PRIVATE CLIENT
GLOBAL ELITE

THE MONTH

DECEMBER 2023

WINTER ROUND-UP

CONTENTS

2024 CALENDAR

Private Client Exchange Cayman
The Ritz, 16 -17 January 2024

Private Client Global Elite Celebratory Dinner
Spencer House, London, 1 February 2024

Trust and Estates Litigation Forum (Postponed)
La Mamounia, Marrakesh, 4-6 February 2024

Private Client Forum Americas
Banyan Tree Mexico, 28 February - 1 March 2024

International Women's Day Leadership Brunch
London, 7 March 2024

Private Client Exchange Switzerland
Guarda Val, Switzerland, 14-15 March 2024

Rising Leaders Leadership Brunch
London, 18 April 2024

Private Client Exchange Italy
Puglia, Italy, 21-22 April 2024

Private Client Exchange Asia
The Capella, Singapore, 16-17 May 2024

Minds of the Future
Terre Blanche, France, 12-14 September June 2024

Trust & Estates Litigation Forum
La Mamounia, Marrakesh, 18-20 September 2024

Private Client Exchange France
Chateau Saint-Martin, 3-4 October 2024

International Private Client Forum
Villa d'Este, 13-16 November 2024

Private Client Exchange UK
Cliveden House, 28-29 November 2024

Annual General Meeting
Spencer House, London, 3 December 2024

WINTER WITH PRIVATE CLIENT GLOBAL ELITE

We have had a very busy November and December this year, with our International Private Client Forum at Villa d'Este in November chaired by Basil Zirinis and Clare Maurice, and our Private Client Exchange UK at Cliveden House in December chaired by Philippe Pulfer and Elspeth Talbot-Rice KC.

We would also like to offer warm congratulations to our members who could celebrate victories at the British Legal Awards in November - particularly Stephenson Harwood for winning Private Client Team of the Year, and Clare Maurice who received a lifetime achievement award.

We look forward to 2024 and everything it will bring = kicking off quickly with events in Cayman, Marrakesh, and Mexico all in the first two months!

On the right hand side you can see, in order, Basil and Clare kicking off our 20th International Private Client Forum, a group of wonderful ladies at our 20s themed evening, Clare Maurice receiving her Lifetime Achievement award at the British Legal Awards, and Rosie Schumm and Dakis Hagen KC leading a memorable session in the beautiful French Dining Room at Cliveden House.

A TRUST-MAS CAROL

Philipp Konzett, Gasser Partner

The festive days are a good chance to relax and re-charge the batteries, to spend some time with your family and (or) loved-ones, maybe even pick up a book to read. These are the times when we are most creative. And, of course, as private client lawyers can never really stop thinking about our profession, can we? So, let me present to you a brief overview of what Liechtenstein has to offer for your clients in analogy to Charles Dicken's "Christmas Carol. In Prose. Being a Ghost Story of Christmas" or, for the purpose of this short contribution: "A Trust-mas Carol. In dry legal language. Being a Ghost Story of Philanthropy."

Marley was dead, to begin with. Scrooge's old business partner – gone. Dead for seven years now. Scrooge and Marley – what a fantastic team they were. Together, they built "Scrooge and Marley Ltd.", a ridiculously profitable investment company. But now, Scrooge was alone. Only his nephew visited occasionally, but he didn't show any interest in the company. So, Scrooge's lonesomeness most often also meant loneliness, and the anxious thoughts about the future hardly ever stopped: What will come after me? What was the purpose of all those insane profits? Why did I even bother to make one formidable business decision after the other? Was it good for anything?

One winterly night, Scrooge was lying in his bed staring at the ceiling, contemplating, somehow half asleep at the same time, alone with his thoughts. Again. Then suddenly, he saw Marley's face looking down at him. Am I dreaming, Scrooge thought. The face was not angry or ferocious, but looked at him as Marley used to look: with ghostly spectacles turned up on its ghostly forehead. Scrooge tried to open his eyes when he realized they were open, already, and what he saw was real. "Humbug!" he cried. But Marley replied with a soft voice and said "What are you thinking about, Scrooge? Haven't you always been better in doing than thinking? Look at the wealth we amassed together and how it is of no use for me now. What is it worth if you don't do something with it? – Tonight, you will be haunted by Three Spirits. They will show you that you can do good with your wealth!" Scrooge couldn't even reply. As soon as Marley had finished, his face suddenly lit up before it vanished with a flash that illuminated the entire room for a split second.

