ISSUE 5

NEXUS

PROTECTING YOUR WEALTH AND YOUR FUTURE

In this edition:

hcrlaw

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WELCOME

It's often said that three of the most stressful events that can happen in life are death, divorce and purchasing a home. In this edition, we'll offer advice that could help to make the legal aspects of each of these easier to manage.

Adam Cottrill and Sally Robinson consider how the breakdown of a relationship can have far-reaching immigration implications when one or both parties are overseas nationals. They highlight why early specialist advice is essential and how collaboration between family and immigration lawyers can protect clients from unintended consequences.

Also on the subject of divorce, Beverley Morris explores why pensions are one of the most overlooked assets in proceedings. She explains why more couples should take them into account – and sets out the options (and the pitfalls).

Turning to legacy planning, Stephanie Dennis and Katherine Hague look at the tax reliefs available to owners of heritage property. It's a timely article because with the announced restrictions to Agricultural Property Relief and Business Property Relief, we may see a greater reliance on these reliefs in the future.

If you're considering a charitable bequest in your will, Michelle Abbott and Rachel Gwynne's article is a must-read. It offers insightful advice on how to ensure your generosity can have maximum impact.

Owners of family businesses can face a dilemma when it comes to succession. How do you ensure the legacy you have built over decades continues to thrive, while also rewarding the people who have contributed to its success? Tim Ward is here to help by offering a guide to the benefits of an employee ownership trust.

We also look back at one of the summer's big stories: that of Angela Raynor and the payment of Stamp Duty on an apartment in Hove in East Sussex. Samantha Holden and Kiran Sandhu explain the issue that arose – and offer advice on how to avoid falling foul of the legislation.

The year has also seen a number of cyber attacks hit the headlines. Kerry Beynon looks at why high net worth individuals face a heightened risk of attack – and offers practical advice on how to mitigate the risk.

As always, I hope you enjoy this edition and find it an insightful read.

Bernadette O'Reilly
Partner, Private Client

This is intended as market insight and does not constitute legal advice.

STRINGS ATTACHED – CONSIDERATIONS FOR RESTRICTED GIFTS TO CHARITIES

We were recently approached by the trustees of an animal welfare charity seeking advice in connection with a gift left to them by will. The gift, a residential property, was a generous one, but came with a restriction: the charity was required to retain ownership and use of the property, with no ability to sell it.

This kind of gift highlights the tension between donor intent and trustee obligations. The trustees were acutely aware of the generosity of the bequest. They were also aware it posed complications. The executors or the charity beneficiary generally cannot simply ignore the restriction in a testamentary gift.

At the same time, trustees have a duty to manage their charity's resources responsibly. This duty includes ensuring that assets are applied in accordance with, or in support of, the charity's objects and best interests.

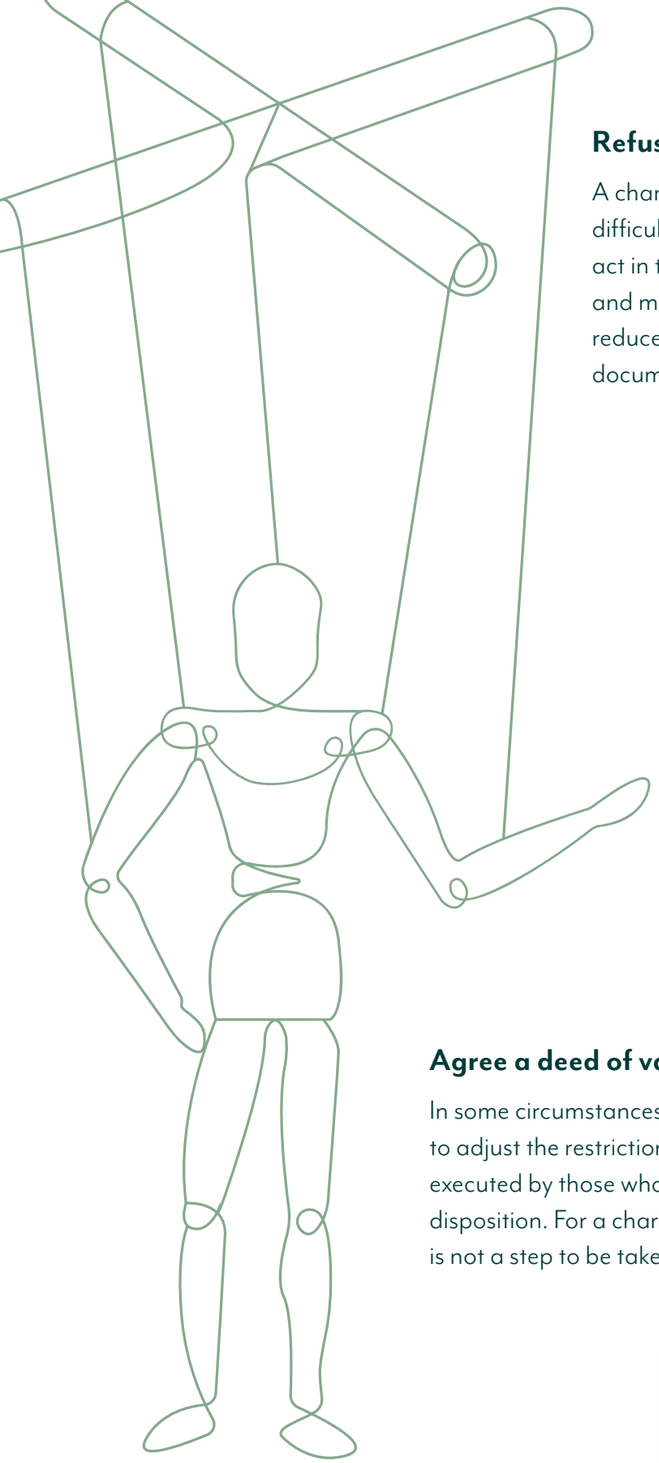
As in this case, the restriction placed on the property could conflict with this duty, particularly as the property was not suited to the charity's activities and could be costly to maintain.

