



**LexisNexis<sup>®</sup>**

## Succession Planning (2020)

8 December 2020

Before viewing this webinar, please visit [www.lexiswebinars.co.uk/test-your-system](http://www.lexiswebinars.co.uk/test-your-system) to ensure that your network and PC are configured correctly.

**Tip: Press F11 on your keyboard to enlarge the webinar player.**

1

---

## Succession Planning (2020)

The law as stated during this webinar is up to date as of **26 November 2020**



LexisNexis<sup>®</sup> Confidential



2

## James Ward

Partner  
Kingsley Napley LLP

## Stephanie Mooney

Associate  
Kingsley Napley LLP



LexisNexis® Confidential



3

3

## Setting the Scene

2020 has been a year few will forget in a hurry and sadly not for many positive reasons.

The shadow of Covid will stretch long into the future affecting public and personal finances, family relationships and how people view their own mortality. It is therefore no coincidence that Private Client practitioners, up and down the country, have found 2020 an incredibly busy year for advising clients about succession planning. In April it was reported that Will enquiries had increased by 75%.

Clients have spent time at home reflecting about their personal lives and the future. Their children may have suffered in terms of their prospects or employment status and need support or conversely clients may be more wary about releasing funds they may need in the future. On top of this the UK Government have signalled that tax rises are around the corner to repair some of the damage done by the financial intervention.

All of this has led to time for reflection and concern for clients which in turn has driven the need to action succession planning in many cases. This webinar covers a number of different areas for consideration and is designed to help practitioners now and going forward with steps they can take for their clients.

LexisNexis® Confidential

4

4

## What will this webinar cover?

This webinar will cover the following areas:

- An overview of the practical issues that Private Client practitioners have encountered during lockdown and when clients have been self-isolating, and how these issues have been overcome with varying degrees of success.
- A quick look at the current delays at HMRC, the Probate Registry and the Office of Public Guardian for managing clients expectations.
- A thought piece of what tax changes we may expect in 2021 and onwards along with steps to mitigate loss to our clients.
- Common Asset Protection devices in Wills
- Inheritance tax planning
- Succession Planning for Companies – “Company Wills”.
- Increased use of Family Investment Companies – pros and cons.
- Importance of Lasting Powers of Attorney – both Finance and Health.

LexisNexis® Confidential

5

5

## Zoom to the rescue....

Logistically Covid 19 caused chaos for the face to face meeting, which is such an important element of practicing Private Client law and discussing sensitive issues.

### **How have we overcome this and what should we be wary of?**

- Zoom to the rescue. Video calls have replaced face to face meetings.
- Quick and easy to organise and you can see the client. Not the same as face to face but as good as you are going to get.

### **BUT be careful**

- Undue influence / Third party control is easier without face to face meetings
- Sometimes harder to tell whether they understand
- Not ideal for elderly clients or for “urgent” Will and Gifting.

### **Video call witnessing**

- For Wills possible from 31<sup>st</sup> Jan 2020 to 31<sup>st</sup> Jan 2022. Was announced in July 2020.
- This should remain the last resort and I would suggest a Will is re-signed when access to Testator is possible to lessen chance of claim.

LexisNexis® Confidential

6

6

## We are going as quick as we can.....

All response times for government and financial institutions have slowed down over the course of 2020.

The most relevant delay for Succession Planning is for registering Lasting Powers of Attorney. Currently it is taking up to 4 months to register Lasting Powers compared to the usual 5 to 7 weeks. Please make sure your client is aware of these delays at the beginning to save difficult conversations.

The Probate registry is taking at least 8 weeks but is functioning and Grants are being received.

HMRC are operating at relatively standard time frames, which are not always quick. For instance an IHT421 receipt should be with the Probate Registry within 3 weeks.

