Private Client MAGAZINE

ISSUE 8



NEXT GEN: REALITY, PERCEPTION, AND WEALTH PROTECTION

INTRODUCTION

"Shirtsleeves to shirtsleeves in three generations"

Unknown

We are delighted to present Issue 8 of Private Client Magazine, which discusses all things 'Next Gen Wealth'. In this bulky edition, our authors cover a range of topics as we approach the anticipated largest inter-generational wealth transfer advisors will have seen. This issue highlights the importance for advisors to adapt, develop, and evolve to accommodate the next generation, and how they are already reshaping the future of their wealth.

Thank you to all our contributors and our community partners for their continued support, we hope you enjoy this abounding issue.

The ThoughtLeaders4 Private Client Team



Paul Barford
Founder / Director
020 7101 4155
email Paul



Chris Leese
Founder / Director
020 7101 4151
email Chris



Danushka De Alwis
Founder / Director
020 7101 4191
email Danushka



Maddi Briggs
Strategic Partnership Manager
email Maddi



James Baldwin-Webb
Director, Private Client Partnerships
07739 311749
email James



Fatema Rasul
Conference Producer
07701 307284
email Fatema

CONTRIBUTORS

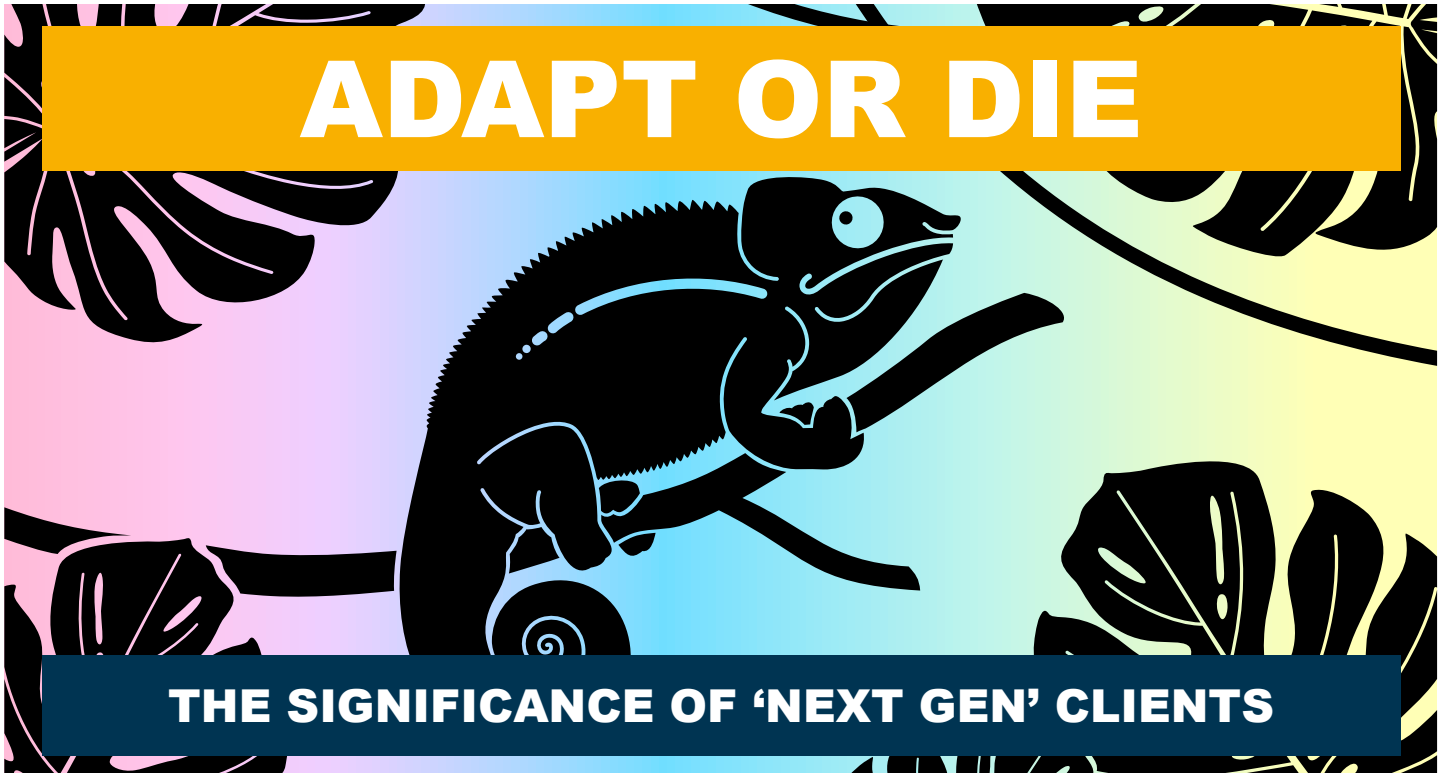
Graham Marsh, **Equiom**
Nicholas Holland, **McDermott Will & Emery**
Jennifer Ronz, **McDermott Will & Emery**
Laura Harper, **Kingsley Napley**
Chris Moorcroft, **Harbottle & Lewis**
Dylan Samuel, **Lombard Odier**
Catherine Moore, **Ogier**
Anthony Partridge, **Ogier**
Katherine Neal, **Ogier**
Liz Palmer, **Howard Kennedy**
Sandra Duerden, **Mourant**
Alexander Hawkins, **Mourant**
Bernadette Carey, **Carey Olsen**
Sarah-Jane Hall, **Carey Olsen**
Ben Havard, **Collas Crill**
Joseph Steadman, **Wilberforce Chambers**
Lauretta Bennett, **Rawlinson & Hunter Trust and Corporate**
Ashleigh Carr, **Forsters**
Maryam Oghanna, **Forsters**
Frederick Bjørn, **Payne Hicks Beach**
Kellyann Ozouf, **Collas Crill**
Angela Calnan, **Collas Crill**
Sophia Moustras, **Collas Crill**
Donna Brehaut, **Saffery Champness**
Sanmari Crous, **Standard Bank**
Sue Nickason, **Dart Family Office**
Philip Paschalides, **Walkers Global**
David Pytches, **Walkers Global**
Tsitsi Mutendi, **African Family Firms**
Suzanne Johnston, **Stephenson Harwood**
Paige Achilles, **Stephenson Harwood**
Yi Lee, **Stephenson Harwood**
Paul Buckle, **Ocorian**
Hannah Southon, **Sinclair Gibson**
Mark Greer, **Charities Aid Foundation**
Joanne Morse, **Summit Trust International**
Eesha Arora, **Maurice Turnor Gardner**
Sophie Wettern-Kirk, **Maurice Turnor Gardner**
Joe Johnson, **Evelyn Partners**
Gilly Kennedy-Smith, **Mourant**
Paul Hardwick, **Macfarlanes**
Patricia Boon, **Forsters**
John Kador, **Global Taxes**
Kelly Watson, **Accuro**
Jemma Goddard, **Stewarts Law**
Emma Holland, **Stewarts Law**
Elizabeth Shaw, **Bedell Cristin**

CONTENTS

Adapt or die the significance of 'next gen' clients 4
Trustees and responsible investment 6
60-Seconds With: Ben Havard 9
The reality of shows like Succession and your assets 10
How is the next generation reshaping private banking? 14
Conversations with the next gen 16
Ringing the changes 20
The next generation and estate planning 22
60-Seconds With: Chris Moorcroft 25
Fractures in the family 26
Trusts for the next generation 30
Developments in fiduciary's powers in relation to ethical investments 32
Who are they and what is so mysterious about the 'Next Gen'? 36
Introducing the Next Generation and keeping them engaged 38
Family wealth management is evolving – are you keeping up? 42
Beyond trusts: how alternative structures can meet next-generation needs 44
NextGen Wealth: an African perspective 46
The 'next gen' and wealth management: what is it really all about? 48
60-Seconds With: Dylan Samuel 51
The Cayman Islands: a jurisdiction of choice for next gen family wealth planning 52
Philanthropy as a gateway to generational bridging 54
The third-generation myth and why families should be utilising the next generation's talents in all their shapes and forms 58
The Next Generation and reputational risk 62
What do young donors want from their philanthropy? 64
Your wish is my command? 66
60-Seconds With: Gilly Kennedy-Smith 69
Why don't family trusts always last for generations? 70
What if anything does Butler-Sloss mean for the next generation and reputational risk 72
Family governance as a tool of Next Gen wealth planning in Asia 76
Do you have a back-up plan? Second citizenships and golden passports 78
The Next Generation – Challenging the status quo in favour of sustainability 82
How to avoid the pitfalls of the 'modern family' in wills and trusts 84
Next Gen wealth trustee considerations 88
Private office structures – how are they evolving to accommodate the next generation? 90


Equiom
GUIDING YOU FORWARD
Helping wealthy families live their best lives
For over 40 years we have provided our sophisticated clientele with professional expertise in multi-jurisdictional wealth and asset protection, succession planning and wealth transfer solutions.
With offices in key locations around the world, Equiom is ideally placed to meet the often complex challenges presented by an increasingly global client base, enabling our private wealth clients to 'live their best lives'.
For more information about our Private Wealth solutions please contact Graham Marsh at GrahamMarsh@equiomgroup.com or visit www.equiomgroup.com/privatewealth
equiomgroup.com/privatewealth
For information on the regulatory status of our companies, please visit www.equiomgroup.com/regulatory

ADAPT OR DIE



THE SIGNIFICANCE OF 'NEXT GEN' CLIENTS

Authored by: Graham Marsh - Equiom

What do we mean by 'next gen' and why is this demographic significant to the future of the wealth management landscape? Graham Marsh, Private Wealth Director discusses 'the great wealth transfer' and its likely impact on advisors and beyond.

Let's start with a bit of background. 'Generation X' refers to those born between 1965 and 1980 - they followed the Baby Boomers and preceded the Millennials. After Gen X and before Gen Z, we have the Millennials (aka Gen Y), born between the early 1980s to the early 2000s. It's those in the Generation X and Millennial categories that are most often, although not exclusively, referred to as what has become known in shorthand as 'next gen'.



So, what's in store for next gen clients?

It is estimated that $70 trillion (that's a 7 with 12 zeros) will transfer to the next generation over the next 25 years. It sounds like a very big number because it is, but how big is it? For context, in 2021 UK GDP was by comparison a mere $3.3 trillion, so yes, the size of wealth heading towards the next gen is enormous - and already we are seeing a less 'traditional' approach from this group when it comes to their preferences.

To attract next gen clients, building a deep understanding of their concerns and desired outcomes is a must and understandably, this can be transformative in attracting and retaining clients. It's particularly worth considering the added complexity of next gen behavior when it comes to the incumbent advisor.

It's a sobering thought for many advisors that, according to Cerulli Associates, a mere 13% of heirs retain their parent's advisors after receiving their inheritance.

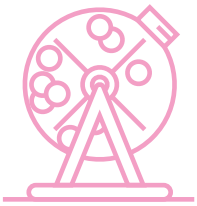
As noted in The Next-Generation Wealth Advisor Report by Broadbridge, this is a generation that not only represents the future of the industry, but it's also one that is highly influential over the attitudes and expectations of older generations. And it's not just the demographics of the clients that are changing. Couple this shift in behavior and influence with the fact 40% of advisors are expected to retire in the next decade (Capco Top Wealth Management Trends 2022) and it's easy to see why commentators believe this wealth transfer will change the face of wealth management for the foreseeable future.



What does this mean for advisors and how should they respond?

What's important to remember is that the fundamentals of business do not need to change. Successful advisors will adapt to their client's changing preferences, making the next generation a priority, and developing relationships based on a deep understanding of their preferences.

The meteoric rise in family wealth over the past 50 years has resulted in around 3,000 billionaires in the world (Forbes Survey, 2021) which further increases the demand for good quality advice and advisors who fully understand the family's requirements. Firms who continue to operate ahead of trends, anticipating their client's behavior will remain at the forefront.



Concerns and responsibility

People buy lottery tickets because there is a small chance of winning an incredibly large jackpot. But imagine winning the lottery without even having to purchase a ticket. Then imagine knowing all along that one day you would win that jackpot. Being the unexpected recipient of a 'jackpot' size inheritance may well be an emotional as well as stressful process, but the same can be said when that inheritance is all too expected.

In some situations, the inheritance of said 'jackpot' can create concern or become worrisome for the unsuspecting next gen heir.

The phrase 'with great wealth comes great responsibility' may well be something the next gen heirs were not prepared to deal with, therefore the knowledge and experience of an external advisor working through this process is invaluable.

This can be achieved by connecting with other next gen families who have been through the stresses and strains of succession and can help answer questions and mitigate areas of concern.





Shifting priorities

All families are different, however there will be some similarities particularly with business and trading assets, investable/invested asset classes, family ethos and so on. But typically, the next gen family will have different investment priorities from their parents and may have greater knowledge in areas such as ESG, cryptocurrencies and new and emerging technologies. To meet with this demand, it is crucial for the next gen advisor to be able connect with clients on such topics, demonstrating valuable and personalised insight.

It's often the individual personalities within the next gen family that make a big difference in family governance and family structure. Aside from any jurisdictional or cultural challenges, it's important to understand the personality dynamics within the family. For example, do they regularly communicate with each other and if so, how? Do they trust one another and is there a harmony with an agreed 'family ethos'? There are many other questions to consider before it's possible to understand the 'best' approach and to build a plan of advice and structuring that will add value and be appreciated.

It is imperative to have a clear understanding of each individual family member including their knowledge, experience, priorities, likes/dislikes and both short-term and long-term objectives. In building knowledge and understanding, the advisor will be of real value to the whole family.

A next gen advisor might be more effective in attracting next gen clients when they are collectively aligned. This might be considered as being either from the same demographic group as the family members or holding a shared understanding of priorities and the view of the world. The advisor may consider for example the advice on the known pitfalls to avoid when structuring entrepreneurial 'start-ups' and preparation for potential 'liquidity' events, may be welcomed and timely.



The role of technology

It's important to note that not all 'next gen' clients have inherited their wealth. Technology and social media have made a lot of younger people very wealthy indeed. Elon Musk, the world's richest man, is only 51 after all. It might be the case where a next gen entrepreneur has created a product or service that has rapidly become very popular which has attracted angel or private equity investment interest. Aside from the business exit strategy, advice will also be required to structure the client's private wealth. While the client may be familiar with the minutiae of business growth strategies, the appropriate private wealth strategy may include several unfamiliar concepts, such as trusts and foundations. This is where the next gen advisor can help by providing an education in the nuances of private wealth structuring, and over time help to make personal structuring and governance advice better understood with the requisite perceived value.

So where does all this leave us? Looking ahead, it's clear to see cultivating relationships with next gen clients must be high on the agenda for advisors and wealth managers alike. At Equiom, we have a keen focus on coaching our up and coming next gen advisors, pooling our experience and investing in future proof infrastructure e.g. digital investment portals that this next generation of clients will be comfortable with and respond to.

To succeed as a next gen advisor, one must evolve with the times, never get stuck, and never think you have all the answers.

Adapting to the shifting preferences of next gen clients isn't going to be a one-off exercise, nor is it optional, and the sooner you realise that the better.

TRUSTEES AND RESPONSIBLE INVESTMENT:



DOES BUTLER-SLOSS AND ORS V THE CHARITY COMMISSION AND ATTORNEY GENERAL[1] GO FAR ENOUGH?

Authored by: Nicholas Holland and Jennifer Ronz - McDermott Will & Emery

Environmental, social, and governance **(ESG)** investing is increasingly on the agenda in the trust arena as beneficiaries and settlors are increasingly incorporating ESG data into decisions on investment objectives and strategy. Requests from beneficiaries and settlors to consider factors such as climate change or that certain industries be excluded from investment of a trust's assets because of their environmental impact, is becoming more popular. This has and is continuing to create challenges for family private trusts, in particular:

- ESG investing may conflict with the trustees' duty to preserve and safeguard trust assets and seek to obtain maximum financial return from their investments in the interests of all beneficiaries;
- The beneficial class and/or beneficiaries and trustees views may not be aligned to an ESG investment philosophy leaving trustees vulnerable to claims from disgruntled beneficiaries if they invested in ESG investments but might have produced better returns elsewhere; and
- Certain types of investments, such as non-income producing investments (including some ESG Investments), may be prohibited under the terms of the trust or violate the fiduciary obligation to balance the interests of capital and income beneficiaries.

In light of these issues, it is welcome news that cases about ESG investing by trustees are starting to filter through the Courts in many jurisdictions. Before the *Butler Sloss Case* handed down on 29 April 2022, it was almost 30 years since the courts last considered how charity trustees might legitimately take account of non-financial considerations when investing. However, we consider below how much protection the recent jurisprudence offers trustees of non-charitable trusts [and arguably charitable trustees] looking to adopt a responsible approach to investment.

Here is an overview of the judgment.

Background

- The case was brought by the trustees of two charitable trusts (the **Trustees**), the Ashden Trust and the Mark Leonard Trust. Both charities have general charitable purposes although their trustees have decided to focus primarily on environmental and associated charitable purposes.
- The Trustees wanted to adopt investment policies which would, as far as possible, exclude investments that did not align with the Paris Climate Agreement 2016 (the **Proposed Investment Policy**). The Proposed Investment Policy would exclude over half of publicly traded companies and commercially available investment funds, and it was accepted by the trustees accepted they were unable accurately to determine the extent of the financial detriment which may be suffered by the charities as a result of adopting the Proposed Investment Policy.

1 Butler-Sloss & Ors v Charity Commission [2022] EWHC 974 (Ch),

- The Trustees sought declarations from the Court seeking a blessing as to whether the adoption of, and specific steps in their decision to support, the Proposed Investment Policy were a lawful exercise of their powers of investment and whether there was an absolute prohibition against making investments that directly conflict with their charities' purposes[2].

Prior to the judgment, the last major case on moral investing for charities was *Harries v Church Commissioners for England [1992] 1 WLR 1241* (the **"Bishop of Oxford"** case). In this case it was held[3] that maximizing financial return was the starting point and trustees *"must not use property held by them for investment purposes as a means for making moral statements at the expense of the charity of which they are trustees".*

The Judgment

- The Court found that the Vice Chancellor's statements in the Bishop of Oxford case were not intended to be an automatic prohibition on considering moral factors in respect of investments, but a logical consequence of reasonably balancing all relevant factors in those particular cases. The Court further confirmed that a direct conflict with a charity's purposes is a major factor where the trustees are exercising their discretion as set out paragraph 78(6) of the judgment[4] and set out the ten points that he considered to be *"the law in relation to charity trustees taking into account non-financial considerations when exercising their powers of investment"*.[5]

- The Court also noted (and importantly in the context of this article) that the Trustees had wide investment powers and that the Proposed Investment Policy was not prohibited by the terms of their trusts, and therefore the declarations the Trustees sought in this regard (set out above) were both *"unnecessary and inappropriate"*. This meant that the case solely concerned the exercise of their discretion in relation to their investment powers (not whether the Court itself considered that the specific terms of the Proposed Investment Policy were appropriate).

Applying that approach, the judge approved the Proposed Investment Policy, determining that they had sufficiently considered all relevant considerations (including the potential financial detriment of their new policy) and not taken account of irrelevant facts.

What the Judgment did not determine?

- It was not a decision by the Court that the Trustees *should* adopt a particular course of action, merely that it was not an improper exercise of the Trustees discretion to adopt the Proposed Investment Policy.

- The Court did not make any specific comment regarding the need for charities (and indeed non charitable trusts) to consider ESG in general but merely set out the factors that all charity trustees must consider when contemplating ESG strategies (which are, fundamentally, those applicable to any trustee decision).

- There is therefore in our view a further case and/or blessing required before trustees of non-charitable trusts can rely on the *Butler Sloss Case*, in a general private client context (and arguably a charitable context), , as to the extent to which trustees may take ESG into consideration in respect of investments where the investments are known to have reduced financial returns. At the moment however, trustees are mostly still torn between finding a balance between investment performance and 'moral' obligations.

- Thus, the wait continues to see how receptive the judiciary will be to the idea that fiduciary market participants may properly take a wider view of their investment priorities in line with the societal change towards such ESG investments.



What can be done to overcome these problems until we have a new case that assists?

- In the case of new trusts, or where it is possible to vary the terms of an existing trust, such concerns might be addressed by:

  i. The trust deed might expressly exonerate or indemnify trustees for considering ESG or similar objectives in their investment decisions;

  ii. The trustee's duties might be restricted or excluded by the terms of the relevant trust deed. For example, the trust deed could include an express power to make ESG investments and define what will qualify as an ESG investment. Or, the trust deed could permit or require the trustee to avoid certain sectors or asset classes, such as arms or tobacco.

- In the case of existing trusts it is more challenging, particularly where there is no power to vary their terms or amendment is otherwise problematic. However, even where ESG investment is not expressly permitted, trustees may still be able to make "impact" investments with good long-term investment prospects.

- Where new trusts are being established, families and trustees might consider the flexibility afforded in offshore jurisdictions e.g. in the Cayman Islands a "STAR trust", which might be set up specifically to make ESG investments. In Guernsey and Jersey, one may also have non-charitable purpose trusts.

- We are also expecting a review of the law of trusts in England & Wales with a view to modernizing the law, including consideration of whether we should adopt certain trust and trust-like entities that exist under the laws of other jurisdictions, which may include non-charitable purpose trusts.

2 This was as a result of the perceived absolute prohibition against making investments that directly conflict with their charities purposes as set out in the Bishop of Oxford Case as set out below.

3 Subject to three expectations: where an investment directly conflicts with a charity's purposes (such as cancer research charities investing in tobacco shares); where an investment indirectly conflicts with a charity's purposes (where particular investments might alienate supporters or donors or make beneficiaries less willing to accept help because of the source of the charity's money) and where this is the case, the trustees must "balance the difficulties they would encounter or likely; or where to do so would not involve a "risk of significant financial detriment".

4 Para 78 (6) 'where trustees are of the reasonable view that particular investments or classes of investments potentially conflict with the charitable purposes, the trustees have a discretion as to whether to exclude such investments and they should exercise that discretion by reasonably balancing all relevant factors including, in particular, the likelihood and seriousness of the potential conflict and the likelihood and seriousness of any potential financial effect from the exclusion of such investments.

5 Butler-Sloss & Ors v Charity Commission [2022] EWHC 974 (Ch), paragraph 78.

WE'RE ALL IN.

From committing to diversity in our hiring practices and setting ambitious Firm-wide pro bono goals to providing time for mindfulness and sponsoring days of service in our communities around the world, we know that our best work isn't limited to the boardroom or the courtroom.

Your legacy is just as important—that's why we're here to go above and beyond for you and your family, from generation to generation.

Learn more at mwe.com/privateclient.

McDermott Will & Emery

©2021 McDermott Will & Emery. For a complete list of entities visit mwe.com/legalnotices. This may be considered attorney advertising. Prior results do not guarantee a similar outcome.



60-SECONDS WITH:

BEN HAVARD
PARTNER, DISPUTE RESOLUTION
COLLAS CRILL, GUERNSEY



Q What do you like most about your job?

A Getting to work with people who are (generally) great company, funny, and extremely good at what they do.

Q What would you be doing if you weren't in this profession?

A Probably teaching, assuming the career as a professional snowboarder didn't work out. And wondering whether law might have been a better choice.

Q What's the strangest, most exciting thing you have done in your career?

A I joined our firm as a single office in Guernsey, and have seen it grow via three mergers to where we are today – a joined-up team operating across four jurisdictions. It has been a hugely exciting process.

Q What is one of your greatest work-related achievements?

A I have untangled some difficult structures and complex family situations. When certain beneficiaries get pushed aside, it is very rewarding work to redress the balance.

Q If you could give one piece of advice to aspiring lawyers, what would it be?

A To be flexible and open-minded in your approach to work. You are generally more capable than you think, and you can learn important things from (almost) everything you do.

Q What do you see as the most significant trend in your practice in a year's time?

A The way in which we work as lawyers, and the role of offshore, is always evolving. At the moment it feels like evolution to meet the needs of our clients is the only trend that can be predicted!

Q What personality trait do you most attribute to your success?

A Good humour.

Q Who has been your biggest role model in the industry?

A I am fortunate enough to be able to learn from great lawyers every day. Particularly, as a junior lawyer I worked on several matters with our firm's then Senior Partner, Chris Bound. All of his matters were approached with care and integrity, which generated long-term trusted relationships with his clients.

Q You've been granted a one-way ticket to another country of your choice. Where are you going?

A North America, but I'd still be asking for the return ticket.

Q What is a book you think everyone should read and why?

A I'm currently reading There's a Monster in My Book by Tom Fletcher (ex McFly and Strictly), three times every night. That cliff hanger never gets boring. Apparently.

THE REALITY OF SHOWS LIKE SUCCESSION AND YOUR ASSETS



Authored by: Laura Harper - Kingsley Napley

High Net Worth Individuals face a range of new challenges as they seek to protect their assets. Whilst the dramatic events of the Roy family may seem remote for many of us, it could still be important to consider the benefits of asset protection strategies.

Generally, we find that the overall desire of our clients to protect their wealth from threats and to ensure that they bequeath it to the next generation in a way that works for them and their children.

As a result of the ever evolving social and economic climates, the risks to the family assets have also increased and, today wealthy individuals are asking more of their asset protection strategies than they were just a decade ago.

We're seeing, for example, increased instances of multiple marriages, among both wealthy individuals and their children and heirs. It's often thought that trusts can provide complete protection here but this isn't always the case.

When it comes to asset protection, the Supreme Court decision in Radmacher v Granatino in 2010 was a game changer for asset protection. This ruling has enabled parties to contract out of the powers of the English courts in order to ring-fence pre-acquired or inherited assets from claims on divorce and to secure significant departures from equality.

Once regarded as something of an American import, nuptial agreements now carry significant weight and have become an essential part of wealth protection for HNWIs in this jurisdiction over the last decade. The truth is that although trusts certainly continue to have their uses, wealthy individuals need to think about prenuptial and postnuptial agreements, both for themselves and their children.

We're also talking to more families about adopting corporate structures such as family investment companies or family offices in order to develop better protection and flexibility for their assets.

Alongside this, a very important trend that we're seeing at the moment is that people are making their money considerably earlier in their careers, perhaps because they work in tech or they've sold their business. The risk here is that they don't start to think about asset protection until it's too late. As a result, they end up paying more tax than they should, and they can't develop a proper strategy for preserving



and managing their assets and ensuring that those assets benefit their children.

Asset protection is not just about laws and regulations, increasingly important is education and developing more positive attitudes towards wealth. As a result, HNWIs want to educate their children about their inheritance so that can use it wisely rather than spending it foolishly.

There's another important new development that HNWIs need to consider these days. Social perceptions of wealth, especially when inherited, are increasingly important. The Pandora Papers, hostility towards oligarchs and the controversy over the tax status of Rishi's Sunak's wife vividly demonstrate the point. Similarly, if you're transferring large sums to your children, you probably don't want to see them boasting about their affluent lifestyle on their Instagram accounts.

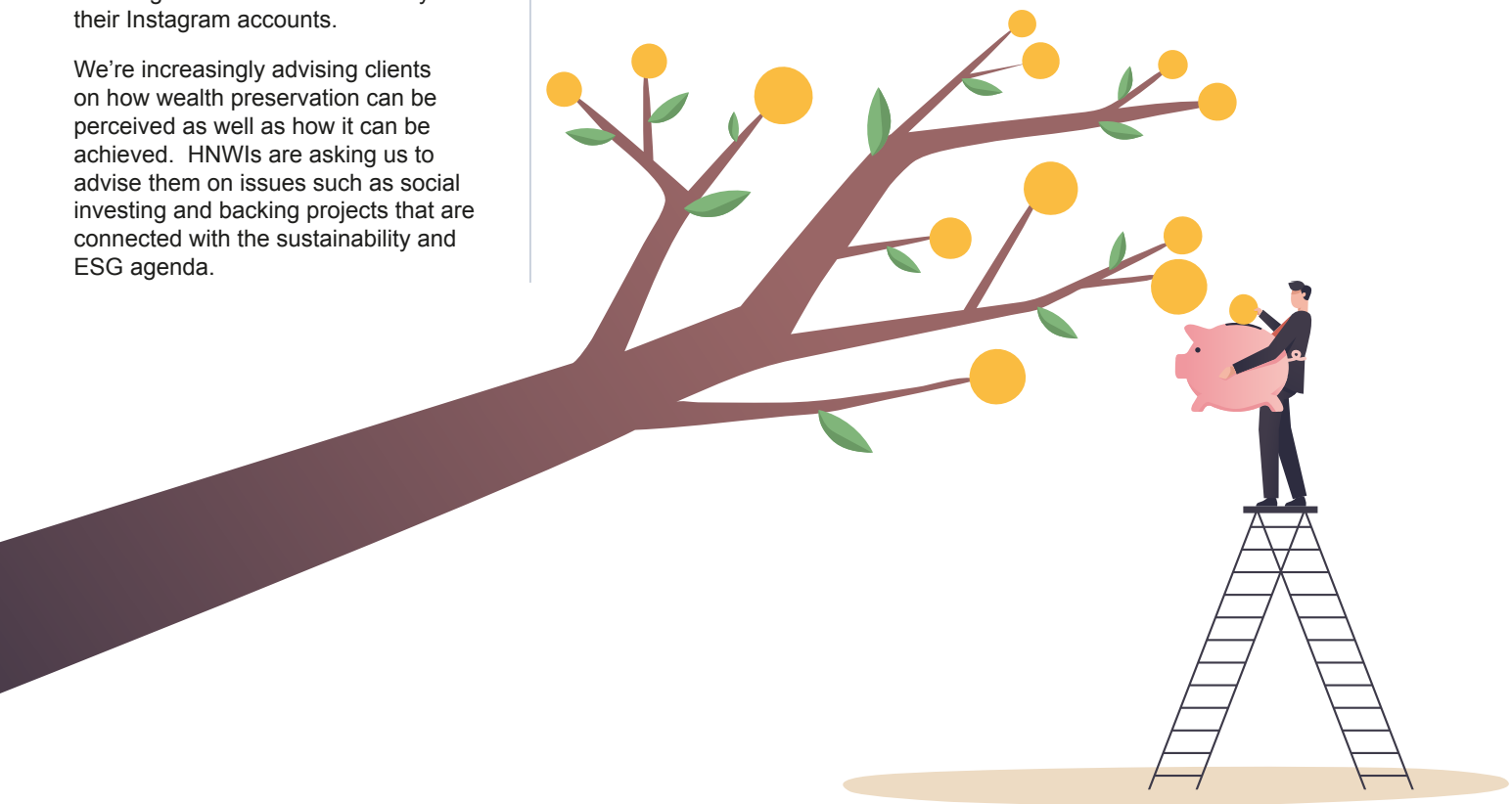
We're increasingly advising clients on how wealth preservation can be perceived as well as how it can be achieved. HNWIs are asking us to advise them on issues such as social investing and backing projects that are connected with the sustainability and ESG agenda.