Even if property could have been made suitable for the charity's use, costs relating to such works could have been significant. Would it be possible to justify these costs as being in furtherance or support of the charity's objects?

So, what are the options are available to charities that may be faced with the dilemma of a gift with strings attached? There are four options.

46,000 estates included a charitable gift in 2024

Source: The Legacy Gifting Report 2025



Refuse or disclaim the gift

A charity can refuse (or disclaim) the gift, but this may be difficult for trustees of a charity to justify. Trustees must act in the charity's best interests, further its purposes, and manage resources responsibly. Any decision to reduce or relinquish value must be carefully reasoned and documented.

Seek a cy-près scheme

Where the restriction is impossible or impracticable to comply with, the charity could seek a cy-près scheme. This is a legal mechanism to redirect or modify the purpose of a charitable gift, involving an application to court or in some cases the charity commission, so funds can be applied as close as possible to the testator's original intent. This route is preferable where the restriction is central to the testator's purpose rather than a minor administrative term, or where there is doubt about the trustees' power to accept the gift as drafted without breaching their fiduciary duties. However, before concluding on any course, trustees should take advice.

Agree a deed of variation

In some circumstances, it may be possible to agree a deed of variation to adjust the restriction. A deed of variation is a post death instrument executed by those whose interests are affected, which can "rewrite" the disposition. For a charity, however, agreeing to relax or remove a restriction is not a step to be taken lightly, and legal advice should be sought.

Explore alternative options

Where the difficulty lies in the nature of the assets, there may be practical alternatives. Trustees can explore whether the executors have the power to appropriate or exchange specific assets, allowing them to receive a more suitable asset or cash instead.

Michelle Abbott
Senior Associate, Private Client

Rachel Gwynne
Head of Charities and Not-for-Profit

This article was co-authored by Jack Tozer, Paralegal, Education and Charities

Advice on putting charitable bequests in a will

When a bequest is made to a charity in a will, in the first instance it is vital that there is no ambiguity as to the identification of the charity. The full name of the charity should be stated along with its registered charity number and registered office address.

We would also recommend that you speak with the charity before drawing up your will. Understanding their objects can help ensure that your gift aligns with their needs and can be used in a way that best supports their work.

We would also recommend seeking early legal advice when drafting a will with a charitable bequest. Expert legal advice can help give additional assurance that your generosity will achieve its intended good.

Charities, like many other sectors, have faced economic challenges in the years post-Covid, with rising operational costs – particularly for those who employ staff – and a decline in public donations.

Whilst charitable donations remain vital to charities, a trustee's overriding duty is to advance the objects of the charity. Gifts such as the one in this article are often made with the best of intentions, but restrictions on use can cause challenges for trustees who must balance asset management with their duty to act in the best interests of the charity, and in pursuance of its objects.

This is not to say that charities are ungrateful for being left gifts – far from it.

But in some cases, an unrestricted gift, or one with fewer conditions, may allow your chosen charity to better fulfil its mission – supporting those who need it most – and make the most of your generosity.

Talk to me about the regulation and governance of charities

THE LEGACY OF DIVORCE AND SEPARATION ON IMMIGRATION STATUS

For high-net-worth individuals navigating the complexities of divorce or separation, immigration status is often an overlooked but critical aspect of legacy planning. When one or both parties are overseas nationals, the breakdown of a relationship can have far-reaching implications not only emotionally but also financially and legally – particularly in relation to their right to remain in the UK.

In this article, we explore how immigration status can be affected by divorce or separation, why early specialist advice is essential and how collaboration between family and immigration lawyers can protect clients from unintended consequences.

Immigration status: precarious position during relationship breakdown

Many personal immigration routes are dependent on family relationships. Partner and dependent visas are contingent on the continuation of a genuine relationship. When that relationship ends, so too can the legal basis for remaining in the UK.

It is a common misconception that an individual may remain throughout the period covered by their visa until the stated visa expiry date. This is not always the case. Certain provisions within the immigration rules and the regulations relating to proof of immigration status (usually in the form of an e-Visa) can require that an individual reports any changes in the circumstances on which their visas were issued, which would include the permanent breakdown of a relationship. However, before any such action is taken, advice should be sought so that the individual's immigration status can be protected.

For example, a person on a spouse visa who separates from their British or settled partner may find themselves at risk of losing their immigration status. Without timely intervention, this can lead to curtailment of leave, enforcement action or even removal from the UK.

For high-net-worth individuals, the stakes are particularly high. Their immigration status may be tied to significant investments, property ownership, business interests or the education of their children. A sudden change in status can disrupt not only their personal life but also their financial and legacy planning.

Disclosure in family proceedings: a double-edged sword

Divorce proceedings can only be issued in England and Wales if the family court has jurisdiction to hear the case. This pivots on the domicile and/or habitual residence of the spouses, and their immigration status could have a bearing on this.

If divorce proceedings are issued, full and frank disclosure of financial and personal circumstances is required during the associated financial remedy proceedings. For overseas nationals, this may include details of their immigration status, visa conditions, and future plans.

This disclosure can have unintended consequences. Information shared in good faith may later be scrutinised by immigration authorities, especially if it reveals non-compliance with visa conditions or casts doubt on the genuineness of a relationship.

For example, if a party discloses that they have been living separately for an extended period, this could trigger questions about whether the relationship was subsisting at the time of the last visa application. Similarly, if financial disclosure reveals that a sponsor is no longer supporting their partner, this could undermine the basis of a dependent visa.

This is why early advice from an immigration specialist is essential. A coordinated strategy

between family and immigration lawyers can ensure that disclosure is managed carefully, compliance is maintained and the client's immigration position is protected.

Strategic planning: protecting status and avoiding enforcement

When separation is on the horizon, clients should seek immigration advice as early as possible. This allows time to:

- assess current immigration status and identify any vulnerabilities
- explore alternative routes to remain in the UK, such as switching to a different visa category
- plan for future applications, including settlement or citizenship
- avoid enforcement action, such as curtailment or removal, by ensuring continued compliance with immigration rules.