LexisNexis® Confidential

7

7

## The tax rises are coming.....

Even before Covid there was much discussion about changing Inheritance tax (IHT) and Capital Gains tax (CGT)

**July 2019 the Office of Tax Simplification published a report on how to amend the Inheritance Tax rules.**

- Increase level of Business Relief ("BR") qualifying activity
- Remove CGT uplift on death where BR / Agricultural Relief ("AR") available
- Reduce 7 years to 5 years for survival gifting period
- Abolish Taper Relief

**2020 pre-Covid All-Parliamentary Group on Inheritance and Intergenerational Fairness report.**

- 10% IHT on estates up to £2 million. 20% IHT on assets over that
- Lifetime gifting over £30,000 subject to an IHT tax
- Removal of Capital Gains Tax base uplift on death
- Removal of BR and AR relief

**Rishi's Tax Increases**

- Already cut Entrepreneurs Relief significantly
- Capital Gains Tax – potential increase in tax rate to align with income
- Corporation Tax – maybe up to 24%

LexisNexis® Confidential

8

8

## The tax rises are coming..... Pre-emptive actions advised.....

What should your clients be doing?

### Triggering CGT pre-Spring budget?

- Selling or gifting?
- Beware of the 30 day CGT payment rule on UK residential property.
- Will the clients be better off – potential introduction of Indexation.

### Taking advantage of BR / AR

- If available then consider triggering through trust gifting
- Be careful doing this for only tax reasons. This change may not occur, so needs other underlying succession benefits.

### Benign IHT regime – gift gift gift...

- 7 years and no gifting tax is still very favourable – especially if CGT is 20% on shares if applicable.
- Take advantage of Principal Private Residence relief – pay a rent
- Gift 2<sup>nd</sup> homes – prepare for a Wealth Tax

LexisNexis® Confidential

9

9

## Where there's a Will there's a way.....

Covid seems to have focused clients minds on Asset Protection more than ever before.

*"I don't want my widow's new husband getting his hands on my money"*

*"The kids won't react well to inheriting a few million pounds in their 20's"*

*"I want to keep my business together"*

*Variations of these quotes have been said to us over the years and never more than over 2020. There are all to do with Asset Protection – so what can we do?*

### Life Interest Trust Wills

- Ring fencing assets on first death to prevent the widow giving away these assets to a new partner or new children.
- More and more popular in first marriage scenarios.
- Maybe effected by CGT base cost uplift removal.

### Discretionary Trusts

- Protecting Assets where there is no Spouse/Civil Partner Exemption.
- So flexible and can protect very well with multiple discretionary beneficiaries.
- Two year window is great for post death reorganisation
- BUT beware of Trustee choice and keep Letter of Wishes updated.

LexisNexis® Confidential

10

10

## Q. How to make a large fortune small?

### A. Let it get clobbered by Inheritance Tax

IHT is the UK's Wealth tax. Technically everyone should be delighted they are rich enough to pay it but it is universally hated.

BUT how do you mitigate?

#### Lifetime gifting

- Outright gifting is still quite unpopular and offers little asset protection, potential CGT and no claw back of gift.
- Small gift exemptions popular, also use excess income gifting while it still exists.
- Always consider Deeds of Variation
- Trusts can be very effective for asset protection by limited capital amount outside BR and AR and excess gifting

#### Intelligent Investing

- Use of BR qualifying investments
- Use of Regulated products – discounted gift trust / gift and loan trusts
- Use of FICs – see below

#### Life Insurance and Pensions

- Get an insurance company to pay the tax
- Make pensions work for you

LexisNexis® Confidential

11

11

## “I want to control my company beyond my grave” - every business owner 2020

Over 50% of businesses fail after the death of the founder. Why is this?

- Often due to lack of succession planning, often caused by the founder refusing to relinquish control until too late or carry out life time succession planning.
- No clear plan for the future and how death / loss of capacity will affect this?

Business owners need a “**Company Will**” but what is this?

