

## Love hurts - helping a loved one to die could disinherit you

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Julia Schtulman

ASSOCIATE | UK

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Assisted dying is a hotly debated topic. Simply accompanying a loved one on their journey to an assisted suicide clinic could be considered as assisting suicide. Assisting suicide could, in theory, lead to a prison sentence of up to 14 years.

Ordinarily such cases are not prosecuted. However, even if an individual does not face prosecution, they may still face difficulties from an inheritance perspective. The current law in England – known as forfeiture – means that not only could you lose a loved one, you could also lose any inheritance.

### Background

*Ninian v Findlay & Ors* demonstrates considerations the Court will take into account and what steps can be taken to avoid loss of an inheritance.

Alexander Ninian was a successful businessman. Following his retirement he became a travel writer. He obtained a PhD at the age of 80, but at around the same time was diagnosed with a progressive incurable disease. As his condition deteriorated he decided to end his life at the Swiss assisted suicide clinic, Dignitas.

His wife, Sarah, tried to dissuade him on numerous occasions. However, Alexander's wish was unwavering. In the face of his determination, she agreed to make the practical arrangements, as he was no longer able to do so himself.

Before travelling to Switzerland, Alexander spoke to a solicitor. He updated his will and made a statement recording the reasons for ending his life. A medical professional provided an opinion on Alexander's capacity.

The couple travelled to Switzerland together. Having gone through Dignitas' examination processes with Sarah by his side, Alexander took his own life.

Shortly after returning to England, Sarah reported her circumstances to the police. The CPS decided it was not in the public interest to prosecute her.

### The law and the decision

Assisted suicide is a form of unlawful killing in England with or without prosecution.

The forfeiture rule is that a person who has unlawfully killed another may not benefit from the latter's death. This means that a person who assists another to commit suicide is not then allowed to benefit from the deceased's estate.

Chief Master Marsh found that Sarah's actions could be considered as assisting suicide. As there had been an unlawful killing, the forfeiture rule meant that Sarah was prevented from benefitting from her husband's estate.

However, the Court has the power to modify the effect of the forfeiture rule and grant an individual 'relief from forfeiture' where 'the justice of the case requires the effect of the rule to be so modified'. So Sarah applied to Court for permission to benefit from her husband's £1,840,557 estate.

Chief Master Marsh considered whether to grant relief. In making his decision, he referred to the Director of Public Prosecutions' guidance for deciding whether to pursue criminal prosecution. That Sarah had tried to dissuade her husband from committing suicide, was wholly motivated by compassion, and her actions might be 'characterised as reluctant assistance' were all key. He also found that 'the decision of the CPS not to

*prosecute Mrs Ninian is a powerful factor in favour of ... relief* and that Alexander's statement recording his reasons for deciding to end his life greatly assisted.

Chief Master Marsh granted relief from forfeiture – so Sarah can benefit from her husband's estate.

### **Think ahead about those you leave behind**

The case demonstrates that if someone is considering the possibility of an assisted suicide, it is worth giving careful thought to not only the medical side of things but also what steps to take to ensure their estate passes as they wish. Alexander made a statement of intent and changed his will to try to protect Sarah from criminal prosecution and ensure she could benefit from his estate.

In *Macmillan Cancer Support v Hayes & Another* the judge took a similar approach. Here, the estate would have passed to remote relatives in Australia rather than to those the deceased couple wanted to benefit. The application was successful and the judge made reference to an explanatory note which explained the husband's reasons for his actions. He also emphasised that evidence of the actions being carried out wholly out of compassion was key.

A lesson from both cases is that in planning for the end, one also needs to plan for the future of those left behind.

# Authors

Julia Shtulman

ASSOCIATE | LONDON

Trust, estate and inheritance disputes

 +44 20 7597 6572

 [julia.shtulman@withersworldwide.com](mailto:julia.shtulman@withersworldwide.com)