Today, preserving the good name of a family is almost as important as preserving its wealth.

As part of this trend, wealthy individuals are looking for a comprehensive package from their asset protection advisors, a package that covers a number of different areas, including reputation management, immigration, real estate and employment. Successful asset protection these days is likely to include the need for corporate and commercial expertise as well.

As the asset protection landscape undergoes so many changes with new risks emerging all the time, it's more important than ever that HNWIs act now. The aim is to create a framework that allows for control with flexibility so that wealthy individuals are not just preserving their assets, but they're building on them to create a better future.

The key to achieving this, as our clients are finding, is to take a holistic, multi-faceted approach to asset protection and wealth management with an experienced, full service legal advisor.



KINGSLEY NAPLEY

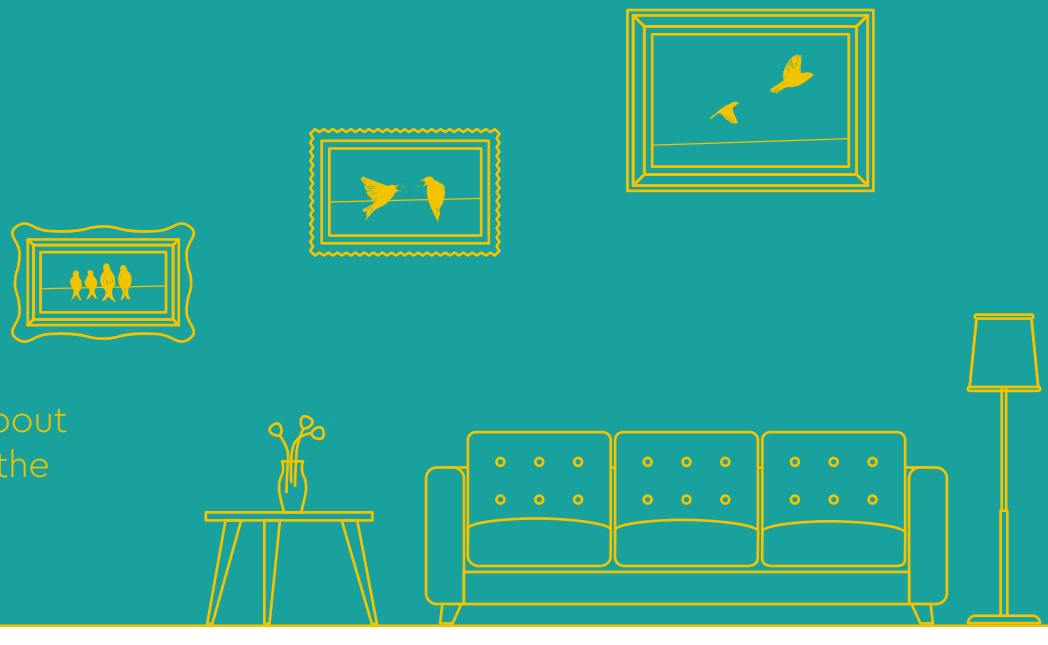
WHEN IT MATTERS MOST

"The dream team"

The Legal 500 UK 2021

We are recognised nationally and internationally as a dynamic and strategic team of family lawyers, known for our expertise in both complex finance and high profile children cases.

We assist clients at all stages of their lives, whether at the beginning of a relationship and planning a future (for example before a wedding or when relocating to the UK) or at the end. Many of our clients or their spouses have international connections, are high net worth individuals and city professionals, or individuals with a public profile.



For further information about our practice, please use the contact details below.

kn.legal/tl4 | +44 (0)20 7814 1200

Kingsley Napley LLP is authorised and regulated by the Solicitors Regulation Authority (SRA number 500046).

THE LAWYER Awards 2022 LAW FIRM OF THE YEAR: (THE INDEPENDENTS)

TOP RANKED Chambers High Net Worth 2022 Kingsley Napley LLP

The LEGAL 500 UNITED KINGDOM LEADING FIRM 2022

SPEAR'S500

Private Client



Wealth / Life Middle East (DBX)

15th-17th November 2022

Shangri-La Hotel, Dubai

Event Partners:

Saffery Champness
REGISTERED FIDUCIARIES

JTC

Harbottle & Lewis

HOW IS THE NEXT GENERATION RESHAPING PRIVATE BANKING?



PRIVATE BANKS WILL NEED TO ADAPT IN FIVE KEY WAYS

Authored by: Dylan Samuel - Lombard Odier

Are the expectations of the next generation really so different from those of older generations when it comes to their finances? Recent research performed by 15 groups of students at ESCP Paris and IAE Nice business schools in 2021 clearly indicates that private banks will need to evolve their service offering to accommodate the attitudes and expectations of younger clients.

The research, an initiative launched by Lombard Odier, was not simply an exercise in fact gathering, but rather an opportunity to work with these students to develop practical, concrete solutions. We wanted to discover the concerns and aspirations of a new generation of start-uppers, serial entrepreneurs, influencers and heirs. By sharing that information, we hope to encourage the private client wealth industry to work together to develop solutions tailored to their specific needs, and promote best practice.

Wealthy millennials are accustomed to commenting, sharing, recommending and educating themselves. They are demanding, have a clear view of the world, and can be wary of big brand messaging.

Our proprietary research highlights that, to attract millennial customers, private banks today must offer them real, online and offline investment experiences.

But above all, banks must respond to a strong desire for financial autonomy, to take a hands-on approach to managing their wealth and achieve an alignment between their investments and their values.

The research revealed five key trends and expectations among millennials:



1. INVOLVEMENT:

I want to decide my own investments and challenge consensus financial analysis

Millennials want to be involved in the management of their assets, and the majority of them want to be actively involved in decision-making. They often aggregate information from multiple sources independently and do not hesitate to challenge their banker on their analyses and proposals. They also want a degree of autonomy, with access to their assets at all times, mainly via digital channels.



2. COMMUNICATION:

My bank must adjust to my pace

Approaches to communication and interaction are extremely important to millennials. They expect a high degree of transparency and access to information at any time. This does not mean they are looking for an exclusively digital relationship. They appreciate face-to-face contact for matters that require careful thought and discussion, but for everyday or administrative matters, they prefer email or instant messaging. In their eyes, it's their banking partner that must adapt to their preferred channels and habits, and not the other way round. They expect a high degree of reactivity, but they also want to make contact through less formal channels.



3. KNOWLEDGE:

I want to understand what I am investing in

A strong desire to learn pervades the research findings. Millennials do not just want to invest in opportunities; they want to fully understand those opportunities and the trends that underlie them. Their age, their lack of financial awareness – which they themselves admit to – and their habits as consumers of content, mean they expect clear, educational explanations, with a strong preference for short, easily digestible content in digital formats.

Moreover, as investors, millennials tend to be more value sensitive than price sensitive and engage in extensive fact-checking before making decisions. Their trust is won by offering transparency on both investment impact and fees.



4. NETWORK:

I prefer a banker I can identify with

Even though they expect a high level of experience and professionalism, the next generation are not interested in the rarefied formalities commonly associated with private banking. Neither are they impressed by the status of their banker. They want a banking partner they can identify with, whether by age, mindset, or shared interests. Millennials will be attracted to a banker that offers more than a professional relationship. They will respond well to one who can become an integral part of their personal and professional ecosystem, and with whom they can mutually develop and broaden their network.



5. SUSTAINABILITY:

Measuring investment impact is key

Sustainability was a major topic in the research. It goes far beyond mere awareness. The next generation want specific, innovative investment solutions, designed thematically, in order to deal with the issues that concern them the most and align their investments to their values. Investing via a sustainable strategy is not enough for them. They want to be able to gauge the concrete effects and the impact, understand the mechanisms and their footprint and avoid greenwashing. To them, sustainable investing should not mean sacrificing returns. Millennials want both financial and sustainable performance, as well as clear reporting on measurable impact through digital and interactive tools.

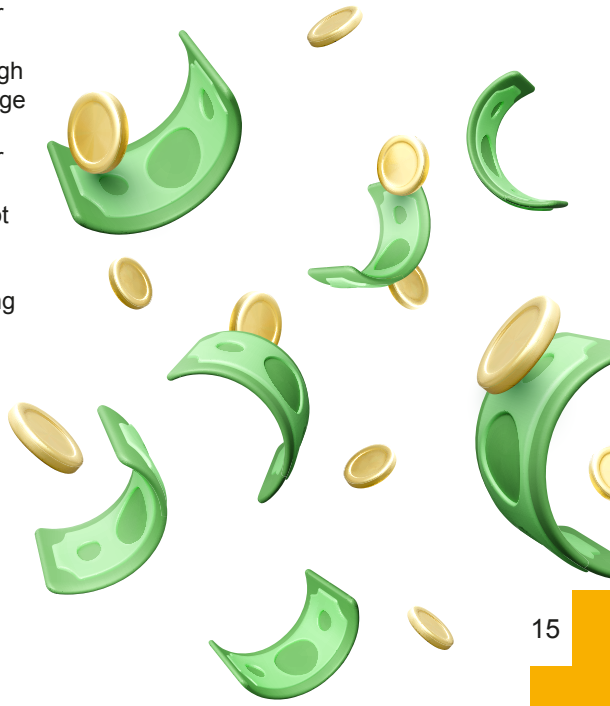
In these fast-changing times characterised by technological disruption, digitalisation, shifting attitudes and environmental pressures, the private banking industry has much to learn from the next generation of private banking clients.

They inspire us and challenge us every day.

Their needs are constantly changing, but their fundamental goals and expectations are similar to those of older generations: they want to protect and grow their wealth. It is important that private banks work closely with private clients and their advisors to strike the right balance between heritage and innovation.

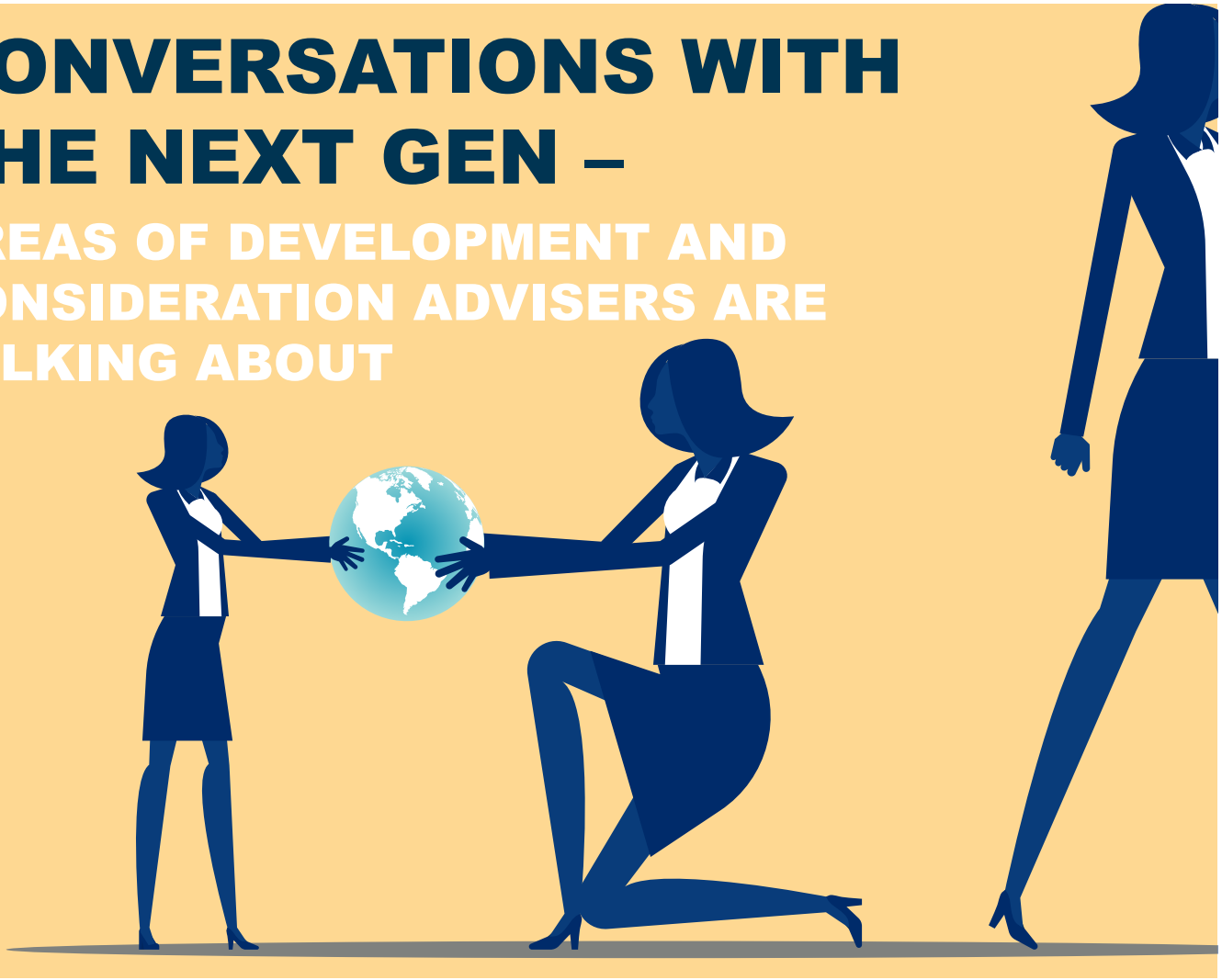
Capstone Millennials in a nutshell

Capstone Millennials belongs to a raft of ongoing initiatives at Lombard Odier aimed at anticipating and gaining a better understanding of the needs of our future clients. The groups of students from the Master's in Wealth Management at ESCP Paris and IAE Nice who worked on this project based their work on market data, quantitative and qualitative analysis, and some thirty individual interviews with millennials across a wide range of profiles, including entrepreneurs, influencers and heirs. The research methodology is therefore largely qualitative, based on personalised exchanges that seek to understand opinions, concepts and experiences, rather than a quantitative data.



CONVERSATIONS WITH THE NEXT GEN –

AREAS OF DEVELOPMENT AND CONSIDERATION ADVISERS ARE TALKING ABOUT



Authored by: Catherine Moore, Anthony Partridge, and Katherine Neal - Ogier

More and more clients and advisers alike have been discussing the "next gen", be they millennials, Gen Z or even the future Gen A. But why?

One reason is likely the sheer size of the inter-generational wealth transfer anticipated in the next two decades - according to various statistics, it's anticipated that the largest wealth transfer advisers will have seen will take place, with many trillions of dollars of assets being inherited or transferred.

In light of this, as well as the differences in attitude and ideas amongst clients regarding wealth, it is important to be talking about the issues arising for advisers.

Who are we talking to?

There has long existed differences in how clients discuss wealth, particularly between cultures and ages. However, there are further differences with the next generation – from a greater increase in female business women through to families that are more international than before and with cross-border investments. There is also a greater percentage of family members who are unmarried or the children of unmarried parents.

These changes in demographic increase the number of factors advisers and their clients need to be aware of, including risks arising from divorce and changing tax and transparency laws. It's important for the next gen to be educated in why all of these are important and for there to be consideration as to who becomes involved in discussions, how and when, even where it may not be the most comfortable of conversations.

In some cases, it will not be the right time to discuss family wealth[1], for others it will be important to bring them "into the fold" so they can be educated for the day when they "take the reins".

How is the wealth invested?

Crypto and developing asset classes

Surveys from major investment institutions have found that a significant number of family offices have an interest in and are actively investing in cryptocurrencies and other developing asset classes, often because of the next generation's interest in such asset classes.

One example we have seen is the growth in investment in funds and companies involved in the lucrative recreational cannabis sector, in some cases directly as a result of a next gen family member's interest in this area and technology solutions around it.

It is increasing important for advisers, family offices and service providers to recognise where they may or may

1 As in the Jersey case of In the Matter of the C Settlement [2017] JRC 035A

not have the expertise in such asset classes as well as the risks and potential liabilities they may expose a structure to before agreeing to invest in the same. Finding the right expert to advise on such asset classes will be imperative.

Impact and ESG investing

The value of global assets under management in impact investments is now estimated at over $500 billion and that figure is increasing rapidly, with more than 1,300 service providers, funds, family offices and other types of investors allocating funds to this space, arguably influenced by the next gen[2].

Research by Gibson Strategy[3] in 2020 shows that the generation focussing most on impact investing are the under 40s. Some argue this is as a result of the next generation being more focused on their money doing good as well as growing through investment. Others argue this is as a result of socio-economic pressure on governments and companies to limit any negative impact they have.

Whatever the reason is, it is predicted that this trend will continue[4] so much so that it will become the norm. Whether an existing structure will be appropriate for this form of investing is key question and it may be that advisers will need to consider alternative or new structures.

As such, it may be increasingly necessary to consider including impact investment related provisions into constitutional documents and whether investment guidelines and parameters should be put in place from the outset.

Investment restrictions

For different reasons, it is not uncommon to include investment restrictions in governing documents. However, we have seen an increase in the desire for such investment restrictions as a result of the next generation voicing their opinions on what they are uncomfortable investing in from a social or environmental perspective, including weapons manufacturing, natural resource exploitation or other industries that cause extensive damage to the environment. However, consideration should be given to including restrictions from the outset and how they can best be clearly drafted so as to be administratively workable.

What is the wealth used for?

Philanthropy

Philanthropy has traditionally been understood to mean the giving away of wealth through donations, often one-off. However, the next generation are less focussed on this and are often more involved long-term with philanthropic causes, with some becoming board members or trustees of charities.

It's important that there isn't a blurring of the lines between structures established to benefit family members and those established for philanthropic structures as this. can lead to conflicts of interest and unnecessary exposure and potential liability.

Looking to pay more than their fair share

In some cases, although this may not have been the driver for the establishment of a structure, estate planning structures will provide some form of fiscal benefit. Some advisers are seeing a shift in attitude with the next generation actively looking to pay more than they are required to[5], in the hope that it will be put to good use for the benefit of society. This naturally can lead to the question of whether the structure is still appropriate or not, with advisers becoming involved in this fundamental discussion.

How can we best deal with the wealth?

Being prepared

It is unfortunately the case that disagreements can arise among the next generation, particularly where the wealth inherited or transferred includes a business or chattels.

Accordingly, we have seen a growth in the use of family governance documents or family charters setting out how family members can be involved in decisions regarding the family wealth and how it will be managed to limit disagreements.

Making assets work all around

In some cases, the current generation has invested their wealth in tangible assets of particular interest to them, be that collectible cars, art or wine collections. But what if fast cars, Picasso and Chardonnay are not to your heir's taste?

One solution we have been seeing more of is the use of tangible assets as leverage to provide capital that can be used by the next generation to invest in other assets without having to sell the unique tangible assets that have meant so much to the current generation.

Asset protection

In light of some of the points we have covered, the next gen is particularly alive to the volatility of the world and the assets classes now being invested in. We have therefore seen a significant number of younger clients who have asset protection at the forefront of their mind when looking to establish structures. Accordingly, advisers should be well versed in the options available, locally and cross-jurisdictionally.

Family offices

For the next gen who want to be involved in decisions regarding the family wealth, family office structures, PTCs or PTFs can all be alternative ways for high net worth individuals to have their wealth managed, as well as all their personal affairs in the case of a family office.

Advisers will need to be able to discuss the pros and cons of the different forms of bespoke structure or family office arrangement that could suit the next generation best.

Summary

The next gen are and will continue to prompt changes in the way we see and deal with wealth in a way that will permanently shift attitudes. These changes are arising quickly and those advisers who have opened up these discussions can place themselves and their clients in a better position for the future.

2 Global Impact Investing Network 2019
3 https://www.gibsonstrategy.com/_files/ugd/7ea316_fe225a61ead14529ad36cd958a919124.pdf
4 PwC Global NextGen Survey 2022
5 As was the case in In the matter of the May Trust [2021] JRC 137

ogier.com

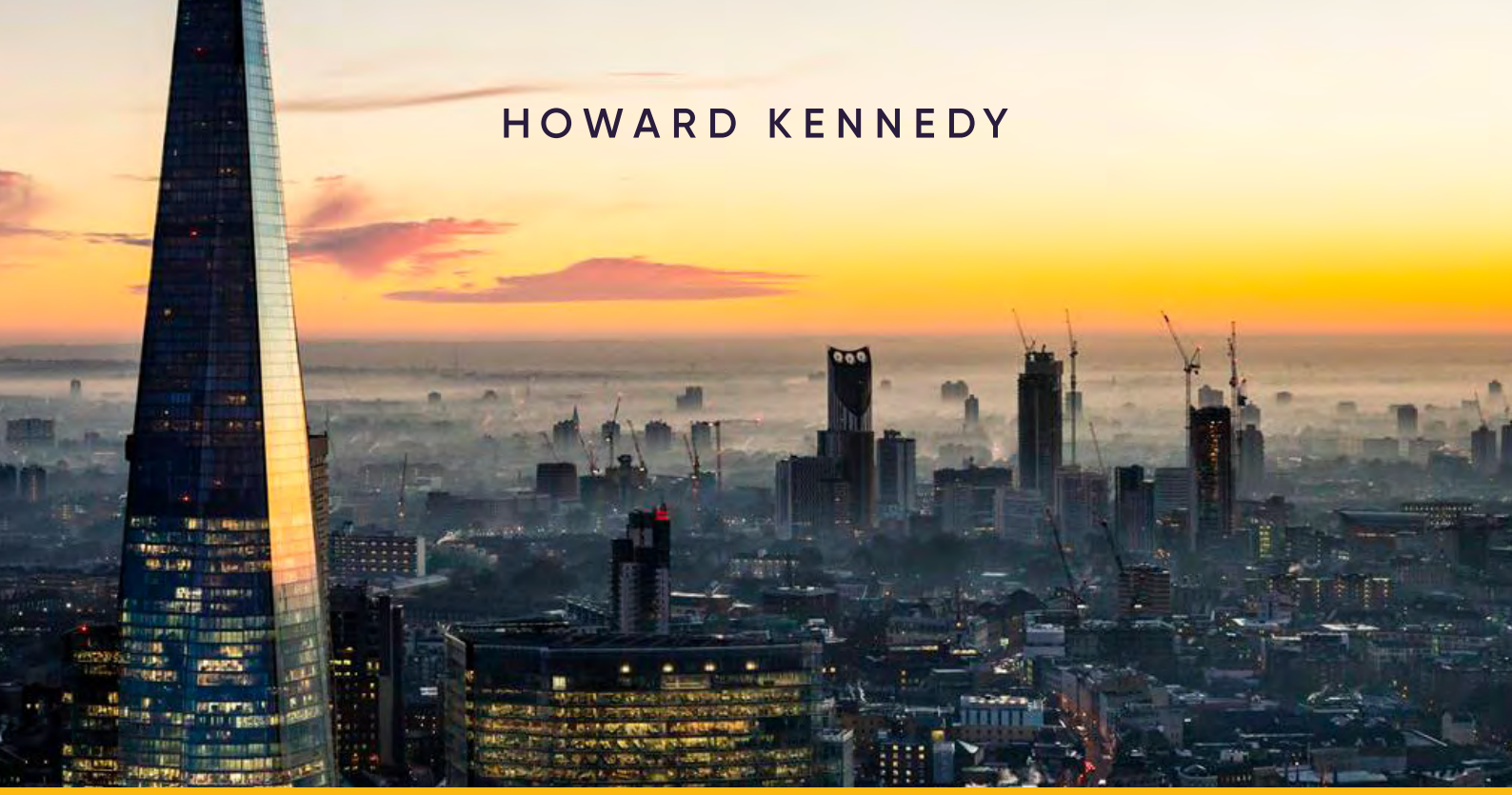
Global reach

Private clients need trusted advisers and an interconnected world demands a global perspective. Our lawyers include some of the most respected names from across the offshore private client world.

We advise on BVI, Cayman, Guernsey, Irish, Jersey and Luxembourg law across all time-zones – and our Trusts Advisory Group draws together a seamless contentious and non-contentious advisory service which also includes relevant corporate support.

Legal Services
Beijing
British Virgin Islands
Cayman Islands
Guernsey
Hong Kong
Ireland
Jersey
London
Luxembourg
Shanghai
Singapore
Tokyo

Ogier



We are a London based law firm specialising in providing straightforward advice to entrepreneurial businesses and individuals on domestic and international matters, whatever the challenges they face.

We simplify what others complicate, giving useful advice in language you understand. We look to complete projects and deals quickly and efficiently so that you don't miss out on important opportunities.

RINGING THE CHANGES

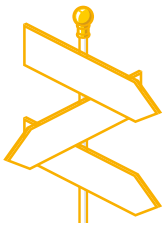


HOW SUCCESSION PLANNING IS CHANGING IN A NEXT GEN WORLD

Authored by: Liz Palmer - Howard Kennedy

In the last few years, significant changes have taken place in the way clients think about succession. Whereas previously, many preferred not to think about a time when they might not be in charge or even around, COVID and the resulting periods of lockdown, gave people nothing but time to reflect on such issues.

As a result, for many, the question of the legacy they wish to leave to their families, and in many cases, to the wider community, has moved centre-stage.



What factors are driving the changes in approach?

COVID has been a huge factor in changing people's priorities in relation to their families. However, concerns about climate change (highlighted by the recent heatwaves across the northern hemisphere and other weather-related crises elsewhere), the war in Ukraine and the local and worldwide impact of such events have caused many wealthy people to consider the role they should play in trying to alleviate, and even help to solve, such problems.

Increasingly, clients are thinking about their philanthropic contribution and how to increase the sustainability of their businesses and investment portfolios. Essentially, they want to know how they, and the trustees and family offices who support them, can make a positive difference.

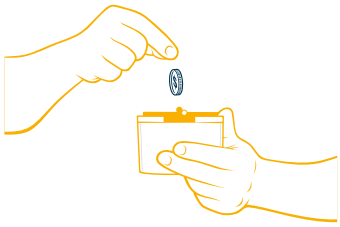


Where does the next generation come in?

Until recently, the focus of succession planning was primarily on building the profits of a family's businesses and increasing its overall wealth in order to ensure that the next generation was provided for financially, and was ready to take over from the senior family members. The main concern of parents and grandparents was how to avoid the well-known cycle of "rags to rags in three generations".

Until it was their turn to take over, it was fairly common for older members of a family to avoid involving younger members in decision-making, whether on day to day matters or, more importantly, long-term family strategy.

That has changed, not least due to the recognition that factors such as climate change, rapid technological developments and the long-term sustainability of our planet and its resources will be huge issues for Millennials and Gen Z. They are the ones that will be affected by these issues, and they are often the ones with the skills and knowledge to address them.



Inter-generational conflict and how to address this

Older members of wealthy families often draw a line between the business and investment aspects of a family's activities and its wider social and philanthropic projects. For example,

they may be sceptical that sustainable investments are capable of offering the same or better financial returns than more traditional forms of investment. Their preferred approach would be to use the returns from such investments to fund a charitable foundation or donate to charitable and philanthropic causes.

In contrast, younger generations tend to consider ESG and other societal considerations to be essential parts of the family's entire philosophy – business, investment and philanthropic.

This may lead to conflict, not least if younger members of the family see their elders investing and trading in businesses that they see as detrimental to the long-term welfare of the planet and humanity, for example, in fossil fuels or other out-dated industries.

However, while it is important that the next generation takes the lead in changing the focus of a family's wealth creation, the benefits of age and experience, and a lifetime of successful wealth management, should not be de-valued.

This is often where a staggered approach to succession may be beneficial, in order to allow all generations to see the value of each others' views.

For example, rather than ignoring sustainable investments completely, or only investing sustainably, initially the family might establish a specific sustainable fund. This could be used to develop businesses with an ESG focus, possibly run by younger family members, or might be invested in existing ESG projects.

More sceptical family members will be able to see whether the financial returns of such an approach justify expanding this to other family business ventures, and at the same time, younger family members will be able to learn the skills of business management and investment from older members in a relatively "safe" environment.



How has the increased complexity of wealth in a globalised world affected succession planning?

There is no doubt that advances in technology and globalisation increasingly mean that a political or economic crisis in one country affects the rest of the world to a far greater degree than in the past.

This, and a more international business and family lifestyle, has resulted in an exponential increase in the complexity of business, investment and wealth holding structures. As a result, it is more vital than ever to ensure that a family's successor generations are educated and prepared to inherit and manage these structures for the future.

A successful senior family member may have developed a huge business empire from a tiny start-up. Having perhaps enjoyed few educational or financial advantages themselves, they may have focused on the academic and social success of their children, possibly neglecting to educate them in the values behind the family's wealth creation and the business structures that they will one day take over.

Given the complexity of their legacy, and the possible gaps in their experience and understanding of its implications, trustees, advisers and senior family members need to spend time working with the next generation to develop their ability to take over the family's wealth and use it for their family's benefit and that of wider society.

Harnessing their technological skills and understanding of a globalised world and the problems their generation will face will be key to ensuring that they are able to take forward the legacy their parents and grandparents are hoping to create.



The key to successful succession planning

The most important and difficult aspect of succession planning is enabling parents and children to understand each other. For example, parents may think that their children will automatically take over a family business, but in fact, the child wants to forge their own career. The earlier such an issue comes to light, the easier it will be to accommodate it within a family's succession plan.

Where children are interested in continuing their family's business, parents must learn to accept that, once they are adults, they are capable of taking over aspects of the business and need to be given space to do so, ideally while the parent is there to provide guidance.

For advisers, the most important lesson is to listen and observe. We are taught to understand and explain issues, whether legal or business-related, and to offer solutions to complex problems. While family succession planning also require these skills, the most important thing for an adviser is to take a step back and listen to what each member of the family is saying - and to observe what they are not saying.

Only once an adviser understands what is important to each member of a family, can they help them to achieve a governance or succession plan that works for everyone.

