

Can we draft better wills?

1. Is there a way to write wills so you don't need to find people?

2. In light of missing persons, presumption of death and GDPR rules and regulations there is one thing that is certain if you find yourself having to deal with anything "out of the norm" it will require you to tell your client that it will cost more.

3. Another thing that is certain, is that those are words clients never like!

4. Remember that the upshot of GDPR from a private client perspective is that contract details simply written in wills while the testator is alive means you don't have to do anything. However, when the testator dies then you have to write to all people that you hold personal data for and provide a Privacy Notice.

5. My thoughts on ways to avoid having to find people while keeping GDPR at bay:
 - 5.1. From the perspective of a testator giving instructions providing contact details of PRs or beneficiaries in the will, a family tree and reviewing the position periodically, may save their PRs and/or relatives the time and expense of having to deal with missing persons.
 - 5.2. Draft clauses with reference to missing people – you could take the GMPA as a template for some of the terms you may wish to include; rather than the PODA which is frankly, at 7 years, just too long – and that after this period of absence the gift fails or a substitute beneficiary becomes entitled. Or a substitute executor is appointed.
 - 5.3. You could direct that a Guardian is appointed for any missing person as defined in the GMPA, and that provided this is done within a certain period of time (you would also need to comply

with the time restraints in the GMPA) that a trust fund is paid to the Guardian for the benefit of the missing person.

- 5.4. Refer to classes of beneficiaries rather than individuals and/or alternatively provide a detailed letter of wishes and/or family tree with sporadic personal data so that further personal data can be obtained; but only if required. Thus, limiting the GDPR requirements.

6. One important point to not overlook is the consequences if a missing person ends up being presumed dead.
 - 6.1. Poignant questions need to be asked and instructions given if a testator starts referring to estranged friends or family whom they would like to benefit in such a scenario.
 - 6.2. Do they want the gift to fail if the beneficiary is presumed dead, or to go to the heirs of the presumed dead beneficiary, or fall into residue?
 - 6.3. What if the date of presumed death occurs prior to the death of the testator?
 - 6.4. Consider whether you would want s. 33 Wills Act 1837 as amended by s.19 Administration Act 1982 [see *Ling v Ling* [2002] WTLR 553 where the operation of this section was extensively reviewed] to automatically pay the funds out to the missing person's issue or whether you would want to exclude this statutory rule.

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June 2019 ©