewed the HMRC website to ascertain the time limits set out for partnership tax returns. They submitted a return based on the information found, as it was the agent's view that the website had confirmed that no penalty would be imposed if a paper return was filed (and tax paid) by 31 January 2009. HMRC even confirmed this position to the agent by telephone. However, the website did not state that this statement

was inapplicable to partnership returns. As a result, HMRC imposed a £200 penalty but the subsequent appeal by the taxpayer found that they had a reasonable excuse for not submitting their return, given that the statement relied upon was actually only applicable to individuals' tax returns. The agent's reliance on HMRC's website therefore provided a reasonable excuse for the late tax return.

HMRC's guidance manuals (nearly 200 of them) can be found on their website. Whilst they can provide very helpful guidance, they only represent HMRC's interpretation of the law - they cannot be regarded as being the force of law in themselves.

Accordingly, if the guidance is laid out on the HMRC website in a way that makes it ambiguous, a taxpayer should not be penalised for relying on that information. Do not be afraid to ask us to review the underlying legislation if in doubt!

The risks of using unregulated Will writers

The Society of Trust and Estate Practitioners (STEP) has recently announced the results of a survey highlighting the risks to consumers in using Will writers rather than qualified solicitors. The survey found that cases of incompetence or dishonesty were commonplace in the Will writing market with 75% of STEP members encountering such cases. Hidden fees that were not outlined in the stated price for a Will were reported by two thirds of respondents. Will writing companies

going out of business also remains a major cause for concern with 63% of cases experiencing companies disappearing with client's Wills, even where charges have been made for storage.

This survey follows an investigation from Panorama into Will writing companies which found similar results. For more information please see our website at www.henmansllp.co.uk/press.