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STEP
ADVISING FAMILIES ACROSS GENERATIONS

Succession story

Gabrielle Lane, July 2017

Panel (L-R, starting with back row)

- **Wilson Cotton TEP**, Partner, private client tax, Smith & Williamson
- **Ed Powles TEP**, Partner, Maurice Turnor Gardner
- **Helen Ratcliffe TEP**, Partner, private wealth, Bircham Dyson Bell
- **Suzanne M Reisman TEP**, Principal, Law Offices of Suzanne M Reisman
- **Julian Washington TEP**, Head of Client Insight, RBC Wealth Management
- **Sarajane Kempster**, Director of Fiduciary Management, RBC Wealth Management
- **Robert Brodrick**, Partner, private client, Payne Hicks Beach
- **Natasha Hassall TEP**, Partner, Boodle Hatfield
- **Philip Le Cornu TEP**, Global Head of Private Wealth, Intertrust

In June, nine senior trust practitioners representing high-net-worth individuals with global assets came together to discuss how wealth-structuring advisors and STEP members can operate effectively amid ever-evolving regulatory frameworks.

In particular, the panellists discussed the importance of communicating the value of good succession planning to both clients and a sceptical media.

Additional areas of discussion were the complexity of estate planning; safeguarding the value and purpose of the industry; client priorities; and cross-cultural variation. The roundtable concluded with panellists reflecting on how best to champion the positive arguments for wealth structuring.

The panel gathered in the run-up to the UK's general election, with chair Julian Washington, Head of Client Insight at RBC Wealth Management, opening the event by acknowledging a period of frenetic activity in the industry.

'It has become a truism to say that we all work in a state of flux. The pace of change in terms of law, taxation and regulation is demanding,' he said. At its most simple, he added, 'succession planning is about a parent wanting to leave money to a child, or a spouse wanting to make sure that their widow is provided for'. He then asked the panel: 'Do we lose sight of this amid the complex structures and changes that we deal with day to day?'

For Wilson Cotton, Partner in private client tax services at Smith & Williamson, one factor that has contributed to the increased complexity of succession planning is the *Perpetuities and Accumulations Act 2009*, which saw the UK move towards a trust perpetuity period of 125 years, with income allowed to accumulate during that time. He said: 'Once you start [extending] the period of a structure, it becomes less about passing wealth down from one generation of people that you know to another generation that you will probably also know. Rather, you begin talking about people you will never know. At that point, a trust starts to take on a life of its own.'

For other members of the panel, taxation looms large. Robert Brodrick, Partner in the private client division at Payne Hicks Beach, said: 'The 2006 changes to inheritance tax laws mean that any trust planning is now confused with tax planning, because there are automatically tax consequences.'

Robert Brodrick, Partner, private client, Payne Hicks Beach

Natasha Hassall, Partner at Boodle Hatfield, agreed, citing as an example the ten-year inheritance tax charges applied to trust funds: 'When planning for inheritance tax, you might consider spreading value and fragmenting ownership of assets between family members, and that is encouraging complexity.'

The complex legal, financial and social consequences of estate planning can inhibit efficiency. This can lead some, like Brodrick, to desire 'trusts that are completely transparent, for management and succession purposes, without any tax benefit or disadvantage'.

The April 2017 increase in tax charges for UK residential properties owned by companies is seen as one move towards transparency, as it encourages direct ownership. However, Ed Powles, Partner at Maurice Turnor Gardner, thinks transparency is not a cure-all: 'De-enveloping might simplify something, but it doesn't necessarily simplify it for the right reasons or in the right way. However, it makes absolute sense to audit complex structures and see if the complexity is justified, and whether simplification is possible.'

Philip Le Cornu, Global Head of Private Wealth at Intertrust, said that there is inherent complexity in trust fund planning that is not jurisdictional: 'As trustees, we favour simplicity. However, the mere action of a family giving assets to a trustee whom they don't know that well means you get complexity built in around control.'

Going further, Suzanne M Reisman, Principal at her own private client practice in London, said that things are not always simpler in 'no tax' jurisdictions: 'For example, in the Middle East, one needs to consider Shari'a law, local ownership restrictions and other issues where tax is not the driver. Non-tax factors, including family values, should always be as important as tax factors. The optimal solution from a tax perspective is not always the right answer for a particular family.'

Washington summarised: ‘If the assets involved are complex, there probably isn’t a simple way to hand them down to the next generation of individuals, so the estate planning solution is probably complex as well.’

Educating the next generation

With this in mind, it makes sense that clients should start discussing succession planning with their heirs in good time. A recent RBC Wealth Management survey of more than 3,100 high-net-worth individuals indicates that clients consider 27 to be an appropriate age for successors to be involved in discussions about inheritance. However, in the panel’s experience, the time frame is subjective.