Timing is critical because immigration rules often require applicants to apply for a new visa before their current permission expires. Delays or missteps can result in a break in lawful residence, which may affect long-term goals such as settlement or naturalisation.

For high-net-worth individuals, immigration planning should be integrated into broader legacy and succession strategies. This includes considering the impact of immigration status on tax residency, property ownership and the ability to pass assets to future generations.

Immigration options following relationship breakdown

Several immigration pathways may be available to help preserve lawful status and avoid disruption to personal and family life. These common (but not necessarily exhaustive) options should be explored with specialist advice and careful strategic planning.

Parent route

If the individual has a child in the UK who is British or settled, they may be eligible to apply for leave to remain under the parent route.

A COORDINATED STRATEGY BETWEEN FAMILY AND IMMIGRATION LAWYERS CAN ENSURE THAT DISCLOSURE IS MANAGED CAREFULLY

This option requires demonstrating active involvement in the child's upbringing and that continued residence is in the child's best interests.

Private life route

Individuals who have built a life in the UK over a significant period may be able to apply under the private life provisions. This route considers factors such as length of residence, integration and ties to the UK.

EU Settlement Scheme (EUSS)

Those who hold pre-settled or settled status under the EUSS may retain their rights following the breakdown of a relationship, depending on their circumstances. For example, individuals who were granted status as the family member of an EEA national may retain their rights if the relationship ended due to divorce or separation, provided certain conditions are met – such as the duration of the marriage and the presence of children.

Alternative family or personal routes

Depending on the circumstances, other visa categories may be available, such as adult dependent relative visas (in rare cases) or switching to a different category if the individual meets the requirements independently (such as work, study or ancestry).

Discretionary leave or exceptional circumstances

In some cases, where no standard route applies, individuals may be able to request leave outside the rules based on compelling or compassionate grounds. This is a complex area and requires strong legal representation.

Each of these options carries its own evidential and procedural requirements. Timely legal advice is essential to ensure continuity of lawful residence, avoid enforcement action and protect long-term immigration goals such as settlement or citizenship.

Conclusion: immigration status as part of legacy planning

Divorce and separation are pivotal moments in a person's life. For overseas nationals, they can also be turning points in their immigration journey. By recognising the legacy implications of immigration status, high-net-worth individuals can protect their future – and that of their families.

Early, specialist advice is key in navigating the complex intersections of family and immigration law. Ideally, family and immigration lawyers should work collaboratively to ensure that strategy, disclosure and compliance are aligned.

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Find out about our how we can support you through an amicable separation

CYBERSECURITY FOR HIGH NET WORTH INDIVIDUALS: PROTECTING YOUR DIGITAL ASSETS

It can feel like a game of cat and mouse – no sooner does a new technology emerge to make our lives easier or more engaging, then bad actors are trying to find a way to exploit it. Indeed, in an increasingly connected world where our homes are part of the "internet of things", some find it a difficult choice between embracing the technological revolution and keeping themselves and their personal assets safe.

For high net worth individuals (HNWIs) the risk is heightened because their substantial assets and high public profiles make them increasingly attractive targets for cyber criminals.

This article considers the specific threats HNWIs encounter – and offers practical advice on how to mitigate these risks.

The threat landscape

Phishing

Phishing involves criminals using emails to trick individuals into clicking malicious links or divulging personal information or log in credentials. They cause inconvenience at best and a full on cyber attack at worst.

Many organisations run phishing campaigns to help train their people to recognise these emails. Technical measures are usually also deployed (with varying degrees of success) to mitigate the risk of anyone who is too "click happy".

But while we are often on our guard at work, we may be less vigilant at home. HNWIs are especially at risk of having their personal emails attacked. They are in possession of valuable information and assets, and they are also a potential channel to any organisation they are connected with, which makes them an even more valuable target.

Social engineering and identity theft

Social engineering involves tricking employees or family members into believing a communication has come from a specific individual and inducing them to take action that might not be in their best interests.

Social engineering is a particular challenge for HNWIs because their writing style, what they put on social media, what is written about them in the press and their social network can be high-profile and more easily accessible.

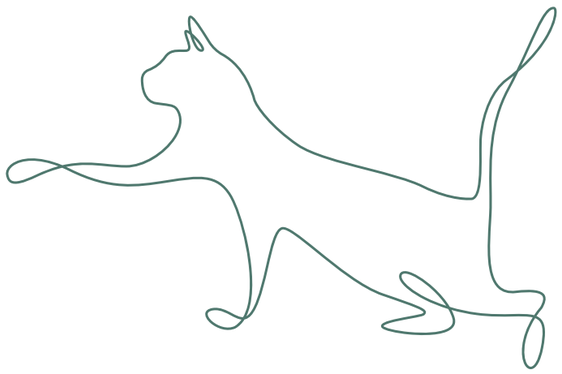
The same information can also be useful to those who, perhaps in connection with information gathered elsewhere (such as from other data breaches), want to steal an identity and use it for nefarious purposes.

Ransomware

Many of the cyber attacks in the press in the last 12 months have involved ransomware. It is where malicious software is used to take control of a device and make it inaccessible to the owner until a "fee" is paid. While the news stories generally involve attacks on companies and organisations, HNWIs are frequent targets because they are seen to be able and willing to pay large ransoms.

The M&S cyber attack is estimated to wipe out nearly one-third of annual profits

Source: CNBC



14 steps to better cybersecurity

Given the complexity of cyber attacks, there is no "one size fits all" approach to keeping your personal devices, data and assets safe. However, there are some general steps we can all take to reduce the risk.

1 Be careful what you share on social media. No one needs to know in advance you are about to go on holiday. Think too about what you say in media interviews.

2 Check the security and privacy settings on your devices, accounts and apps.

3 Avoid using passwords that are simple, commonly used or easily guessed. Try not to use the same password across several accounts – if one account suffers a data breach, your password being made available online can lead to the compromise of your other accounts.