THE NEXT GENERATION AND ESTATE PLANNING:

WHAT MUST TRUSTEES CONSIDER WHEN IT COMES TO GENDER IDENTITY AND SURROGACY

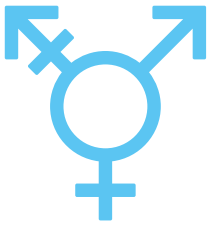


Authored by: Sandra Duerden and Alexander Hawkins - Mourant (Guernsey)

Social and community values permeate and underpin the development of legal institutions. As society changes, so too do the laws that govern that society. The last five decades has seen tremendous social change, perhaps more than any other period of time that came before it. From the growing acceptance of blended families, to support for gay rights, to increasing recognition of different genders as well as the different ways by which people can conceive or have children. All of these changes have demonstrated the reciprocity between law and social change and each has presented new challenges for estate and trust practitioners.

Wealth and succession planning must always be sensitive to and reflect prevailing community values.

Two recent changes in these values, which has seen a shift in the way private client practitioners draft documents and consider planning strategies, include the recognition of different genders and surrogacy.



Gender identity

Whilst data is not yet robust in this area, estimates put the percentage of the UK population who are transgender at 1%, which equates to around 600,000 people. Furthermore, transgender and non-binary (**TGNB**) identification appears to be more common among younger age groups, making this a next generation consideration for private client practitioners.

The Gender Recognition Act 2004 (**Act**) introduced a gender recognition certificate (**GRC**) which allows people to change their legally-recognised gender. A GRC can be used in Guernsey to change a person's birth certificate. Between 2005 and 2019, over 8,000 GRC's were granted in the UK. However, there is data that suggests only a small number of people who identify as transgender actually seek legal recognition through a GRC.

From a wealth planning perspective, as well as from a trust administration point of view, a GRC can have massive ramifications. The Act states that a GRC has no effect on the disposal of property under a trust instrument made before 4 April 2005.

Consider that proposition in this context:

A trust established in 2010 is to be split equally between the settlor's sons. In 2019, a child of the settlor who is a transgender man is granted a GRC, and so is now legally recognised as male. The class of beneficiaries is now wider and the trust must now be split factoring in an additional beneficiary.

So, how should a trustee consider gender identity issues? A trustee does not have a duty to ask beneficiaries about whether they have obtained a GRC if they have not received notice of this prior to making a distribution. However, this does not affect a beneficiary's right to trace property if another person has received that property. It is therefore possible for a

beneficiary to make a claim against a trustee to trace property, even where the trustee has not committed any fault.

In light of changing community attitudes towards TGNB identification, trustees, now more than ever, ought to consider maintaining a personal dialogue with beneficiaries to ensure that they are aware of personal circumstances, especially prior to making distributions.



Surrogacy

Although surrogacy is by no means a new concept, it is increasing. A recent study led by the University of Kent found that a number of parents using a surrogate have almost quadrupled between 2011 and 2021. In particular, there has been a sharp rise in the number of same gender couples applying for parental orders (moving from one-quarter of all applicants to one-third) and around 40% of applicants were between 30 and 39 years of age.

Cultural tensions between older and younger generations about surrogacy should be considered when implementing a succession plan. The settlor's wishes, especially for an older trust, may not reflect future changes in family demographics. This can result in unequal treatment of beneficiaries involved in family set-ups which were not envisaged by the trust instrument.

For example, a settlor may have provided that upon their death, their child's children should join the class of beneficiaries. Would a child born out of surrogacy qualify under that category?

Guernsey public policy and human rights legislation require the Court to construe trust provisions so as to eliminate any discrimination against children who have different status (e.g. so-called 'illegitimate' or adopted children). However, these considerations do not extend to a child born through surrogacy. This is because Guernsey does not, for the time being, recognise surrogacy arrangements entered into by non-Guernsey domiciled parents or give effect to foreign parentage orders[1]. Instead, we look to the common law definition of "children" pre-modern statutes, which implies a child is born from their gestational mother who is married with the natural father. This effectively means that, absent specific provisions in the trust deed, a beneficiary's children who are born via surrogacy could not be treated as a "child" or "issue" of that beneficiary – even if they are born of the gametes of one or both intended parents - for the purposes of the dispositions in the trust. Seeking assistance from the Guernsey courts would be futile since there is no equivalent of the English parentage order, through which the intended parents can confirm their parentage.

This does not mean that children born via surrogacy cannot benefit where the trust provisions are silent on who qualifies as a child or issue. The available remedy in those situations is for the existing beneficiaries/parents to legalise the relationship through adoption. Guernsey recognises adoption orders made in several designated countries or where specific criteria are met.

In adapting to these recent social changes, trustees now more than ever need to embrace a regular dialogue with beneficiaries. It is imperative that a trustee stays abreast of any significant changes in the personal circumstances of the people interested in the trust. As part of this, trustees should also regularly review the terms of the trust, just to make sure that no variations are required in light of a change in personal circumstances of a beneficiary. Particular care should also be given to the drafting of trust instruments, ensuring that parties are specifically defined without using overly restrictive or vague language.



1 The Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009 applies where either of the surrogate parents or the intended parents live in Guernsey.

mourant



Supporting the next generation

"They're an excellent firm. They are very focused on client service, they are really easy to work with and the team are very focused on delivering the best possible result for the client."

Chambers and Partners UK 2022

Our trust and private wealth practitioners operate as a single integrated team collaborating on contentious and non-contentious matters in BVI, Cayman, Guernsey and Jersey through our six locations.

With this distinctive global perspective, we're able to advise impartially on the most appropriate jurisdiction to establish and administer trust and private wealth structures, as well as how to avoid and, if necessary, successfully resolve disputes through our highly experienced team of contentious advisors.

We partner with trustees, ultra-high-net-worth individuals and single and multi-family offices to provide bespoke and seamless solutions focused on growing and protecting wealth, asset protection, philanthropy, sustainability, governance, inter-generational wealth transfer and privacy.

Contact one of our Practice Leaders or Partners for an initial discussion.



Ed Devenport
Global Practice Leader
edward.devenport@mourant.com
+44 1534 676 366



Gilly Kennedy-Smith
gilly.kennedy-smith@mourant.com
+44 1481 739 397



Eleanor Morgan
eleanor.morgan@mourant.com
+1 284 852 1712



Hector Robinson QC
hector.robinson@mourant.com
+1 345 814 9114



Tony Pursall
tony.pursall@mourant.com
+44 20 7796 7603

mourant.com

Follow us:

Offshore Law Firm of the Year 2020 and 2021, *The Lawyer Awards*

BVI | CAYMAN ISLANDS | GUERNSEY | HONG KONG | JERSEY | LONDON

60-SECONDS WITH:

CHRIS MOORCROFT PARTNER HARBOTTLE & LEWIS



Q What do you like most about your job?

A The fact that it is always interesting – principally because it's about individuals and their complexities, weaknesses and problems. I feel like I fell on my feet to work in this area because it is a lot of fun.

Q What would you be doing if you weren't in this profession?

A If I weren't already on a path to having a sensible career as a lawyer, I would almost certainly have had a go at the X Factor in c. 2005. So maybe I would be a failed singer?

Q What's the strangest, most exciting thing you have done in your career?

A Frustratingly… I couldn't possibly tell you. Or even hint at it. Not being able to tell people about some of the interesting stuff we do is one of the biggest frustrations of the job!

Q What is one of your greatest work-related achievements?

A Being part of a team that has gone from 4 private client lawyers when I joined to c. 20 today. We have grown enormously as a team and offering and it has been a privilege to be part of it.

Q If you could give one piece of advice to aspiring lawyers, what would it be?

A Soak up as much learning as you can. Take every opportunity. Read widely and read a lot. You can never know enough.

Q What do you see as the most significant trend in your practice in a year's time?

A Problems in the global economy will drive further inequality, which in turn will continue to ferment a backlash against the very wealthy.

Q What personality trait do you most attribute to your success?

A I tend to be fairly affable and get on with pretty much everyone, which on one level is a simple thing to do. But it helps to have lots of friends and allies as you go through your career.

Q Who has been your biggest role model in the industry?

A The head of our Family team, Catherine Bedford, is a remarkable lawyer and role model. She is absolutely at the top of her game. I have learned a lot from her.

Q What is something you think everyone should do at least once in their lives?

A Las Vegas.

Q You've been granted a one-way ticket to another country of your choice. Where are you going?

A I would have to live La Dolce Vita in Italy.

Q What is a book you think everyone should read and why?

A I'm going to say two: The 100-Year Life by Lynda Gratton & Andrew Scott, which is a brilliant, forward-looking book on how increased longevity will impact individuals and societies, and Stolen Focus by Johann Hari, on the impact of our decreasing attention spans.

Q If you had to sing karaoke right now, which song would you pick?

A Ha – again there are many answers to this because I LOVE karaoke. So long as I can find someone willing to duet, it would be Endless Love by Lionel Richie and Diana Ross. If not then End of the Road by Boyz II Men. I'll happily croon any ballad to be honest, but I do like to roll out Tupac's California Love to surprise people.

FRACTURES IN THE FAMILY:



ADVISING WEALTHY FAMILIES IN THE MIDST OF CONFLICT

Authored by: Bernadette Carey and Sarah-Jane Hall - Carey Olsen

Family feuds can be the greatest source of hurt, and generational wealth can often be the catalyst for irreparable conflict. Where there is great wealth there is also great potential for infighting and acrimony as family members deploy the great resources at their disposal to score points, defend their pride, and establish a leading role in the family. More often than not this is a lose-lose situation: ties are permanently severed and - worse - the family wealth is squandered.

Recent upheavals sweeping the globe, including significant changes in social and familial structures and technological, political and economic shifts, have quite obviously also stoked the fire of underlying family tensions with incendiary results. Often the next generation fails to conform to the expectations of the wealth-originating generation and their goals and ambitions can diverge quite significantly. Even the basic evolution of cultures and beliefs, and a new generation's exposure to different worlds and thought processes (not to mention changing risk appetites), can cause ruptures. Sometimes these can be healed, occasionally they are incurable.



Sources of pain: generational gaps and sibling rivalries

A significant threat to unity amongst wealthy families is the absence of - or a dysfunctional approach to - succession planning. There can sometimes be a, perhaps understandable, tendency for individuals to shy away from contemplating their deaths and entering into meaningful discussions with their family about the future. In some cases, there may be a temptation for the family matriarch or patriarch to use their wealth as a mechanism for enforcing their wishes on their children and grandchildren – even from beyond the grave. This can be harmful both at an intergenerational and intragenerational level, opening up the field to sibling rivalries and disputes.



The assimilation of the next generation into the family business can also pose substantial challenges if it is not carefully managed with a guiding hand. Rifts frequently arise as new generations seek to carve out their own niche and take the business in a new direction by revamping long-standing policies, procedures and processes. This can be an emotive issue for many members of the originating generation whose sense of self identity is tied up with the business and who have devoted their life to its success. Conversely, the source of strife may be an individual's decision to "go their own way" rather than entering the fold of the family enterprise. A reluctance by heirs to follow the same path as their parents can breed hostility as such decisions can often be viewed as shirking responsibility and prioritising the individual's wishes over the interests of the family as a whole.

Another cause of family contention is the rise of new ideologies amongst forthcoming generations which conflict, sometimes violently, with the values of their forebears. There has been a trend amongst the next generation of wealthy individuals to show disinterest (and in some cases active distaste for) the family wealth and there is now a movement amongst some to disavow their inherited wealth. This may particularly be the case where there is a perception that family wealth promotes social injustice or has historically been connected to or generated from activities which offend against modern ethical codes (some examples could include investments in fossil fuels, tobacco and activities which exploit vulnerable or indigenous groups). Such views may be an anathema to other family members, who may consider such ideas to be self-entitled and naive.



Antagonisms may also arise where there are differences in opinion regarding the investment of the family wealth. Some members of the family may be keen to cash in on high-yield, and what might still be considered as higher-risk investments (i.e. psychedelics, cryptocurrencies, NFTs, apps and video games). This can be alarming for earlier generations, where the family wealth originally derives from a conservative strategy built on traditional sectors such as retail, property and manufacturing.

Solutions and strategies

The old adage is correct: prevention is always the best form of cure.

Early engagement with the next generation and offering up an effective succession planning strategy is an important tool for promoting family harmony.

This should entail a consultative approach, steered by professional advisers. It is important that any agreed strategy is consistently aligned across the family's private and business interests. Thoughtfully drafted wills, trusts, family charters and shareholder agreements are some of the essential tools for achieving these ends. Inbuilt flexibility is essential to ensure that any planning can cater for a family's current and future needs.

Where the malady of family discord already exists, more drastic intervention may be required. In some cases, for instance where existing wealth holding structures are no longer fit for purpose, the only option may be to operate and separate. It is usually possible to restructure old trusts and companies which no longer fulfil the family's requirements. For instance, it may be possible to vary existing trusts or create separate sub-funds within a trust to better serve the family's needs. In some cases, administrative applications to court will be required to aid this process. Such applications can also assist with the development of new investment mandates. An even handed and neutral approach from the family's trustees can aid the healing process: sometimes it can be effective for the beneficiaries to have different points of contact at the trustee company. Other external avenues of guidance should not be disregarded: family counselling and mediation can be a more constructive, cost-effective and private alternative to airing grievances in contentious court proceedings.

Of course, sometimes there are wounds which are too deep to heal and it may be cleaner to amputate and cauterise than to limp on. For instance, where it is not possible to resolve animosity between different branches of the family it may be possible to create separate trusts from an existing trust, possibly with different trustees, to hold each branch's share of the wealth. Where there is a family business involved, the option of a buyout may be the best solution for moving forwards.

Family disputes are not always fatal and, if carefully advised, families can regroup and restructure. Often this can result in a healthier family with a revitalised wealth generation plan.



CAREY OLSEN

Our Trusts and Private Wealth practice

TOP RANKED
Chambers
Global
2022
Carey Olsen

Carey Olsen has one of the largest offshore trusts and private wealth legal practices covering Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey and Jersey.

Our offices in Hong Kong and Singapore also ensure we are able to advise clients in Asia on both contentious and non-contentious trusts and private wealth matters.

We have the scale and experience to resource the most demanding and complex matters as well as the day-to-day instructions.

We represent professional trustees, private individuals and families, banks, financial institutions and charities from all over the world.

To find out more, please contact one of the lawyers listed.

"Its trusts and fiduciary group is in a class of its own."

Chambers and Partners



Keith Robinson
Partner – Head of Trusts and Private Wealth, Bermuda

D +1 441 542 4502
E keith.robinson@careyolsen.com



Bernadette Carey
Partner – Head of Trusts and Private Wealth, BVI and Cayman Islands

D +1 345 749 2025
E bernadette.carey@careyolsen.com



Russell Clark
Partner – Head of Trusts and Private Wealth, Guernsey

D +44 (0)1481 732049
E russell.clark@careyolsen.com



Siobhan Riley
Partner – Head of Trusts and Private Wealth, Jersey

D +44 (0)1534 822355
E siobhan.riley@careyolsen.com



Rachel Yao
Counsel – Head of Trusts and Private Wealth, Asia

D +65 6911 8088
E rachel.yao@careyolsen.com

Carey Olsen Bermuda Limited is a company limited by shares incorporated in Bermuda and approved and recognised under the Bermuda Bar (Professional Companies) Rules 2009. The use of the title "Partner" is merely to denote seniority. Services are provided on the basis of our current terms of business, which can be viewed at: www.careyolsen.com/terms-business.

Wilberforce CHAMBERS

wilberforce.co.uk

We have long been regarded as a leading chambers in the fields of trusts, related tax work, probate and estates.

With strength in depth at silk and junior level, we have a wide range of barristers who are skilled in both contentious and non-contentious private client matters, spanning the UK and offshore jurisdictions.



> "Probably the leading brand in trust litigation."

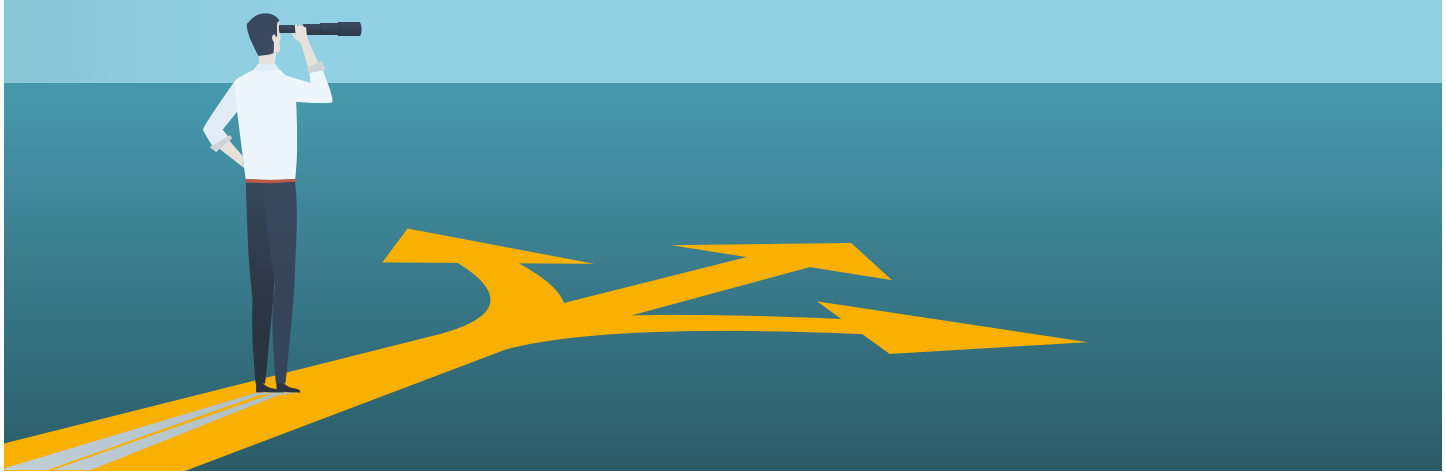
Chambers HNW Guide, 2021

A top-ranked set in The Legal 500 and Chambers & Partners, and winner of Chambers of the Year at the 2020 Chambers HNW Awards.

+44 (0)20 7306 0102 chambers@wilberforce.co.uk
Wilberforce Chambers, 8 New Square, Lincoln's Inn, London, WC2A 2QP

TRUSTS FOR THE NEXT GENERATION:

RESPONDING TO AND PLANNING FOR CHANGES IN FAMILY STRUCTURES



Authored by: Joseph Steadman - Wilberforce Chambers

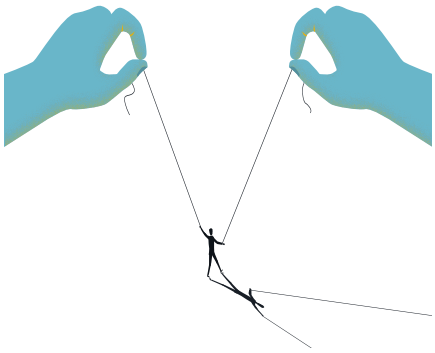
If it were possible to travel back in time 100 years, and to ask the man on the Clapham Omnibus – who had already by then found his way into the Law Reports: see *McQuire v Western Morning News* [1903] 2 K.B. 100 at 109 – to describe a family, he might have said something like: "two parents and their children".

And it would probably have gone without saying that those two parents would have been one (cisgender) man and one (cisgender) woman, rearing their own biological children, who were conceived without any scientific intervention and – perhaps slightly less obviously – born within wedlock.

Only 100 years later, modern society recognises a much richer variety of identities and of family structures. There are unmarried parents and same-sex married or civil-partnered parents; there are single-parent families and "blended" families; there are adopted children, step-children, and children born following assisted conception or surrogacy; there are transgender people and non-binary people.

In England and Wales, those societal changes have to a large extent been reflected – albeit often belatedly and imperfectly – in legislative changes. (For a fuller account of these changes and their limitations, see: *Modern Family: trusts in a time of rapid social change* (2002) 28(4) Trusts & Trustees 265.) The concept of family has been expanded in relation to new private trusts. But in relation to older trusts – particularly those established fifty or more years ago, before the relevant legislation came into force – determining the meaning of, for instance, "spouse" or "child" or "relative" will not necessarily be straightforward.

And inevitably, each individual will have their own understanding of what constitutes "family" for them. So what should our advice be to next-generation clients who wish to ensure that the law will support that understanding—both now, and in the longer term?



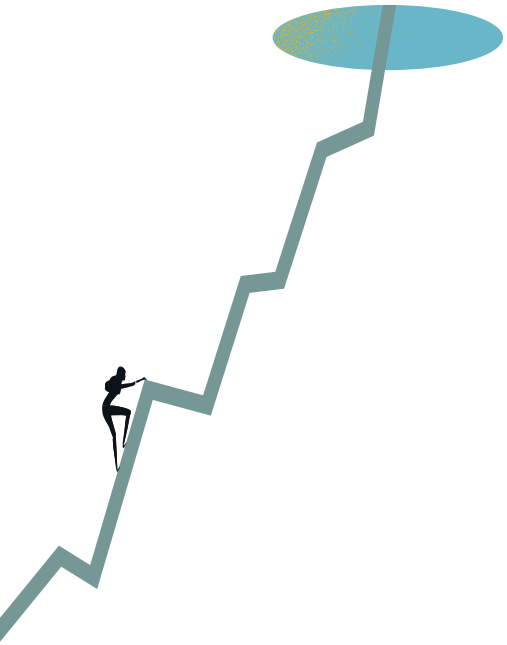
Establishing trusts: the age-old tension between flexibility and control

The legislative changes mentioned above have significantly expanded the restrictive and outdated common law conception of family, providing a "baseline" for new private trusts. So, spouses will include same-sex spouses and children will – in broad terms – include "illegitimate" and adopted children as well as those born as a result of fertility treatment or surrogacy arrangements.

However, by including **definitions of key relationships**, settlors are able to depart from that legislative baseline in either direction—in relation to private trusts, it only applies subject to any contrary intention expressed in the trust instrument. So, for example, it would be possible in principle for a new trust deed to restrict the meaning of the term "spouse" to exclude a same-sex spouse (albeit that future generations might seek to remove that restriction, as discussed below). And on the other hand, it would be possible for a new trust deed to expand the meaning of the term "child" to include a step-child, or to make provision for civil partners and cohabitants, or for partners who have undergone a ceremony which does not meet the requirements to be recognised as marriage in England and Wales.

Flexibility can be provided by including **powers of addition or amendment**, so as to enable future trustees to respond to changing conceptions of the family and developments in the legal recognition of different family structures. To temper the breadth of those powers, albeit in a non-binding manner, the settlor's personal views can be set out in a letter of wishes.

The key – as ever in trust drafting – is **taking care to obtain full instructions** from the settlor. What does family mean to them? If they are creating a trust for successive generations of children, what is it about their relationship with those children which makes them beneficiaries? Is it simple genetics, or something more complex? How do they feel about the trust changing with the times? Are there red lines they would wish to draw?



Changing trusts: the opportunity to bring trusts "up-to-date"

In relation to existing trusts, different considerations arise. Trustees and beneficiaries must work with what they have, and in the case of older trusts this will often mean applying a different legislative baseline or even returning to the restrictive common law. Given the rapid pace of social change in the past few decades, it is advisable for all trustees and beneficiaries to consider whether it would be appropriate to broaden their trusts' conception of the family, and if so how that can be achieved.

The first and most obvious way is through powers in the trust instrument, often in conjunction with a blessing application (examples include Pemberton v Pemberton [2016] WTLR 1817, Edward, Duke of Somerset v Fitzgerald [2019] WTLR 771, and PQ v RS [2019] EWHC 1643 (Ch)).

Powers of amendment, addition or appointment are the obvious candidates, though care needs to be taken – for example – to ensure that there is no "fraud on a power". In considering whether such powers are available, it is worth noting that – at least in England and Wales – a power can be exercised "for the benefit of" a beneficiary without it conferring a direct financial benefit upon them.

The second way is through a **variation** of the trust. Again, the courts have shown themselves to be flexible when answering the question whether a variation would be for the benefit of the beneficiaries. So, in *Re Remnant's Settlement Trusts* [1970] Ch 560 – where a trust instrument expressly discriminated against Roman Catholics – the court considered that it would not be in the interest of the members of the beneficial class to be put in the invidious position of choosing between religious faith and taking benefits under the trust, and that the provisions of the trust discriminating against Roman Catholics could cause dissension and dissatisfaction within the family. It was therefore in the interests of the class for the discriminatory provisions to be removed.

The third way is through a **construction** application. There are several examples of the court being prepared to adopt a broad construction of terms such as "spouse" and "child" even where the legislation in force at the relevant time would not lead to that construction. In some cases – such as *Re Erskine 1948 Trust* [2012] 3 WLR 913 and *Re Hand's Will Trust* [2017] Ch 449, which each concerned whether the term "child" included adopted children – that conclusion was reached by applying human rights law.

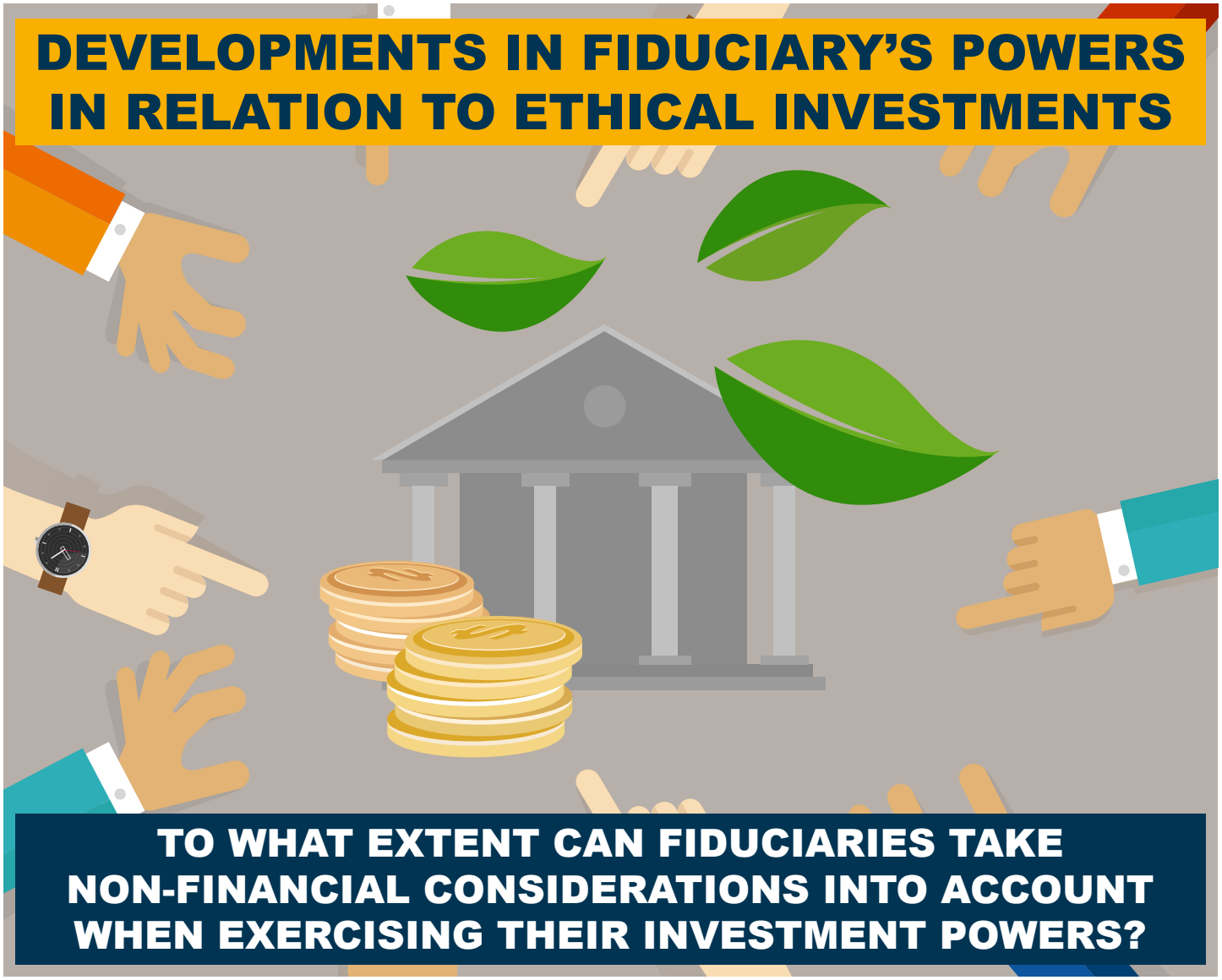
But that is not so in the most recent example. In *Goodrich v AB* [2022] EWHC 81 (Ch) – which concerned an employee benefit trust established in 1990 – "spouse" was held to include same-sex spouses simply as a matter of construction and without recourse to human rights law (though it is worth noting that "spouse" was held not to include civil partners, and "child" was held not to include step-children).



Conclusion

Trusts are, by their nature, capable of being long-term institutions. They are also capable of being flexible institutions. Given the possibility – and indeed likelihood – of the social and legal context changing around a trust during its lifetime, the question for those involved in its creation and subsequent administration is how they can and should plan for and respond to such changes. And helping clients reach answers to that question will be a source of interesting advisory and contentious work for the foreseeable future.

DEVELOPMENTS IN FIDUCIARY'S POWERS IN RELATION TO ETHICAL INVESTMENTS



TO WHAT EXTENT CAN FIDUCIARIES TAKE NON-FINANCIAL CONSIDERATIONS INTO ACCOUNT WHEN EXERCISING THEIR INVESTMENT POWERS?

Authored by: Ashleigh Carr and Maryam Oghanna - Forsters

It seems like everyone is talking about 'ethical investing'. In this article, ethical investing can be read to mean "an investment made not, or not entirely, for commercial reasons but in the belief that social, environmental, political or moral considerations make it, or also make it, appropriate", (per Lord Wilson in R (Palestine Solidarity Campaign Ltd & Anor) v Secretary of State for Communities and Local Government [2020] UKSC 16).

This may inhabit different forms, including 'ESG' (measuring the ethical impact of an investment using Environmental, Social and Governance indicators), Socially Responsible Investing or 'SRI' (which goes one step further, by screening and avoiding investments based solely on ethical considerations) and Impact Investing (investments which aim to create financial returns and measurable social or environmental impact).

Whilst the concept of ethical investing dates back many hundreds of years, it is increasingly becoming a hot topic for private wealth advisors, many of whom are reporting a growing demand, particularly amongst 'next gens'.

This influence affects trustees and other fiduciaries who must consider whether and what weight to give non-financial factors when performing their fiduciary duties. Whilst the law regarding trustee duties in relation to investments is well established, the bedrock cases significantly predate the growing trend in ethical investing. New law is arguably required to reflect social, economic and environmental developments as the climate crisis and sustainability continue to climb the global agenda.