The clock struck one when the first ghost appeared. It looked as if it was sitting on the stool next to Scrooge's bed. Scrooge sat up and asked "Are you the Spirit, sir, whose coming was foretold to me?" "I am." the ghost replied. "Who, and what are you?" Scrooge demanded. "I am the Ghost of Liechtenstein Foundations. I come to tell you how you can use Liechtenstein foundations for charitable and private purposes." Scrooge was puzzled. "What is it?" And the Ghost of Liechtenstein Foundations explained with an angelic voice: "Liechtenstein foundations are legally and

economically independent special-purpose funds formed as legal entities. You can use them to pursue private-benefit purposes, charitable purposes or mixed purposes. In Liechtenstein, you and your advisors can maintain influence over your foundation so that it is managed according to your will. And if you are gone, the foundation will go on to continue pursuing your wishes for all eternity." That sounded a lot like what Scrooge was looking for, but he had never heard of foundations. "Excuse me, sir. I was socialized in Anglo-Saxon legal systems. Is it like a trust?" Scrooge inquired. "It is similar, except it has legal personhood, so it may be better for tax reasons to use a foundation. But that is something for your lawyer to explain", the Ghost of Liechtenstein Foundations replied and vanished as fast as it had appeared.

Scrooge didn't know what to think. He stared at the ceiling again: "Marley, what is the meaning of this?!" Then the clock stroke two and Scrooge could suddenly saw someone standing at the table. "Who are you?", he asked. "I am the Ghost of Liechtenstein Trusts", the ghost replied. "So, you have trusts in Liechtenstein?! I thought you use foundations…" Scrooge was even more confused now. "You are correct, Liechtenstein offers both. Liechtenstein introduced the trust almost 100 years ago, even though it is a civil law jurisdiction. A trust is a contractual relationship between the settlor and the trustee, but it doesn't have legal personhood. You could say, the Liechtenstein trust is a bit more flexible than a foundation, although the foundation is already quite a flexible legal form. In some cases, trusts may be more tax efficient than foundations. In other cases, it is the other way around." the Ghost of Liechtenstein Trusts explained and then, almost whispering "In Liechtenstein, there is no rule against perpetuities…" – "Fine… Tell me more" Scrooge demanded, but the ghost had started to vanish slowly already, and Scrooge could only hear from far away "Go ask your lawyer…".

Scrooge was left behind, thinking. Philanthropy, maybe that would be an option. After all, he didn't have any children, there was only his nephew. The "Scrooge Foundation" … "The Scrooge Charitable Trust" he mumbled to himself. It had a nice sound to it and Scrooge started to like the idea… "Not so fast!" someone firmly said. Scrooge turned around and saw another ghost all in white. "Who are you?" he asked. "I am the third one: The Ghost of Liechtenstein Establishments" the ghost responded "and although you have never heard of such Establishments, I will show you that they are indeed quite interesting." Scrooge stared at the ghost "Establishments???" – "Yes, establishments. The establishment, or in German simply 'Anstalt' is a Liechtenstein legal entity that is most suitable for private benefit succession planning. Its main feature are so-called founder's rights, which allow the founder to control and influence the establishment. The founder is free to define the extent of the founder's rights. The founder is free to reserve these rights or to waive them all together. The founder's rights can be divided into quotas and are transferrable and fungible." – "So, like a share?" And the ghost replied "Something like that, but you are free to define the shareholder's rights, if you will." Scrooge wanted to get out of bed and ask more, but the ghost had disappeared, already.

The next morning, Scrooge felt like a new person. He had slept well, or he thought he did. Conversations with ghosts about succession planning seemed like a distant dream. What happened anyway? For the first time in years, though, he had a good feeling about the future. And he was fairly certain that he had dreamed about Marley. Like Marley's ghost had lit up the room, Scrooge felt as if his heart had been somehow enlightened, too.

In the office, Scrooge sat down and enjoyed his coffee. Then, he jumped up and called his assistant: "Give me Philipp Konzett, I am thinking about settling a Liechtenstein trust…"

The End. ■

"A DROP IN THE OCEAN..."

