Landed Estates Inherited Wealth

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Every parent wants to secure their children's future and to pass to them some of the value held within the family

Inheritance planning – ensure a desired outcome

Every parent wants to ensure their children's future but there can be a fine line to tread in determining this. **Lesley Davis** TEP, Partner in the Private Client team at Martineau, reports

According to a recent report ,almost a third of parents are worried about leaving their inheritance to their adult children.

This is largely due to fears that any wealth passed to the next generation may fall into the 'wrong hands' in the event of divorce, untimely death or the arrival on the scene of a 'gold digger'.

Parents are right to be concerned about their children, particularly as the surge in property values in recent decades has pushed up the value of many estates beyond what families might have expected in the past.

Every parent wants to secure their children's future and to pass to them some of the value held within the family to help set them up for the future.

A gift of the entire family's wealth to the eldest male heir was the traditional approach; he would then ensure the stability and financial well-being of his siblings and his own descendants in turn.

But times have changed, so how do parents ensure their children get their dues?

Establishing a trust is the priority. Most people believe a trust is only a useful tax avoidance measure for the very wealthy.

However, in essence a trust is an arrangement whereby one person gives something to another person (the trustee) to look after for the ultimate benefit of someone else of the givers choosing (the beneficiary).

Things often aren't as clear cut as just giving an asset to the person you want to have it.

Control is a primary issue. If the intended beneficiary is still young or not in settled circumstances, you can use a trust to retain control by setting qualifying conditions that dictate how much, when and under what circumstances the beneficiary receives anything.

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Most importantly, assets placed in trust are protected. If the trust is well drafted, it is protected from outside influences on the beneficiary or to some extent relationship breakdowns or bankruptcy.

For the very vulnerable the management of their financial affairs by trusted individuals ensures they can be cared for through their entire lives and the worry of managing the day-to-day is removed.

This is the recommended solution in circumstances such as when an older family member can no longer care for themselves, or a child who having suffered injury in a car accident has compensation monies to protect. Trusts offer unprecedented flexibility. When you aren't sure who the 'right' beneficiary is or 'how much' to allocate, a trust gives you the option to change your mind later.

Guarantees are important when discussing assets.

The assets held in trust are clearly identified and the beneficiary(s) is(are) well provided for. Amid all of life's difficulties, a trust remains a safe haven for assets and the trustees can ensure the givers wishes are followed, even after their death.

This is always a hot topic, regularly attracting media attention with high profile cases involving the super-rich.

But generally all highlight the importance of trusts in mitigating Inheritance Tax and passing on assets without triggering a charge to Capital Gains Tax.

Both are certainly attractive qualities of setting up a trust, but whatever the individual need of a family, there is almost always a trust available to meet that need.

Who can you trust?

Trusts are far from obsolete, says **Lesley Davis** TEP, Partner in the Private Client team at Martineau

Putting your affairs in order in case something happens to you can be an overwhelming experience. What options are available and how do you ensure any complicated and sometimes conflicting family wishes are taken into account?

One solution is to set up a trust. A common misconception is that trusts are complicated and expensive, but this is not so. Others believe that now we have transferable nil rate bands available to married couples, trusts are obsolete, but this is far from the truth.


Lesley Davis

Control

A life interest trust over the family home can ensure that on the death of the first to die the remaining survivor has a roof over their head and can stay in their home. On their subsequent death, however, the half of the house owned by the first to die passes as dictated in their will and does not form part of the estate of the second to die.

This allows each spouse to guarantee where their half of the family home will end up. Often this ensures that children of the marriage benefit and not those of a later marriage or relationship.

It can allow spouses to each pass their estates as they wish and not rely on the surviving spouse to follow a vague promise or understanding.

Discretion

The use of other types of trust can provide a level of flexibility often not thought possible.

A discretionary trust allows those drawing up their wills who are unsure as to how potential beneficiaries, who may be very young at the time, will turn out to adopt a 'wait and see' approach.

Appointing trustees of their choosing and asking them to administer the estate's assets through a trust allows the individual making their will to set guidelines but ask that their trustees assess the beneficiaries against those guidelines at the time. Age and lifestyle can be factors, and the beneficiary's own financial position or personal circumstances at the time can be factored in.