In this article we look briefly at case law which touches on the tension between ethical investing and prioritising financial reward, and the legal guidance and commentary which is emerging on the topic.



Case law

The starting point when considering the case law on non-financial considerations is **Cowan v Scargill [1985] Ch 270**. In that case, Sir Robert Megarry V-C held that the board of trustees of a mineworkers' pension scheme were in breach of their fiduciary duties by blocking overseas investments and investments which were in competition with coal.

He reasoned that, where the purpose of the trust is to provide financial benefits for the beneficiaries, the trustees should exercise their power of investment to yield the best return (judged in relation to the risks of the investments in question). Trustees must exercise their powers in the best interests of the beneficiaries and put aside their own personal interests and views.

However, it was noted that financial benefit would not always be the trustees' sole concern: "*benefit*" has a very wide meaning and it may be reasonable to prioritise benefits other than financial ones, where all the beneficiaries are adults and support an alternative policy. However, "*such cases are likely to be very rare*", and where the trusts are for the provision of financial benefit, there would be a heavy burden on anyone who asserted that it was for the benefit of the beneficiaries to receive less.

Whilst the impact of Cowan has been debated, it is unlikely to offer much comfort to trustees and beneficiaries who wish to prioritise benefits other than financial ones. This is demonstrated by the recent case **McGaughey v Universities Superannuation Scheme Ltd [2022] EWHC 1233 (Ch)** which concerned two members of a pension scheme who were unhappy with the trustees' continued investment in fossil fuels. Instead of alleging that the trustees had a duty to sell its fossil fuel investments for ethical reasons, the claimants pursued a claim on the basis that the pension scheme's continued investment in fossil fuels represented a breach of their directors' duties pursuant to sections 171 and 172 of the Companies Act 2006. Their claim ultimately failed.

The Court noted that the claimants had not run the ethical argument "*no doubt because the Court rejected such an argument in Cowan v Scargill [1985]*" and suggested that the more appropriate claim would have been a breach of trust claim against the company, despite the practical difficulties that would have arisen with that claim.

The position is slightly different for charitable trusts. *Cowan* was distinguished in **Harries v The Church Commissioners for England [1992] 1 WLR 1241** ("the Bishop of Oxford case") which was, until recently, the only reported case dealing with ethical investments by charities. Here, the Bishop of Oxford was concerned that, by permitting investments in South Africa, the Church Commissioners of England failed to sufficiently take into account the underlying purpose for which the assets were held.

Sir Donald Nicholls V-C held that where the trustees held investments, the starting point (similarly to *Cowan*) is that the trust will be best served by the trustees seeking to obtain the maximum financial return. However, the decision goes further than Cowan in that he recognised that there were certain exceptions to the general rule: (i) where the nature of the investments would directly conflict with the charity's purposes the charity; (ii) where the investment may indirectly conflict with the charity's purposes (such as through alienating certain donors or beneficiaries); and (iii) where there is little or no risk of significant financial detriment to the charity.

It was unclear whether the Bishop of Oxford case created an "absolute prohibition" on making investments that directly conflicted with the charity's purposes or objects. The High Court recently considered that question in **Butler-Sloss v The Charity Commission for England and Wales [2022] EWHC 974 (Ch)**, in which the trustees of two charities sought the court's blessing of the adoption of new investment policies which would align the charities' investments with the Paris Agreement (which aims to limit global warming). . The judge concluded that there was no absolute prohibition on directly conflicting investments (a view which seems to have been shared by Charity Commission, as expressed in its current guidance on charity's investments, CC14, and all of the parties in the case). Instead, the trustees have to perform a discretionary exercise, balancing against the potentially conflicting investments against the risk of financial detriment from implementation of that policy. He further held that the trustees were permitted to adopt the proposed investment policy and that in doing so would discharge their duties in respect of the proper exercise of their powers of investment.

Commentary

There are differing views on the impact of *Cowan* and the scope of trustees' duties to consider ethical investing. Some of the legal commentary suggests that Cowan is misunderstood and that the nature of trustees' fiduciary investment duty has always been sufficiently flexible to allowed pension schemes to consider ethical investing. Furthermore, guidance in the charity sector provides greater scope for fiduciaries to take a balanced approach to considering investments and what is in the interests of the charity.

Trust law already acknowledges that '*benefit*' is not limited to financial

returns, yet it remains unclear where to draw the line. Cowan still appears to represent a barrier to ethical investing, at least where the only demonstratable benefit is ethical and not financial. The thrust of much of the emerging legal commentary is that this is an unnecessarily restrictive approach, and there is increasing feeling that financial institutions and other organisations should take nonfinancial risks into account when exercising fiduciary duties.

This may partly be due to the dichotomy between ethical investing and financial reward becoming outdated, as acknowledged by Lord Sales in a recent lecture paper entitled 'Directors' duties and climate change:

> Keeping pace with environmental Challenges': "there is much force in the view that directors may and, increasingly, must take into account and accord significant weight to climate change in their decision-making. This is not least because a failure to act sustainably is more and more likely to have adverse financial impacts on companies who are, or are perceived to be, behind the curve on environmental issues".

As Lord Sales concluded in the context of company law, there appears to be justification for trust law to be modified to enable trustees to accord greater



weight to ethical issues than has previously been possible.

Ethical investing is only set to grow in popularity and can be a significant force for change. Market pressures such as changing societal attitudes and reputational risk are bringing ethical investing to the fore at pace. In this brave new world, trustees and beneficiaries alike would benefit from further direction elaborating on, and arguably supporting, a fiduciary's ability to prioritise ethical investing.

There is an emerging view that judicial re-examination may prove useful, but that the real solution will be legislation. We are already seeing new legislation, policy and guidance being introduced in other areas (for example, by the Companies Act 2006 and Occupational Pension Schemes (Investment) Regulations 2005, the Charities (Projection and Social Investment) Act 2016 and guidance by both the Law Commission and Charity Commission). However, the Trustee Act 2000 fails to deal with non-financial considerations. A statutory update may provide greater clarity and certainty.

In practice, and at least whilst Cowan remains good law, it seems that the identity of the trustees and, possibly more importantly, beneficiaries will have the biggest impact on the uptake of ethical investing in the context of individual trusts. As next gens increasingly populate the beneficial classes of these structures, we could reasonably expect to see an increasing positive trend towards ethical investing. Whilst legal developments are awaited to support ethical investing, there are practical steps which might usefully be taken to support the consideration of non-financial benefit when exercising fiduciary powers, and for mitigating risk.

If settlors want to provide trustees with the freedom or even an incentive to invest ethically, they should adopt a similar stance as the regulatory and legislative approach in England and Wales in the context of company law, namely, to seek to inject ethical considerations into their decision-making processes. When settling new structures, settlors should think carefully about the purpose and aims of the fund, and consider utilising charitable trusts, purpose trusts and/or foundations. Where there is a discretionary trust, careful thought should be given to the terms of the trust, which can record the settlor's expectations as to the extent to which trustees can, or should, take non-financial benefits into consideration.

By taking this approach, settlors can incorporate sustainability and ethical investing into a trustee's duty, instead of leaving it as an obstacle, whilst we wait for the law to catch up with the shift in approach to investing that many next gens are already demanding.





YOUR **PRIVATE WEALTH MANAGEMENT** JOURNEY

Navigating the private wealth management landscape for over 40 years to become the largest independent trust company in the Cayman Islands takes direction and focus.

At R&H Trust & Corporate, our skill lies in remaining responsive and adaptable to the needs of our clients, and striving to find solutions to match their distinctive and evolving circumstances.

Our personal, client-centric relationships are our core asset and have been instrumental for building and maintaining our trusted advisor role over many generations.

R&H TRUST & CORPORATE

- Trust Services
- Corporate Services
- Contentious Trusts
- Executor & Estate Administration
- Protector
- Foundation Companies
- Private Trust Companies
- Family Office
- Accounting
- Enforcer
- STAR Trust
- Aircraft and Shipping Registration

Contacts:



Alan Milgate
Chairman
Alan.Milgate@rawlinson-hunter.com.ky



Tamara Corbin
Director
Tamara.Corbin@rawlinson-hunter.com.ky



Amanda Bako
Director
Amanda.Bako@rawlinson-hunter.com.ky



Philippa Stokes
Director
Philippa.Stokes@rawlinson-hunter.com.ky

RHTrust.ky

WHO ARE THEY AND WHAT IS SO MYSTERIOUS ABOUT THE 'NEXT GEN'?



Authored by: Lauretta Bennett - Rawlinson & Hunter Trust and Corporate

The Next Gen(s) with their very own colloquial terms, are filled with vibrancy, individuality, intelligence and passion. They are advocates of international social, political and environmental causes. Having been exposed to terrorism, economic instability, climate change and different humanitarian challenges around the world, the Next Gens are stalwarts for human rights and social justice and eager to make this world a better place.

Whether Gen Y (the Millennials born 1982-1994), Gen Z (the Zoomers born 1995-2012) or Gen Alpha (the i-Generation born 2013-2025), these digital natives naturally align themselves with technology for communication, shopping, education and socialising. They collaborate with each other and share a positive mindset.

On the other hand, their predecessors (the Silent Gen born 1925-1945, Baby Boomers born 1946-1963 and Gen X 1964-1994) having lived through some major world events like World War II, the Great Depression, the Atomic Bomb and economic turmoil has resulted in many different beliefs and ideals than those of newer generations. One job or one marriage often lasted an entire lifetime. The Boomers, often being described as 'a generation of workaholics', value teamwork, growth and success. Due to their belief in hierarchal structure and traditional approach, they may find it more difficult to adjust and adapt to modern flexibility trends than that of our new generations.



Approach to Generational Wealth

It should be no surprise then that the approach to generational wealth and family values can differ greatly from generation to generation. The Boomers, for example, may wish to preserve their hard-earned family wealth and have their same ideals and values carried on by the Next Gen. However, with each new generation comes new perspectives. Having an innovative and entrepreneurial mindset in this ever evolving world the Next Gen may not have these same ideals and beliefs. They may have very different plans for their future inheritance than traditional family values and wealth preservation. The transfer of family wealth and legacy to the Next Gen can then often become a challenging and complex road to navigate.

There is the old adage from the 20th century 'shirtsleeves to shirtsleeves in three generations' which is intended to mean that wealth gained in one generation will be eroded by the third.

According to Forbes "Millennials are banking on the Great Wealth Transfer. The Silent Generation and the Baby Boomers, upon their death, will transfer an estimated $30 to $68 trillion to adult children' in the next few years.

So will this old adage stand up?

To avoid becoming a shirtsleeve statistic, families can take certain approaches to ensure effective family succession to their Next Gen.

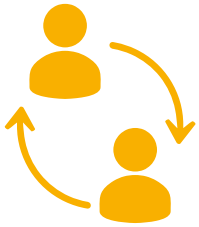
If a family's goals and values are misaligned, a family will not be unified which can result in breakdown in communication and next generation succession. In contrast, families that place emphasis on a value based culture and work to ensure that all family members are aligned in the family vision and have a shared purpose are most likely to succeed in a multi-generational transfer of wealth and legacy. Arranging and attending regular family meetings and gatherings ensures that family cohesion is maintained. All members, including Next Gen leadership, can participate and provide their input in the family values and what they feel is important to them. Differences and skill sets are identified and accepted. The family bond across different family segments is enhanced and a sense of belonging becomes more defined.



The unique skill set of the Next Gen

Due to advanced technology and ease of access to the internet, the answers to most of life's questions are one click away. The Next Gen have access to investment and financial information at their fingertips. There are exposed and educated in block chain technology and digital assets. Being passionate supporters of climate and social change, LGBTQI+ causes and other human rights, the Next Gen may wish to invest some of the family's wealth for the betterment of the world or bring innovative ideas to the table. This may present a challenge for current family leaders and advisors to manage due to their traditional investment styles and support of different causes. However, to disregard or ignore such values and beliefs could lead to feelings of alienation and being undervalued by the older generation. Instead of being dismissed, their ideas should be explored.

To integrate passions and skill set effectively into the family enterprise creates a sense of personal connection, business acumen and self-worth for the Next Gen, while adding new values to the family cause.



Succession Planning

When it comes to succession planning, open and honest lines of communication is vital. This is important from both the current family leader's perspective and the younger family members. Perceived conflicting feelings of either a sense of entitlement or feelings of entrapment can be common amongst the Next Gen. Some junior family members may believe the natural succession for all roles and responsibilities would be handed over to them and feel comfortable with this idea, even though that may not be the case. On the other hand, other members of the Next Gen may feel overwhelmed and burdened at the thought of such responsibility and feel trapped within the family and its business. They may have a strong desire to leave, to build a career of their own and to establish their own independent life. Current family leaders should be very mindful of this, especially if certain members of the Next Gen are expected to take the reins. Failure to effectively and transparently manage expectations is a common reason for relationship breakdowns. An open dialogue is necessary to ensure that all family members understand their roles and responsibilities and the specific skill sets required to carry those out.

In order to prepare the Next Gen for their responsibilities they must be equipped with the proper tools to ensure they can make informed business decisions. Traditional education, together with practical experience, and exposure to the family business is critical. Involvement in the day to day running of the family enterprise will allow for greater decision making in the future.

Having established that a shared sense of purpose, open and regular communication, transparency, education and involvement are key tools to succession planning, the importance of family governance for multi-generational families cannot be overstated. While governance in a family business is usually informal rather than the more formal governance as seen in larger corporate institutions, the use of Family Charters and Family Councils will not only ensure a well-governed decision-making process but will also provide clear guidance and support for the Next Gen to successfully carry out their new responsibilities.

As professional Trust Advisors, we form an integral part of our client's family succession planning needs. Our ability to adapt to new trends and be receptive to change is essentially the ability to evolve with the world around us.

By taking time to listen and understand our client's needs, and their family's diverse generational views, we can create not only long-term relationships but also ensure the Next Gen are thoughtful stewards for the family's wealth and lasting legacy.

INTRODUCING THE NEXT GENERATION AND KEEPING THEM ENGAGED



Authored by: Frederick Bjørn - Payne Hicks Beach

If you have sat through a lecture on a topic outside your sphere of expertise, you will have a sense of what it is like for the "Next Gen" to be thrown aimlessly into their family's business affairs. They have been 'introduced' to the business, but have they been engaged? In this article we consider how you might go about ensuring the Next Generation are both introduced and engaged from the outset, and how their engagement might be built upon.

What do we mean by the terms 'family business' and 'Next Gen'? For these purposes we adopt a simplistic definition of each:

- a family business is one where family members of different generations have some form of collective ownership, whether this is purely investment or with a trading element; and
- the Next Gen, refers to the generation which has yet to become materially involved in the collective ownership and is a family member but not an owner.

As advisors our clients will generally be owners of the business and will often ask when it is appropriate to involve the Next Gen. There is, of course, no right answer to this and it is easy to trot out platitudes – 'it depends', 'each family is different' etc, but ultimately the clients are looking for guidance as to what they can do to introduce the next generation to their business and to engage them, so that they can become responsible owners themselves.



Introducing the Next Gen to the business brings with it the fear that they will become entitled and will lose the will to succeed in their own right. This fear may well be justified, but it is often a delusion that it is the introduction to the business that creates apathy; after all it is unlikely that the family wealth has gone unnoticed during the Next Gen's formative years. So how might one set about the introduction?

1. An introduction does not mean a promise that 'one day this will all be yours' – it is the beginning of an education and an opportunity to teach the Next Gen about the history behind the family business and the responsibility that comes with ownership and involvement. It is also an understanding that not everyone will want to be part of the family business, at least in its current guise, and that this is not necessarily a bad thing.

2. The 'Three Circle Model' used when advising family businesses distinguishes between the circles of family, business and ownership. When introducing the business, it is important to bear these circles in mind. A couple of questions the circles may raise are:

A What are we introducing the Next Gen to? There are plenty of decisions and issues that are family driven and outside the scope of business and ownership. These range from use of the family 'toys' (holiday properties, boats etc) to the family's philanthropic endeavours. Discussions in this area can start at any time, and are natural ways to get a family discussing their views and understanding the skills required to work collaboratively with other family members. This creates a platform from which to consider bringing the Next Gen in on the business side, if this is appropriate, and ultimately as owners.

B Is it most beneficial for the introduction to come from the CEO, if the CEO is also the patriarch/matriarch? The family dynamic is always going to be relevant when advising a family business. Whether it is right to introduce the Next Gen with their seniors in attendance is a key consideration. The process can be daunting and it may be that a more informal setting and the absence of more senior members can help to pave the way.

C Are the advisors to the 'controlling generation' appropriate for the Next Gen? At a professional level it is key to choose the right "staff" and to ask yourself whether the lead adviser to the family is the right person to coordinate the Next Gen's introduction. Might there be someone better placed to do this who will make them feel more at ease or who they feel will be 'on their side'. Bear in mind the logical assumption from the Next Gen that everything they say or do will ultimately be fed back up the generations. Client confidentiality obviously precludes this, but the concern will be evident.

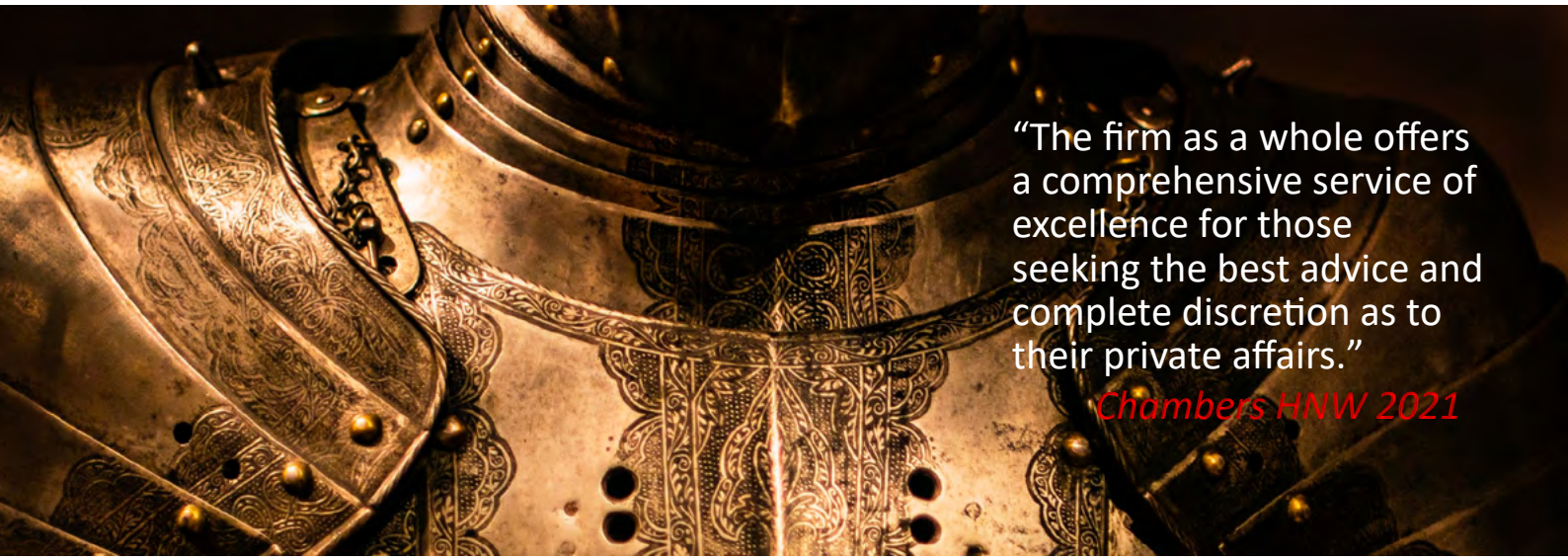
3 Having introduced the Next Gen to the family's business affairs, it is important to consider what it is that matters to the Next Gen, as this will be a key step in engaging them. Are they driven by the same things their parents/ grandparents are driven by? If not, those generations will need to tailor their approach if they are to help the Next Gen 'buy in' to what has been built. This may be a difficult step, and one which the senior generations are reluctant to accept or adapt to, as to their mind it may demonstrate ungratefulness or immaturity. Discussions in this area can be fraught and emotive, but equally, approached in the right way they can be productive in helping generations to understand each other.

4 It is one thing to engage the Next Gen at the outset, but how is that engagement retained? A key element here is the dissemination of communication and advice. It is important that this is pitched at the right level but equally does not patronize. It is easy to forget that the advisors, and indeed the family running the operations of the business, are living and breathing the various structures and dynamics. At the outset, the Next Gen will have limited knowledge of the background and indeed the technical workings. Merely lecturing them on this is unlikely to create engagement. It is useful to find a medium and approach that allows them to assimilate the information at their own speed and to find themes of interest.

As a concluding point, the introduction and engagement of the Next Gen is not a one way street. They will have plenty to offer in family discussions and their thoughts and opinions need to be respected if they are to be engaged.



PAYNE | HICKS | BEACH



Bespoke legal services. Outstanding personal service.

Payne Hicks Beach is a leading private client law firm providing specialist advice to high-net-worth individuals, families, family offices, trustees, commercial clients and family businesses. We regularly advise high profile families and deliver a personal, partner-led service.

Our work is both domestic and international and we are used to working with advisors in a range of jurisdictions, co-ordinating complex advice, acting as a client's trusted advisor on a myriad of issues, and delivering a seamless client service across our practice areas.

Well known for our incisive, straightforward and solution-led advice, we always take the time to understand our clients' needs, then advise objectively and sensitively to suit their particular circumstances.

- Private Client
- Citizenship & Immigration
- Privacy & Media
- Agriculture & Landed Estates
- Employment
- Contentious Trusts & Probate
- Family
- Dispute Resolution
- Property
- Corporate

LEGAL 500 UK — LEADING FIRM — 2022

CHAMBERS UK — LEADING FIRM — 2022

CHAMBERS HNW — LEADING FIRM — 2021

THE TIMES — BEST LAW FIRMS — 2022

EPRIVATE CLIENT — TOP LAW FIRM — 2021

For further information please contact:
Robert Brodrick, Partner, Private Client rbrodrick@phb.co.uk
Richard Manyon, Partner, Dispute Resolution rmanyon@phb.co.uk
Jessica Henson, Partner, Dispute Resolution jhenson@phb.co.uk

Payne Hicks Beach LLP, 10 New Square, Lincoln's Inn, London WC2A 3QG
Tel: 020 7465 4300 Fax: 020 7465 4400 www.phb.co.uk

The firm is authorised and regulated by the Solicitors Regulation Authority: SRA Number 807106 © 2021 Payne Hicks Beach LLP

COLLAS·CRILL



An extension of your team

With matters requiring offshore expertise, you need lawyers who know their stuff, understand your clients' needs and get it right first time. At Collas Crill, we will always strive to achieve your goals when representing you offshore. We are an extension of your team - when you succeed, we do too.

To find out how we can partner with you, visit collascrill.com

WE ARE TEAM PLAYERS | WE ARE OFFSHORE LAW | WE ARE COLLAS CRILL

BVI | Cayman | Guernsey | Jersey | London

Private Client | Dispute Resolution | Corporate | Risk & Regulatory | Property

FAMILY WEALTH MANAGEMENT IS EVOLVING – ARE YOU KEEPING UP?



Authored by: Kellyann Ozouf, Angela Calnan and Sophia Moustras - Collas Crill

Building relations with client's successors should be a key objective for all advisers. A proactive approach to getting to know the next generation in a family is imperative if that business relationship is to be retained following the death of the patriarch/matriarch and if the adviser is to become the family's 'trusted adviser'.

The transfer of wealth places new demands on advisers to support families through succession and advisers should consider adapting a forward-thinking and dynamic approach for a smooth transition across successive generations.

Changing preferences and priorities

Next gens see the world differently and have different appetites for risk, lifestyle, diversity and financial needs than their predecessors. The first generation usually has a very low risk appetite and seeks to select investments which will preserve and enhance wealth. The next generation is known to have a more environmentally conscious outlook, focused on environmental change and sustainability and being driven by a growing interest in societal and ecological concerns.

Deloitte conducted a survey of Millenials and Gen Zs in 2021[1], reporting that:

"respondents are channeling their energies toward meaningful action—increasing political involvement, aligning spending and career choices with their values, and driving change on societal issues that matter most to them. In turn, as we have repeatedly found over the years, these generations expect institutions like businesses and governments to do more."

The report went on to state that:

"As consumers, millennials and Gen Zs continue to make decisions aligned with their values. More than a quarter of respondents say businesses' impact (both positive and negative) on the environment has influenced their buying decisions."

We are seeing businesses take a closer look at their values and commitment to corporate social responsibility. Those businesses are now also being regularly quizzed on these matters, often by other businesses who take these subjects very seriously themselves.

As a law firm, we regularly respond to requests for information from global banks and onshore law firms we work with on our plans, priorities and progress in these areas. We are

1 https://www2.deloitte.com/global/en/pages/about-deloitte/press-releases/in-its-10th-year-the-deloitte-global-millennial-and-gen-z-survey-reveals-two-generations-pushing-for-social-change-and-accountability.html

also heavily focused on diversity and inclusion and we find that this is an area that the next gen expect us to be alive to; often asking for statistics around the make-up of our firm from the top down before confirming instructions. This has driven significant change in the financial services sector as a whole.

It is not enough to be able to talk about these matters. Businesses need to be able to demonstrate what they are doing in these areas to have any chance of retaining a relationship with a patriarch/matriarch's next generation.



Approach with the next gen

As advisers, we see the importance of investing time in the next gen, not only to get to know them personally, but also to get an understanding of the following types of themes:

- What is important to them in life?
- What are their values?
- What are their views when it comes to investments?
- What do they know about the family business?
- What role (if any) would they like to play in any family business?
- Do they have the right talent to drive the family business forward?
- When and how would they like to get involved with the family business?
- What training do they feel they would need to take on such a role?
- Do they have a preference when it comes to who advises them?

Pairing a next gen with an adviser of a similar age may, for example, encourage and foster a more trusted relationship, which hopefully has the benefit of longevity. They may also be more trusting of an adviser who is not their parents' adviser, encouraging them to offer their views freely on matters and in family meetings and business decisions. It also gives them a 'safe space' where they can bounce views around without someone reporting back to their parent straight after the meeting.

The importance of technology

Advisers need to embrace technological solutions that make meetings and correspondence quicker, easier and more efficient, bridging geographical gaps that are now so common in modern families.

With the next gen growing up as digital natives, priorities have shifted. Advisers must adopt digital capabilities and solutions to support service delivery, strengthen resilience and drive efficiencies if they are to continue to retain next gen clients.



Transfer of wealth between generations

An effective wealth transfer programme is essential for families (whether they have a dedicated family office or not) , and should be tailored to their unique circumstances, investment profile, business holdings and philanthropic approach. Effective wealth management should reflect a family's cultural values and must engage all generations.

The implementation of formalised succession plans, family governance plans, family charters/constitutions and value statements can be valuable ways of ensuring continued success of a family business, or preservation and enhancement of family wealth over the years.

Communication is key when it comes to ensuring that there is a successful transfer of wealth between generations. By building a rapport with each family member, the risk of intergenerational conflicts is minimised and a shared heritage is instilled, ensuring that families align around common goals and avoiding a sense of disunity.

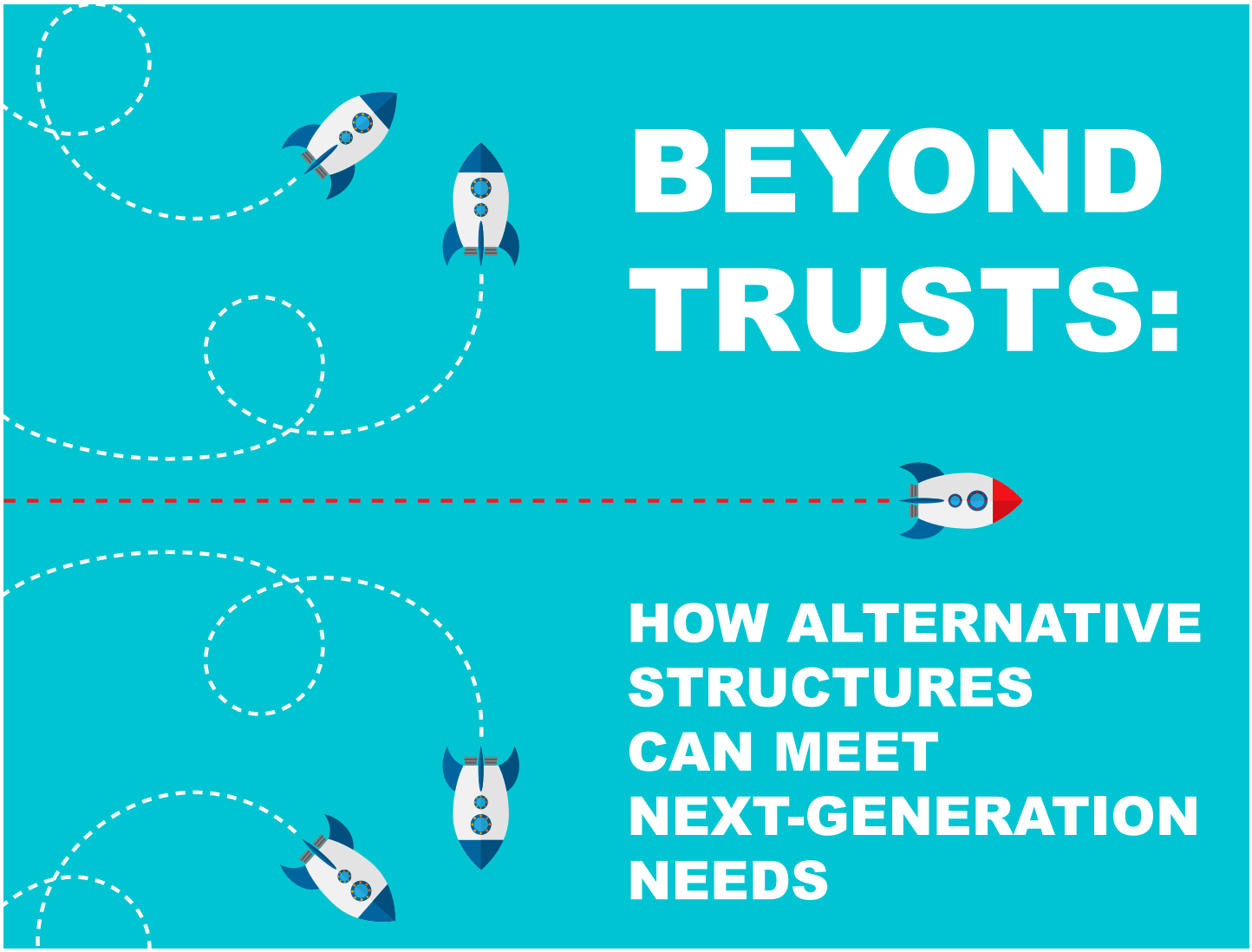
While wealth planning discussions among family members can sometimes be a taboo topic, the earlier open communication occurs, the greater it facilitates transparent objectives and the chance of a successful transfer of generational wealth.