4 Keep the operating systems on your personal devices up to date and use the latest versions of apps and software. Using the latest versions means you'll have the most up-to-date security patches, which can help reduce the risk of your device being compromised.

5 Look into a virtual private network (VPN) which can help reduce the visibility of your data to cyber criminals when using public networks.

6 Assess the security on your home network and check it is up to date. Insecure home networks can be exploited by bad actors.

7 If you work, your organisation will have a "bring your own device to work" policy or something similar. You can adopt the approaches it sets out when using work devices in a personal context.

8 Consider whether a "data breach" alert services could help you keep up to date with any security breaches that might have compromised your data, login details etc. Knowing your data / accounts have been compromised can help you take action to reduce the risk of further harm.

9 Sign up to a credit report agency to help you keep track of any accounts opened in your name. The earlier you spot an account you did not open, the earlier it is likely to be resolved.

10 Investigate insurance that could provide cover for the risks you may face as an individual.

11 Regularly backup important documents and photos stored on electronic devices. If your device is compromised by ransomware or an account is "stolen" it can be difficult to get that information back.

12 If your device is compromised by a ransomware attack, think very carefully before paying any "ransom". You may not get your data back, your device may still be compromised and paying a ransom can put you at risk of being seen as an easy target by others with criminal intent.

13 If you think you have been the victim of a data breach, you can register for the Cifas Protective Registration service. This will place a flag against your name in its National Fraud Database so its member organisations know to take extra steps to make sure it's really you applying for their products and services.

14 The National Cybersecurity Centre offers valuable information and guidance to help families and individuals protect themselves against cyber attacks - www.ncsc.gov.uk

Dr. Kerry Beynon
Partner, Technology and Innovation

Find out more about building a robust governance framework before an attack occurs

Between April 2023 and March 2024 £45m worth of cultural items were accepted under the Acceptance in Lieu and Cultural Gifts Schemes

Source: Arts Council England Cultural Gifts Scheme and Acceptance in Lieu Annual Report 2023/24

HERITAGE PROPERTY: ARE YOU ELIGIBLE FOR TAX RELIEFS?

There are a number of lesser-known tax reliefs available to the owners of heritage property that have the potential to provide significant tax savings. The rationale for these reliefs is to conserve and protect assets of national importance for the benefit of the public.

With the announced restrictions to Agricultural Property Relief (APR) and Business Property Relief (BPR), we may see a greater reliance on these reliefs in the future. With that in mind, this article explores the opportunities for taxpayers.

What qualifies as Heritage Property?

Firstly, we should consider which assets can attract such relief.

Section 31(1) of the Inheritance Tax Act 1984 defines 'National Heritage Property' as:

(a) A chattel which is pre-eminent for its national, scientific, historic or artistic interest.

(aa) Collections within (a) which as a whole appear to be pre-eminent.

(b) Land of outstanding scenic, historic or scientific interest.

(c) A building which should be preserved due to its outstanding historic or architectural interest.

(d) Land essential for the character/amenity of a building in (c).

(e) Any object historically associated with a building in (c).

HMRC, in conjunction with the relevant advisory body, such as the Arts Council or Historic England, will determine whether the land, building or item in question is 'pre-eminent' or 'outstanding'.

The tax reliefs: an overview

If a taxpayer owns assets which meet the above criteria, the following reliefs should be considered:

Conditional Exemption

Conditional Exemption provides a deferral of Inheritance Tax (IHT) and Capital Gains Tax (CGT) which may be triggered on the transfer of an asset during a taxpayer's lifetime or on death.

There are strict criteria for this exemption. It must be claimed (usually within two years of a triggering event) and, if successful, no IHT will be payable.

There are a number of conditions for this exemption, namely:

1. If the item is a chattel, it must remain in the UK (unless HMRC approves it leaving the UK temporarily, e.g. for an exhibition).
2. The owner must take all reasonable steps to preserve the asset (to keep it in good repair and condition or such other condition as HMRC agrees).
3. The item must be made accessible to the public.

If the application for the exemption is accepted, the taxpayer will provide HMRC with an Undertaking to meet the agreed conditions.

The exemption no longer applies if the taxpayer does not comply with the conditions imposed by HMRC, if the person beneficially entitled dies or if the asset is later disposed of (unless in a Private Treaty sale). The taxpayer will then need to pay tax on the asset, with reference to its market value at the time. The tax will be payable at the rate when the conditional exemption was agreed.

However, if an asset which previously qualified for the Conditional Exemption is passed on, either by

way of gift or on death, then as long as the asset still qualifies for the relief, the new owner can give a replacement undertaking to HMRC to preserve the conditionally exempt status.

Public access: the practicalities

Public access is often the most controversial condition. The Government encourages the enjoyment and educational use of the heritage assets by requiring the asset to be available to the public for a minimum number of days per year. However, for many, opening up their private home or collection is unpalatable.

The precise access conditions must be agreed with HMRC and will depend on the nature of the asset. However, typically access must be available for at least 28 days per year (and advertised as such), as well as offering access by appointment. Importantly, public access cannot be by appointment only but the owner can charge a 'reasonable' fee for access.

Understandably, owners are often concerned about security arrangements for these assets. Public access can mean putting in place expensive security, risk assessments and protecting or relocating other assets for the public openings. All such costs are to be borne by the owner of the asset.

Consideration also needs to be given to insurance arrangements. Insurance may be more difficult to arrange or more costly if you are giving access to the asset to members of the public because the risk of damage, theft or vandalism is much greater.

Owners of heritage assets need to be more mindful than ever that they are complying with the conditions of the Undertaking given to HMRC. HMRC may check the conditions are being complied with at any time. There is also a rise in 'social auditors' (members of the public who use social media to highlight where a land or property owner is not complying with their legal requirements).

Preservation of the asset

The owner of any heritage asset must take reasonable steps to preserve the Asset in the form it took when the Undertaking was entered into. The Undertaking itself will set out the steps necessary to maintain the asset. In many cases, this will require the owner to agree to and implement a Heritage Management Plan. These plans are drawn up in conjunction with appropriate agency (for example, Natural England or Historic England) and often need to be negotiated before HMRC approve the Conditional Exemption.