A word of warning

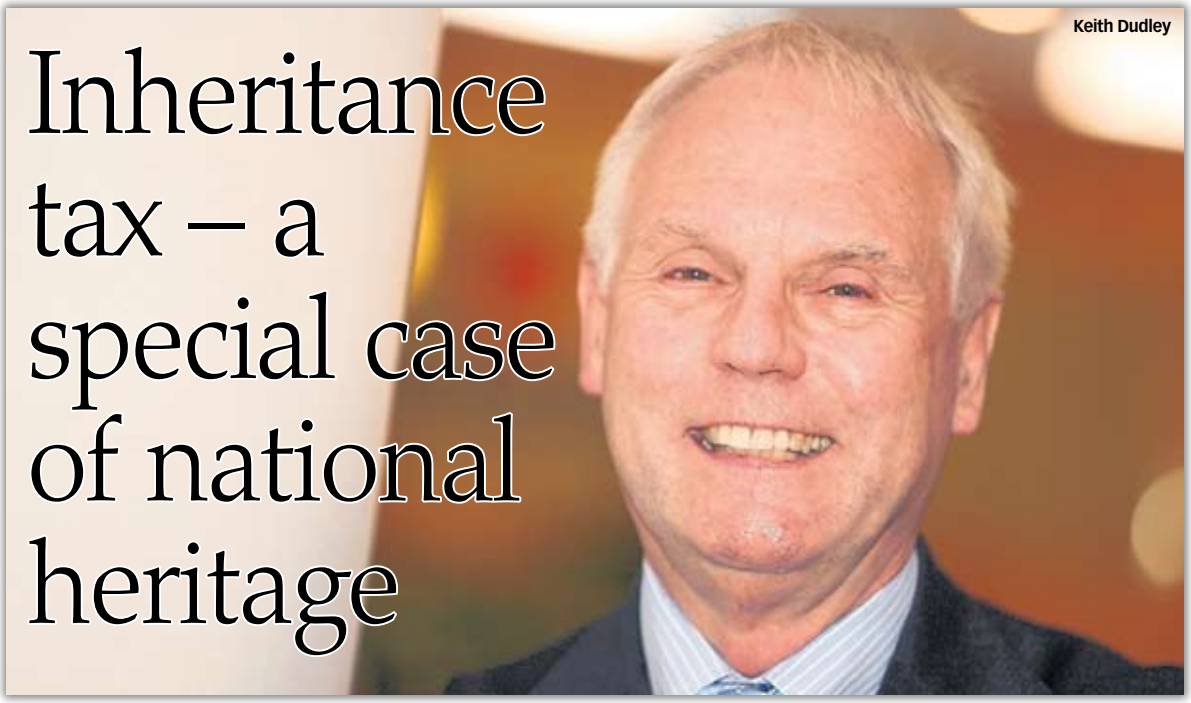
In creating a trust through your will you will appoint trustees. These must be people who you 'trust'; people who will stand in your shoes and act as you would, were you still alive.

It is possible to be both a trustee and a beneficiary and often we advise that on first death the surviving spouse should be a trustee. Thereafter a spread of family and professionals gives a good balance. All trustees decisions must be unanimous and a maximum of four is allowed by law.

It's important that programmes such as *You Can't Take It With You* raise awareness of the usefulness of trusts. Not to mention the poor unfortunate Nigel Pargetter who recently fell to his death from the roof of his ancestral family home in *The Archers*.

His own will ensured the safety of Lower Loxley Hall by placing it in trust for the future generations.

Inheritance tax – a special case of national heritage


Keith Dudley

Keith Dudley TEP, Partner in Martineau's Private Capital Group, analyses the exemptions to inheritance tax

Martineau act for many wealthy families who own a whole host of different types of assets, but some own heritage property for which specialist advice is required; in particular the impact of inheritance tax on these assets.

There has been an exemption from death duties for national heritage property since 1896, two years after the introduction of estate duty. Exemption from inheritance tax (IHT) may be given on a transfer or gift that might otherwise be chargeable to IHT for property forming part of the national heritage of the UK. It may include stately homes, land, paintings and other objects.

The exemption however, is conditional. Before it is agreed, the board of the Inland Revenue will require undertakings to be given regarding the future maintenance of the property. They will require arrangements to be put in place for the public to have access to it and for moveable objects to remain in the UK. If those undertakings are broken then the exemption may be withdrawn and a charge to inheritance tax may arise.

What property may qualify?

