



Let's talk about trusts law

A discussion on the future of trusts law and upcoming trends

[BRIAN GREEN QC](#) INTERVIEWS [EMILY CAMPBELL](#), 10TH JUNE 2021

Brian: This is the second 'Let's talk about trusts' video. The last video, as you may have seen, was Emily interviewing me about developments in trusts in the past and now I'm going to be interviewing Emily about what the future holds. Emily, you were my pupil back in 1996 and it's been a pleasure to see the flourishing practice in the years since. What do you see as the prospects for private client in the coming years?

Emily: Okay, so I think we're going to see major changes in the make-up of the legal profession and the Bench. I think we're going to see changes in the shape of the family and the trusts that people set up for them. I think we're going to see big economic changes in the country that are going to influence the range of clients we see and their objectives, and I think we'll see a lot more technological development.

Brian: And so as regards the legal profession and the Bench what do you think is going to happen there?

Emily: Well, I think that the legal profession is going to become even more diverse especially at senior levels, which I certainly think is a good thing! Post-Covid working practice is going to make working life more flexible and I think that's going to encourage a more diverse workforce. You've mentioned yourself the lack of specialist judges in the private client area and the expectation it can all be dealt with by Masters and we've obviously seen a number of recent examples, variations and so on. I think it's unsustainable to think that Masters can deal with all of these technical types of cases. We need some specialists and one possibility that occurred to me was that they could recruit from the ranks of senior solicitors. One thing that I've seen changing is more in-house specialism in solicitors' firms in this area and I think that that would be a good place to look.

Brian: That's a very, very good idea I think. Lawrence Collins was a very distinguished solicitor, wasn't he? He progressed to the Bench and added greatly to the law. And you say that you think that the change in the nature

of family is going to have an effect on private client in the coming years, what do you mean by that?

Emily: It interests me that we've got these 125-year perpetuity periods, and we presume to think we can dictate how families or people are going to live in 125 years' time. I wouldn't presume to say how life is going to look in 125 years' time, other than to say it's going to be very different from how it is now. I mean, 125 years ago, who would have foreseen same-sex marriages, "test tube" babies and so on. An example I saw online is that, in California, a polyamorous throuple, three fathers, have been put on a birth certificate and I think that shows that we just don't know the way people are going to live in the future and we don't really know what the options are going to be for creating babies in the future, what with scientific developments and so on. I think the whole idea of dynastic wealth is rather outmoded. It has this sort of patriarchal feel to it, which is bound to change, but what I would say is that if we get rid of surnames, let's hope we don't all become part of a dystopian society, where people are just known by numbers!

Brian: Well, you can imagine that would make some difficulty in defining beneficial classes! The other thought I had actually, when you said polyamorous throuples, was how that would work in terms of stirpital devolution of property, who's the heads of stocks!?

Emily: Quite, quite!

Brian: The third thing that you mentioned was how economic changes are actually going to impact on private client. What do you think there, what's going on there?

Emily: The way I see it is you've got property inflation, a high proportion of family home is going to be inherited with relatively low rates of inheritance tax. I feel we are facing a divided society, where some people will have a foot on the property ladder through inheritance, and other people won't have a chance even if they work really hard, and I think a society of 50% haves and 50% have nots is a new phenomenon and I don't really know what kind of effect that would have on the dynamic in society, but I think that's it's going to change attitudes. I think attitudes towards inheritance, which at the moment are fairly positive, might become more negative and I think that for better or worse we are likely, in the next couple of decades, to see something like a wealth tax.

Brian: Right and you mentioned technological changes and the effect that those may have on private client, how do you see that developing?

Emily: Well, we have had recently, because of Covid, an experiment with remote witnessing wills and I think that that measure may well be made permanent. I think it goes on until January 2022 at the moment? I would expect it to be rolled out eventually to deeds, remote witnessing of deeds, and in fact I expect to see paper instruments got rid of altogether. A bit like we are

becoming cashless, we may become deedless, and it would help people not to lose things, I suppose. Do you get deeds and they've been treated as counterparts? You've got one signature and there's never any expectation that you will see all the signatures, and it's not quite satisfactory.

Brian: That's true, it's far from satisfactory, but there's a kind of abiding assumption that all the other counterparts must exist and have been signed and that's completely neutralised, hasn't it, the importance of the signature? Because everyone assumes, yes, the formalities must have been complied with.

Emily: And do you think people are downloading just the signature page and, I mean, is that actually valid? So I think all of these questions can be dealt with if they have some sort of remote system. It could be also registering legal documents in some sort of bank of documents. Anyway, there's that and I think we'll see huge steps towards the use of artificial intelligence in decision making. I was looking at an HMRC decision tool, I think it's a "check employment status" tool the other day and it's quite rudimentary, but in principle something like that would be extremely useful, and so I think that we are going to see a lot more of that sort of thing in the future.

Brian: Well how would that work in a private client context?

Emily: Well I think it's going to be quite helpful for tax. Anything where you've got a complex system of rules that can take you through the algorithm and certainly look at key indicators, especially things that the Revenue regard as relevant, which is you know what the clients want to know - how the Revenue's going to see something.

Brian: And you spoke a bit earlier about, you know, how do we know where anyone's going to be in a 125 years' time, which is obviously absolutely right and it's funny, isn't it, the way there's been these abiding assumption in relation to trusts from the year dot almost or since, as it were, perpetuity periods were introduced that you can prescribe for such long periods. Of course, in 125 years' time there probably won't be perpetuity periods one imagines, that the world will probably have changed completely, won't it, as you say?

Emily: Yes, I mean 125 years was presumably judged as being slightly longer than any life in being could be but 125 years is presumably not going to be length of life in being; in 125 years' time, you'll get people who are, I don't know, limping on with some robotic method.

Brian: And artificial intelligence!

Emily: Yes.

Brian: Do you look forward with optimism to the next 25 years in private client?

Emily: Well, I'm hoping that more people are going to develop the speciality and continue the tradition at the Bar of having that knowledge, which I think helps. Even if you're not doing private client practice, it's always good to have a grounding in trusts and tax.

Brian: Here, here. I couldn't agree more.

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