A recent decision Tribunal Decision also now requires owners of property benefitting from the Conditional Exemption to disclose their Heritage Management Plans to the public. Publication of these adds to the administrative burden of owning a heritage asset.

THE ACCEPTANCE IN LIEU SCHEME ALLOWS A TAXPAYER TO USE AN IMPORTANT WORK OF ART OR HERITAGE OBJECT TO PAY IHT

Where the heritage asset in question involves a landed estate, this is becoming more difficult to do because of the increasing need for diversification to preserve an estate's financial position. One such estate recently fell foul of the requirement when it constructed renewable energy apparatus within parkland in the Conditionally Exempt area.

HMRC obtained a report from Historic England which suggested that the construction of the apparatus caused substantial harm to the main house, the park and garden. It advised HMRC there had been a detrimental impact on the way the heritage asset was enjoyed by visitors. HMRC withdrew the Conditional Exemption in respect of the land where the apparatus was situated and an IHT charge (plus interest from the point at which it fell due 20 years earlier) was levied upon the landowner.

A costly tale – and one which reminds us that early professional advice is key.

Acceptance in Lieu

The Acceptance in Lieu scheme allows a taxpayer to use an important work of art or heritage object to pay IHT. It offers a credit for capital taxes which would otherwise be due on the disposal.

To qualify, the asset must be of national, scientific, historic or artistic significance. The Arts Council will recommend an item for acceptance, or not as the case may be. If accepted, the item will be allocated to an appropriate public institution or charity, such as the National Trust.

An offer in lieu often provides a greater benefit than sale on the open market. The taxpayer is offered a credit against tax payable on other items based on the net value they would have received had they sold the item to pay the tax. They are also given a 'douceur', which is calculated as 25% of the tax that would have been payable if the item is a chattel, or 10% if the item is land.

For example, Rose inherits a rare vase on her mother's death. Rose is the sole executor. The vase is valued at £100,000 on the open market. Rather than sell the vase, Rose instead offers it in part satisfaction of the IHT due on her mother's death. HMRC accepts the offer.

Rose will receive a tax credit of £70,000, which is calculated as follows:

Sale proceeds	£100,000	
Less: IHT due	(£40,000)	
		£60,000
Add: douceur (25% of tax due)		£10,000
Tax credit		£70,000

HERITAGE PROPERTY RELIEFS MAY PROVIDE A LIFELINE FOR MANY TAXPAYERS WHO MAY HAVE A GREATER EXPOSURE TO IHT

Heritage Maintenance Funds

Heritage Maintenance Funds (HMFs) are trusts to maintain property eligible for the Conditional Exemption. They allow owners of heritage assets to shield non-heritage funds from IHT on the basis that they are used to maintain heritage property. They are exempt from IHT, unless capital is later paid out for reasons other than the maintenance of the relevant assets. To qualify as an HMF:

1. Any assets added must be appropriate (i.e. income-producing) and not excessive for the purpose. There must be a minimum of £10,000 settled.
2. Income must be used to maintain the heritage property or paid to an approved body.
3. At least one trustee must be a professional trustee/trust corporation.
4. The fund must be used to benefit the heritage property for at least six years.

The HMF will pay income tax in the usual way. Any income paid out from the HMF to the beneficial owner of the asset in question is taxable income in the hands of the recipient. Accordingly, there is a double tax charge. There are options to mitigate this, but in practice HMFs are not commonly used.

Cultural Gifts Scheme

The Cultural Gifts Scheme provides income tax and CGT relief on gifts of heritage assets to the nation.

The scheme is open to individuals and companies, not personal representatives of an estate or trustees.

If an individual donates a pre-eminent object to the nation, they receive tax relief of 30% of the value of the object. This relief can be set against the individual's income tax/CGT liability for the year in which the donation is made, and/or any or all of the following four tax years. Again, it can only reduce the tax liability to nil, not produce a refund.

Conclusion

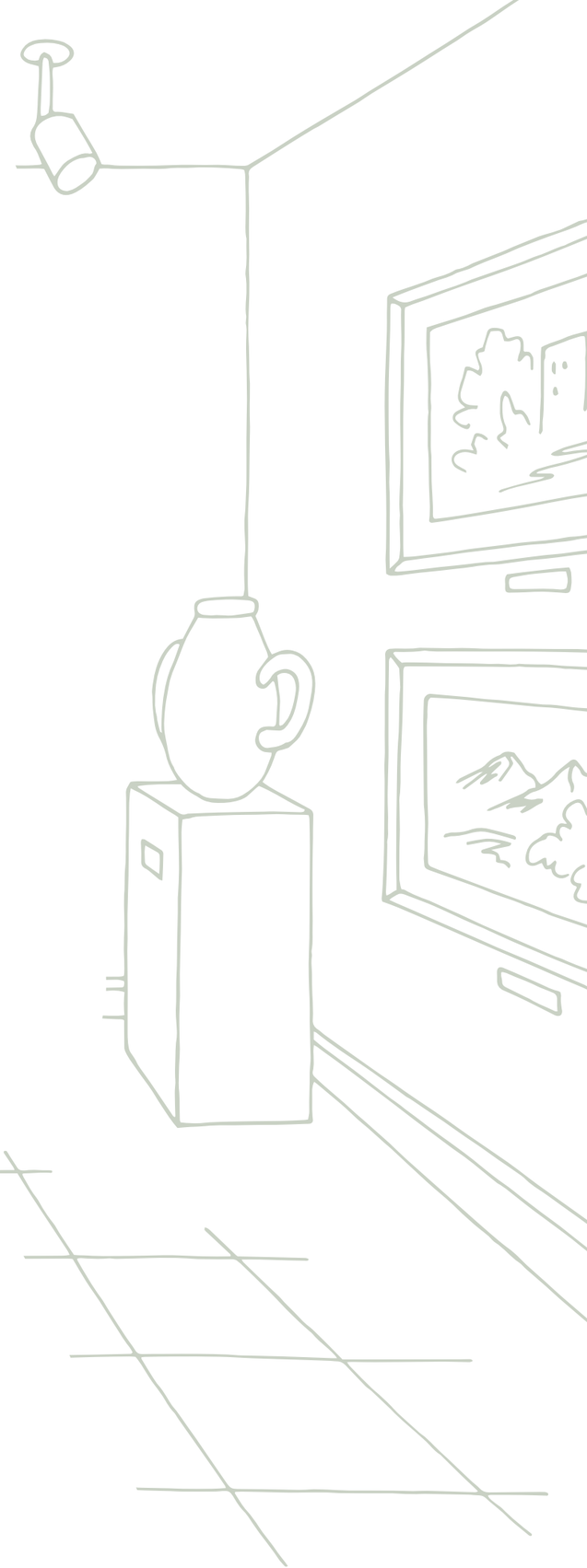
For some, these reliefs can provide the opportunity to retain 'pre-eminent' assets within a family or provide an alternative means to settle a tax charge. For this reason, heritage property reliefs may provide a lifeline for many taxpayers who may have a greater exposure to IHT as result of the new limits on APR and BPR that come into effect in April 2026. However, the conditions of relief and practical considerations will outweigh the tax advantage for some.