The types of property for which a conditional exemption may be claimed, will broadly fall into three categories:

1. Works of art including pictures, print, manuscripts and scientific objects and collections and groups of such objects, some of which individually might not qualify on their own, which are pre-eminent for their national scientific historical or artistic interest. National interest is within any part of the UK.

2. Land which in the opinion of the board is of outstanding scenic, historic or scientific interest.

3. Buildings for which by reason of their outstanding historical or architectural interest, special steps should be taken for their preservation. This may include land which is essential for the protection of the character and amenities of such a building and objects which are historically associated with such a building.

The exemption

A claim for exemption is made to HM Revenue & Customs and passed on to the board of the Inland Revenue for consideration. Once conditional exemption is given, it may be withdrawn and a charge to tax will arise on:

A breach of the undertakings; or

On the disposal of the property by a lifetime gift or on death unless the undertakings are renewed by the new owner; or

On sale.

Undertakings

Undertakings are taken from such a person as the board consider appropriate. No further guidance is given but ordinarily this will be the recipient of the gift and undertakings vary according to the nature of the property. The owner is expected to publicise the times of access and the location of any moveable items. This information should appear on the Revenue website and also advertised more widely, such as in national guides to historic houses.

As regards works of art, the access provisions might include display of the article in a suitable room of a privately owned house at agreed times or the long term loan for public display in a public collection or viewing by appointment combined with a loan on request to a public collection for special exhibitions.

Examples of breach of undertakings would be unauthorised restriction of the public access, failure to maintain property in a reasonable state of repair, or removal of an object abroad without the board's permission.

Next step

Clearly this is a specialist area full of pitfalls for the unwary, but a subject on which we are able to offer expert advice in addition to the comprehensive service we provide in all aspects of private client and family law.

The Balfour case – tax needn't be taxing

With the huge sums of money that can be involved **Hugh Carslake,** Partner in the Private Capital Group at Martineau, believes that is vital that landed estate owners and managers seek professional advice to develop the best business strategy to avoid the taxing pitfalls

Landed estates are always advised to regularly review their inheritance tax planning, but particularly now, in light of the decision made in the Balfour v HM Revenue & Customs (HMRC) case late in 2010.

Following the death of Lord Balfour in 2003, his estate argued they were entitled to 100 per cent Inheritance Tax Business Property Relief (BPR) on land; in-hand and let farms; and homes let to third parties, which might normally expect to be fully taxable.

The original decision found in favour of the estate, but was appealed by HMRC contending the decision to treat the entire estate as a single trading entity. In its appeal HMRC argued that the let cottages were in fact investment properties and not entitled to BPR and therefore subject to inheritance tax (IHT).

The appeal was lost by HMRC and the Upper Tier Tribunal upheld the original decision creating something of a landmark case for the legalities of rural estates, particularly those that operate as mixed-use commercial businesses. Estates that now engage in a diverse range of business activities, including some property letting, can now expect to qualify for BPR, if they can prove their business activity is predominantly non-investment based.

In simple terms this means the owner of an in-hand farm, can expect to receive 100 per cent relief from IHT on the land and other properties associated with that activity. However, an estate owner who only lets properties on the estate to third parties will be treated as an investment based business and therefore not eligible for BPR.

Every case must be treated on its particular merits, so although not eligible for BPR, Agricultural Property Relief (APR) may be available for let farmland and associated property.

This complex case highlights the practical need for landowners to constantly review their tax planning activities in the face of changes to legislation or important cases such as Balfour. If a business is structured appropriately to allow it to pass the 'single trading entity' test, then a robust defence against claims by HMRC can be more easily made. This case highlights the importance of landed estates ensuring they have the most advantageous ownership, management and accounting structure in place.

It can be as simple as using a single set of accounts rather than different management accounts for farming activities and estate activities, but it is sure to be something the Revenue keeps a close eye on in the future.

For landed estates with a mix of farming, trading activities and letting it will be essential to assess the relative importance of each of these activities to the overall performance of the estate. If the shift is too far to the letting side it might be worth considering a move back towards trading activities, with less emphasis on the investment side of the business.

It is clear this is an area of interest for the Revenue. With the sums involved often running into millions of pounds, it is vital that landed estate owners and managers seek professional advice to develop the best business strategy to avoid the many pitfalls that exist. Pitfalls that could give the Revenue the advantage they are looking for.