Conclusion

Intergenerational wealth transfers present a vast opportunity for advisers if they invest the time to get that trusted adviser piece right between generations. Seeking and maintaining the engagement of the whole family is of utmost importance in succession planning for any family and its business and/or wealth.

So, advisers, our message to you is ignore the next gen at your peril! to invest the time to build those next gen relationships now, don't delay.





BEYOND TRUSTS:

HOW ALTERNATIVE STRUCTURES CAN MEET NEXT-GENERATION NEEDS

Authored by: Donna Brehaut - Saffery Champness Registered Fiduciaries

Trusts have long been a mainstay of prudent asset and estate planning, to protect and preserve wealth for the next generation and to assist with tax and succession planning. Today, while trusts still have an important role to play, there is a growing recognition of the value that alternative structures can provide to families – helping meet their objectives and fulfil their needs.

In the modern world, family situations are frequently complex, and assets and individuals are often based in multiple jurisdictions. The next generation is increasingly keen to be involved in discussions regarding the family's financial and/or business affairs, with many seeking to align businesses and portfolios with ESG criteria – including focusing on impact investing and/or philanthropy. The recent lockdowns as a result of the pandemic have also meant that families have had more time to focus their minds on what really matters to them.

In this context, it is becoming more important than ever for families to think carefully about what sort of structure is most suitable for their specific requirements. This article looks at what factors should be considered in the decision-making process and what different types of structures are available.

Working out what's important

All families are different and considerations such as personal and collective investment wishes and objectives will need to be weighed up alongside issues such as family culture, individual characteristics, risk appetite, tax residence and jurisdiction. Communication is vital. Families should get together to discuss what is important to each person concerned, so that the right decisions can be made in everyone's best interests.

The matriarch or patriarch will need to reflect on questions such as who the beneficiaries of any structure should be, who should be actively involved in the family businesses or other operations and how much control should be handed over or retained.

Tax planning will invariably feature in the thinking too although, in our experience, a noticeable shift is underway.

Tax is no longer the main driver for establishing a structure and more and more often, we are seeing tax planning becoming a secondary concern, while succession planning, family governance and asset protection are front of mind.

That said, it remains an important issue with expert tax advice required in every case to ensure that structures are efficient and that tax reporting requirements are being adhered to.

The types of assets to be included within structures and the amount of flexibility required are also factors to bear in mind. While some trustees can be reluctant to manage trusts containing non-standard assets - given potential value/market volatility and the fiduciary duty to act prudently and in beneficiaries' best interests – others have established suitable practices, processes and the necessary experience to effectively hold these asset classes and apply the appropriate risk management and oversight. In addition, alternative options such as foundations may provide certain advantages for holding more complex assets such as cryptocurrencies and other digital assets, private company shares, business assets or artwork.

What are the options?

There are several different types of alternative structures available, including:

Private Trust Company (PTC)

A PTC is a company incorporated to act as a trustee of a trust or a group of trusts. Multiple trusts can be set up for different purposes or to hold different asset classes. PTCs can be structured with family governance, control and succession planning in mind where family members can be appointed to the board of directors with or without a professional fiduciary. It is quite common for different classes of shares may be issued to give different powers of authority to different family members whilst the next generation are brought into the business.

Foundation

Foundations are often referred to as a hybrid between a trust and a company, as they have the key traits of a corporate entity, while allowing for the controlled succession of benefit. Families in civil law jurisdictions may opt for a foundation over a trust due to the unfamiliarity of giving over the legal entitlement of assets to a trustee. Foundations are also appealing to those seeking flexibility, as the charter and rules can be tailored to achieve the family's wishes on how they would like it to be governed, or to create different rights and roles for beneficiaries. For example, so that younger generations are shielded from day-to-day responsibility while opening the door for them to be involved in the future.

Family Investment Company (FIC)

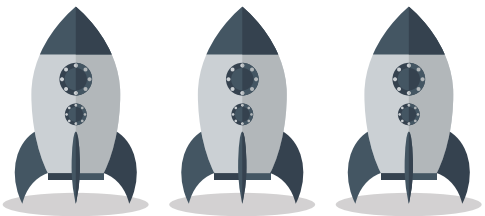
A FIC is a corporate vehicle which provides for succession planning, in which the company's shares are held by the family. Directors (often the parents) make the decisions and retain control, but the transfer of value is handed down to their children. Different classes of shares with different shareholder voting rights can be issued to safeguard the interests of different generations. There may be tax planning benefits in choosing a FIC compared to a trust in some cases (and there may be additional IHT efficiencies too).

Limited Partnership

A Limited Partnership is a useful vehicle particularly in the private equity space and for various listed investment structures. It provides a limited liability option where an individual wishes to participate financially in a partnership up to a fixed capital amount but does not want to have the responsibility of taking part in the management of its affairs. Limited Partnerships are also often used for tax planning purposes.

Protected Cell Company (PCC)

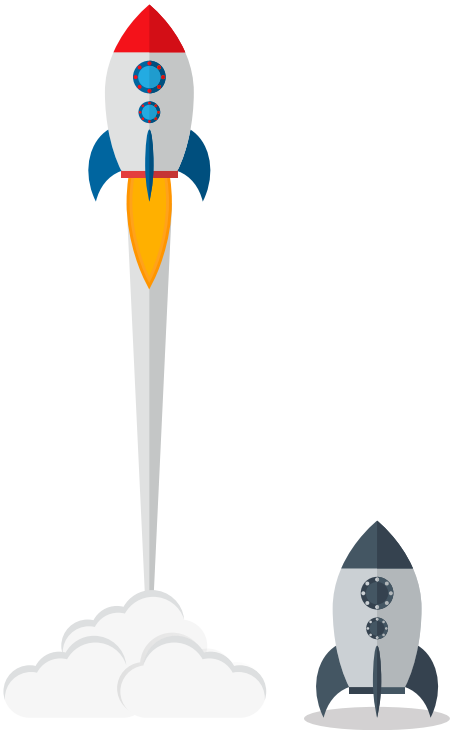
A PCC is a very popular vehicle for families with multiple asset classes. The principal differentiator between a PCC and a traditional company is that as a PCC is comprised of a 'core' and any number of 'cells', its assets can be segregated. Therefore, a PCC can limit its liability relating to a particular contract to a specified cell and its associated assets.



The vehicles listed above are not mutually exclusive – indeed, using a combination of several different structures, including selecting the most appropriate jurisdiction to situate assets according to needs, may be the best way forward to suit unique and diverse family requirements. Trusts remain a highly attractive option, but they are not the only route to achieving families' goals and effectively manage tax planning, succession and governance arrangements.

There is no one-size-fits-all solution: but given the often wide scope and the detailed nuances of each family's situation, taking a flexible approach and weighing up pros and cons of the full range of potential options can deliver real benefits.

For the adviser and / or fiduciary professional, the key imperative is to have that open dialogue with the family to truly understand their goals – and devise the best structuring arrangement to suit.





NEXTGEN WEALTH:

AN AFRICAN PERSPECTIVE

Authored by: Sanmari Crous - Standard Bank's International Fiduciary Services

"You cannot leave Africa, Africa said. It is always with you, there inside your head. Our rivers run in currents in the swirl of your thumbprints; our drumbeats counting out your pulse; our coastline the silhouette of your soul."

- Bridget Dore

Anyone who has been to Africa would agree that there is something about the continent that makes it different – it's in the noise of the cities, the quiet of the natural expanse, and the rhythm of everyday life. This is true, not only of the land, but also of its private wealth. Although much of the global trends can be found in Africa too, there are nuances and context that make it different. In this article, we explore NextGen Wealth in Africa.



Africa in context: a continent of opportunity

Across the globe, there are 2,668 billionaires worth a total of $12.7 trillion, according to Forbes. Africa is about three times the size of Europe, with almost double its population. Yet, according to Forbes, Europe has 30 times more billionaires than Africa: Africa has 18 billionaires in comparison to Europe's 592, holding a total wealth of $84.9 billion in comparison to Europe's billionaires' $2.8 trillion.

This is a huge difference, and the immediate question arising is whether this imbalance is better when considering the number of ultra-high net worth individuals (UHNWI). However, the opposite is true. Knight Frank estimates that there are over 60 times more UHNWI in Europe than Africa: there are 2,240 individuals in Africa worth $30m or more, in comparison to Europe's 154,008.

The total private wealth held in Africa is expected to rise by 38% over the next 10 years, according to Henley & Partners. However, Knight Frank predicts that the global growth in UHNWI's by 2026 will be 28%, and that Africa's growth will be only 11%.

There are many reasons for this unequal distribution of wealth across the globe, flight of capital being one of them. However, the opportunity in Africa is great and, in relation to family business, the NextGen is involved and interested in continuing, preserving, and growing their family's legacy. With the NextGen often being more committed to their home countries, they have the potential to make a true difference in the continent. Wealth advisors must be ready to help them on this journey.



The African private wealth landscape: diverse and unique

Africa is probably one of the most diverse continents. According to Henley & Partners, 50% of the continent's wealth is held in the 'big five' - South Africa, Egypt, Nigeria, Morocco, and Kenya, with South Africa holding twice as much of the wealth as the runner up, Egypt. In addition, the economies, politics, and cultures across Africa are diverse. For example, in certain African cultures, the contemplation of death or any discussion about their own or their loved ones' death is discouraged, making succession planning discussions challenging. In many countries, Sharia law is integral to estate and succession planning, bringing a unique set of challenges to the discussion. Often, NextGen professionals or entrepreneurs are carrying the cost of supporting their parents financially, turning the traditional wealth planning discussion on its head.



NextGen Wealth in Africa: a practical view

Our colleagues in our South African and Nigerian offices agree that a large proportion of UHNW wealth in Africa remains first generational. Jacques Els, Head of Family Office in South Africa, said that one of the foremost challenges with "first generational" wealth is the fact that these families have no experience in inter-generational wealth transfer. Emi Agaba-Oloja, Executive Director of Stanbic IBTC Trustees in Nigeria, echoed this sentiment, saying that it is still the first generation setting up structures, although she has seen an increased interest in setting up family trusts, and Lisa Guscott, a Wealth Manager in South Africa, found that we are often the ones to prompt the first generation to bring the next generation into the room.

As a result, there is a big focus on education. "We find ourselves being financial coaches," says Lisa, adding that when she talks to a family, she starts with the foundations in understanding the family, their culture and their needs first. Although this is important all over the world, it seems to be even more so in Africa. "Even if it takes six months, that's what needs to be done before you can start the wealth planning."

The NextGen shouldn't be underestimated, though – they are well-informed and not limited to some of the traditional views of the older generations. For instance, Ally Jaulim, Head of Business Development for our international fiduciary services, noted that, although talking about death is often a taboo for the first generation in some cultures, it is usually not the case with the next generations.

We have found the NextGen in Africa to require data-driven decisions, prefer a one-stop shop, insist on consolidated platforms available 24/7 with all their financial information, and often have significant influence over the opinions of their elders.

In some instances, members of the NextGen do not have a full appreciation of the extent of the family's wealth.

PwC's Africa NextGen Survey 2022 found that, although 48% of NextGens said they're more involved in the family business now than before 2020, only 28% were given significant internal operations to lead, 43% say there is a resistance in their company to embracing leadership changes, and 61% say that the current generation's hesitance to retire is a problem.

Jacques observed that where the patriarch/matriarch/principal took a conscious decision that the NextGen should not be privy to full details of the family wealth, it is likely to bring about significant challenges at the stage where inter-generational wealth transfer takes place. In contrast, where the NextGen participates in the management of the family wealth, either in a structured way as members of fincom/investcom, or in a less structured way (attending or observing investment discussions, for example), there is likely to be a greater degree of interest and sense of ownership and, as a result, a smoother transition of generational wealth.

The next generation is focused on investing based on their personal values, including ESG-based investments, in Lisa's experience. PwC found that 69% of NextGens in Africa believe there's an opportunity for family businesses to lead the way in sustainable business practices. Jacques agrees that the younger generation's increased focus on ESG is a global trend also applicable in Africa. In his experience, the younger generation often has different views and priorities as to what is important to them, where they'd like to make a difference and which causes they would like to see the family support in the future – both from an investment and philanthropic perspective.

The next generation will be instrumental in the growth of Africa's wealth, and look set to do it in a sustainable way, not only for the environment, but also for the people on the continent. 82% of NextGens say that they expect to be involved in increasing their businesses' focus on investments for sustainability, according to PwC, and 78% agree that, in Africa, there is a greater tendency to contribute to their local communities.

Africa has great potential and the NextGen holds much promise. It is important that we partner with UHNW families across all generations, and foster relationships with members from the NextGen (in the widest sense) from an early stage.

THE 'NEXT GEN' AND WEALTH MANAGEMENT: WHAT IS IT REALLY ALL ABOUT?



Authored by: Chris Moorcroft - Harbottle & Lewis

One of the most discussed topics in the private client world in recent years has been the impact of the 'next generation'. On one level this is nothing new: succession planning work involves a constant and gradual process of families moving the control of wealth down the generations, so practitioners have been dealing with the 'next gen' for centuries. However, recently we have heard a lot more than usual about it; partly fuelled by a pandemic-inspired explosion in webinars, and partly down to a genuine sense that the values and perspectives of many of the current younger generations differ, in some ways drastically, from their elders. Hence there has been many a debate on how the 'next gen' might behave, as they become the owners and custodians of the world's wealth, whether through their own endeavours or inheritance.

The 'next gen', so the narrative goes, have different views to their elders on things like tax, trusts and offshore. They are, it is said, passionate about ESG investing - wanting to see an impact with their investments. This is partly driven by increasingly dire warnings on climate change. However, they are worried not only about the environment but about inequality and social injustice too.

Much of the above is generalisation and cliché, not least in relation to the environment, with members of Extinction Rebellion just as likely to comprise pensioners as teenagers. However, within every cliche often lies a kernel of truth.

Individuals are moulded by their experiences and the world around them. As the world changes, so those growing up into it change.

Bear in mind the formative experiences of two generations that are, wrongly, often lumped together: millennials and generation Z. Born in 1983, I count myself as a millennial. That means that I became world aware in the 90s and early noughties, a period of remarkable economic stability in the western world. Back then the now much-maligned 'neo-liberal consensus' was dominant, which often meant government budget surpluses, steady and consistent economic growth – in the UK marked by then-Chancellor Gordon Brown's declaration of 'the end of boom and bust'. The EU, World Bank and NATO were among a number of solid and respected international institutions. I saw the explosion of the internet but remember life beforehand. Even when I entered my 20s, social media didn't exist. Vaguely aware of a hole in the ozone layer, it was only really around the release of Al Gore's 'An Inconvenient Truth' in 2006 that environmental concern moved seriously into the mainstream agenda.

Contrast these experiences with those of Generation Z, born after 1997. Their formative years have been extremely different. They have seen crises requiring massive state intervention to save major economies from falling over twice: first the banking crisis of 2008/09 and then Covid in 2020. Economic growth in much of the western world has been anaemic, and unprecedented budget deficits have become the norm. This generation has grown up through a period of huge political volatility – seeing the rise of populism, Brexit and the election of Trump. Faith in institutions such as the EU, NATO etc has declined significantly. Meanwhile, environmental catastrophe looms scarily in their future.



Perhaps most significantly to the here and now, Gen Z have grown up with the internet and social media as an ever present in their lives. This has completely reshaped the world around them and the way people interact with each other. Humans' attention spans have become shorter, political debate is amplified and toxic. All of this has altered the Gen Z world view.



It is hardly surprising, therefore, that different generations' outlook on the world differs. Yes it is correct to point out that many of the 'next gen' cliches are just that: cliches. But, it is also key to understand that different generations, moulded by common formative experiences that differ to those before them, often share some common perspectives. Whilst the above maps out the vastly different experiences of millennials and Gen Z, the gap between more distant generations is even starker.

The impact of this on wealth transition and the private wealth industry, has been widely debated, not least in pandemic-era webinars.

In my view, the change being driven by the 'next gen' can best be summarised with two words: purpose and fairness.

Purpose, because a large number of younger wealth owners believe that with the privilege of wealth comes a responsibility - to use the wealth as a force for good. This creates discussion about purpose of the wealth, i.e. what is the wealth for? This partly accounts for the boom in interest around ESG and impact investing – a desire to find an answer to this burning question.

Fairness, because a large number of younger wealth owners believe that society should address inequality. Highly educated, affluent individuals are often far more socially and economically liberal than their elders. One of the most obvious examples is in attitudes towards tax, with aggressive avoidance deemed to be off limits, and a desire to pay the 'right' amount of tax (although 'right' in this context remains an incredibly subjective question).

These two concepts - purpose and fairness - are in turn challenging two historically widely held assumptions in the private wealth industry. The first of these is that tax minimisation is generally desirable. Many clients will continue to think this way, but many do not. Tax compliance, far more than tax avoidance, is the future.

The second assumption is that wealth accumulation and preservation is always desirable. This is a penny which for many in the industry, has not yet fully dropped.

For those seeking a purpose and positive impact in wealth ownership, preservation of wealth for generations simply might not fit the brief. With impact comes the opportunity to make a difference - and a safer and fairer world. For many, that opportunity will trump the importance of ensuring that their grandchildren and great grandchildren inherit wealth.



Harbottle & Lewis

Award winning providers of Private Client advice and services.



The LEGAL 500 UNITED KINGDOM LEADING FIRM 2022

TOP RANKED Chambers High Net Worth 2022 Harbottle & Lewis LLP

harbottle.com

60-SECONDS WITH:

DYLAN SAMUEL
EXECUTIVE VICE PRESIDENT
LOMBARD ODIER



Q What do you like most about your job?

A My clients and network! In my role, I have the privilege of working with some fantastically interesting and successful people. Each family is different and I really enjoy the variety of working with clients from a range of backgrounds, countries and cultures.

Q What would you be doing if you weren't in this profession?

A I studied Mechanical Engineering at university, so I would probably be working in mechanical/product design. One of my friends from university won The Apprentice a few years ago, so perhaps I would have worked for him!

Q What's the strangest, most exciting thing you have done in your career?

A A client once asked me to help him sell a tropical island during a portfolio review. It caught me a little off guard!

Q What is one of your greatest work-related achievements?

A I have recently been working on a governance project for a family who are going through a significant wealth transfer event. It has been amazing to work with my clients through this process and see them arrive at a family succession plan and a business model that reflects their strong family values.

Q If you could give one piece of advice to aspiring lawyers, what would it be?

A I would encourage any lawyers with a private client practice to develop a strong professional network. As a private banker, I often work closely with my clients' counsel to make sure I meet their specific objectives. The strong relationships that I have formed with lawyers has been hugely important both to my clients and to my own business.

Q What do you see as the most significant trend in your practice in a year's time?

A There are two trends in wealth management that are important to understand: digitalisation and sustainable investment. On a more secular level, the great intergenerational wealth transfer presents a huge opportunity for the whole wealth industry.

Q What personality trait do you most attribute to your success?

A Hard work and a good sense of humor.

Q Who has been your biggest role model in the industry?

A My former boss, Olivier de Givenchy gave me a chance to become a banker back in 2008. He was an amazing banker and a big influence on my early career. I seized the opportunity and never looked back. Thank you, Olivier!

Q What is something you think everyone should do at least once in their lives?

A It is a bit of a cliché but nothing worthwhile ever happens unless you take a risk.

Q You've been granted a one-way ticket to another country of your choice. Where are you going?

A A tough choice because I love to travel, but for a one-way ticket I think it would have to be Italy. An amazing country with all the things I love – skiing in the winter, great wine, beautiful countryside, great wine, beaches in the summer, great wine, amazing food, great wine, friendly people, great wine, history and culture. Did I mention they also have great wine?

Q What is a book you think everyone should read and why?

A I think that 'Factfulness' is a really interesting book. It is too easy to be swept along by the pessimistic view of the world portrayed by our short-term negative media. 'Factfulness' uses data to demonstrate some really positive aspects of human evolution. It is a great reminder to look at the bigger picture and to use data and facts. Also, check out Hans Rosling's website, www.gapminder.org - it is amazing!

Q If you had to sing karaoke right now, which song would you pick?

A I have just finished reading Dave Grohl's autobiography, so I might try a very poor rendition of 'Learn to Fly' by the Foo Fighters.

THE CAYMAN ISLANDS:



A JURISDICTION OF CHOICE FOR NEXT GEN FAMILY WEALTH PLANNING.

Authored by: Sue Nickason - Dart Family Office, Philip Paschalides and David Pytches - Walkers Global

The Cayman Islands is a British Overseas Territory located 475 miles southwest of Miami, Florida. For almost half a century it has prevailed as a leading offshore financial services centre, thanks to its sound regulatory environment and world class service providers.

In recent years it has also quietly emerged as a jurisdiction of choice for family offices, particularly with next gen family principals. Tax neutrality, English common law, close proximity to the US, low government debt, ease of earning permanent residency and a thriving economy are some of the attributes that are attracting a new cohort of family offices to the Cayman Islands.

Philip Paschalides and David Pytches are Partners at Walkers Global, a leading international law firm with offices in the Cayman Islands since 1964. They spoke with Sue Nickason, Vice President at Dart Family Office, about why the Cayman Islands' trust legislation and foundation company laws well serve the next gen, as well as other trends with respect to wealth management planning for next gen clients.

Philip and David, you have been advising family offices for over two decades on wealth management. When you reflect on the needs of managing next gen wealth 20 years ago to today, are there significant changes in the challenges and opportunities facing families in this regard? Can you share a few examples?

When structuring, one always wants to anticipate and cater for the "black swan" events which are (by definition) unanticipated. One often hears it said, though, that it's the continuously dripping tap which truly erodes value over time – what's hiding in plain sight. The portfolios and structures which concern the next gen face an obvious and ever-growing challenge. That is the challenge raised by longevity, that human beings are living longer than ever before, spending an extended period at the end of their lives when they perhaps require extensive (and expensive) support or treatment. This has the potential to erode value (both financial and emotional), to place extra demands and ultimately to split families and societies. How are the needs of the older generation to be balanced against the needs and capabilities of the next? It feels like a very new, yet very old, question.

The Cayman Islands is well regarded for its world class trust legislation. What is unique about Cayman trusts and how do they best serve next gen wealth planning considerations?

Cayman trusts are very flexible and robust vehicles and serve well as a foundation stone for preserving, investing and passing on family wealth, both inherited and newly created. Sophisticated reserved powers laws, private trust companies and the unique STAR trust regime, all allow a UHNW family to enjoy the benefits of settling property into trust while, at the same time, retaining extensive control over its management and distribution. A Cayman trust provides the ideal governance structure through which a family may organize the longer term management of its wealth, centralize administration, ensure smooth

succession, and educate the next gen in the family's mission and values. Every family is different, but a Cayman trust can provide the framework for a properly thought out succession plan, developing and integrating next gen's skills, allowing them scope to pursue their passions, and ensuring that the family legacy continues to thrive.

Cayman introduction a Foundation Companies law a few years ago. Do you foresee more families using foundation companies as part of their next gen wealth planning considerations?

Absolutely! We have seen a marked increase in the formation of Foundation Companies in the past three years and we believe this is set to continue. In a commercial setting, this type of vehicle has found its niche in the world of Fintech and, from there, has been carried across into the private lives of the entrepreneurs who use them in a business context. Being able to decentralize control aligns well with the nature of web-based communities and a company which is held together through evolving rules is not unlike the complex algorithmic processes which we see in Fintech. These entrepreneurs, typically under the age of 40, have accrued considerable personal wealth and are now looking to Foundation Companies as the way to structure, protect and transmit it.

It's almost impossible not to read a news article or attend a private wealth advisory conference without the topic of tech coming up. How is the rapidly evolving tech sector impacting next gen wealth planning, particularly crypto currencies and VC investments in the tech sector?

Most of our younger clients are entrepreneurs who have made their own wealth quickly as pathfinders in technology ventures. While their core wealth may be "trapped" in their business interests, they often seek to diversify their portfolios by accessing more traditional asset classes, especially real estate. Conversely, we find that capital held in multi-generational structures is nervous about being left behind by the increasingly rapid advances in the digital space. There are always going to be two sides to every trade!

ESG is really important to the next gen. What types of questions are your clients asking you about ESG as you guide them in their planning exercises to preserve wealth for the next gen?

Next gen sees a vital link between responsible investing and growth; they are much more attuned to environmental and social concerns than their parents' generation. The opening question is no longer about minimising the factors, such as tax, that adversely impact on their wealth. Instead, next gen are asking "How can we best deploy family wealth to make an impact socially and environmentally?" and "How can we ensure that we, and the businesses in which we invest, are good citizens?" This translates into organisational questions around values, diligence and reporting, involvement and governance. The next gen is bringing a new dimension of considerations to the project of wealth transmission, broadening that concept out to include the returns that do not feature so easily on a profit statement and also to include "beneficiaries" that may never be encountered in person.



"Why Cayman: A Jurisdiction of Choice for Family Offices."

https://familyoffice.dart.ky/

PHILANTHROPY AS A GATEWAY TO GENERATIONAL BRIDGING



Authored by: Tsitsi Mutendi - African Family Firms

As we all navigate working with families of wealth, we realise that certain defaults to truth are accurate in our interactions. Governance is critical for most families, even those who are not wealthy. Governance enhances communication and allows all family members to have some say or input into the conversation that concerns the family's past, present or future. However, as any professional who deals with families can tell you, governance is one of the most landmine-filled conversations in any family, and most families avoid it due to:

1. **Wanting to avoid conflict**
2. **Feeling that the conversation or topics to be addressed are too emotive**
3. **It involves airing the family's dirty laundry or skeletons in the closet**

One or more reasons other than the above may apply depending on the family and the generation it is on, and its history. We can safely say that the most topical issue, especially in governance or any other space requiring multiple family members from different generations coming together, is "How do we engage the Next Gens or How do we have the different generations work together."

With more and more modern families becoming complex, the generational gap has been widened by factors like technology. Whereas we still have a generation who lived in a time where smartphones were not available to everyone and in some cases had not been invented, and snail mail or the telegraph was the way to communicate. In the same family, we have a generation that does not know a time before smartphones and social media.

How do we bridge the gap and bring collaboration? Philanthropy is an underutilised tool when it comes to a collaborative effort. And in the same breath, it allows the conversation around governance to become a natural transitional conversation that helps the different generations to recognise the importance of Family Governance.

How do we use philanthropy? Giving is almost a default that comes with wealth. It utilises the strengths of the five capitals of wealth in that it plays a massive role in building the family's Social Capital and allows the family to harness its Human Resources and Intellectual Capital when the different family members engage in the setting up and execution of philanthropy. By bringing everyone to the table and speaking on the philanthropic direction the family wants to take, all members can talk about their values, and the spiritual capital of the family is brought to the forefront. The final decision is what they will then put their financial capital to support.



It is essential for all generations to be heard.

Within the development of their philanthropy, the different generations have interests to bring forward and require support. The current generation (older generation) would want to see a future where their philanthropic interests are protected and continue to be a part of the family's interests. This can only happen if the Next-Gens understand the family's shared history and why the causes the current or previous generations hold dear are important. With this understanding, the Next Gens may not necessarily continue to drive large amounts of philanthropic giving to a specific cause if it's not an important one for them. They will, however, respect and honour the legacy and values that have led to these causes being supported by the family's philanthropic thrust. And as they bring on their own causes that may be guided by the shared history and shared vision, the different generations hold for the impact that their giving will have on the causes they support.

Within this discussion of shared history, the various generations articulate what they know and understand about the history of the family, and they also can identify shared values that emanate from this shared history. It may be the experiences that have led to this conclusion. For example, a family that supports education may come from a past where education was hard-won or deprived from certain family members. This experience in itself makes them adamant that they will supply the ability to get a better education to individuals or societal demographics that look like them in and around the world or in geo-specific or demographic-specific beneficiaries.

For the Next Gens to continue this philanthropic thrust, there has to be some sort of resonance that can only come from understanding the history of the family and their support for this cause.

Equally so, the Next-gen can bring with them a new viewpoint as to how this cause can be supported in a more impactful way, or even through different avenues. This may change particular emphasis for the current generations, but because it speaks to the same values, it will bring with it a need to collaborate across the generational divide.

Take, for example, a family whose foundation supports medical research in a specific area of interest like cancer of the blood. Current gens may have decided on this cause because a dear family member was affected or passed from that cancer. The Next Gens may understand the importance of this only if they know the reason for this choice. Whilst the Next Gens may feel passionate about wealth distribution and causes in the developing world because they live in a more conscious world, the Next Gens can collaborate with the current gen to amplify cancer research funding in the developing world or by supporting the setting up of cancer treatment centres in developing countries with high deaths and low cancer treatment. The values of all the family members are seen and recognised, and a middle ground is found. Ultimately this collaboration in one area can lead to more open-mindedness to collaborating in previous areas of conflict, and it also leads to combined Family Governance development. The beginning of working on joint visions is a live example of what works when multiple generations work together and for practitioners looking for a bridge between the generations.



Resolving private client disputes

Our aim is to work collaboratively and strategically with legal teams to achieve the best possible outcome for clients.

We know that when clients are dealing with personal disputes, whether this is following the death of a family member or a family fall out, they often become emotionally charged and sometimes extremely acrimonious. But we also know that with the right team in place, who have experience in assisting and managing these complex and sensitive matters, resolution and recovery strategies can be implemented to ensure the dispute is successful resolved for your client.

To find out more about resolving these disputes and our work in high value asset recovery and enforcement, please do get in touch.