Charles Lloyd and Jonathan Arr, Macfarlanes

Introduction
It has recently been confirmed that a charity created in 1928 to discharge the National Debt should be applied only in reduction of the National Debt, rather than for more general charitable causes under a new scheme. The judgment of the Court of Appeal highlights the tension in the legislation between the flexibility introduced by the need to consider whether the scheme is "suitable and effective" in the "current social and economic circumstances", and the rigidity with which the Court must consider the "spirit" of the original gift and the "closeness" of the new proposal to the original gift.

Background
The charitable trust, known as the "National Fund", had been set up in 1928 with the express purpose of "benefiting the Nation by discharge of the National Debt". The terms of the original trust deed provide that, once the assets in the charity (along with other funds for a similar purpose) are sufficient to discharge the National Debt, the funds are to be paid to the National Debt Commissioners. In the 90 years since establishment, the charity's assets grew from £500,000 to over £500 million. However, in the same period the National Debt grew from £7 billion to over £2 trillion.

The Attorney-General, as protector of charity in the UK, brought proceedings to determine whether the purpose of the charity had therefore failed with the result that the funds could be applied cy-près for a new purpose under a new scheme.

Descendants of the original donor joined the proceedings to argue, in their own interests, that the charity failed from the outset and therefore the funds were held on resulting trust for the estate of the original donor. At the initial trial, the donor's family failed to have the original gift invalidated but it was determined that, as the National Debt had grown so substantially, the charity could not achieve its purpose, and therefore the funds should be applied to a new scheme.

The judge ordered the parties to prepare schemes for the use of the National Fund. The trustee, Zedra Fiduciary Services, argued the fund should be applied for general charitable purposes in the UK. The Attorney-General contended that the fund should only be used to reduce the National Debt.

The law
There are three factors that the court (or the Charity Commission) must have regard to when considering a scheme for the application of funds (under section 67(3) Charities Act 2011):

(a) the spirit of the original gift;

(b) the desirability of securing that the property is applied for charitable purposes which are close to the original purposes; and

(c) the need for the relevant charity to have purposes which are suitable and effective in the light of current social and economic circumstances.

The Attorney-General argued that the "spirit of the original gift" was to benefit the Nation by seeking to reduce the National Debt. The trustees argued the "spirit of the original gift" was wider than this: (1) to benefit British citizens of the UK; (2) to benefit future generations in preference to the generation in existence at the time of the gift; and (3) to stimulate altruism in others by setting an example.

The Attorney-General argued that s.67(3)(b) Charities Act 2011, assumes the "desirability" of applying property for charitable purposes which are as close as possible to the original purpose. The trustees argued this requires the Court to engage in "an assessment" of the extent to which it would be "desirable" that the relevant property is applied in that way.

The Attorney-General emphasised that "suitability" should be considered specifically in relation to the charity in question, and that the Court should not seek to determine what scheme is the "most" suitable and effective in the current social and economic circumstances. The trustees argued that due to the enormous discrepancy between the National Fund and the National Debt and considering updated attitudes towards the National Debt, reduction of the National Debt was neither suitable nor effective in the current social and economic circumstances and instead would amount to "a futile, symbolic gesture".

However, at first instance, the High Court authorised a scheme to apply the fund in reduction of the National Debt. The High Court ruled that the spirit of the original gift and the question of the closeness to the original purpose favoured the Attorney-General's scheme, and that the current social and economic circumstances, which pointed towards the trustee's scheme, did not outweigh the other two.

The trustees appealed.

Appeal

The Court of Appeal agreed with the trustees that the Judge's reasoning on the spirit of the original gift was flawed but nevertheless accepted that the first factor favoured the Attorney-General's scheme. In the leading judgment of the Court of Appeal (with which Lady Justice Asplin and Sir Launcelot Henderson LJ agreed) Lewison LJ noted that using the National Fund to reduce the National Debt would have a "negligible effect", but ultimately held that the Attorney-General's scheme satisfied the third factor of being suitable and effective in the light of the current social and economic circumstances in the context of this particular charity.

