

Private client news - winter edition: joint bank accounts when sharing may not be straightforward

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Joint bank accounts are a common means of sharing access to funds for two or more individuals and the majority of people will have one, either with their spouse or with their parent or child. However, what many people are not so clear about is what will happen to these funds on their death and whether or not they will pass automatically to the surviving account holder. As two recent cases have shown, the sharing principle is not applied to all joint bank accounts. When someone dies holding one or more joint bank accounts, their executors have to consider whether one joint owner inherits the whole account by survivorship or whether the funds are now held on trust for the deceased's estate. This note briefly summarises the recent cases and sets out some points to consider in respect of joint bank accounts.

In *Drakeford v Cotton*, a joint account was set up and funded by a mother. Her daughter was the other account holder and assisted with her mother's care. On the mother's death, it was presumed that the account was held on resulting trust for the mother's estate and so devolved according to the Will. However, the daughter was able to prove to the Court that the mother had intended that she take all of the funds by survivorship and the presumption was disapplied.

In *KO Pflum v HMRC*, HMRC claimed that a joint bank account set up and funded by a London based banker for both his and his girlfriend's benefit consisted solely of the banker's funds and looked to tax him whenever the girlfriend withdrew funds and used them in the UK. The Court held that the account had been set up so that withdrawals could be made without restriction by either party and as a result the funds belonged to the party withdrawing them.

Both these cases show the importance of making clear one's intentions for a joint account when it is set up, especially if all or the majority of the funding comes from one account holder. Unless it can be shown that there is an intention for the funds to pass to the other person (there is a presumption that transfers from a husband or father to his wife or children are gifts, unless proven otherwise, but the same is not true in respect of transfers by a wife or mother), then there will be a presumption that they are held on resulting trust for the individual's estate. Therefore, make sure your intentions are recorded in good time.

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