Hugh Carslake

Holistic approach to investment

David Craig is a Private Client Director, Brown Shipley, Birmingham

As a private bank we use the word 'holistic' to mean we look at the whole picture when advising clients. A fiscal perspective is as crucial as the selection or performance of any individual investment. With a top rate of income tax of 50 per cent it's tough.

Investment strategies may need to be reviewed.

And if rates are likely to remain high, there are only two possible options. Accept or defer. Either bite the bullet and invest for the best returns or choose a strategy and products that aim to defer tax to the maximum extent now. Taxes reduce yield, so it follows that any mitigation benefits performance. It's like the Americans say: in tough times, you want the best bang for your buck.

The fact is you don't have to pay tax now. One option is to go offshore. This means that you can defer your main tax liabilities until you repatriate your investments. But that isn't the only option. There are many structured investment products designed to help.

Listed below are some examples of investment products already available to help defer taxes and provide a healthy environment in which your money can grow.

AIM PORTFOLIO
IHT Shelter

A highly tax-efficient investment, an AIM Portfolio can shelter part of an estate from Inheritance Tax. While the investment is at the upper end of the risk spectrum, products are professionally managed, in our case, directly by Brown Shipley. Your investment will be in companies listed on AIM (the Alternative Investment Market). Subject to holding these for a minimum period of two years, your investment gets 100 per cent IHT relief, so the entire value of your holding gets passed on to your chosen beneficiaries after your death. The minimum investment is usually around £100,000.

OFFSHORE INVESTMENT BOND
Regular tax-deferred income

Investment growth is rolled up in this life assurance based offshore bond. Make withdrawals of up to 5 per cent pa without incurring a tax charge. Divided into multiple segments, individual segments can be assigned to a lower-rate taxpayer to reduce the tax charge.

David Craig

DISCOUNTED GIFT TRUST
Regular income plus IHT shelter

In conjunction with an offshore bond, the trust provides an immediate discount for IHT purposes. The full value of your investment will be allowed outside your estate after seven years. A fixed level of income can be paid throughout your lifetime whilst alternative structures permit income to be deferred.

FLEXIBLE WEALTH ACCOUNT
Tax-deferred income

This special version of an offshore bond enables you to take out more than the usual 5 per cent pa by adding any investment growth and income to one segment.

This leaves all other segments free of gains and therefore free of any tax liability.

The tax charge will only arise when you cash in the last segment, and is then chargeable at your marginal income tax rate.

SPECIALIST LIFE FUND/PRIVATE OPEN-ENDED INVESTMENT COMPANY
Tax efficient investment wrapping

Like a unit trust, a SLF or bespoke OEIC enables investment in a wide variety of assets and is managed according to your own investment objectives. Dividend income and gains from disposals are rolled up. Minimum investment (via Brown Shipley) is £1 million - £10 million.

ENTERPRISE SCHEMES AND VENTURE CAPITAL TRUSTS
Big tax breaks

At a stage in your life when security is probably your number one priority, why would anyone recommend an investment in just about the riskiest part of the market?

Answer: fantastic tax breaks.

Tax-free on its way in, and CGT/IHT free when it comes out subject only to you staying with the investment for a minimum of up to five years.

■ The above are examples of highly specialised products and you should always seek professional advice on their suitability to your circumstances. References to tax reliefs are based on Brown Shipley's understanding of current law and HMRC practice.

The value of any tax benefits will be dependent on individual circumstances.

James Spreckley, Partner in Real Estate Group at Martineau, explains why landed estates in most cases have to be a mulit-faceted business

James Spreckley, Partner in Real Estate Group at Martineau

Landed estates – we mean business

Over the approaching summer months many of us will while away some time enjoying the grandeur of a stately home and the beauty of the British countryside. As we do so it would be all to easy to imagine that the landed estates which are responsible for so much of this heritage are bastions of tradition doing today what they have done for years gone by.

However in most cases nothing could be farther from the truth. Yes the focus may still be on generating income to run and manage the estate and on protecting assets for future generations, but the ways landed estates do so have developed from the historic reliance on agriculture.

These days many landed estates are sophisticated commercial operations akin to a corporate group, with different business lines be they paying visitors, holiday lettings, cafes, shops, car boot sales, office and workshop conversions, archery, pet crematoria, mobile homes or lodges, equestrian events, golf courses etc. In many cases the estates have become substantial developers and landlords, as they look to maximise the returns from their assets. In short they are multi-faceted businesses.