Conclusion

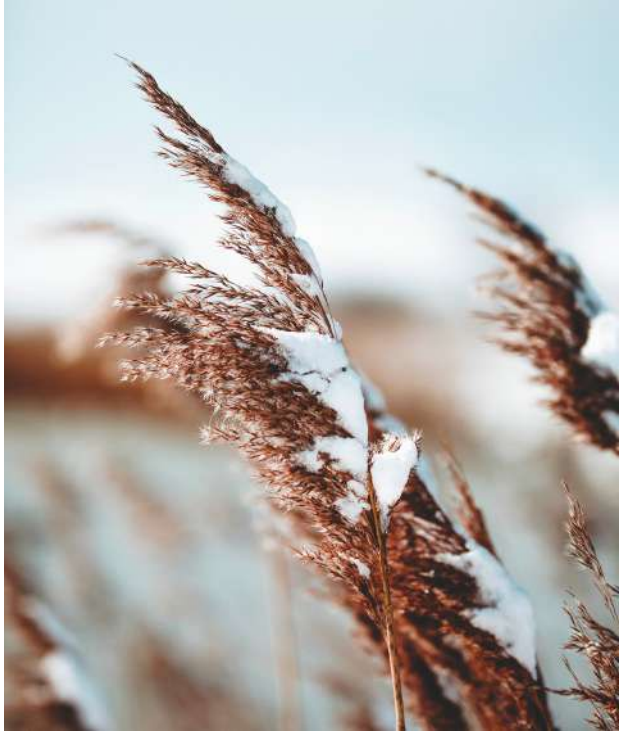
The in-depth analysis of the interpretation and application of s.67(3) will provide valuable guidance on how courts and (more often) the Charity Commission will apply the cy-près scheme jurisdiction in the future. The decision confirms "there is no necessary hierarchy" as between the three factors under s.67(3), and each case must be determined by the Court's or the Charity Commissioner's "value judgement".

The court will also have regard to the particular charity itself when considering what is suitable and effective in current social and economic circumstances. This decision clarifies that there are clearly strict limitations on the scope of the consideration of what purposes may be suitable and effective.

The Court of Appeal decision also highlights the familiar difficulties in deciding whether to appeal an evaluative judgment made by a first instance judge. The Court of Appeal highlighted inconsistencies and doubts they had over parts of the reasoning in the High Court's judgment, specifically in relation to the spirit of the gift but nonetheless upheld the High Court's decision as one which the Court was "entitled to reach". ■

GUERNSEY'S CHARITABLE SECTOR: A WINTER ROUNDUP

Matt Guthrie and Diana Rodriguez, Ogier



Guernsey boasts a vibrant charity sector, home to several hundred local charities that offer support and services to the community. In addition, there are a similar number of global charitable trusts and foundations, many of which are managed by trust and corporate service providers regulated and headquartered in Guernsey. We are hearing more and more from clients who are motivated to use their wealth for the wider benefit of society and the environment, and who are interested in Guernsey as a place to base their philanthropic endeavours. This is something that the next generation of clients, who are preparing to take control of their wealth, are increasingly interested in.

In response to the need to align its regulations with international standards on anti-money laundering and combating the financing of terrorism, Guernsey implemented new charity legislation on 29 April2022. This legislation was phased in over a 12-month period redefined charities and non-profit organisations under Guernsey law, established criteria to determine which organisations needed to be registered on the Register of Charities and other Non-Profit Organisations, and outlined the governance and risk mitigation strategies these organisations were required to put in place.

In this article we look at how the legislation has worked in practice; what amendments have been made to it and why; and we provide some tips we have learned along the way which we hope will be helpful to those interested in setting up philanthropic structures in Guernsey.

Defining charities

A welcome addition in the new charities legislation is the including of a detailed definition of charitable purposes.

The definition is expansive, ranging from the prevention of poverty, to the advancement of education, health and community, to human rights, conflict resolution and the promotion of religious or racial harmony and to the advancement of environmental protection and animal welfare. And if this were not enough, the list also includes "any other purpose that may reasonably be regarded as analogous" to any of the above.

Which NPOs must register under the Guernsey charities register?