We help you resolve disputes through:

- Intelligence and research
- Expert witness services
- Valuations
- Asset tracing and management services
- Formal appointments to deceased estates
- Insolvency appointments
- Debt enforcement and recovery strategies

Visit grantthornton.co.uk to find out more, or contact:



Hannah Davie
Partner, Head of Contentious Estates and Family Disputes
T +44 (0)20 7865 2849
E hannah.davie@uk.gt.com

Grant Thornton

© 2020 Grant Thornton UK. All rights reserved. Grant Thornton UK is a member firm of Grant Thornton International Limited (GTIL). GTIL and the member firms are not a worldwide partnership. Services are delivered by the member firms. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions. Please see grantthornton.co.uk for further details

DS1947



Private Client

TransAtlantic Tax & Estate Planning

US / UK Tax & Estate Planning in the Spotlight

20th September 2022

Ironmongers' Hall, London

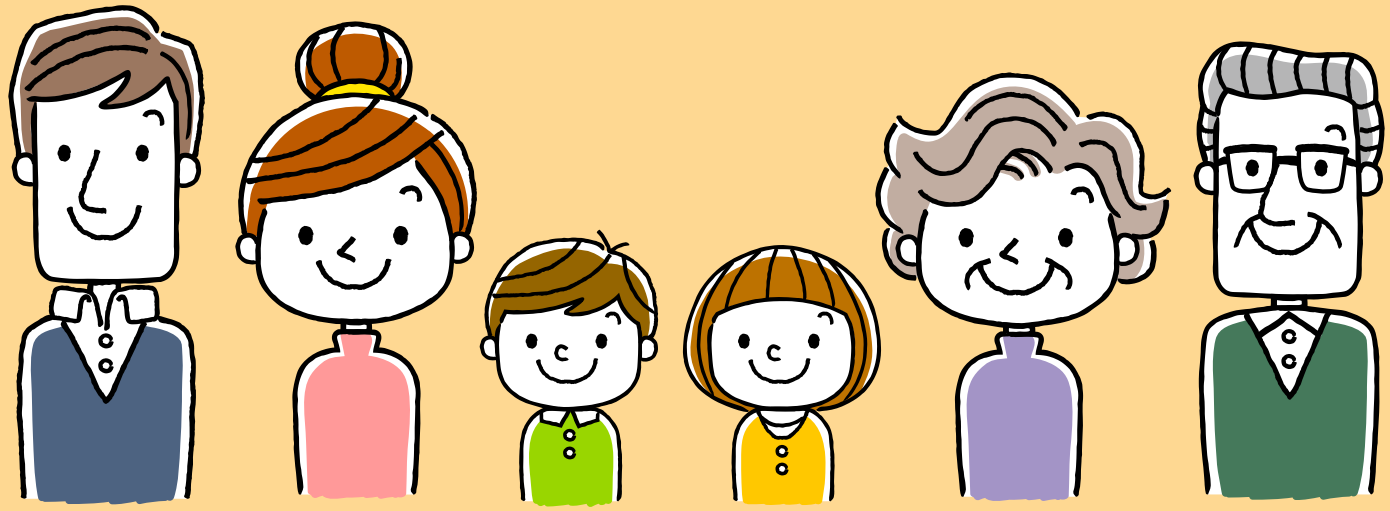
Knowledge Partners

Global Taxes

LGT Wealth Management US

For event queries contact: **paul@thoughtleaders4.com**

THE THIRD-GENERATION MYTH AND WHY FAMILIES SHOULD BE UTILISING THE NEXT GENERATION'S TALENTS IN ALL THEIR SHAPES AND FORMS



Authored by: Suzanne Johnston, Paige Achilles and Yi Lee - Stephenson Harwood

We've read the saying "shirtsleeves to shirtsleeves in three generations" a multitude of times in articles about family wealth (sorry). The three-generation myth can be self-prophesising for family businesses but this doesn't have to be the case and perhaps it isn't...

That old chestnut, Generation 1 (G1) rolled up their sleeves and made their way in the big wide world. They grafted (or got lucky, depending on whose view you're taking) made a fortune, and a name, for their family. G1 passed their drive on to Generation 2 (G2). There weren't many of G2 – maybe 2 or 3 – who all saw how hard G1 worked and strove to emulate them.

But then comes Generation 3 (G3). You know the type, the generation that grew up in wealth. The "they don't know they are born" generation!

Historically, G3 has been cast as lazy and disinterested in keeping the family and the family business together. But this isn't what we are seeing in practice, especially in Asia.

Yes, G3 have grown up in wealth, but this isn't at odds with them being successful in their own way. What we have observed is a G3 willing to bring their own unique talents and contributions to the family business AND the family.

One natural talent G3 have is that they are digital natives – most don't know life before high-speed internet and computers the size of their hands. They can navigate the internet effortlessly and touch type quicker than G1 and G2 can speak. They have knowledge that G1/G2 cannot fathom and it's fast becoming indispensable in today's world.



With large companies hiring fresh-out-of-university graduates as social media consultants, family businesses who ignore the talent they have in their own gene-pool are ill-advised. More than half the world's population uses social media today, and 72% of companies now use social media data to inform business decisions.

This previously untouched and unknown business capability is one that G3 can help bring to the table. It's something that, generally, G1 and G2 find more challenging to engage with in a relevant way.

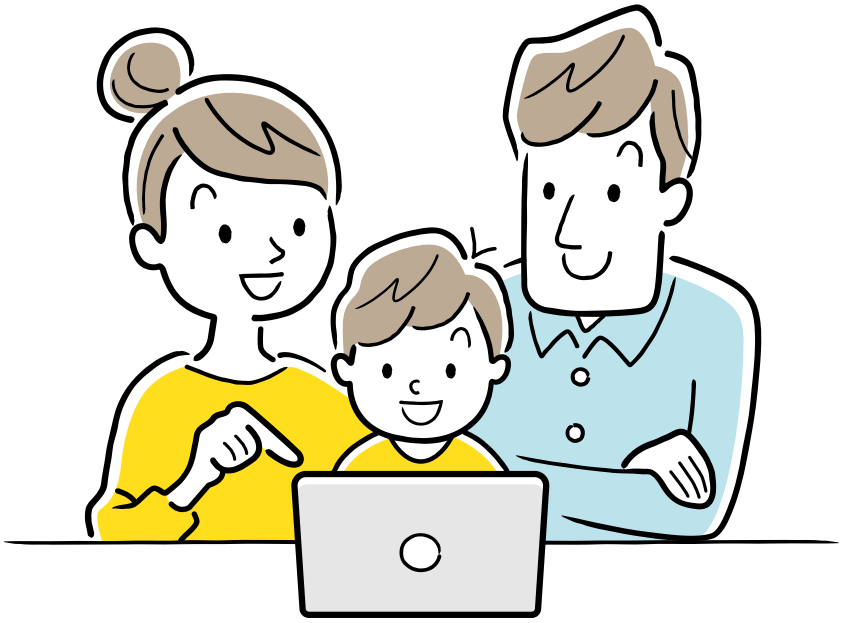
In amongst that, the G3's we work with have other interests and capabilities beyond the original intention of the family business. Say, the family business produces car parts. G3 has no knowledge of and isn't interested in learning about car parts. G3 isn't going to be an engineer but G3 may be able to bring to the table a knowledge of marketing, communication, design, PR, and events management. Contrasting skills, bring breadth and depth to the family business that wasn't there before.

G1 and G2 are missing a trick if they ignore this potential. There is more to a family business than just the core ethos. Family businesses can thrive utilising "soft" skills (e.g., an ability to bring harmony and work together), as well as more traditional "hard" skills (e.g., an aptitude for math or science).

When we work with G1 and G2 we encourage them to actively involve G3 from an early stage. The longer a family has substantial money, the more difficult it is to maintain family dynamics and wealth, with barriers across family structures, shifting priorities, a lack of effective communication, global presence, and diverse interests. These threads of potential disruption can be managed (in part) by putting in place family structures that bring the family and its talents together. Whether it is the settling of a trust, entering a family constitution or, in Asia, the increasingly popular – family office - strategic and well-thought-out succession planning is key to breaking the G3 "curse".

Taking the family office as an example, it creates a centralised framework and a platform to unite a family. Family members can draw on the strengths of everyone, harmonising family values with investment goals leading to a consistent, sustainable and enduring family legacy. In Asia, we observe a gradual trust building between G1, G2 and G3. Increasingly, G3 are involved early in the succession planning stage and, more significantly, their life plans, hopes and dreams form a key focus for discussions.

As the attractive family office regime becomes more established in Singapore, an increasing number of family offices are being created by G2 or G3. As the benefactors of the wealth created by G1, they recognise the need to protect, structure and grow the wealth to meet their life choices. This is seen in the introduction of non-traditional asset classes such as cryptocurrency,



non-fungible tokens (NFTs), investing "horizontally" in areas distinct from the core family business or investing "intelligently" making them market leaders in growing spaces including, technology or Environment, Social and Governance (ESG).

All of this points to G3 bringing new perspectives and opportunities to families that are in line with market developments and needs. The result, as far as we have seen - a diversified, well-balanced and competitive wealth solution. This, coupled with the assistance of professionals and proper education, means wealth preservation and growth is almost guaranteed.

G3 is the undeniable future. The best way to ensure that the family business proves the three-generation myth to be just that, a myth? A recognition by G1 and G2 of the different contributions G3 can make beyond the limits of the original family business. There is also a duty on professional advisers to facilitate meaningful and open discussions between G1, G2 and G3 at the outset. As with most things, families are better together.



ARC
ASSET RISK CONSULTANTS

www.assetrisk.com

Supporting Durrell & Jersey Zoo

Jersey Zoo is the heartbeat of the Durrell Wildlife Conservation Trust. All of their conservation work around the globe is underpinned by the zoo. Despite their hardest efforts, the present pandemic is having a devastating effect on the income of Durrell.

When they wrote to inform us that their global conservation program and 61-year history of saving species and habitats from the brink of extinction was in real danger due to the financial impact of the pandemic on Jersey Zoo, we asked how we could help.

After discussions with Durrell, we are delighted that ARC is now the proud sponsor of their Blue Poison Dart Frogs display.

Find out more about the Durrell Wildlife Conservation Trust, their work and the frogs on their website **www.durrell.org**



The Blue Poison Dart Frog

(dendrobates tinctorius azureus)

Native to Suriname

The poison frogs of Central and South America are famous for their toxic secretions, used by native communities when hunting. The poisons are not made by the frogs themselves, but are taken up from their diet of invertebrates, which have in turn ingested plant chemicals. However, in captivity the poison decreases considerably in strength as the food chain needed to supply them with their raw materials does not exist.

The frogs' bright colours advertise their poisonous nature. The blue poison frog's pattern of black spots on a blue background is particularly striking and varies from individual to individual. After they metamorphose into tadpoles, the male carries the young on his back to a small pool, water trapped in a hole or a bromeliad, where they develop into frogs after 10-12 weeks.

With the world's amphibians in crisis, captive populations are vital to conservation efforts.

Extremely sensitive to environmental change, amphibians give us early warning of problems that might be due to global warming, pollution and so on. The blue poison frog, like many others, is threatened with extinction.

Durrell has successfully bred this species, and their biosecure facilities at the Trust's headquarters in Jersey will enable them to continue studying and breeding the blue poison dart frog and other threatened amphibians in captivity, developing techniques to help slow their decline.

Asset Risk Consultants Limited
7 New Street
St Peter Port
Guernsey GY1 2PF

Asset Risk Consultants (Jersey) Limited
Charter Place
23-27 Seaton Place
Jersey JE2 3QL

Asset Risk Consultants (UK) Limited
46 Chancery Lane
London
WC2A 1JE

25 asset risk consultants 1995–2020

Love your Zoo

Radcliffe Chambers

Radcliffe Chambers Private Client

"This set is quality from top to bottom - the quality of work and personnel is just brilliant."

(Chancery: Traditional, Chambers High Net Worth 2022)



We have a longstanding reputation as a leading barristers' chambers for private client disputes and advisory work. Our members are recognised for their excellence across a wide range of issues affecting individuals, including trusts and estate planning, wills and probate, court of protection proceedings, charities, tax and property.

We have extensive experience working with private clients and their advisers in the UK and internationally, and we pride ourselves on taking a collaborative approach to everything we do, supported by a deep understanding of the sectors and jurisdictions in which we operate.

E: clerks@radcliffechambers.com
www.radcliffechambers.com

T: +44 (0)20 7831 0081
F: +44 (0)20 7405 2560

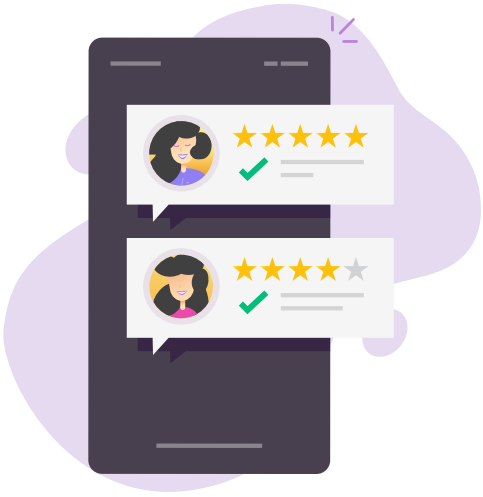
THE NEXT GENERATION AND REPUTATIONAL RISK



Authored by: Hannah Southon - Sinclair Gibson

A definite theme to emerge from the interactive roundtable sessions on inter-generational conflict that took place during the 5th July TL4 Private Client / ConTrA conference on 'The Modern Trust – Contentious Trusts in a Changed Social Landscape' was that of reputational risk, particularly the next generation's increased – and increasing – awareness of and sensitivity to the potential for criticism and public censure. Many advisers had experienced the effects of this increased risk-aversion in a number of different ways. On a macro-level, some advisers have seen clients re-domiciling, so as not to be connected to a jurisdiction that rightly or wrongly, they perceive, or perhaps more accurately fear others perceive, to be in some way problematic. Another shared experience were clients who were reluctant to use trusts or other sensible wealth-structuring vehicles at all, fearing that their use would create a perception that they were shirking their duties as global citizens. At the investment portfolio level, a greater focus by younger generations on CSR, and disinvesting from sectors or companies deemed for example to be 'climate-change denying' has already been widely-discussed in the industry literature. Another area of discussion was client sensitivity to the reputation of their advisers. This was brought to the fore last year by comments made in the course of debate in concerning the situation in Ukraine, and the UK's response to it, which were reported more widely in the press.

It is probably uncontroversial to attribute much of this increased sensitivity to reputational risk to the increasingly transparent world in which clients and their advisers are living. In large part, this is being driven by legitimate concerns on the national and supra-national level, primarily co-ordinated actions being taken to combat terrorist-financing and money-laundering. At present for example, further changes are being implemented by the UK and other jurisdictions in response to 5MLD, and in March 2022 the global Financial Action Task Force amended its Recommendation 24 to require member countries to strengthen the way in which they collect information on beneficial ownership of legal entities. It is also currently reviewing Recommendation 25, which deals with the beneficial ownership of legal arrangements other than legal persons. But there are also other, arguably less legitimate means by which organisations and individuals are pursuing transparency – the various 'leaks' facilitated by the International Consortium of Investigative Journalists is a very important example. However, even social media campaigns may also play a part – in the United States for example, the Twitter user calling himself MrMoneybags has seemingly made it his life's mission to harass Brian Sheth, co-founder of Vista Equity. All these factors represent changes that mean that rather than affording wealth-owners more privacy, complex wealth-holding structures with many different parts across multiple jurisdictions can now actively compromise it.



Reputational risk management has long been an important consideration for corporations. There is now a growing industry seeking to provide reputational risk management services to private clients, but it is also something that should be factored in by more traditional private client service providers.

In my experience as a trust litigator, private wealth disputes are often caused or made worse by structures in which there has been too great a focus on asset protection without a sufficient counter-balancing of other considerations.

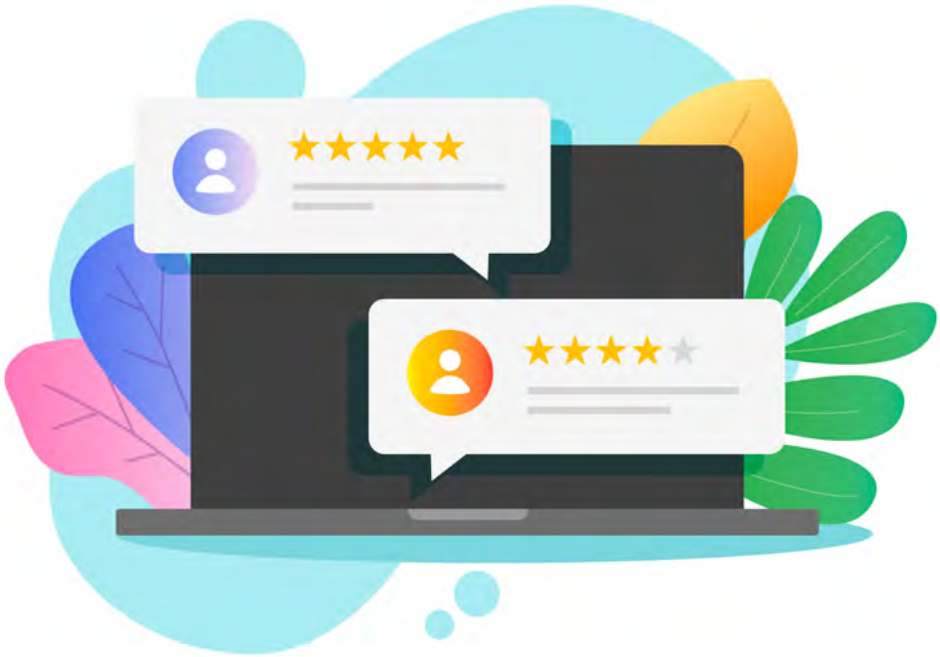
Increasingly, differing attitudes to wealth-structuring based on different approaches to reputational risk are leading to tensions within family structures, particularly between the generations. How might advisers rise to the challenge of providing solutions that achieve a structured and orderly devolution of family wealth and business interests, minimise the potential for breaches of privacy and reputational risk and are capable of accommodating different tolerances towards such risks within a family?

First, in general, slimmer, flatter, and less complex structures minimise the amount of reporting required and therefore the concomitant risk of leaks. In streamlined structures with less complexity, there is less potential for things to go wrong.

Second, structures should be stress-tested to ensure that they are flexible enough down the line that they can react quickly to friction points, and can be disaggregated or broken down into sub-structures to respond to changing fiscal and family circumstances or opinions.

Third, as well as these general principles, the reputational profile of each individual client must also be scrutinised and thought about both at the outset of a professional relationship or piece of work, and on an ongoing basis. Are there elements unique to that individual that might turn an otherwise fairly standard and unremarkable investment or piece of tax-planning into a public relations nightmare for them? One example is the criticisms of hypocrisy levelled at Justin Welby in 2018 when the Church of England's investment in Amazon was reported in the media following a speech he had made criticising zero-hours contracts. More recently, considerable public censure was directed towards Rishi Sunak on account of his wife's, Akshata Murty's, non-domiciled status. Whilst undoubtedly being Chancellor of the Exchequer is a unique position with its own unique challenges, in the aftermath the same method of attack was subsequently employed for example by anti-SNP Twitter trolls to seek to discredit public (albeit not political) figures supportive of Scottish independence, such as Irvine Welsh, Alan Cumming and Martin Compston.

Here are just three suggestions to start. Given the rapidly evolving situation in terms of transparency, reporting and risks and other changes, such as societal attitudes to various different issues, there are clearly scope for more ideas. The key however will be, as always, to adapt those ideas and general principles to the circumstances of individual families and clients.



WHAT DO YOUNG DONORS WANT FROM THEIR PHILANTHROPY?



Authored by: Mark Greer - Charities Aid Foundation

'Next generation' donors, broadly defined as those aged between 18-40 years old, are coming into wealth as part of "The Great Wealth Transfer", where an estimated £5.5trn wealth is being moved from baby-boomers to millennials. Advisers to the next generation need to understand how this transition is already affecting the philanthropy sector, with younger donors driving major change.



Philanthropy as an action to take while living

Many younger philanthropists embrace giving while living – more so than previous generations – and have a long-term outlook. A focus on results and impact characterises next generation philanthropy and translates to younger donors wanting to see the impact of their philanthropy in their lifetime. In some cases, they might even want to become involved further by using their time, talent and in some cases influence, to further causes, rather than giving purely in monetary terms.

Speaking to the notion of philanthropy as an ongoing action, younger donors are also more hands on. They want to understand an organisation's theory of change, make visits to see the impact in action, and evaluate and learn from a programme's success.

According to KPMG's Global Philanthropy Report, almost three-quarters (71%) of donors surveyed place measurable impact as key when selecting causes to support.

The trend towards prioritising impact and leaving a legacy for future generations also links to younger donors' interest in environmental causes. The Environmental Funders Network found that 'eco-givers' are concerned that the climate emergency is now reaching the point of no return, and these givers – who tend to be younger – believe that funding causes to alleviate environmental disasters

and help slow or reverse the effects of climate change is the most important way for them to help.



Influencing and inspiring others

Younger donors are conscious of the valuable influence they can exert and the impact they can create through inspiring the broader public to get involved with a charity, cause or campaign. Not only are younger donors more socially conscious and inspired to be a force for good, but they also hope to inspire others to do the same.

The Environmental Funders Network found that HNWs would be motivated to donate even more if they had a better understanding of the positive impact of their giving and if they could see how their contributions effected social change. To connect with these younger philanthropists, it is worth noting that they want to ensure that the way they give takes environmental interests, social equity, and diversity into consideration.

The new generation of younger philanthropists are using their platforms to exert influence and amplify the impact of significant sums of money. A growing emphasis on equity, for example, is highlighted by younger donors of colour leveraging their positions and success to promote change, including rapper Stormzy and sporting stars Lewis Hamilton and Mo Salah, who lead the Sunday Times Giving List in 2022, which CAF helps to produce. These considerations are crucial as opposed to optional – a departure from the traditionally private nature of philanthropy.



Broadening the concept of philanthropy

Significantly, for next generation donors, there has been an expansion of the very concept of philanthropy. Philanthropy is not a passive venture for them, particularly when it concerns investment.

Younger donors are far more likely to be involved in impact investing or mechanisms which allow them to choose both social or environmental and financial returns.

They may put together a portfolio of philanthropic investments – just as they would a portfolio of for-profit investments – marrying a balance of risks with potential social returns. We also know of several family offices who have given their younger representatives control over charitable funds to invest in innovative ways, to help them learn about what it means to be responsible for significant amounts of wealth.

Investing strategically for younger philanthropists might also involve investing in expert-led, innovative initiatives geared towards solving some of the world's most pressing problems. Take Deutsche Bank's Ocean Resilience Philanthropy Fund as an example, which CAF is administering. The fund was launched at COP26 in Glasgow in November 2021 to provide donors with a path to support ocean conservation, and it encourages work with scientific experts on innovative projects by focusing on advancing nature-based solutions. The fund is open to donations from philanthropists around the world.

A further increasingly popular method of giving strategically is social investment – which can also have an environmental impact. CAF Venturesome for instance, blends traditional charity with supporting social enterprises through a combination of grants and 0% loans to provide wrap-around support. A recent example of this type of investment is social enterprise Energise Barnsley, who are particularly notable in the context of the current energy crisis. Through CAF Venturesome, Energise Barnsley have paid for solar panels in low-income households in Yorkshire. This has not only led to lower energy bills for the community, but also reduced CO2 emissions across Barnsley significantly. Since these investments are primarily loans, this money is then 'recycled' to benefit further causes.

The next generation are expected to be the most significant donors in human history – and it is how they approach their giving that makes them different from previous generations. Understanding the motivations, values and attitudes of the next generation can help foster better client relationships as well as help place us all on the path to more effective, impactful charitable giving.





Authored by: Joanne Morse - Summit Trust International and Eesha Arora, Sophie Wettern-Kirk - Maurice Turnor Gardner

The trustee's view

One of the first things we tell our settlors when they are thinking of setting up a trust is that they should always express their wishes regarding what they would like to happen after their death by writing a letter to the trustee, to guide them when they are exercising their dispositive powers. It comes with the usual caveat that we are not, of course, bound to act upon those wishes, but it is an important note to have on file and will be taken into account when making decisions. This can be helpful reassurance for settlors who worry about how matters will evolve after they have died, and there is some expectation that those wishes will indeed be followed, and that the trustees will not make a decision that is "perverse or irrelevant to any sensible expectation of the settlor"[1].

Best practice would tell us that this letter should be reviewed as life circumstances change, not be too prescriptive (so it could be construed as an instruction to the trustee) and acknowledged by and discussed with the trustee regularly so as to ensure the intentions behind the letter of wishes are clear and understood. But of course, whilst best practice can be encouraged, it does rather depend on the settlor.

Of course, one always comes across the settlor who finds the prospect of facing their mortality a difficult one, and so the drafting of the letter of wishes is always a task put off for another day. Usually, it is the formality of having to put wishes down in writing which tends to invoke this reluctance. Without some guidance, trustees could be left in quite difficult circumstances where the class of beneficiaries is wide and when family tensions were known. We do see this from time to time, where the drafting or signing of the letter of wishes is on the 'to do list' long after the trust deed has been signed. Whilst it is impossible to force the issue of signing a letter or memorandum, it is always useful and also acceptable for a trustee to keep their own detailed notes from meetings where wishes are expressed generally, and other advisers are also present, in the hope that they are recorded in some way and could be referred to in the future.

By complete contrast, there is the settlor who wields the letter of wishes as a 'power play', so they feel that they retain control somehow over the trust fund. We have seen settlors update their letter of wishes as frequently as several times per year, and who 'summons' their advisers after arguments with family members to make changes to the letter.

We have even seen a letter of wishes amended due to upset over inadequate birthday gifts received.

1 Re Manisty's Settlement 1974

This scenario with the indecisive settlor is obviously difficult for a trustee to navigate- if the settlor dies just after making a significant change to the letter of wishes so as to favour one beneficiary over another due to a seemingly trivial incident, and there is precedent to this happening in the past, can the trustee rely on it? Could the reason for the erratic behaviour be due to a lack of, or fluctuating mental capacity, and should the views of other advisers be sought if there is a concern about capacity?

Letters of wishes do tend to be shrouded in secrecy, and we have had a few instances where the settlor has written a letter of wishes, but not shared it with us as trustee, and asked his lawyer to keep it vaulted until his death. Presumably, it is because it will prove to be fairly controversial for the settlor's family, but a much better approach would be for the trustee to be aware of any issues and to be able to discuss it in full with the settlor during his lifetime. In other circumstances, we have seen settlors share their letters of wishes freely with their families during their lifetimes, so all issues are aired and there can be no confusion about the intentions on any part. This would seem to be a much more openhanded way of tackling with any issues head on.

The advisor's view

While trustees are not legally bound to follow a settlor's letter of wishes, under English law they are bound to take it into account when considering whether and how to exercise their powers and discretions[2]. The logic is that the trustees stand in place of the settlor in relation to his assets and are given dispositive powers in order to make choices that the settlor could have made, therefore they should consider his wishes in making those choices.

Indeed, the Supreme Court has found that the settlor's wishes "are always a material consideration in the exercise of fiduciary discretions" [3].

From a legal perspective, when considering the exercise of their powers the trustees have a duty to take relevant matters into account and ignore irrelevant matters[4]. The settlor's wishes are not the only factor which trustees must consider when reaching a decision. They should also have regard to other relevant factors, such as the beneficiaries' needs and wishes. This can lead to conflict where a settlor expresses wishes that may be arbitrary or unfair to certain beneficiaries. In such circumstances, it is key that the trustees should act rationally (noting that rationality is not equivalent to reasonableness)[5].

As Joanne mentions above, from the trustee's perspective matters are often easiest where a settlor shares the contents of any letter of wishes with their family, or if a letter is simply used as a record of wishes that have already been fully discussed with all beneficiaries. Where this is not the case, the trustee can face a difficult decision as to whether they should disclose the contents of the letter to the beneficiaries, perhaps as part of explaining the reasoning for a decision. Under English law, the general rule is that the court will not order disclosure of a settlor's letter of wishes for a discretionary trust[6]. The reasoning for this approach is that the letter of wishes operates within the confines of the powers and parameters set by the trust deed, containing material which the settlor wishes the trustees to take into account when exercising their discretionary powers as set out in that deed. Accordingly, a letter of wishes is a document forming part of the decision-making process on the exercise of discretionary powers which should be protected by confidentiality[7].

So, when should a trustee disclose the contents of a settlor's letter of wishes to the beneficiaries of the trust? Disclosure should only be considered by the trustee if doing so would discharge the trustees' powers and discretion and if it is in the interests of the sound administration of the trust. Crucially, the interests of disclosure should outweigh the protection that confidentiality offers, taking into account the objective consequences (for example, the potential for future challenge to the trustees' exercise of their discretionary powers). Where trustees do decide to proceed with disclosing part or all of a settlor's letter of wishes to a beneficiary, they should consider redacting this as appropriate.

While a letter of wishes can be helpful for the trustees in summarising a settlor's wishes at that moment in time, no letter can cover every possible scenario. Rather than attempting to set out prescriptive guidance for different situations, it is often more useful for a settlor to set out guiding principles which they would like the trustees to consider taking into account the circumstances at the time.

2 Kain v Hutton 2004

3 Pitt v Holt 2013

4 Edge v Pensions Ombudsman 2000

5 Hayes v Willoughby 2013

6 Breakspear v Ackland 2008

7 Re Londonderry's Settlement 1965


Can your tax advisor also be an architect for lasting success?
Providing private clients and business owners with the insight and experience needed to solve complex UK and US tax and compliance issues
ey.com/ey-frank-hirth
The better the question.
The better the answer.
The better the world works.
EY Frank Hirth
Personal Tax

60-SECONDS WITH:

GILLY KENNEDY-SMITH
PARTNER
MOURANT



Q What do you like most about your job?

A I really enjoy my colleagues - we all spend so much of our life with them and you have to like them. I also get a lot of satisfaction in working collaboratively with families and their teams. I enjoy a big project that comes to a close and helps to cement your relationship with the family or the advisors. Every family is different and the dynamics vary in so many ways so it's never boring or 'standard'.

Q What would you be doing if you weren't in this profession?

A I've been increasingly fascinated by architecture so if I went back to university now though I think I would study some form of architectural design. I love designing space efficient solution in my home to use everything to its optimum and personalizing it for how I like to use it. It probably stems from my years in London, when I renovated and customized my home. I love making the most out of very little so that the end result is so much more. I also have a pretty inspirational sister who is excellent at it and has built the most beautiful home and we constantly share ideas.

Q What's the strangest, most exciting thing you have done in your career?

A The strangest matters for me have always involved a probate. As a junior lawyer I shared an office with a lovely probate focused colleague and during a house visit we almost mistook fish fertilizer for the parents' ashes (understandable in the circumstances the house was in). The deceased also had a very bespoke (and eye opening) catalogued porn collection which the executors were initially not sure what to do with – do you want the estate to be seen to make money from the sale of porn and if you can get past that questions, do you admit you know who to sell it to?