- A standard Will, but careful thought as to how the shares in the business pass down on death – direct gift / discretionary trust. Be careful not to spread shares too thinly.
- Who are the directors post death? Beware of the sole director dying.
- Consider getting shares passed down during lifetime – consider a carefully drafted shareholders agreement and pre-emption rights.
- Incentive shares through Wills and Shareholders agreement can bind in key staff.
- Should be backed up by relevant life policy or Key person's Insurance. Cash injection prevents fire sell.
- Not all children want the same out of the business – so have to look at wider asset base.

LexisNexis® Confidential

12

12

### Family Investment Companies - magic bullet or “another fine mess” my lawyer got me in!

#### Pros

- Controlled Succession planning through economic share ownership by next generation;
- Management of company stays with older generation through voting shares;
- Loan to FIC stays in estate of older generation and provides tax efficient money back over a number of years;
- Take advantage of corporation tax as opposed to income tax;
- Manage payment of dividends in a tax efficient manner subject to tax position of the shareholder;
- No trust entry charges if set up correctly and no limit on capital;
- Gradual passing of assets down the generation.

#### Cons

- Set up cost is high and is not always best option for client.
- HMRC reviewing FICS – have set up a task force

Where can they clamp down?

- Increase in Corporation tax for Investment companies?
- Loan Interest needed?
- Placing a value on voting shares?
- Tax undistributed income?

LexisNexis® Confidential

13

13

### Lasting Powers of Attorney – absolutely necessary but often done badly

#### Finance

- Most clients should have one, even if just for dealing with things like bank accounts.
- Many clients have old LPAs or Enduring Powers of Attorney, the main thing these are missing is the discretionary fund management wording.
- Can have a separate “business LPA” .

- In either case, choice of attorneys is key.
- Keep it simple – not a good idea to have onerous restrictions in the LPA.
- Just like for Wills, a Letter of Wishes can be a useful tool.
- Get on with it – delays common, particularly at the moment, even when intend to register straight away.

#### Health

- Often seen as less essential, but with increasingly blended families, making it clear who should make personal decisions is becoming more important.

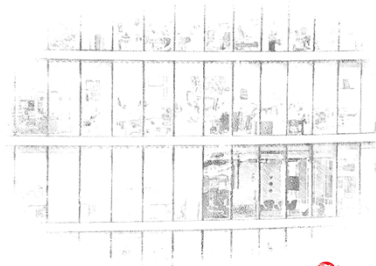
LexisNexis® Confidential

14

14

## In-House Counsel webinars in Q4 2020

- Common employment trends for in-house lawyers (2020)
- Developing culture and ethics within your firm (2020)
- Moving from firm to in-house (2020)
- Dealing with conflicts of interest within your organisation (2020)
- Effectively representing your client in a cost-pressured environment (2020)
- Employment law issues for in-house lawyers (2020)



LexisNexis® Confidential



15


## Thank you and reminders


- This webinar is designed to help solicitors meet requirements A2 (Maintain competence and legal knowledge) and A4 (Draw on detailed knowledge/understanding) of the SRA's Statement of solicitor competence. You may also use the quiz, which can be accessed via the "Take a quiz" link on the webinar details page, to reinforce your understanding of the webinar content. You should answer 7 out of 10 questions correctly and will have two attempts at the quiz.
- Please submit feedback via the survey screen.
- This webinar will be archived immediately, and will be available to view on-demand for 24 months.
- A transcript of the webinar can be made available on request within 48 hours.
- You can use the training and evaluation record form which is included in the supporting materials for this webinar to log this training activity and how it relates to the continuing competences that the SRA requires from all solicitors.

If you have any queries, please contact us:

[webinars@lexisnexis.co.uk](mailto:webinars@lexisnexis.co.uk)

+44 (0) 330 161 2401

 @LexisUKWebinars

 lexisnexis-webinars

LexisNexis® Confidential



16



**Thank you for attending.**

**We hope you've enjoyed this session.**



**Bespoke in-house training solutions**

- Tailored for your business
- Extensive portfolio of expert presenters
- All areas of legal practice covered
- Location of your choice

**Find out more - <http://www.lexiswebinars.co.uk/in-house-training>**