Guernsey has been operating a charities register since 2008, and the new legislation has fine-tuned the registration requirements. As a result, the mandatory registration now applies to a slightly revised group of organisations. Charities, can opt for voluntary registration, but they are obliged to register if they meet one or both of the following criteria:

1 - They possess gross assets and funds of £100,000 or more, or a gross annual income exceeding £20,000, unless they do not seek or accept public donations, funds, or contributions. This is a significant increase from the previous thresholds of £10,000 and £5,000 respectively; or
2 - They engage in international

activities, which means they raise or distribute funds overseas. This requirement applies regardless of whether they meet the financial threshold or solicit or accept donations from the public. There are limited exceptions to this rule, such as if the international activity is intended to aid someone primarily residing in Guernsey or Alderney.

Although the legislation increased the financial thresholds for having to register, meaning a few very small charities would no longer be required to register, it also made one significant change that has affected a number of our clients. The change is that whereas previously a charity that was administered or managed by a regulated Guernsey trust and corporate services provider (TCSP) was exempt from registration (the rationale being that charity would be supervised by virtue of the TCSP being regulated), such organisations now have to register if they requirements set out above.

Fortunately, in recognition of the fact that the supervision is taking place at the level of the TCSP such charities are exempt from some of the more onerous aspects of the new legislation. For example, they do not need to ensure that a majority of board members (or trustees or councillors) are Guernsey or Alderney residents. This is important for international families who want to be involved in the running of their charities.

Further changes made to the law

Further changes came into effect on 29 July 2023, which expanded the powers and responsibilities of the Registrar in Guernsey and Alderney.

The Registrar now has updated powers to communicate and cooperate with other authorities both within and outside of Guernsey. This cooperation aims to assist both the relevant authority and the Registrar in fulfilling their functions and further preventing, detecting, investigating, or prosecuting financial or non-financial crimes.

The Registry now has the authority to request or require certain information from charities or other entities under the Registry's jurisdiction. This could include information about the registration, regulation, governance, and law practices and procedures of charities, or information that could assist in the prevention, detection, investigation, or prosecution of crimes.

In addition to increased powers to request information, the Registry can also share certain information with specified entities or individuals. This could be to assist other authorities in their functions and aid in the prevention, detection, investigation, or prosecution of crimes, or to promote the public interest or the reputation of Guernsey and Alderney as a finance centre.

Conclusion

In conclusion, these changes are a significant step forward for Guernsey's charity sector, ensuring it aligns with international standards and continues to serve the community effectively and transparently. The new powers and responsibilities of the Registrar will further enhance the sector's ability to prevent, detect, investigate, or prosecute financial or non-financial crimes, and promote the public interest or the reputation of the Bailiwick as a finance centre.

Since the introduction of the new legislation, local and international charities based in Guernsey, and their advisors, have been working hard to get up to speed with the new legislation. This is an exciting and rewarding sector to be involved with. ■

COVERT RECORDINGS IN FAMILY PROCEEDINGS IN ENGLAND & WALES: THE HIDDEN DANGERS

Flora Harragin and Stephanie Lidell, Farrer & Co

Spies and private investigators are no longer needed to record another person covertly; anyone with a mobile device can press "record" without another person even knowing.

In the context of Family proceedings, covert recordings of ex-partners, children and professionals are frequently the subject of applications made by parties who wish to rely on them in support of their case. In England and Wales, it is necessary to obtain permission from the court to adduce covert recordings as evidence, but permission may be granted if the recording is of probative value, reliable and relevant.

However, while it may appear that covert recordings would provide clear and cogent evidence, given that they seemingly capture the 'reality' of the situation on the ground, they are in fact treated with caution and viewed with suspicion by judges. For example, a judge will be cautious when assessing the content of a covert recording because of the risk that where one party knows a conversation is being recorded but the other does not, the content may be manipulated. There is also the risk that the judge will consider that the act of recording another person covertly is as an attempt to control and/or intimidate (regardless of whether the recording, on the face of it, proves their point).

Specialist advice should therefore be taken at the earliest opportunity, and consideration will need to be given to the following:

You cannot cherry-pick
The recording should be demonstrably of the whole conversation, not just a snippet. It is important for the court to know that something someone has said or done has not been taken out of context. If the recording is found to be part of a longer recording, the court could order the full version to be produced. If the full version contains unhelpful content, it could end up having unintended adverse consequences for the party wishing to rely on the recording in the first place.

