

The Telegraph

'I was cut out of £300,000 estate by Dad's second wife'



Stuart Herd lost his inheritance CREDIT: DANIEL JONES

By Olivia Rudgard

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The news that David Cameron's mother gave him a £200,000 gift five years ago has sparked a national debate about inheritance tax.

But experts warn that tax is not the only thing to consider when planning an estate. It's also important to make sure your legacy goes where you want to avoid heartache for your dependents.

Giving it away during your life, as Mary Cameron did, is one easy way to ensure this. But not everyone has the disposable income to be able to do this and, as families become more complex, people could have multiple offspring and new partners to consider.

A particular dilemma often faced by older people in second marriages is how to provide for their partner after they die, while still making sure their children get their inheritance.

This is one of the most common sources of will disputes, and can cause real issues for those left behind.

Changed will

Just before Stuart Herd's father died in 1997, he had a conversation with him about his will.

His father said that he would leave his estate to his second wife, who he had married nine years previously, and the couple's assets would then be split between Mr Herd and his wife's son.

The couple had each drawn up wills leaving their estate to each other shortly after their marriage.

After his father's death, Mr Herd, an accountant from Southend-on-Sea, Essex, says he kept in touch with his stepmother.

But unknown to him, in 2008 she changed her will to leave her whole estate to her son and his family – effectively cutting Mr Herd out.

She said this was because he had not been in contact with her for ten years – something Mr Herd disputes.

He did not find out about the changed will until after her death in 2012.

He wrote to his stepbrother's family, who had inherited the entire estate, to explain his position – but got nowhere.

Mr Herd, 64, said: "I feel the law hasn't moved on – there is an increase in blended relationships. Relationships are far more complex these days.

"My father worked really hard to build that up and losing it feels like you've been mugged. To me he was very clear in what he wanted. There should be a requirement and an obligation to notify anyone being disinherited so they can challenge it then.

"She changed it in 2008 and she lived those four years as if nothing had happened."

He said the money might have helped him buy his 27-year-old daughter a flat.

Under UK law Mr Herd's stepmother had a right to leave her estate to who she wanted.

But his case highlights a common modern problem in "blended" families where wills can be changed after the death of one partner to favour the other's family.

Good and bad solutions

Paula Myers, a will dispute lawyer at law firm Irwin Mitchell said situations like this are one of the most common sources of arguments.

"It's a very common situation, and could also be an issue if the lady had gone on to remarry. Then there's another spouse, and a chance that the family inheritance could go down a completely different line.

"We see a number of cases where this happens, simply because someone might not get on with their stepchildren," she said.

MAKING YOUR WILL INCONTESTABLE

Things to consider

- Get a doctor or psychiatrist to affirm that you are of sound mind
- Tell your family what you are doing
- If you can't or don't want to do that while you are alive, leave a letter with your will explaining your decision
- If you're cutting out a family member, explain why - for example, because they're financially independent
- If you're donating to a charity, explain why you want to support them

Of course, we'd all like to trust that our loved ones will follow our wishes after we die. But it's impossible to predict how changing circumstances, family fall-outs, or health and financial issues might affect people's decisions.

One of the best ways to preserve inheritance for children is to place it into a life interest trust. This means that a spouse or partner can use assets such as homes, cash and investments while they are alive. Once they die, however, the assets will go to whoever you want - for example, a child.

A less common - and more problematic - tactic is to draw up "mutual wills". These put constraints on what someone can do with their assets. Generally speaking people are free to change their wills how they wish. Mutual wills limit that ability.

- 'I'm leaving all my wealth to charity - and nothing to my estranged family'
- Why you should write a will

They are very rare, said Alison Regan, a partner at law firm Russell Cooke, and should be approached with caution.

"These often cause even more problems. There might be an agreement where the survivor has the assets and then those assets have to go down to the children.

"But she can't change her will – so she may find her ability to pass assets to any new children from a second marriage is restricted. Mutual wills don't allow for changing circumstances," she said.

If you do leave all your assets to one person with the expectation that they are passed on, you can leave a letter with your will expressing your wishes. "It's a good

idea to leave a letter saying why you have done what you have done, because it's always better to explain for the benefit of anyone who might be unhappy at being disinherited," Ms Regan added.

However, this still leaves an individual free to do whatever they want with the assets - even if this goes against your wishes.

Splitting an inheritance

If you are left money but want to share it with someone else, there is an easy and tax-efficient way of splitting it.

Ms Myers said that a deed of variation is one of the most common ways of settling will disputes. These allow an individual who has been left an inheritance to split it with other people, or pass it on entirely.

INHERITANCE TAX

How does it work?

Each individual is taxed at a rate of 40pc on all their assets above a threshold of £325,000.

From April 2017 a new, higher threshold including a "family home allowance", will begin to be phased in.

This will be worth £100,000 in 2017-18, £125,000 in 2018-19, £150,000 in 2019-20, and £175,000 in 2020-21.

This means that married couples will be able to pass on estates worth up to £1m to their direct descendants, including a family home.

People who sell an expensive property will be eligible for an "inheritance tax credit" so can still qualify for the new threshold, as long as most of the estate is left to descendants.

People often use these to "skip" their generation, leaving assets to children so they don't have to pay inheritance tax twice, but they would also work in situations like that of Mr Herd.

The government has consulted on the use of deeds of variation because of concerns that people were using them to mitigate tax, but decided not to restrict their use - so they can be one of the best ways to split a contested inheritance.

Alison Regan

Partner

+44 (0)20 8394 6549

Alison.Regan@russell-cooke.co.uk