This is a complex area, particularly in relation to negotiations with HMRC and considering the future management of a qualifying asset. It is therefore one that requires legal advice from a specialist.

Katherine Hague
Head of Private Wealth

Stephanie Dennis
Partner, Agriculture and Estates

Find out about our services for high-net-worth individuals



UNPICKING THE ANGELA RAYNER STAMP DUTY STORY

Earlier this year, Angela Rayner was forced to resign as deputy prime minister and housing secretary because she was found to have underpaid Stamp Duty Land Tax (SDLT) on an apartment in Hove in East Sussex.

But what did she get wrong – and why?

Let's start with a recap of the situation.

Under UK law, anyone purchasing a property valued above £125,000 is liable to pay stamp duty. The amount owed varies according to the property's price. It also varies depending on whether it is classed as an additional property. Buyers acquiring a second, third or subsequent home are subject to higher rates of SDLT than those selling their primary residence and purchasing another.

Angela Raynor purchased the apartment for £800,000 and paid £30,000 in SDLT. This was the amount that would have been due if the property were primary residence.

However, she has since acknowledged that she did not pay the appropriate amount of SDLT because the purchase should have been treated as a second home.

This interpretation arises from complex regulations relating to a trust in her son's name. The trust owns the family home in Ashton-under-Lyne.

According to Ms Rayner, the trust was established in 2020 to manage compensation awarded to her son after his premature birth, which left him with life-long disabilities.

Despite the owner being the son's trust, not Ms Raynor herself, the house should have been treated as her first home for the purposes of SDLT.

To understand why that is the case, we need to understand the 'parental deeming' rule which decides when a parent must be deemed as an owner for tax purposes, as happened in Ms Raynor's case.

Personal injury trusts and SDLT

A personal injury trust (PIT) is a type of trust set up to hold compensation following an accident or medical negligence claim.

The trust protects the money so it doesn't affect entitlement to means-tested benefits and ensures it's used in the injured person's best interests.

Sometimes a property – such as a new home or adapted accommodation – is bought using the trust's funds. That's where SDLT comes into play.

SDLT is normally paid by whoever buys or owns the property. But the legislation also includes deeming rules – situations where you can be treated as owning a property even when you don't.

These rules are found in the Finance Act 2003, which also contains the 5% higher rate surcharge for second homes.

One of those deeming rules says that if a child under 18 benefits from a trust that owns a home, their parent may be treated as owning that property too, in specific circumstances.

This was introduced to stop people avoiding the higher-rate SDLT by buying homes through trusts for their children.

When the 'parental deeming' rule applies

The deeming rule only applies in quite specific circumstances. It applies where:

- the child has a beneficial interest in the home (for example, a right to live in it or receive income from it), and
- the trust is a bare trust or a life interest trust, meaning the child is directly entitled to the property.

In these circumstances, the parent is treated as though they own the home, or hold an interest in the home, even (for a certain period of time) after disposing of any interest.

If they then buy another property – even in their own name – they might pay the 5% SDLT surcharge, because they're deemed to already own another dwelling through their child's trust.

This parental deeming rule is the rule that Ms Raynor was found to have broken. She was deemed to still have an interest in the Ashton-under-Lyne property, which meant the higher rate of SDLT should have been applied to her purchase of the Hove apartment.

> IF A CHILD UNDER 18 BENEFITS FROM A TRUST THAT OWNS A HOME, THEIR PARENT MAY BE TREATED AS OWNING THAT PROPERTY TOO

How a disabled persons trust could have helped

A disabled persons trust (DPT) does not automatically attract special SDLT relief, but the beneficiary's status determines who is treated as owner.

If the disabled person has a fixed beneficial entitlement (life interest or bare trust), they are treated as purchaser/owner. If it is a discretionary trust or court-appointed trust, the trustees are treated as purchaser, and no parental deeming applies.

There is an explicit exclusion in Paragraph 12(1A) of the Finance Act 2003 which ensures a parent of a disabled minor will not be deemed to own property where trustees act under a Court of Protection appointment.

What is a discretionary trust?

A discretionary trust is a type of trust in which the trustees have the authority to decide how the trust's assets are used and distributed. Depending on the terms set out in the trust deed, the trustees may determine:

- whether to distribute income, capital, or both;
- which beneficiaries will receive payments;
- the timing and frequency of those payments; and
- any conditions that should apply to the beneficiaries.

Discretionary trusts are often created to provide flexibility and protection. They may be used to set aside assets for:

- future or uncertain needs, such as supporting a grandchild who may require additional financial assistance later in life; or
- beneficiaries who, due to age, disability, or other reasons, are not yet able or responsible enough to manage money or property on their own.