You run the risk of all covert recordings being disclosed
If one party applies for a recording to be adduced as evidence, they may be required to disclose all other recordings in their possession. Careful thought will need to be given, therefore, to this risk before seeking to rely on a recording.

Additionally, if one party's recordings are adduced into evidence, the court may require the other party to produce all recordings in their possession (even if that party has not made an application to adduce this as evidence). The party wishing to rely on a covert recording must therefore consider whether unhelpful material could come to light if they sought to rely on their own recording.

Recordings of children are likely to be frowned upon
Many parents believe that recording their children would be beneficial to their case. In fact, the opposite is often true.

Judges have made clear that parents should think very carefully about the consequences of making a recording of their child and there are many cases in which recordings made of children have backfired on the parent making the recording.

In the case of M v F (covert recording of children) [2016] EWFC 29, a father sewed recording devices into the lining of his child's clothing to find out what was being said in meetings between the child and a social worker. The judge stated that "it is almost always likely to be wrong for a recording device to be placed on a child…this should hardly need saying…such activities normally say more about the recorder that the recorded". Ultimately, the judge in that case made an order in terms that the child should live with the mother, rather than the father, and for the father to pay the mother's legal costs incurred in relation to dealing with the covert recordings.

Recordings of adults are also likely to be frowned upon

Although to a lesser degree, the court also takes a dim view of a party who has secretly recorded another adult. In the case of C (A Child) [2015] EWCA Civ 1096, a father secretly recorded the mother during handovers and via CCTV footage. The judge considered that to amount to "a form of intimidation" and granted the mother a non-molestation order against the father. It would be prudent to seek the other person's approval of being recorded or take a contemporaneous note and apply for that to be adduced as evidence.

It will cost you

If a covert recording is admitted into evidence, it is likely that the court will want a professional transcript, the cost of which would typically be borne by the party seeking to rely on it. Depending on the length and / or volume of the recording(s), this cost could be significant. There will also be the costs of the applicant's legal team for carefully reviewing the recordings and transcripts, in addition to the costs of the application, and potentially the other party's legal costs if their application is unsuccessful and a costs order is made against them.

The possibility of significant delay

The case of Re Children (Private Law: Covert Recordings: Adjournment of Final Hearing) [2021] EWFC B82has highlighted the considerable risk that the court orders an adjournment in the proceedings to allow for covert recordings to be properly considered, which could result in significant delay and additional cost. In that case, the mother was found to have over 100 recordings of the father on her phone, and the judge ordered a six-month adjournment to allow the parties' respective legal teams to consider them.

Guidance for the future

As we have seen, seeking to rely on covert recordings in the context of Family proceedings in England and Wales involves a myriad of issues and can have significant adverse consequences. It is important, therefore, to take specialist legal advice at the earliest opportunity and think very carefully about the potential consequences. This is a complex area which is becoming increasingly prevalent due to the advances in the technology available to us all today.

The Family Justice Council (FJC) has consequently produced useful draft guidance on the legality and admissibility of covert recordings in this jurisdiction. It sets out important case management considerations, and it includes useful precedents, such as letters of consent. The guidance also warns professionals who are offered covert recordings in the context of family proceedings that admissibility is a case management decision, and they should not listen to, or view, the recordings until the court has determined whether or not to admit the material in evidence.

This publication is a general summary of the law. It should not replace legal advice tailored to your specific circumstances. ■

IHT CONSIDERATIONS ON THE SALE OF A BUSINESS

Holly Hill, John Lamb Hill Oldridge

In all the excitement of the sale of the business, the long-term impact of having cash rather than shares in the unquoted trading company on the IHT liability is often not addressed. In terms of presale planning, often there will be a transfer into a relevant property trust in the certain knowledge that the value transferred will become chargeable if the transferor dies within 7 years.

Similarly, for cash assets that are now with the client, there is an immediate IHT liability created. Additionally, there is often a wish to transfer assets to the children in both the short and the long term which will again instigate the IHT gift tail.

The life insurance industry has cost effective solutions to both the short and long term IHT planning.