‘In landed families, discussions start early, and there is an expectation that the eldest son will inherit,’ Hassall said. ‘In other families, it can be very much later, because they don’t want to start conversations early and risk creating a rift.’

Helen Ratcliffe, Partner in the private wealth team at Bircham Dyson Bell, framed the issues succinctly: ‘People confuse assets with affection.’ In her experience, parents want to start estate planning when their children are aged between 19 and 21. At her law firm, education about succession planning involves asking the children to make a modest will. ‘It sets the scene for them continuing to do so throughout their lives,’ she explained. Her department also introduces the successors to younger members of their team, ‘so they feel that they’ve got their own person to talk to’.

Of course, there are parents who are keen to delay telling their offspring about the true nature of their wealth in order to protect them from a burden or sense of entitlement. However, Powles feels that fiduciaries can best aid the estate planning process by becoming partners to the family earlier: ‘If the children don’t already have a relationship with the fiduciary, it’s very difficult to start that relationship later on.’

For Jersey-based trustee Le Cornu, a compromise is best: ‘We tend to see children having more involved conversations about wealth post-university, at the age of 21, when they want to stand on their own two feet and tend to be buying property. You might tell them there is a structure in place, but not fully disclose its value. That way, there’s an element of protection when they start to rely on the trust for one or two areas of their life, and you can start to build a relationship.’

However, the trust practitioner must never take the initiative, Hassall said: ‘You have to expect the family to take the lead, even if it doesn’t always happen.’

The priorities for clients

When it comes to estate planning, family stability is an overarching priority for many clients. Despite the proposed taxation rules that could mean an end to permanent non-domicile status, many clients have been reluctant to leave the UK.

‘When you’re advising people on estate planning for the longer term, what their tax bill is likely to be in one year becomes almost irrelevant,’ Brodrick said. ‘When they consider the broader implications for family life, very few actually move abroad.’

However, this may vary according to the nationality of the client. Reisman has many non-British clients who have moved to Switzerland and Asia in the wake of the changes.

Rising compliance costs are also a potential issue. Brodrick said: ‘It may seem simple to do a will for an international client who owns property in the UK – but, where they’ve decided to put things in multiple names, you can never predict divorce, or who will die first. Therefore, it’s going to be difficult to do the job properly at an appropriate cost. This is more likely to be an issue for clients who are not used to having a will in the first place, because they’re from a jurisdiction where religious or local restrictions take care of the problem.’

On top of this, there are privacy concerns. ‘The big driver is the implementation of the Fourth Anti-Money Laundering Directive and the debate over the Fifth Anti-Money Laundering Directive,’ explained Cotton. The former includes the creation of a register of beneficial ownership for trusts, while the latter could see this register made public in the future.

‘With the internet providing access to more information, there’s an assumption that finances should be in the public domain,’ Le Cornu said. ‘Therefore, if records are going to become public, clients want peace of mind that they’re compliant, and are not going to be splashed across the newspapers.’

Media speculation and the value of succession planning

The media can appear to cover the industry in an erroneous and negative way, leading Washington to ask: ‘How can we articulate what we do in challenging times?’

Cotton believes the focus needs to be placed on positive arguments for wealth structuring for ‘ordinary people’. He reflected on the fact that ‘there can be too much of a fixation on super-wealthy international families. We need to remember and communicate that the bulk of our members in the UK are looking after moderately wealthy families who have made money out of property ownership. There is lots of debate at the moment about care-home fees, and we need to get the message out that wealth and succession planning is important for everyone.’

Hassall pointed to the wider implications of succession planning: ‘Quite often, what you’re talking about is managing a complicated family business. If that doesn’t transition smoothly from one generation to the next, there can be an impact beyond that suffered by the heirs. It can mean risks to jobs in the business, and to the business’ investment in its field of operations – for example, in a local community.’

To reframe the debate, the rhetoric needs to change from one of ‘wealth inequality to opportunity’, Ratcliffe said.

In Le Cornu's view, as offshore trusts are operated by small island communities, more should be done to encourage young professionals to stay local and work in the industry. He said: 'Social issues arise when one industry dominates – we need to educate young people about what we do.'

Either way, for Sarajane Kempster, Director of Fiduciary Management at RBC Wealth Management, the onus is on individual practitioners to speak up: 'We've all got a role to play, although I know that not everyone wants to put their head above the parapet and talk about what they do.'

According to Brodrick, the time is right to change that: 'In a post-Brexit world, we need to send a strong message to the government that trusts are one of the best exports we've got. We should try to encourage the government to enable practitioners to do things in a transparent, compliant way that helps us manage the expectations of the public.'

After all, the panel believes that the positive arguments for wealth structuring and succession planning are intuitive. Washington summed up the spirited discussion with the observation: 'It is a human impulse to want to be a good steward of wealth and to look after loved ones. When it comes to executing that simple idea, we do encounter complexity, but it's our job to explain that complexity to our clients as best we can, and to help educate the next generation.'