In summary

The deemed ownership rule for parents exists to prevent SDLT avoidance. It only applies in limited circumstances where a minor child has a beneficial right to occupy or receive income from a home held in specific kinds of trust – normally bare trusts. A DPT is treated differently if it is court-appointed or structured in such a way as to make it a discretionary trust. If structured in one of these ways, it will ensure that a parent of a disabled minor will not be deemed to own property where trustees act.

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PENSION SHARING ON DIVORCE

Pensions are one of the most overlooked assets when couples divorce or seek to dissolve their civil partnership. It is thought that fewer than one in 20 of divorcing couples obtains a report from a pension expert and that a Pension Sharing Order features in only 11% of divorce cases.

Yet they are often the most valuable asset in a divorce case, especially when they're seen in the context of an income in retirement rather than a cash value.

For example, a final salary or defined benefit scheme pension (often common in the public sector) will provide a guaranteed income for life based on a person's final or average salary and the number of years they were in the scheme.

Defined contribution scheme pensions (often referred to as money purchase schemes) offer more flexibility and can be used to provide an annuity for life as well as an up to 25% tax-free lump sum on retirement.

Source: House of Commons Work and Pensions Committee

Given their value, why are they so often overlooked? There are several reasons.

Research suggests that many couples simply aren't interested in the pension. When they are, there's a presumption that it should remain with the contributing party.

Other studies suggest that many people think pensions have become too complicated and find that pension orders on divorce are the most complex and least understood of all resources.

They are a constantly changing asset that are significantly affected by government-led initiatives and taxation. In recent years we have seen the introduction and growth of auto-enrolment, Hutton reforms to public sector pensions, the triple lock, lifetime allowances and more. At the time of writing, further change may be on the horizon too, with speculation about the abolition of higher rate pension tax relief and the 25% tax-free lump sum in the forthcoming budget.

Pension freedoms introduced in April 2015 by the Taxation of Pensions Act 2014 changed the landscape and the options available to an individual in retirement. It introduced flexi-access drawn down and allowed people to draw down their full pension fund as a single lump sum, of which 25% is tax-free. This means that, very often, parties simply think of the pension as "cash".

Despite these factors, it is always worth considering the pension sharing options open to couples who are divorcing or dissolving their civil partnership.

The options open to divorcing couples on pensions

There are three options available to couples. (As an aside, it is interesting to note that before 1996, the courts had no powers to impose any orders in relation to the rights held within a pension scheme, so all are relatively new).

- Pension sharing, which creates a new, separate pension pot for the ex-partner.
- Pension attachment, which gives a portion of one partner's pension income or lump sum to the ex-partner once the partner starts taking their pension.
- Pension offsetting, which attempts to balance the value of the pension against other assets, such as property.

PENSIONS ARE ONE OF THE MOST OVERLOOKED ASSETS WHEN COUPLES DIVORCE OR SEEK TO DISSOLVE THEIR CIVIL PARTNERSHIP.

Each of the options has different implications for the pension holder and the recipient of an award and needs to be considered carefully.

In essence, divorce lawyers need to address a single question. Should pensions be shared to provide equality of fund value or equality of pension income in payment? Many divorce lawyers now accept there is no 'one size fits all' approach to this question.

A capital division is often not the right answer when the pension(s) in question is a defined benefit scheme. However, if the pension is a defined contribution scheme and the parties are of comparable ages and there are no underlying health issues, dividing the pension fund value to provide each party with the same fund value, can be sensible and pragmatic.

Offsetting is a more complicated exercise that attempts to compare asset categories. The comparison typically depends on the quality and type of pension scheme. There is a marked difference in the quality and value of £500,000 held in a defined contribution scheme compared to the value of £500,000 attributed as the value of an investment in a defined benefit scheme.

However, offsetting is often appropriate and necessary where, for example, the alternative would create an income gap, there are foreign pensions which are not going to be shared or there are liquidity issues – as the following examples show.

The pitfalls to note

When considering the best option, it is useful to be aware of some of the potential complications. Here are some of the most common.

When there is an income gap

Let's take the example of Alan and Mary.

Alan is a senior serving officer in the police force. Under the Police Pension Scheme, Alan can retire at age 48 ½ on completion of 30 years' service to receive pension income of, say, £70,000 gross per annum. His wife, Mary, has a modest defined contribution scheme with a value predicted to pay

just £6,000 gross per annum at state pension age (67 in the UK). She will be 46 if Alan retires at 48 ½.

If a pension sharing order is made in favour of Mary, there is no scope for the pension credit she will receive to be converted into an immediate pension in payment (because she is only 46 years of age).

The net result of sharing would be an immediate reduction in income for Alan and no corresponding income for Mary until she reached the age of 55 (with reductions for early payment) or at age 65 (with no such reductions).

In this scenario, pension sharing reduces the resource for a number of years – with no corresponding benefit except to give Mary the assurance she has secured a pension income for later in life.

When a personal pension is invested in commercial property

Small self-administered pension schemes (SSASs) or self-invested personal pension schemes (SIPPs) are often invested in commercial property. However, they have liquidity issues which means there are not enough resources to provide for funds to the other spouse on pension sharing.

For example, Sheila is a member of a SSAS along with three fellow directors in an owner-managed business. The assets of the SSAS are a commercial property worth £4 million, a portfolio of equities worth £170,000 and cash of £100,000. This gives a total fund value of £4.27 million, of which Sheila is entitled to a quarter, £1,067,500.

A pension sharing order can be made against the scheme in favour of Sheila's civil partner Caroline but funding the pension credit of £533,750 (50% of Sheila's entitlement) in favour of Caroline is problematic.

The other members of the scheme object to the scheme borrowing against the value of the commercial property to raise funds and will not agree to the cash and equities being used to fund the pension credit.

An internal transfer (where Caroline becomes a member of the SSAS) is unattractive to both Caroline and the members of the scheme. How does

PENSIONS ARE OFTEN THE MOST VALUABLE ASSET IN DIVORCE CASE

she access her pension at, say age 55, if the liquidity issue still exists? She can't take his 25% tax free lump sum because there is no cash available. How does she draw down his pension or purchase an annuity?