There is a balance between retaining the traditional values of an estate whilst also keeping a commercial mindset, particularly in the current economic climate. The owners of large estates may be driven by familial commitments but increasingly in addition to the usual tax planning concerns, they need to address complex commercial issues such as employment and staffing, brand protection, planning and environmental issues. The growth in the renewable energy sector has alone created opportunities at the same time as raising challenging issues to consider.

It is this need for greater commercial support that has been at the core of our Rural Business Practice ensuring we can support our clients more than ever before.

We realise that landowners will always be concerned with contemplating traditional inheritance issues but our team has been structured to support the needs of businesses operating in a rural economy. Drawing on the wealth of expertise and experience from our multi-disciplined teams across the firm, the Rural Business Practice covers an extensive range of legal services including tax planning, matrimonial, equine and bloodstock, heritage property and agriculture but also commercial property and development, planning and employment.

Whilst we offer such a varied range of legal services delivered by a team with diverse and complementary skills, we ensure we provide a truly personalised service by allocating each client a dedicated relationship partner.

That relationship partner acts as a single point of contact and will over time introduce others within the Rural Business Practice whose particular area of specialism a client may benefit from.

Whomever our clients deal with, we are confident the depth of our experience and the strength of our resources will deliver the very best advice for the challenges faced by modern forward thinking landed estates.

Rural property: Voluntary land registration

It is often the case that many farms and estates have remained in the same family for generations and are therefore unregistered at the Land Registry. However the Land Registry, supported by the National Farmers Union, has been attending various markets and other rural venues to encourage farmers and landowners to consider applying voluntarily to have their land registered.

Quentin Butler a partner in our Landed Estates team, wholly endorses this as a prudent consideration for a variety of reasons:

- The exact extent of your land would be checked, marked on a modern map, and given, in effect, a Government title guarantee.
- Whilst there is a degree of work involved in preparing the application, it invariably leads to cost savings on future dealings. And by applying voluntarily, the fees payable to the Land Registry.
- If any discrepancies about boundaries or about access rights are highlighted in the application process, these can be tackled calmly without the undue pressure of urgency caused by a transaction being underway. Evidence often needs to be gathered and recorded in statutory declarations from historic personal knowledge and this often takes time and may impede a transaction. Tackling these issues now will prevent, or at least reduce, difficulties arising later for landowners or their children.
- As part of the preparation of an application, a check of the register of land charges (essentially third party rights) will be carried out. This can throw up long forgotten or discharged matters (such as reference to old mortgages or lapsed options) and these will need to be cleared up before your property can be sold or charged. Again these are issues that are more easily handled when time is available and not limited through transactional requirements.
- If you have bought your land in different pieces at different times, you will have different sets of title deeds, which might in turn be kept in different places. If any of these should get lost or mislaid, then it could be difficult to recreate evidence of the ownership. It's a good idea to get it all together and registered in a single location.
- Once land is registered, the title is the Land Registry's computer record, which cannot be lost or mislaid and it is recorded on an up to date Ordnance Survey plan.
- Another key benefit is that it is much more difficult for squatters to gain ownership of registered land based on long adverse possession.

Quentin Butler

Sometimes it is difficult to put a financial value on the benefits outlined above, but in peace of mind terms alone, we believe that most land owners will more than get their money's worth, if they make a voluntary Land Registry application. Our Landed Estates team has years of experience of preparing applications and will happily talk you through the benefits in person.

Where there's a will there's a relative


Michelle Gavin

Michelle Gavin, Associate in the Private Capital Group at Martineau, highlights some unfortunate consequences of not making a will

Many people think a will is not necessary; believing they will automatically inherit any assets if their partner dies.

The reality, however, is different. In fact, by not making a will, you are asking your surviving partner to rely on the rules of intestacy.

If you are unmarried, this can ultimately lead to assets, including any shared property, passing away from your surviving partner. Yet with a little prior thought and planning, they could have received the assets you had always wished them to have. Under the Intestacy Rules, the surviving partner of an unmarried couple has no automatic right to even the home that they have shared unless the legal title to that property has been correctly addressed and a will prepared.

The Intestacy Rules can lead to far flung or even unknown relatives inheriting your estate; leaving those you would have wished to provide for with nothing. High profile examples of this include Jill Dando, Stephen Gateley and Benny Hill.