Q What is one of your greatest work-related achievements?

A I think the greatest achievement is when a client or referrer you have worked with then recommends you to another person. A small thing but it means a lot. That shows better than anything else how much they have enjoyed working with you, how you listened to them and helped them achieve what they needed to be done.

Q If you could give one piece of advice to aspiring lawyers, what would it be?

A Oh there are so many things you can suggest and I'd struggle with only one. If you allow two, I guess the first would be, 'don't specialize too soon or allow yourself to be pigeonholed by others'. If it happens early on in your career then regroup. Remember that the years invested so far are likely a fraction of your entire working life and you have years to add to your expertise left. No knowledge gained is wasted. Some of the best lawyers I know have changed paths along the way. Secondly, 'remember that you spend the majority of your time with your colleagues'. Pick ones you like to spend time with, can learn from and make your day better and when you move on don't burn your bridges. Private client is a small world and team dynamics are king – you are not the most important person in the team.

Q What do you see as the most significant trend in your practice in a year's time?

A The most significant trend is probably going to be the continued conversation around passing of control and succession of interests in the smoothest and most effective way. We've seen branches of families go their separate ways, seeking advice on how they achieve this and separate out portfolios, assets, control and structures. I also see a need for not just investment reviews, but reviews of practices and books of business. I've seen problems arise as people didn't do their due diligence or did not appreciate their standard of care might differ to industry standards. Reviewing and sense checking if your procedures, approach, work and standard of care and diligence meet industry best practice is going to become increasingly important to service providers.

Q What personality trait do you most attribute to your success?

A I like people and I like to problem solve.

Q Who has been your biggest role model in the industry?

A I've been lucky to learn from some really good lawyers, trustees and family advisors along the way. You can learn – good or bad – from almost anyone, either because you like how they do something or you'd never do it that way. I've had a few mentors along the way and my colleagues are really important to me. I don't want to name any of them individually in case I miss someone out, but they know who they are and how much I appreciate them.

Q What is something you think everyone should do at least once in their lives?

A It's always the simple things - one of my favourite things to do (and which I don't do enough as I hate waking up early) is to watch the sunrise. Once I'm up I'm ok and really enjoy a dawn swim with friends or to climb up a hill or a mountain in the early, calm morning and sit and watch the sun come up on a new day. It sort of restores and resets me all in one go.

Q You've been granted a one-way ticket to another country of your choice. Where are you going?

A I love to travel and grew up all over the world so I'd really struggle to think of one country to go to but that said, I used to live in Guernsey for almost nine years and I returned to Guernsey after working for six years in London. It's actually the place I've lived the longest and I still love it. I love the combination of friendly people, the beauty of the island and being close to the sea. It doesn't hurt that we get great work here too. To be perfect it would just need a mountain range to spring up from the Torteval cliffs, to allow me to go skiing at the weekend.

Q What is a book you think everyone should read and why?

A I love to read and could write an entire essay on my favourite books. I must have read La Reine Margot by Alexandre Dumas about three times on my gap year as sometimes it was the only book to hand (pre-kindle days!). I just finished The Islands of Sea Women by Lisa See and I really want to read more of her books. I really enjoyed How to Fail by Elizabeth Day (I love her fresh take on why a life changing disaster isn't always a bad thing) and I love anything by Malcolm Gladwell as he makes me think about why things are the way they are. This is going to Hurt by Adam Kay and Wild by Cheryl Strayed were also books I really enjoyed (finding humour in a bad situation – is there a theme here?), as was I am Pilgrim by Terry Hayes. Oh and I really enjoyed the Star Series (Red Rising, Morning Start and Golden Son) by Pierce Brown which surprised me as I wouldn't say I'm a sci-fi fan.

Q If you had to sing karaoke right now, which song would you pick?

A I used to be in the choir when I lived in Jordan as it was a great way to meet people and one of my best memories is singing on Easter morning as the sun came up over the Dead Sea, but the thought of standing up alone and singing karaoke in a bar is not one I relish. I wouldn't be that cruel to either my friends or myself!

WHY DON'T FAMILY TRUSTS ALWAYS LAST FOR GENERATIONS?



Authored by: Paul Hardwick - Macfarlanes

Family trusts are supposed to last. At the very least, they are generally supposed to outlast the person who set them up (the settlor). But sometimes they don't. It is, in fact, the moment that the settlor dies – the passing of the first generation – that determines how likely it is that the trust will last. This moment can become a crisis, not only for the trust but also for the next generation of beneficiaries and can lead to a trust being dismantled. So how do you navigate this moment successfully and make sure that your trust lasts for generations?

What motivates the next generation after the death of a settlor?



Fracturing of the nuclear family – If, as is usually the case, the settlor is a matriarch or patriarch of a family, the death of the settlor will change the dynamics of the family as well as the trust. A parent may, by force of personality, be able to hold together a family of adult children so that they still prioritise the nuclear family in which they grew up. But even if this is the case, when that parent dies, the adult children will usually prioritise the needs of their own families over those of their siblings. This doesn't always lead to an immediate breakdown in sibling relationships, but it does mean that the next generation of beneficiaries will have different priorities and may lack a natural unifying point.

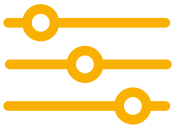


Resolving the balance of power – Having a single settlor of a trust means that, whilst that settlor remains alive, there is no need to divide power and influence between multiple parties – for example, the settlor may be the sole protector and so retain the power to appoint and remove trustees. When the settlor dies, there needs to be some arrangement that deals with the power and influence they held and how to split this amongst multiple family branches. Whether or not the settlor has put in place adequate arrangements, resolving the balance of power and influence in relation to a trust can be one of the first priorities of the next generation following a settlor's death.



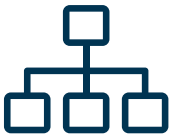
Taking a new approach – It is common for the next generation to want to put their own mark on the management of the family wealth, drawing a line under the influence of a settlor. Whilst this is not always a bad instinct, it can lead to unnecessary changes being made. More importantly, it is likely to lead to conflict between members of the next generation over the best approach to take.

What are the common sources of conflict between members of the next generation?



Changes in control – Settlors often reserve some powers over a trust, for example by acting as protector. They may also be a board member of an investment company

or a private trust company, though this is less common and can have adverse tax consequences. Therefore, the death of the settlor can lead to a change in personnel in certain key roles. Where only some (or no) members of the next generation succeed the settlor in particular roles, this can cause conflict with other members of the next generation who may feel disenfranchised.



Knowledge of the structure – It may be that the next generation has very little practical knowledge of the family trust. This is most often seen in trusts where the settlor remains closely involved. On the settlor's death, the trustees and the family advisers will typically want to educate the next generation about how family wealth is managed and what new positions or responsibilities family members may expect to hold in the future. When family members only learn about the precise nature of a family trust at this stage, and so may not fully understand the rationale behind it, this can lead to difficulties. For example, the next generation may have expected to receive assets directly.



Introduction of new advisers – The involvement of the next generation can also mean that new professional advisers (e.g. lawyers, accountants or family consultants) are involved. New advisers can be a force for good, bringing a fresh approach to the management of family wealth. However, there is often value in the "institutional memory" existing advisors can have, and ideally existing advisors would work together with new advisors to achieve a common goal.

How can trustees and advisers minimise the chance of conflict arising?

The steps that can be taken to minimise the chance of conflict arising following the death of a settlor are not particularly complicated or surprising. What makes them difficult to implement, however, is the fact that they generally rely on the settlor wanting to take them.



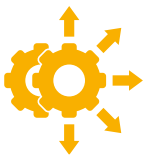
Settlors should talk to the next generation directly – Although it may not always be appropriate, the best way of minimising the chance of conflict arising is for a settlor to discuss with the next generation (i) what will happen after the settlor's death, (ii) how power and influence will be delineated and, most importantly, (iii) why the settlor has chosen to arrange matters in that way. This limits the possibility that members of the next generation will disagree about what a settlor may or may not have wanted to happen, which can become a significant source of conflict.



Define the role that the next generation will be expected to play – Whether it be memorialised in a letter of wishes, a family constitution or the trust instruments themselves, carefully defining the role that the next generation will be expected to play in relation to a trust is a vital exercise and may prevent disagreements arising later. It should complement, rather than replace, the settlor talking to the next generation directly.



Introduce the next generation to the trust and the family's advisers early – Educating the next generation about a family trust more generally can help minimise the disruption caused by the death of a settlor. Introducing the next generation to the trustees and key advisers early and involving them in, for example, the interview process to replace key personnel from time to time can help members of the next generation feel invested in the structure and help establish key relationships early. It should also help prevent the instinct to replace all the existing advisors, which may be tempting if the next generation have no relationship with them.



Don't be afraid to restructure if necessary – Trusts are inherently flexible. Sometimes, the best thing to do after a settlor dies is to sub-divide or partition a trust to allow beneficiaries to have a degree of autonomy over their respective interest. Whether or not this will be possible (or desirable) will largely depend on the nature of the trust assets. For example, liquid investments are easier to divide than a controlling interest in a private company, although there are ways of dividing ownership and control of any asset. Ultimately, trusts must adapt to changing beneficiary circumstances in order to survive.





WHAT IF ANYTHING DOES BUTLER-SLOSS MEAN FOR NON-CHARITABLE TRUSTEES' INVESTMENT POLICIES?

Authored by: Paul Buckle - Ocorian

People seem split on whether the decision of Mr Justice Michael Green in the Butler-Sloss[1] case should be restricted to its charitable context, or whether it has wider implications for trustees deciding on ethical investments. Mindful that future generations often favour environmentally sound investment, this article considers the impact of the decision.

That the case has charitable significance is in no doubt; the trustees of two charities sought the court's approval under category 2 of the familiar Public Trustee v Cooper jurisdiction[2] of their decision to introduce two new investment policies. What made that decision momentous, and hence within Cooper Category 2, was that the policies both excluded investment in over half of publicly-traded companies and many funds because they did not meet the ESG criteria by which the trustees wanted to judge new investments. Those criteria were essentially whether the investment was in line with the greenhouse gas emissions and climate resilience targets imposed under the 2016 Paris Climate Agreement. Both trusts' purposes included environmental protection and improvement. Hence the new investment policies, as the trustees thought the only previous case dealing with charities' ethical investments, the so-called Bishop of Oxford case[3], prevented them from investing in things which were not environmentally friendly.

The Charity Commissioners and the Attorney General joined the proceedings to oppose the new policies because they feared an automatic exclusion on charitable trustees making investments which conflicted with their purpose might have serious implications for charities in general, and because on the facts, the trustees had not properly considered the financial effect of the new polices, which was necessarily that lower returns were likely. Moreover, everyone agreed some clarification was needed as to what exactly the Bishop of Oxford case had decided.

The judge endorsed the trustees' actions and approved the policies. The Bishop of Oxford case, he said, had not imposed an absolute prohibition against investment contrary to a trust's charitable purposes; the starting point was always to maximise financial return as charities needed money. However, what it had done was give trustees discretion to exclude an investment they reasonably believed was contrary to those purposes. In exercising that discretion, they should balance all relevant factors. There were three "comparatively rare" instances where financial return might not be the only consideration. These were (1) exceptional cases of direct conflict

1 Sarah Butler-Sloss & ors v (1) The Charity Commissioners for England & Wales, and (2) HM Attorney General [2022] EWHC 974.

2 [2001] WTLR 901.

3 Harries v Church Commissioners for England [1992] 1 WLR 1241.



such as cancer research charities investing in tobacco companies, (2) indirect conflicts where an investment might create financial detriment by alienating donors to the charity, and (3) other cases, albeit it was not the trustees' job to restrict their investment powers by their own moral judgments. In summary, where they faced difficult decisions involving potential conflicts or reputational damage, trustees exercising good judgment by balancing all relevant factors, and in particular the extent of the conflict against the risk of financial detriment, would meet their legal responsibilities[4].

What then of the case's wider import, and should Green J's assessment of the charitable law be taken to have equal relevance for non-charitable trusts? On one view, the answer to that question may well be no.

Butler-Sloss is after all about how trustees of charitable trusts without beneficiaries should deal with conflicts, when conflicts arising in companies or private trusts may be resolved by obtaining the shareholders' or beneficiaries' consent[5].

Moreover, the judge placed considerable reliance on the Charity Commission's guidance on investment published in 2014;[6] and the Bishop of Oxford case, the proper interpretation of which was central to the conclusion, was specifically about ethical investment by charities. Finally, and above all, Green J's summary of the relevant law was said to be a summary of the law "..in relation to charity trustees taking into account non-financial considerations when exercising their powers of investment"[7], and where there was a potential conflict, incapable of resolution by consent, between investments and the charitable purposes the trustees were bound to advance..



That said, the following points may have wider significance;

- As Green J observed, charities can be structured in a number of different ways. Where the structure is a trust, the trustees owe the same duties as any non-charitable trustee and, where the trust is governed by English law, the Trustee Act 2000 applies.[8] Absent contrary intention, the familiar principles surrounding standard investment criteria and receipt of proper advice therefore apply to any trustee taking account of non-financial considerations when investing.
- The underlying premise behind the Bishop of Oxford decision was that charity trustees, like all trustees, must further the purposes of the trust to which they are appointed.[9] It should follow that, subject to the caveat identified below, Green J's summary of the law surrounding ethical investments, and in particular the thought process where financial benefit may not be the only relevant consideration, will apply just as well to any private trust with a charitable element and even to cases where settlors have indicated they wish funds to be applied for charitable purposes as well as for the beneficiaries. The only caveat would be that direct and indirect conflicts should not feature in the process, as within a non-charitable trust reputational concerns surrounding donors would be irrelevant.
- Cowan v Scargill,[10] a non-charitable case dealing with non-financial benefit, said that even trustees bound to exercise their investment powers to generate maximum returns for beneficiaries, could, rarely, have regard for beneficiaries' wishes for non-financial benefit. Alternatively, some beneficiaries may have moral or ethical objections to purely financial investments. In those cases, Green J thought beneficiaries[11] in effect consented to an investment policy which may not yield maximum returns. To ensure consent is freely and informedly given, trustees might usefully undertake a balancing exercise similar to that applied to charities in the Buttler-Sloss and the Bishop of Oxford cases, and in which the beneficiaries are made fully aware of the financial risks.

It is important not to overstate Buttler-Sloss's general significance for private trustees. It was, to repeat, a charity case. The most that can probably be said is that it does highlight the need for beneficiaries wanting ethical investment to be made fully aware of the financial risks that sometimes accompany such activities.

4 [2022] EWHC 974, [52], [78].
5 [2022] EWHC 974, [74].
6 "Charities and investment matters; a guide for trustees (CC14)".
7 [2022] EWHC 974, [78].
8 [Ibid], [44].
9 [1992] 1 WLR 1241, 1246A - B, quoted at [2022] EWHC 974, [57].
10 [1985] 1 Ch 270.
11 Presumably, the adult beneficiaries.

Transforming human performance, impact and wellbeing in legal business

Ineo develops individuals, teams and businesses for profound impact and lasting change beyond the realm of workplace

For further details contact
Steve Smith - Managing Director
M: +44 7545 814368
E: steve.smith@ineo-life.co.uk
www.ineo-life.co.uk

ineo
our future is human

GASSER PARTNER

ATTORNEYS AT LAW

Protecting what matters to you.

We are dedicated to advocating for your interests. With comprehensive expertise, full service and decades of experience we always remain focused on your goals. Learn more about our passionate way of providing legal excellence.

Vaduz Zurich Vienna

GASSERPARTNER.COM

FAMILY GOVERNANCE



AS A TOOL OF NEXT GEN WEALTH PLANNING IN ASIA

Authored by: Patricia Boon - Forsters

It is well-documented that a good number of high-net worth Asian families are on the cusp of a very significant inter-generational transfer of wealth as, over the course of the next decade, we will see the ownership and stewardship of family wealth and family businesses pass from the hands of the wealth generators/creators of Generation 1 to Generations 2 and 3.

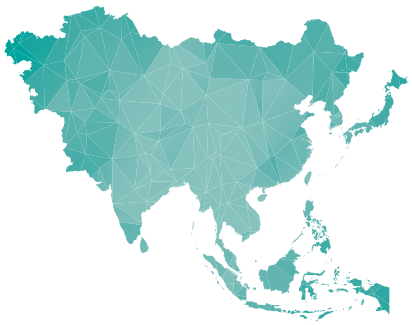
The families standing at the precipice of this change will, in some cases, not yet have considered the implications of this inter-generational wealth transfer or, if they have, may be uncertain as to how to deal with them. Family businesses are at their most vulnerable at the point of this transition, particularly when the business founder/wealth creator is still the person at the helm. For such families, family governance planning can enable them to meet the challenges that this transition to the next generation poses.

The main challenges facing families in this position are:

- to ensure that the value that has been generated by Generation 1 can be preserved, grown, and perpetuated for the benefit of future generations and/or for philanthropic purposes; and
- to equip the next generations to deal with the businesses, assets, or structures that have been passed on to them so as to avoid a diminution in the value of the business or dissipation of the wealth.

There are further sub-sets of challenges within these categories, including the risk of inter-generational and cross-generational conflict, risks to family harmony as the number of family members grows and becomes more disparate, and the risk of divorce.

If these challenges are to be navigated successfully, it is essential for Generation 1 to look carefully at how to involve Generations 2 and 3 in their succession planning and to obtain the next generation's contribution and buy-in to the philosophy that will shape the family's management of their businesses and assets for the medium to long-term. However, it is often difficult for Generation 1 to let go of the reins; of the respondents to the PwC Global NextGen Survey 2022, 45% said that they found it difficult to prove themselves as a new leader or board member in the business. In this context, family governance planning has an important role to play, as the implementation of a governance framework for families to manage succession to the business and/or control of family assets is a key way to involve the next gen today and to minimise the risk of dispute and wealth dissipation tomorrow.



Using a Family Governance framework to involve the next gen

The aim of any family governance strategy should be to ensure that there is a robust and flexible succession plan in place for Generations 2 and 3 (and beyond) to play their part as stewards of the family wealth and assets.

Good communication is essential to mitigating the risk of disputes and conflict, as it encourages transparency, minimises suspicion, and offers the opportunity for the stakeholders to have their say.

Where the family is at the start of the governance exercise, it may be helpful to have a third-party, such as the family's trusted advisor, to co-ordinate the discussion process, meeting together and individually with Generation 1 and members of Generations 2 and 3. This is an important step to flush out areas of frustration, that are ripe to develop into points of conflict between the generations, so that these can be discussed and addressed openly at the outset. It is noteworthy that, in the studies looking at the difficulties inherent in inter-generational wealth transition, many next gens of business families who are surveyed cite their frustration that they are unable to have a voice. Consequently, open dialogue is a crucial part of allowing the next generation to feel involved and engaged.

The creation of a family council can ensure that each family branch has a voice and representation. Where there are family trusts, the family council can act as an interface with the trustees, ensuring a regular flow of information to the family members. The family council can also act as a 'training ground' for the next gen, making clear the expectations there will be of any family member who wishes to work in the family business, any requirement to have undertaken particular work experience within or without the family business, and/or setting out criteria that must be met for a family member to be considered eligible to work in the business.

A family council may also allow the next gen to:

- observe the workings of the family council before assuming a formal role;
- receive training in understanding the family business, responsibilities and duties of office-holders and shareholders, and financial statements.

Such training can help to identify at an early stage the leaders of the future who have the relevant qualities and skills to contribute to the business.

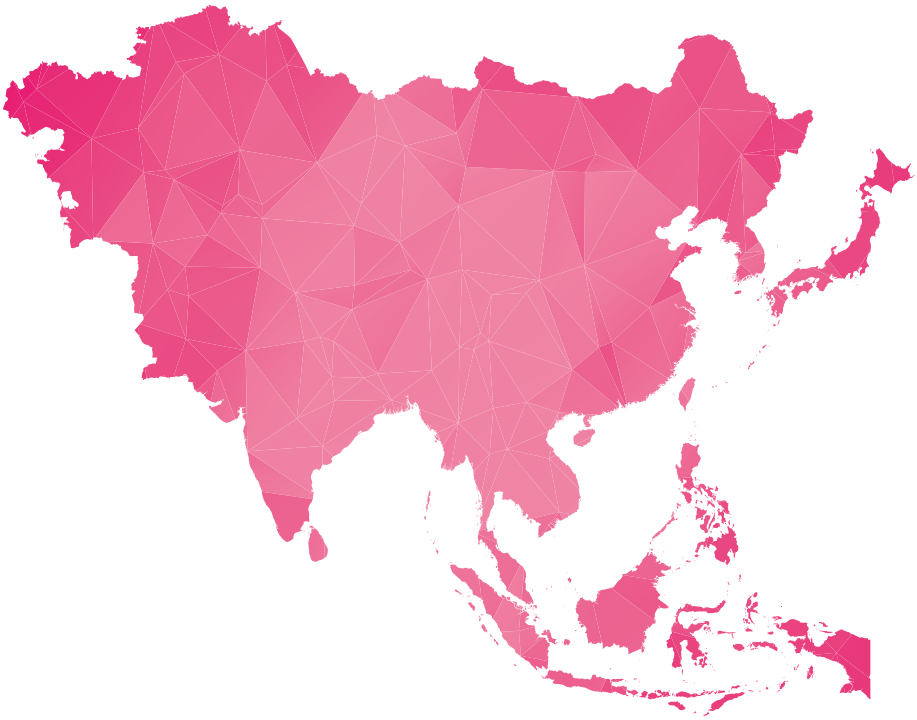
Where there are multiple shareholders, shareholders' agreements are a valuable tool which can be used to educate the next generation in relation to shareholder co-operation. They are also useful for focusing the attention of Generation 1 as to whom shares should be transferred.

The involvement of experienced and trusted non-family management and advisors has a role to play, as these individuals can offer objectivity and can act as a sounding board to the different generations, as well as assisting in the transition of Generation 1 out of day-to-day control into an 'oversight'/advisory role.

There is no 'one size fits all' solution to sorting out the myriad issues that business and wealth transfer will bring to the fore between family members.

However, what is self-evident is that a failure to consider succession planning and the involvement of the next generation (and beyond) in a timely fashion will increase the risks of family conflict and fragmentation of wealth to the detriment of all of the family members.

This makes it vital for wealth creators to recognise the value of involving the next generation in their succession plans early on, and to understand the means available to them to achieve this.



DO YOU HAVE A BACK-UP PLAN?

SECOND CITIZENSHIPS AND GOLDEN PASSPORTS



Authored by: John Kador - Global Taxes

An increasing number of wealthy Americans are seeking second citizenships for themselves and their families. They're motivated by a mix of rational risk management, shadowy survivalism and a desire to escape what they fear will be confiscatory taxes on the wealthy. Whether they call it an "exit plan" or "backup plan," wealthy Americans are dropping impressive amounts of money to secure a guaranteed path out of the U.S. for themselves and their families should the need arise.

The global COVID-19 pandemic catalyzed a surge of interest in second citizenships. Americans who thought they could flee from the virus by traveling to their refuge properties in, say, New Zealand, got a rude wake-up call when the pandemic hit. New Zealand, like many other countries, promptly closed their borders to nonresidents.

Hence the increasing interest in the benefits of a "golden passport," a non-U.S. passport acquired either through a citizenship by descent or citizenship by investment (CBI) program. When the time comes, a golden passport ensures passport holders can enter freely and without visas into the country issuing the passport.



Citizenship by Descent

By far the most affordable and quickest way to a second passport is if an applicant can document heritage. Over 25 countries allow Americans to claim citizenship if their parents or grandparents (sometimes even great-grandparents) hail from a given country. Any country that defines nationality by the law of the right of blood (jus sanguinis) makes it easy to approve citizenship if they can prove their bloodline. For Americans, the most popular such programs include those of Ireland, Italy, Poland and The Philippines. The major obstacle for many second-generation Americans is documenting a bloodline that can be traced to a particular country.

I myself benefited from citizenship by descent. I was born in Hungary (I emigrated when I was 6 years old), but even if I had been born in the United States, I'd still be qualified for Hungarian citizenship by virtue of the fact that at least one of my parents or grandparents was a Hungarian citizen.

Indeed, my two children, both of them born in the U.S., received Hungarian passports under the doctrine of citizenship by bloodline.

My Hungarian heritage brings many blessings, but the most powerful is that a passport from Hungary—a member of the European Union—gives my entire family the right to live and work in any of the other EU countries. My daughter is allowed to live and work in Denmark because of my Hungarian heritage.

Acquiring a Hungarian passport required extensive documentation (originals of birth certificates, marriage certificates, etc.) and a personal interview at the Hungarian Embassy in Washington, D.C. (Interviews can also be arranged at consulates in New York, Chicago and Los Angeles.) I paid a fee of $150 and waited for a year before my passport and citizenship card arrived.

With 36 million Americans claiming Irish heritage, the Irish citizenship by descent program is the most popular. That a nation of 4 million people has issued more than 14 million Irish passports is a marker of that popularity. The process to obtain Irish citizenship is straightforward. Eligibility requires an Irish citizen grandparent (great-grandparent in some cases). The hard part usually is to be able to produce

originals of birth certificates, marriage certificates and emigration records. The Irish citizenship application costs €287 (about $315). A passport from Ireland is gold: It offers visa-free access to 186 countries. The real problem is that COVID-19 backlogs mean that most applicants for Irish citizenship will have a two-year or longer wait for their applications to be processed.



Citizenship by Investment

For Americans who don't want to wait two years, passports acquired by investment offer faster service. Passports offered by Caribbean CBI schemes are usually the fastest.

Nations such as St. Lucia, St. Kitts and Nevis, Grenada, and Antigua and Barbuda can usually process applications in the 60–90 day time frame.

CBI programs are not a new phenomenon. Two dozen or so countries, including the

U.S. through its EB-5 visa investment program, have adopted well-regarded "golden passport" programs over the years.

Predictably, golden passports can be costly. For an individual, the cost of a second citizenship varies from $150,000 to $3 million. The most desirable countries for second citizenship include St. Lucia, Dominica, Grenada, St. Kitts and Nevis, Vanuatu, Antigua and Barbuda, Bulgaria, Malta, Turkey, Montenegro, Samoa, Egypt and Jordan, according to Best Citizenships, a leading citizenship planning platform for the CBI industry.



Meet Malta Man

Many wealthy Americans consider themselves under attack. President Biden proposed raising the top capital gains tax to 43.4%. The president's 2023 budget includes a minimum 20% tax rate on all American households worth more than $100 million. That tax rate would be on their full income or the combination of traditional forms of wage income along with unrealized gains. While it's unclear if the budget will be adopted, many high-net-worth Americans feel targeted by Uncle Sam.

On the local level, amid the disruption of the COVID-19 pandemic, the city of San Francisco quietly introduced a pay gap tax targeting companies with CEO pay rates more than 100 times that of the median worker's salary. Voters approved the measure in November 2020.

This local ordinance was the last straw for a San Francisco investor we'll call Malta Man. (No one I approached for this story was willing to be identified. Besides the expected concerns about privacy, all the sources pointed to the stigma attached to leaving the U.S.)

One has to look no further than the scorn that greeted Elon Musk's decision simply to change domiciles from California to Texas, says David Lesperance, founder and principal of Lesperance & Associates, experts in immigration and taxation advice, in Warsaw, Poland. "When Musk left his native South Africa to move to Canada, no one said a word. When he moved from Canada to the U.S. for college, no one cared. But when he moved from one state to another, everyone lost their mind," Lesperance notes.

Malta Man felt that merely changing states was insufficient. Besides his desire to minimize taxes, Malta Man's anxiety about what he perceived to be the growing political, economic and environmental instability in the U.S. could not be addressed by simply crossing state lines.

Malta Man is a single U.S. citizen with a net worth of over $500 million. Within the next four years he expects a liquidity event with the potential of quadrupling his net worth. While he intends to live permanently outside the U.S., he wants to be able to visit substantial portions of the world, including the U.S., without needing a visa. He also wants to retain several existing real estate investments and banking relationships in the

U.S. Finally, Malta Man, the eldest of many siblings, wants to gift, with optimum tax efficiency, most of his fortune to his siblings, nieces and nephews.

It's no secret that the U.S. has one of the most draconian tax regimes in the world. Along with only Eritrea, the U.S. predicates its tax collection scheme on citizenship, rather than residency. That means the U.S. claims taxes on worldwide income and extracts taxes from its nonresident citizens no matter where they live or work. Malta Man was determined to get citizenship in another country with a strong passport, renounce his U.S. citizenship, and be rid of most tax and reporting responsibilities to the IRS.

One of Malta Man's first steps was talking to his longtime financial advisor. If Malta Man were your client, what would your response be? Before we go further, take a pause here to consider how prepared you are to advise a client with similar concerns.



It Takes a Village

If your first reaction is, "I'm in way over my head," you're like all financial advisors. No one advisor can be expected to keep up with the dizzying complexity and shifting laws, regulations and costs of every CBI option.

If your second reaction is, "I definitely need to partner with experts in immigration law, exit tax complexities, offshore taxation, and citizenship and residence lifestyle issues," you're on the right track, according to Mel Warshaw, a former wealth advisor for JP Morgan

Private Bank, and more recently an international tax and estate planning lawyer

in private practice in Wellesley, Mass. Warshaw was part of the multidisciplinary team that guided Malta Man to a new life based in the island nation of Malta.

Malta, says Warshaw, offers one of the most attractive CBI programs in the world because it, as a member of the European Union, rocks one of the most powerful passports in the world. “It’s the only passport that grants access to both the EU and the borderless Schengen Area,” he says. “Moreover, it offers visa-free access to 186 counties, including the U.S.”

The new Malta Citizen-ship by Naturalization for Exceptional Services program has gotten a lot more rigorous and expensive since 2016. The program requires applicants to jump through a number of hoops. First, a minimum donation of €690,000 (about

$784,000) gets one on track for citizenship in three years. A donation of €840,000 ($955,000) fast-tracks citizenship in one year. Spouses and dependents require fees of

€50,000 ($57,000) per person. In addition, Malta requires a charitable contribution of at least €10,000 ($11,500) to an approved nonprofit. An additional requirement is purchasing or renting a residence. If purchased, the price must be at least €700,000 ($796,000). If rented, the lease must be for a term of at least five years with an annual lease payment of €16,000 ($18,000). The property may not be rented or leased to a third party during the five years.

Other than costs, one major consideration of CBI programs is how much time applicants must live in the country. Malta Man had to spend considerable time living in Malta to show proof of connection to the country. Other CBI programs don’t care if you live in the country or, indeed, ever set foot within its borders.