These problems can be compounded even further where the occupant of the commercial property is the owner-managed business.

When an overseas pension is involved

Dealing with overseas pensions gives an interesting insight into the generosity of other countries' state pension-funded provision, particularly those who are economically comparable with the UK: the UK does not do well.

There is no jurisdiction for the court in England and Wales to make a pension sharing order over a foreign pension. That issue was determined by the courts in 2016.

However, in some jurisdictions, sharing pensions will occur automatically on divorce. In Switzerland, for example, there is a very generous state pension entitlement for all residents. It will also divide equally all pension entitlement accrued during the marriage, save in the most exceptional of circumstances.

When a scheme is underfunded

Some pension schemes have insufficient funds to meet the obligations to the members of the scheme. They can be – and are – still subject to pension sharing on divorce. However, reductions proportionate to the level of underfunding in the scheme can and will apply so care needs to be taken.

When a pension provider has suffered an insolvency event

Where a pension scheme provider has suffered an insolvency event (on or after 6 April 2005) a safety net was introduced by the Pension Act 2004 in the form of the Pension Protection Fund. The rules surrounding this are complex and care needs to be taken.

Navigating a route through the complexities

Fundamentally, pensions can be complex assets. The rules of auto enrolment mean employers contribute in many cases. The taxation treatment is often unique. There are age constrictions on when pensions can be accessed. Some pensions also come with explicit guarantees.

To reach the fairest decision, parties should seek detailed analysis of the underlying benefits of the pension scheme. They should also seek answers to questions such as: what are the income predictions in retirement? What happens on the death of the pension holder?

It is invaluable to take advice as to which of the three options is most appropriate. Ultimately, the aim is to determine how pensions can be shared to arrive at equality of pension income at a predicted retirement age.

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SECURING THE FUTURE OF FAMILY BUSINESSES WITH EMPLOYEE OWNERSHIP TRUSTS

For many family business owners, the question of succession is both a practical and an emotional one. How do you ensure the legacy you have built over decades continues to thrive, while also rewarding the people who have contributed to its success? In this article we explore how transferring ownership to an employee ownership trust (EOT) can be a form of succession planning that addresses both the practical and emotional considerations.

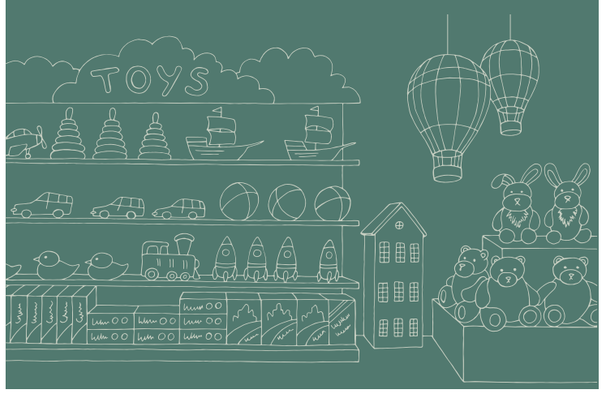
The Entertainer: A case study in family business succession

The Entertainer is the UK's largest independent toy retailer. It was founded in 1981 and now has 160 shops and 1,900 workers across the UK.

The company's founders, husband-and-wife team Gary and Catherine Grant, have recently transferred ownership to an EOT. It offers a timely and compelling example of how EOTs can provide a solution that balances continuity, independence and employee engagement.

Two of the couple's children work for the company, but do not wish to take on ownership. A number of exit options were explored, and an employee ownership trust emerged as the best option.

Speaking about the decision, Gary Grant commented that he and his wife would have been concerned about selling The Entertainer to another business with a different set of values to the ones they had built over the years. For them, the EOT option was a win-win situation.



When the traditional routes of succession aren't suitable

For family businesses, there are two traditional routes of succession – passing the business to the next generation or selling to a third party.

Each comes with its own challenges. Not every family has a willing or able successor. An external sale can risk the loss of the business's unique culture and values. When neither route is appropriate, an EOT offers a third way.

HOW DO YOU ENSURE THE LEGACY YOU HAVE BUILT OVER DECADES CONTINUES TO THRIVE, WHILE ALSO REWARDING THE PEOPLE WHO HAVE CONTRIBUTED TO ITS SUCCESS?

The advantages of an EOT

For family businesses without an obvious successor and no wish to sell to a third party, an EOT offers several key advantages.

Preserving independence

By transferring ownership to a trust for the benefit of employees, the business can remain independent and true to its founding principles.

Rewarding employees

Employees become beneficiaries, sharing in the company's success through profit-related bonuses, which are often tax-free up to a certain limit.

Securing legacy

The founders' vision and values can be embedded in the trust's governance, ensuring continuity for customers, suppliers and the wider community.

Engaging the workforce

Employee ownership has been shown to increase engagement, productivity and retention, as staff have a direct stake in the business's success.

Tax efficiency

There are significant tax incentives for both the selling shareholders and the employees, making EOTs an attractive option from a financial perspective.

How does an EOT work?

An EOT is a special form of employee benefit trust. The tax incentives on the model reflect the government's wish to encourage businesses to thrive far beyond the original owner's tenure, and consequently continue to contribute to the economy and the tax take.

It involves the current owners selling a controlling interest (at least 51%) in the company to the EOT. The purchase price is usually funded by a combination of company cash, external finance and future profits. The EOT then holds the shares on behalf of all employees. Employees benefit from profit-sharing and have a say in the company's governance, often through advisory boards or direct representation.

Is an EOT right for your family business?

The decision to move to employee ownership is a significant one. It requires careful planning, clear communication and a genuine commitment to employee engagement.

However, as The Entertainers example (see box left) shows, for family businesses looking to secure their future, reward their people and preserve their legacy, an EOT can be a powerful and positive solution.

In short, if you are considering succession options for your family business, it is worth adding an EOT to your list of options.

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