Jill Dando's father, who was in his eighties, inherited her substantial estate under the Intestacy Rules as she died without having made a will. This left her fiancé with no provision, which was particularly painful in respect of sentimental items, but which also created an unnecessary inheritance tax bill.

Stephen Gateley's sisters and brothers received nothing from his substantial estate as the Intestacy Rules restricted the class of beneficiaries and the amount they receive.

Benny Hill famously told his entourage and friends that they would be looked after on his death but didn't make a will, resulting in his estate passing to distant cousins with whom he was reported to have had very little contact.

To prevent these situations from happening, prepare a will so you can control and direct what happens to your assets and ensure the right people benefit from your estate. By taking guidance and planning for potential tax liabilities (bearing in mind gifts which are exempt for inheritance tax purposes and allowance and exemptions available), you can reduce the emotional and financial impact on your family and friends following your death.

So the importance of making a will is clear but what is the best way to do it? Do you buy your form from the local stationers, use a will writing service or pay for professional advice?

People often turn to will writers believing that they are more economical with fees. Solicitors, however, are required to set out their charges in writing and will be transparent as to the cost from the outset.

A recent survey of the general public produced the staggering result that 67 per cent of the general public believed will writers to be legally qualified. This is not the case.

Unlike a solicitor, there is no formal training required and they are not regulated in any way.

Frequently will writers fail to advise on the rights to bring claims against an estate for inadequate provision under a will. This could include leaving out a spouse for whatever reason, which could risk a claim being made in the event of death.

If you are unclear about the rules of intestacy and how this may affect you, email michelle.gavin@martineau-uk.com to receive a copy of our intestacy guide.

What happens if no will has been made?


Claire Darley


Michelle O'Brien

Claire Darley, Senior Associate, family team and **Michelle O'Brien**, partner, dispute resolution group, analyse what can happen in the absence of a will

Inheritance claims are becoming ever more commonplace in today's society. Such claims may involve disputes relating to wills; claims against estates by family members who may not have been provided for reasonably, under the terms of a will or the provisions relating to the intestacy rules.

Issues may involve challenges to wills and Trusts on grounds of duress, undue influence and incapacity; and claims by family members. Disputes may arise relating to trusts and contractual claims by, or against estates; and disputes with HM Revenue & Customs over tax.

Interestingly such claims are pursued in accordance with the Civil Rules, but are decided in accordance with Family Law principles, which is the reason why Claire Darley, Senior Associate in the Family Team, specialises in dealing with claims of this nature involving surviving spouses against their late wife's or husband's Estate.

Wills

It is a principle of English law that there should be absolute freedom for testators to leave their property and assets how they would wish by will upon death. However things don't always go to plan.

Additionally, second and third marriages are more common than ever, and for most of us, the family matrix is a more complex arrangement than could be said to have been the case in earlier generations.

There is therefore more scope for challenges to the distribution of estate assets, and for disputes to arise between interested parties, and the estate.

No Will?

It is a staggering fact that the majority of people die without having made a will. The rules which apply when a person dies intestate (without having made a will) are complicated, and fail to take into account the potential need for flexibility in the allocation of estate assets dependant upon need, and/or the possibility that other third parties may be financially dependant upon or have a claim to the deceased's estate. Certain categories of individuals are entitled to bring claims against the estate where such provision is deemed to be inadequate or unreasonable in the circumstances. We are able to advise in relation to such claims.

Fundamentally, the intestacy rules do not provide cohabitants with an automatic financial entitlement to the Estate, irrespective of the length of time that parties have lived together. It is a reality that the law does not reflect modern society in this regard, despite the fact that parties are now more likely to live together as cohabitants than to marry.

The legal structure of such settlements in the most tax efficient form can benefit the estate and therefore all parties significantly.

Our specialist in-house teams deal with all aspects of wills and probate; trusts and estates disputes; tax and succession planning.

Such claims can often be dealt with in the High Court. In proceedings it is now mandatory to consider all forms of alternative disputes resolution including mediation and reaching agreement in discussions, without resulting to court proceedings.

We adopt an innovative approach to our settlement strategy to seek to ensure that the issues are dealt with timely to minimise cost and avoid delay.

Effective relationships are built on integrity, respect - and of course trust.

So when it comes to protecting your wealth, our Private Client team can help you by delivering trustworthy legal advice.

We offer a comprehensive range of legal services including estate planning, family law, charities, wills and trust & probate administration.

For instinctively trustworthy legal advice, contact:

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