Gifts and transfers to trust
For the transfer of qualifying unquoted shares into a relevant property trust, there is no immediate IHT payable and normally there will be CGT holdover relief. The clock for the 7-year IHT tail will also start ticking from the date of transfer. Therefore, if the assets are moved into trust and the sale is subsequently made a year down the road, there is only a 6-year reducing liability to IHT. For a client aged 60, the total cost of life insurance to cover the 6-year tail would be just 0.4% of the assets transferred. Advisors can save clients significant amounts of money by ensuring that the gift maker, and therefore the insured person, is as young and as healthy as possible. You should therefore consider whether the assets can be passed to a younger (and potentially fitter!) spouse before being moved into trust or gifted.

GIFT COVER Cost per year for £1m of single life cover (covering a £2.5m gift)						
	AGE					
	30	40	50	60	70	80
Yr 1	£261	£440	£983	£2,371	£6,998	£28,201
Yr 2	£261	£440	£983	£2,371	£6,998	£28,201
Yr 3	£261	£440	£983	£2,371	£6,998	£28,201
Yr 4	£210	£355	£795	£1,918	£5,689	£22,913
Yr 5	£158	£270	£605	£1,464	£4,376	£17,625
Yr 6	£106	£184	£413	£1,010	£3,058	£12,338
Yr 7	£54	£95	£212	£522	£1,604	£6,463
Total paid over term	£1,312	£2,222	£4,974	£12,027	£35,721	£143,941
Cost as a % of the gift	0.05%	0.09%	0.20%	0.48%	1.43%	5.76%
Guaranteed premiums are fixed for the full policy term						

Following the sale, gifts can also be made directly to the children and grandchildren and again the overall cost compared to the potential IHT liability is negligible. Clients can view insurance as a definite c.0.5% cost compared to a potential 40% tax.

The overall cost over 7 years for a client who is 70 years old is still under 1.5% of the gifted amount.

Long term IHT liability
Clients will also have long term IHT liabilities which they may be happy to retain within the estate, effectively self-insuring.

Alternatively, long term insurance can often be a flexible and cost--effective solution to protecting the family assets. In the UK market, term cover can be purchased up to a maximum age of 90, or clients can opt for a guaranteed whole of life policy which will provide permanent protection. Typically estates will opt for a mixture of these two options for cost control purposes.

If we look beyond UK waters, the international market offers a term to age 99 contract which is not only comparatively well priced, but which works very well for clients with longer than average life expectancies, or where couples seeking joint-life policies have a significant age gap (since term policies will terminate wen the older life reaches, or would have reached the designated age on the contract). Similarly, there are a range of flexible and investment-based options available through the US market. Additionally, clients may also be considering future gifting, recognising that as they get older they may want smaller houses, fewer yachts and to hang up the private pilot's license. For these clients, buying a contract that allows you to insure your current liability on a joint-life-second-death basis, but to then split the cover down into single life policies if gifts are made or there is matrimonial strife, provides excellent flexibility.

Who pays the premiums?

Life insurance policies purchased for IHT protection will need to be held outside of the life assured's estate. This can be achieved either by taking out the policy on a 'life of another' basis, for example where a child takes out cover on their parents, or by assigning the policy into trust. In both cases consideration will need to be given to who will be responsible for paying the premiums, and importantly, to how the payment of premiums will be enforced in the long term. The latter can sometimes be an issue where multiple siblings receive gifts and some dutifully maintain gift cover while others do not, leaving a cash void if the tax does end up falling due. There are a number of options and considerations for premium payments:

1. The donor
    - If the policy is owned on a 'life of another' basis then premium payments made by donor will be considered to be PETs. If the policy is held in trust, then premiums will be considered to be either PETs or CLTs depending on the type of trust.
    - Where premiums are high enough to exceed the Nil Rate Band, the tax implications will need to be considered. To navigate this, premiums can be covered, where appropriate, by:
        - the £3,000 annual gift allowance
        - the normal expenditure from income exemption

2. The donee
    - Where a donee is happy to fund the premiums themselves, there are no PET/CLT issues, but care must be taken to ensure that the donee continues to pay for the cover if the estate is relying on the policy to foot the IHT bill.

Summary of considerations:

- Don't forget that business sales come with a sudden and significant IHT exposure.
- For married couples gifting, try to pick the youngest and healthiest spouse to make the gifts.
- Consider who will be responsible for paying the premiums, what the tax implications are and ensure controls are in place to maintain the premium payments into the future to avoid a lapse in cover and a cash flow void. ■

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