

## ATTORNEYS, DEPUTIES AND TRUSTEES

**In the claim-chasing world we live in today, don't be an easy target for an aggrieved beneficiary**

### IHT - Attorneys and Deputies

You may advise (even act as) Attorneys and Deputies for clients with IHT problems. Unfortunately you cannot make significant gifts (without Court approval, which is often not forthcoming - **not** in clients' best interests). Even if you could make gifts, the client needs to survive 7 years to be fully exempt and this is often a tall order.

One option could be to consider investing in a Business Property Relief (BPR) qualifying investment, as this gives fast relief as well as being exempt of IHT after only 2 years. This is often considered more achievable and if the client does not survive 2 years, they are no worse off.

BPR investments are allowed as they are not a gift and client retains access to capital and income if required.

Traditionally, BPR solutions have been linked to highly volatile AIM listed portfolios, but today there is a wider range of options offering much lower risk solutions.

***'to ignore this effective and valuable solution could be viewed as negligent'***

In such situations, this type of investment should always be considered in conjunction with an IFA. They may not always be suitable, but, to ignore this effective and valuable solution could be viewed as negligent, especially by aggrieved beneficiaries who would have inherited greater value had these been utilised.

There are a range of different BPR

solutions currently available. Investments can be made over a series of tranches, normally each separate payment will have its own 2-year qualifying period from date of investment.

We have one solution that will allow top-ups to be made and treated as if made at the original investment date. This is a very valuable option and allows clients to make an initial investment (toe in the water) and add further funds later as their confidence in and knowledge of this type of arrangement increases over time.

***'Those interested in benefiting from this top-up facility need to complete their initial investment by the end of June'***

Unfortunately, this particular scheme is due to close at the end of June 2012 and those interested in benefiting from this top-up facility for the future will therefore need to complete their initial investment by the end of June deadline.

### Deputies and Trustees need to review Court of Protection funds

It is today surprising the significant level of funds controlled by Deputies and Trustees still languishing in the Court of Protection cash fund, with a return of only 0.5% per annum, or in the limited Court fund Global Index Tracker.

Deputies and Trustees have similar fiduciary responsibilities and are subject to the Standard Investment Criteria in Section 4(1) of the Trustee Act and a duty under

Section 5 to take proper advice.

Perhaps now is the time to revisit the original strategy and consider moving the Court funds into a more suitable environment to provide a much more appropriate asset allocation strategy with the potential for improved and more stable returns. Using such a strategy will improve diversification and so reduce risk and volatility.

### Trustee - Annual reviews

The Trustee Act 2000 requires Trustees to have regard to the Standard Investment Criteria, being:

- The suitability of investments
- The need for diversification

Trustees must also keep investments under review and consider tax considerations of selected investments and should take proper advice.

There remain many many Trusts where investments were put in place many years ago, which would have been appropriate at the time, but due to changes, introduction of alternative solutions and taxation developments, are no longer suitable.

It is not sufficient for a review to merely complete a tax return and note the investment return. Trustees need to be asking the question of an IFA - "Is this type of investment/strategy still appropriate?" - to not ask the question, and act upon the answer, will be a breach of the Trustees' duty and potentially lead to a negligence claim (Gregson -v- HAE Trustees Ltd)

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