In Congress, the CBI landscape currently is being challenged. As Wealth Management reported, several lawmakers have introduced legislation in the House that, if enacted, would revoke a country’s right to remain on the U.S. Visa Waiver Program list if that country sponsors a CBI program in which passports are sold in exchange for an investment.



The Most Extreme Step

Alicea Castellanos, CEO of Global Taxes LLC in New York, also has witnessed growing interest in clients seeking a second citizenship as part of a coordinated backup plan. “Some of the motivations expressed by clients include concern about political instability and a desire to access alternatives to the U.S. health care system,” she says.

While most of her clients seek assistance securing golden passports for themselves and their families, a minority actually want to be permanently free of the U.S. tax system.

That requires the extreme step of renouncing one’s U.S. citizenship. This process is even more rigorous than the most-demanding CBI program, says Castellanos. “It really takes a village of experts to avoid the cross-border tax pitfalls that often trip up clients,” she notes.

Castellanos has learned to ask pointed questions to avoid the myriad issues that complicate expatriation. First is the question of assets. “Whatever net worth the client tells me, I always recommend calling in a tax advisor who has experience in drilling into the details, because nothing will disrupt an exit plan faster than undeclared assets. It’s not a fast nor inexpensive process,” Castellanos says. “Because it takes time to assess a client’s particular situation, it makes sense to plan for expatriation three to five years in advance.”

In order for U.S. citizens to cut the umbilical cord with the U.S. tax system, they must certify to the IRS, under penalty of perjury, that they have been fully tax compliant for the preceding five years. Maybe they had an overseas income generating account that they missed, or they had an inheritance from a non-U.S. person that they forgot about. “Both of these issues would render an applicant noncompliant,” Castellanos says.

A byproduct of becoming U.S. tax compliant is that the individual may avoid the exit tax and the far more draconian inheritance tax. “One of the first things we do is review tax returns for the previous five years, as well as interview clients to make sure they have reported everything,” Castellanos says. “If my firm’s audit reveals tax discrepancies, we help the client become tax compliant.” Global Taxes helps the client become tax compliant by helping them take advantage of one of the IRS streamlined filing compliance procedures for taxpayers who mistakenly fail to report foreign financial assets or pay taxes on those assets. The bargain is that in exchange for coming forward to clean up the five-year tax compliance, the IRS agrees not to assess any other penalties (except for the 5% miscellaneous offshore penalty under the Streamlined Domestic Offshore Procedures).

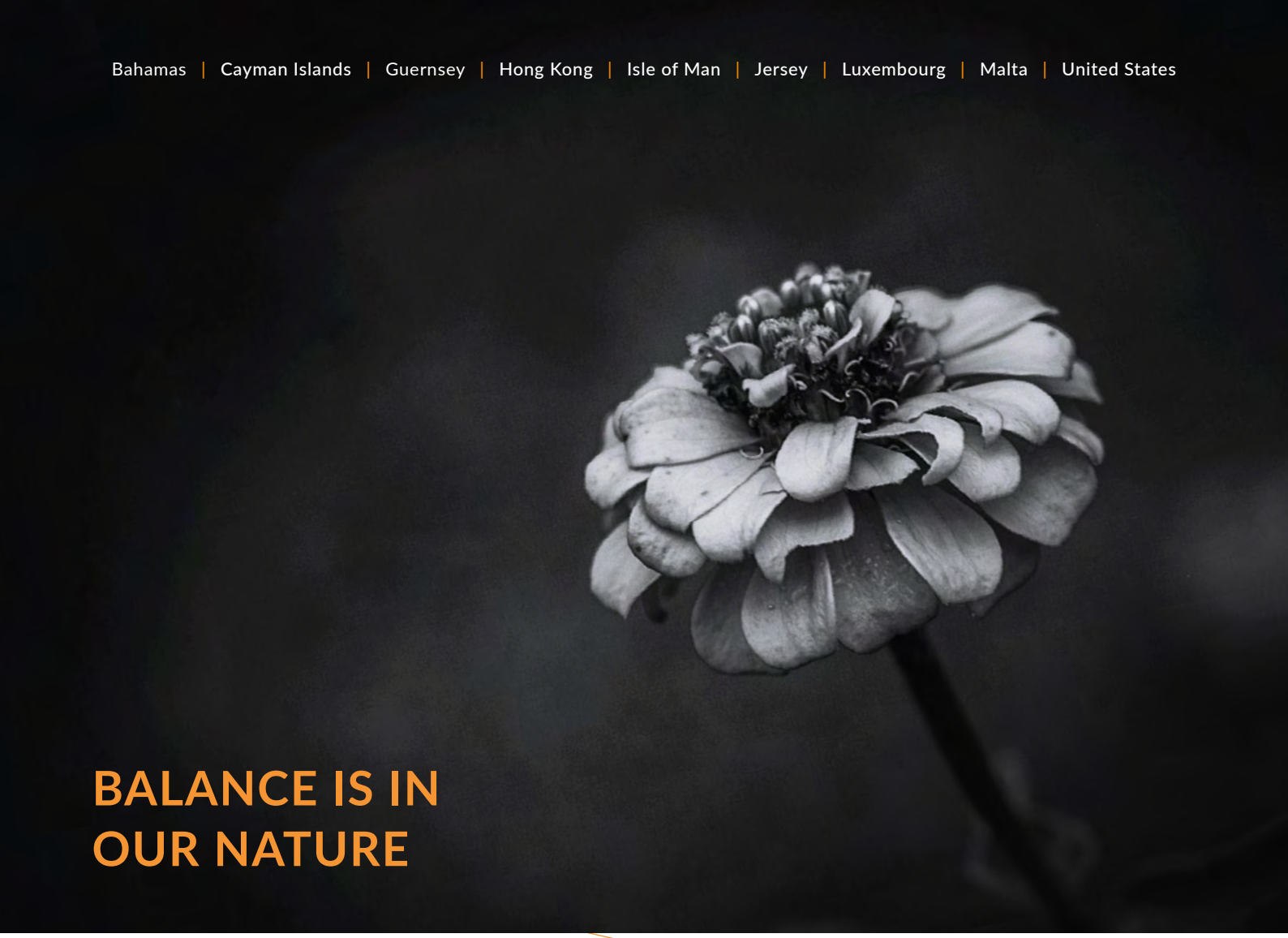


Livable for Family

Americans embarking on crafting an exit plan must navigate myriad issues having to do with where in the world the applicant wants to land: the power of the passport, timelines, budgets, assets to protect, etc. But the bigger issue is not where you want your family to land but from where the family starts. “It’s more critical that the exit plan be decided first at the breakfast table and then in the boardroom,” says Lesperance, the Poland-based consultant. “The exit plan must make both financial and family sense,” he notes.

In order for an exit plan to be livable, it must be a family decision guided by a frank family discussion about individual preferences and needs around schooling, language, accessibility, infrastructure, health care, rule of law and other details that consider the individual needs of all family members. “Such a broad and deep discussion then allows the design of a sustainable backup plan with elements that make financial, individual and family sense,” Lesperance says.

Bahamas | Cayman Islands | Guernsey | Hong Kong | Isle of Man | Jersey | Luxembourg | Malta | United States



BALANCE IS IN OUR NATURE

Suntera Global Private Wealth meets the needs and ambitions of high- and ultra-high-net-worth individuals, families and entrepreneurs across the globe.

Our expert teams protect and nurture every stage of wealth creation, providing a tailored approach to succession and estate planning, supported with full trustee and management services, governance, administration and accounting.

Your Private Wealth Partner

To learn how we can meet your needs and ambitions, please contact Anne Baggesen – Managing Director, Private Wealth

T: +44 (0)1624 683242
E: anne.baggesen@suntera.com

EMPOWERING RESPONSIBLE AMBITION

suntera.com

For details of the regulatory licenses held across Suntera Global, please visit the legal and regulatory page on suntera.com

SUNTERA GLOBAL

THE NEXT GENERATION – CHALLENGING THE STATUS QUO IN FAVOUR OF SUSTAINABILITY



Authored by: Kelly Watson - Accuro

As a trustee I consider our role as being focused on helping to steward families through the challenges of life whilst assisting to protect them and their wealth. In my experience, a key part of being able to achieve this is communication, particularly listening, not something that always come naturally but which is so important. Whether it be the settlor who has a story to tell about how they made their wealth, or the beneficiary with ideas as to how to grow the trust assets with the newest biggest investment opportunity, a trustee should always be ready to listen. The needs, requirements and ideals of one beneficiary to the next are often very different, even more so across the generations.

As the world focuses more on preserving our environment and protecting the planet, trustees need to be aware that it is those generations who will feel the impact of any failures in this regard, that are focusing on the subject more and more and recognising that they have a responsibility to fight climate change and its related consequences. Where once beneficiaries might have been content to agree a target return on investments driven solely by the needs of their own lifestyle, now this is increasingly subject to ensuring that no harm is done in the process.

Next-Gen, short for next-generation, was an adjective that originally came into being to describe a product that had been developed using the latest technology and was likely to replace an existing product. In the wealth arena, it seems that it is commonly being used to describe the transfer of wealth from one generation to the next and the significant differences we as service providers are seeing between those generations.

Trustees do not have the prerogative of being able to discard the old generation in favour of the next-gen. As trustee we need to listen to this shift of focus whilst also keeping an eye on / ear out to those generations who haven't been swept up in the same shift.



Some of the older generation still retain the view that a "traditional family" is formed of a man and a woman who are married and have naturally born children. Now "blended" families are on the rise, with same sex parents, unmarried couples, and / or non-biological children forming a part of the mix. Legislation is evolving (in some jurisdictions at least) to keep up to date with these altered views but it is also important that trustees keep up to date and ensure that the documentation governing our families' structures does so too.

It is no surprise that with such a significant change in what is seen as representing the "norm" that views on wealth, its management and the sharing of such wealth by the next-gen



differ from those of the past. Such differences can risk leading to conflict between the generations which needs to be managed by the trustees in so far as it relates to trust assets. Where the "next-gen" might assume and expect sustainable investing to reasonably form a part of a portfolio, the "old-guard" often have to be persuaded that this is the correct approach, particularly when, in their opinion, it is only relatively recently (within the last decade or so) that the application of ESG and sustainability to investments has begun to affect returns positively rather than negatively.

As a trustee, we often have to balance the desire to actively include ESG and sustainability to meet the demands of the next-gen, against making sure that this doesn't lead to the disinterest and refusal of the older generations to engage, whilst also being aware of the fact that as the law currently stands, impact investing should only form a limited part of a trust investment portfolio unless otherwise set out in the trust deed. Genuine arguments that have been used to persuade the older generation include:

- "Sustainable investing can help future proof returns with regard to tipping points within the market, for example, with regard to climate change" – better to be invested in renewable energy sooner rather than later when the world is moving away from fossil fuels;
- "Impact investing can be highly complementary to philanthropy giving a direct result in the areas in which families wish to target – e.g. clients buy significant land as a means to saving a patch of the world a piece at a time;
- "Sustainable companies are being seen to do better long term investments than those that are not, meaning that returns are likely to be better if investments consider ESG matters" – this is something that is not always obvious and sometimes as a trustee it is for us to take the lead and stress test the portfolios against ESG criteria; or,
- "Impact investing allows the funds to be used again and again with the returns that are generated from such investing thereby allowing ongoing impact in the chosen area to benefit, whereas philanthropy tends to be a donation which even if invested by the recipient, any return and future investment is beyond the control of the donor".

Notwithstanding the fact that all of these points are valid, we have found that they often need to be gently positioned in the face of negative assumptions and misinterpretation of the impact of ESG and sustainability to those who have operated in a world where they are "new".

This is where the communication skills of trustees are key. The move of the next-gen towards ESG and sustainability is widely known and accepted, understanding the reservations of the older generations and navigating the route towards the requirements of the next-gen is where a trustee can show their worth by listening to each generation and balancing the interests as needed.

The next-gen are the future but as trustee, we should fail to listen to the past at our peril – both the past and present are important as we weave our way forwards.



HOW TO AVOID THE PITFALLS OF THE 'MODERN FAMILY' IN WILLS AND TRUSTS



Authored by: Jemma Goddard and Emma Holland - Stewarts Law

What constitutes a "family"?

The Cambridge English Dictionary defines a family as "a group of people who are related to each other, such as a mother, a father, and their children".

While this definition is relatively broad, the example supports the image of what one might consider the "traditional family": one male and one female raising their biological children, with an accompanying assumption that the children were born within wedlock. But how many modern-day families conform to that stereotype?

Do parents generally still consist of one male and one female? The Office for National Statistics ("ONS") estimates that the number of same-sex couple families increased by more than 50% between 2015 and 2018, while the number of married same-sex couples increased more than fourfold to 68,000 over the same period. While no robust data on the UK trans population exists, it has been tentatively estimated[1] in 2018 that there were approximately 200,000-500,000 trans people in the UK, many of whom will have children.

Single-parent families are also now far more commonplace. There were approximately 2.9 million single-parent families in the UK in 2020, accounting for 14.7% of families in the UK[2]. This is in part due to divorce rates still being relatively high. In 2020, more than 100,000 divorces were registered in the UK (although, interestingly, this was a significant decline from the figure of approximately 160,000 in 1993)[3].

Does the modern-day family necessarily consist of biological children? Birth rates have fallen in recent years: the average woman who had reached the end of their expected childbearing years in 1970 was estimated to have on average 2.4 children; by 2020, this had fallen to 1.6 children[4]. That said, people continue to explore different ways of having children, whether by surrogacy, egg, sperm or embryo donation, adoption or fostering. Given the divorce rates, it is also commonplace for families to be 'blended', i.e. consisting of a combination of parents, new partners and children from different relationships.

Are children generally born within wedlock? According to the ONS, in 2020, almost 50% of births were outside marriage or civil partnership.

How has the law adapted to suit the modern family?

The rules of intestacy demonstrate that the law has not kept up with the evolving nature of the modern family. When a person dies without a valid will, their spouse or civil partner gets priority over their estate. Notably, this does not include cohabiting couples who are not married. There is no legal concept of a 'common law' spouse in the UK; cohabiting couples do not share the same legal rights as spouses or civil partners despite the fact that in 2020, 18% of couples living together fell into this category[5].

Where the deceased had children, they will be entitled to either half of the residuary estate (after payment of £270,000 and transfer of chattels to the spouse/civil partner) or, if there is no spouse or civil partner, the entire estate. Unless they have been adopted, this does not include stepchildren, who have long been considered not to be covered by the term "child", unless there is an indication to the contrary[6].

1 By the UK Government Equalities Office
2 According to the ONS
3 Again, according to the ONS
4 According to the ONS
5 According to the May 2021 House of Commons research briefing paper, "Common law marriage" and cohabitation
6 See Goodrich v AB [2022] EWHC 81 (Ch)

There has, however, been some limited statutory intervention to ensure that certain categories of persons are not overlooked. For example, the legal definition of "children" has evolved to include illegitimate[7] and adopted[8] children.

Unfortunately, the situation for same-sex couples is less clear-cut. Those who have taken advantage of the ability to marry since March 2014[9] now fall within the legal definition of "spouse". However, while civil partnerships confer a similar set of legal rights and responsibilities on the parties, they remain treated as legally distinct from marriages.

To what extent will the courts assist?



In situations where the terminology of a will or trust does not appear fit for purpose, the courts have often shown themselves as willing to assist in ways ranging from construing (interpreting) the terminology (often taking into account the European Convention on Human Rights), to taking into account public policy considerations[10]. Separately, the courts will, in certain circumstances, assist with legal recognition of status.

In Goodrich v AB,[11] the court considered the meaning of "spouses" in employee benefit trusts established before the legislation allowing for either civil partnerships or same-sex marriage. As the commercial purposes of the trusts was to reward employees and dependants, it construed "spouses" to include same-sex spouses and civil partners. The court also considered it possible to achieve a similar result by interpreting the same-sex marriage legislation to be compatible with the European Convention on Human Rights; in particular, Article 8, which protects the right to respect for family life, and Article 14, which protects the right to non-discrimination in the enjoyment of the other convention rights.[12]

In PQ v RS[13], the court refused to find that an illegitimate child was included in a discretionary trust's class of beneficiaries. This was because the trust was established before the legislation expanding the definition of children to include those born out of wedlock came into force. However, it was willing to bless a proposal by the trustees to use their power to appoint the funds on to new trusts that could benefit the child.

Where a family member appears to have been overlooked on intestacy, they may succeed in bringing an application under the Inheritance (Provision for Family and Dependants) Act 1975. This was demonstrated in Higgins v Morgan,[14] where the deceased had died intestate and his estate was due to be split seven ways among distant cousins. His stepson, with whom he had a close relationship, successfully claimed under the Act on the basis that the intestacy did not make reasonable financial provision for him as a child of the family.

From a different angle, where difficulties are encountered regarding the legal recognition of non-biological children, the courts have shown themselves willing to assist. A recent example is X v Z (Parental Order Adult)[15]. In this case, the court granted an application for a parental order following the discovery that a couple who underwent surrogacy in California were not acknowledged as the child's legal parents in the UK despite a birth certificate and Californian court order.



How can we avoid these pitfalls?

Ideally these issues should be identified and addressed without the need for court intervention.

Precise drafting is the easiest way to do so. Specifying in the relevant deed or document either the name of an individual or that you intend to include, say, civil partners, stepchildren or transgender people avoids ambiguity.

In the case of wills or trusts, you might set out the testator or settlor's intentions in a letter of wishes, which can be updated depending on the family's current circumstances. Alternatively, you might appoint executors, trustees or a protector who can clarify what the testator or settlor's wishes were after they are dead or have lost capacity.

Unfortunately, rapidly changing social norms and the law's tendency to languish behind them make it likely that modern families will continue to experience issues related to close family members being overlooked.

7 By virtue of the Family Law Reform Act 1987

8 By virtue of the Adoption Act 1979

9 When the Marriage (Same Sex Couples) Act 2013 came into force

10 See the Jersey case of Representation of Y Trust and Z Trust [2017] JRC 100

11 [2022] EWHC 81 (Ch)

12 Although it acknowledged the Civil Partnership Act was discriminatory and infringed articles 8 and 14, it found it was unable to read it down because it would effectively treat the concepts of civil partners and spouses as having merged, which it was not permitted to do

13 [2019] EWHC 1643 (Ch)

14 Higgins v Morgan and others [2021] EWHC 2846 (Ch)

15 [2022] EWFC 26

SCHNEIDER

FINANCIAL SOLUTIONS

Scalable, Sustainable, and Secure Lending Solutions



Established in 2013
Schneider Financial Solutions is the preeminent lending partner for private client and family law matters.

Our loans are tailor-made and underwritten by solicitors on a case-by-case basis.

We understand that the complexities of litigation require intelligent finance solutions and we will support your client from case inception to completion.

020 3411 1033

WWW.SCHNEIDERFS.COM

Schneider Financial Solutions Limited (Registration No. 8668384) is incorporated in England and Wales and the registered office is at Unit 4, Galaxy House, 32 Leonard Street, London, EC2A 4LZ. Schneider Financial Solutions Limited is authorised and regulated by the Financial Conduct Authority, FRN 724278

HIGHVERN

SETTING NEW STANDARDS

A sustainable vision for international fund and fiduciary services.

HIGHVERN.COM



FUNDS PRIVATE WEALTH CORPORATE

NEXT GEN WEALTH



TRUSTEE CONSIDERATIONS

Authored by: Elizabeth Shaw - Bedell Cristin

Anything between an estimated $30 to $68 trillion is expected to be transferred to Millennials over the coming years in what has commonly been dubbed the 'Great Wealth Transfer'. In addition to this, we are seeing a generation of entrepreneurs, particularly in Asia, creating significant new wealth. The overall effect of this is that there is a notable increase in the number of younger high net worth individuals (**"HNWIs"**).

It has become abundantly clear that this next generation of HNWIs have very different ideas on investment from those of previous generations.

Some of the key differences described by advisors are:

- a greater desire to invest in digital assets, such as non-fungible tokens and cryptocurrencies;
- reduced interest in traditional stocks and more focus on private equity and venture capital investments;
- a greater emphasis on placing value on social, cultural and environmental considerations, and a strong desire to make a positive impact on the world; and
- that Millennials are much more informed investors owing to the wealth of information available at the touch of a button, bringing with it a desire to have a greater involvement in the investment decision making process with (or without) their advisors.

Adjusting to this new 'Next Gen Wealth' landscape is a challenge. Advisors, governments and regulators are hastily familiarizing themselves with a vast array of new concepts and terminology, whether in relation to environmental, social and governance ("**ESG**"), digital assets or cryptocurrency, with many questions still unanswered.

When Next Gen investors invest in such assets in their own name, the risks and uncertainties associated with such assets fall on them. However, when funds are held by trustees through a trust structure, the matter is significantly more complex.

Subject to the terms of the trust, trustees hold the powers of investment and are under a core duty to 'preserve and enhance' the value of trust fund, to act as a 'prudent' person would and to act in the best interests of the beneficiaries.

There are, therefore, significant conflicts when considering these fundamental duties against the Next Gen Wealth landscape.



Digital Assets and Cryptocurrencies

Digital assets and cryptocurrencies are notoriously volatile assets. The trustees could generate a significant loss in value of the trust fund. Worse still, a lost or hacked private key means a loss of the entire value. Each of these could give rise to costly claims of breach of trust from disgruntled beneficiaries.

In addition, when settlors are seeking to settle digital assets or funds derived from digital assets, trustees need to be able to comfort themselves as to the source of wealth and funds through the blockchain where the owner of the wallet remains anonymous.



Private Equity and Venture Capital

Private equity and venture capital investments are also riskier investments. Held as part of an overall balanced portfolio, a degree of private equity and venture capital investments may be acceptable. However, advisors are reporting a real demand from Next Gen investors to invest a higher proportion of a portfolio's funds in such investments.

This can present a couple of issues for trustees. Firstly, they have to consider their core duties to preserve and enhance the value of the trust fund and to act as a prudent investor would. Such a weighting to risky investments may not be aligned to this. Secondly, private equity and venture capital investments are generally long term, illiquid investments. Trustees therefore need to carefully consider the funding requirements of the trust to ensure that there is sufficient liquidity to meet the needs of the beneficiaries.



Making a Positive Impact

It is widely accepted that ESG considerations are a material financial factor when making investment decisions and, therefore, in accordance with a trustee's fiduciary duty. However, Next Gen investors often seek to move further along the sustainable investment spectrum towards impact investing, aligning their portfolios with their personal values and societal goals.

The question remains, for private trusts at least, to what extent trustees can sacrifice financial return in exchange for positive social or environmental impact.



Directing Investments

This desire to take a more active role in investment decisions is of itself problematic for trustees. Generally, the settlor and/or beneficiaries do not have any powers of investment, which rest with the trustee. Of course, the trustees will listen to views of the beneficiaries to hear what they consider to be in their interests, but even if all beneficiaries' views are aligned, the trustees may still face challenges in aligning their views with their duties under the trust deed. Everyone may be happy whilst the investments are going well, but one bad investment could present a real risk to the trustees. And what if the beneficiaries do not agree, with some very keen to invest in more speculative or impact investments and others seeking more prudent and traditional investments?



Is there a solution?

Generally, there are potential solutions for trustees, paving the way for the Next Gen Wealth landscape, whilst allowing trustees to sleep at night. A trustee's overriding duty is to act in accordance with the terms of the trust deed, which can displace the core duties discussed above. The key is, therefore, in the structuring and drafting.

Trustee investment powers can be drafted so as to expressly permit certain types of investments, whether that be in digital assets, cryptocurrencies, speculative or impact investments. Corresponding exoneration clauses can also be includes to exclude liability for any losses arising in respect of such investments.

Settlors can expressly reserve the powers of investment and have power to direct the investment of the trust fund at no risk to the trustee. Alternatively, investment management agreements can be put in place between the trustee and certain individuals.

Sub-trusts could be created to allow differing investment strategies for different beneficial groups.

Trustees should therefore view Next Gen Wealth as an opportunity to be embraced, with their legal advisors are on hand to ensure that this is done in a way which is aligned with their duties.

PRIVATE OFFICE STRUCTURES – HOW ARE THEY EVOLVING TO ACCOMMODATE THE NEXT GENERATION?



Authored by: Joe Johnson - Evelyn Partners

The role of the Private Office is evolving faster than ever, with the next generation of family transitioning into the driving seat. Whatever the reason for their increasing involvement, the "next-gen" has a desire to rip up the rule book and do things differently. With that, the role of the adviser has had to adapt too.

Private offices are usually established to ensure success of a family's financial affairs – financial prosperity, privacy, and harmony - with a view to creating a lasting legacy for future generations.

"Millennials" (individuals born between 1981 and 1996) and even "Gen-Z's" (1997 onwards) are testing long-held conventions and getting involved in family offices globally in a serious way. This could be through existing family offices prioritising handing over the reins to their well-educated children, or entrepreneurial 20-somethings becoming successful private office founders in their own right.



Catalysts for changing objectives

Before trying to second guess how advisers and structures need to evolve to meet the objectives of this new wave of family office leaders, it is worth reflecting on the experiences that may have shaped their views.

- **Financial uncertainty** - they have had to live through financial uncertainty brought about by various "Black Swan events": 9/11, the 2008 financial crisis, the COVID pandemic and most recently, Russia's invasion of Ukraine. This has heightened the anxiety that what is financially secure now, may not be in the future. It may have led to an increased desire for control and diversification of wealth, both geographically and by asset class.
- **Technological advance** - no one can deny the unprecedented rate of technological advance. Millennials have spent much of their lives in the age of social media. The oldest "Gen Z's" were 10 years old when the i-Phone was released in 2007, meaning they have spent the whole of their adult lives in an "always on" technological environment. Exacerbated by the explosion of the "economy of convenience" brought about by Amazon, the next-gen has an expectation to be able to assimilate data on demand and make real-time decisions.

- **The desire to have a positive impact on society and the environment** - the next generation are very aware of the impacts of climate change and have a strong desire to act now to solve the issue. They want purpose beyond pure profit and are willing to put their own money where their mouth is.
- **Attitudes to tax and transparency** – various leaks of private data in exposures such as the Pandora and Panama papers have left families reviewing their own affairs, with a view to protecting their reputation with the public and tax authorities.



What does this mean for private office structures

While each family's objectives are unique, here are some common themes:

- **Simplicity and flexibility** – there is an increasing trend amongst existing family offices to review their structure and question whether it is fit for purpose. This type of exercise is increasingly co-led by the next generation. Often born from the desire to be agile and cost-efficient, principals are questioning the role and function of existing structures and the cost/benefit of increased structural complexity. Practical outcomes include the liquidation of special purpose vehicles and other entities serving limited purpose, and considering whether certain non-UK resident entities could migrate their tax residence to the UK. The ability to raise finance is also paramount, with family offices either wanting to plug operating cashflow gaps, i.e. the "COVID impact", or leverage and deploy capital tactically in interesting ventures. An understandable structure only helps lenders do their own due diligence.
- **Speed and involvement in decision making** – next-gen family office principals want to know the right decisions are being made regarding their wealth and that potential opportunities are not missed. This feeds into the structural form of their own private offices but also the associated governance procedures.

  There might be a personalised governance framework allowing the appropriate balance between delegated authority to make day-to-day decisions and the need to escalate and consult on decisions outside certain parameters – be it financial or otherwise. This might be achieved with the use of structures such as Private Trust Companies ("PTCs"), allowing for a mix of next-gen family members and outside professionals in the decision making process.
- **Balance sheets evolving into new asset classes** - historic asset allocations typically spanned traditional and well-understood asset classes, including real estate, public markets and passive involvement in private equity.

  The next-gen increasingly want to enjoy active involvement. This has led to the rise of direct investments by family offices, typically into fast-growth companies and emerging technologies where the principal is keen and able to influence the strategy of the target companies, over and above a pure financial investment. Different families are also coming together to do "club deals" and support each other with expertise and capital. Philanthropy and impact investing continue to be on the rise, with a dedicated allocation of resource and capital to meet the family's social objectives, as well as bespoke structures to facilitate those goals.
- **Tax efficiency is now a secondary focus** – advising on structures that are tax-efficient is sensible. However, the next-gen, among others, often feel a moral obligation to pay an amount of tax that they view as fair and view a good relationship with tax authorities as important. Tax is therefore just one of a number of factors to consider when advising on structures.
- **The use of technology to measure and report performance** - the next-gen value the use of technology solutions to gain access to data instantly. The ability to "slice and dice" financial data and other KPIs in a dynamic fashion allows for agile decisions to be made as opportunities arise.

The active involvement of the next-gen in family offices is fantastic, especially where capital is increasingly being deployed for reasons beyond pure profit. Advisers ultimately need to be able to provide real-time, succinct and commercial advice if they are to stay useful in this ever-changing world. To provide advice at this level requires firms to innovate to support clients, and to tap into their own pool of talent and next generation of advisers.



Private Client



Wealth / Life Middle East (DBX)

15th-17th November 2022

Shangri-La Hotel, Dubai

Event Partners:

Saffery Champness
REGISTERED FIDUCIARIES

JTC

Harbottle & Lewis

ThoughtLeaders Private Client

Meet ThoughtLeaders



Paul Barford
Founder / Director
020 7101 4155
email Paul



Chris Leese
Founder / Director
020 7101 4151
email Chris



Danushka De Alwis
Founder / Director
020 7101 4191
email Danushka



Maddi Briggs
Strategic Partnership Manager
07825 557739
email Maddi



James Baldwin-Webb
Director, Private Client Partnerships
07739 311749
email James



Fatema Rasul
Conference Producer
07701 307284
email Fatema

Our Private Client Community Partners:

Grant Thornton
asset risk consultants — advising clients since 1995 — 25 asset risk consultants 1995–2020
PETERS & PETERS
Radcliffe Chambers
ConTrA
GASSER PARTNER ATTORNEYS AT LAW
Ogier
SUNTERA GLOBAL
CAREY OLSEN
PCD Club
COLLAS·CRILL
IBSA International Business Structuring Association
PAYNE | HICKS | BEACH
McDermott Will & Emery
SCHNEIDER FINANCIAL SOLUTIONS
HIGHVERN
mourant
Equiom
Wilberforce CHAMBERS
EY Frank Hirth Personal Tax
Harbottle & Lewis
R&H TRUST & CORPORATE
KINGSLEY NAPLEY WHEN IT MATTERS MOST
HOWARD KENNEDY
London&Capital WEALTH AND ASSET MANAGEMENT
JOSEPH HAGE AARONSON