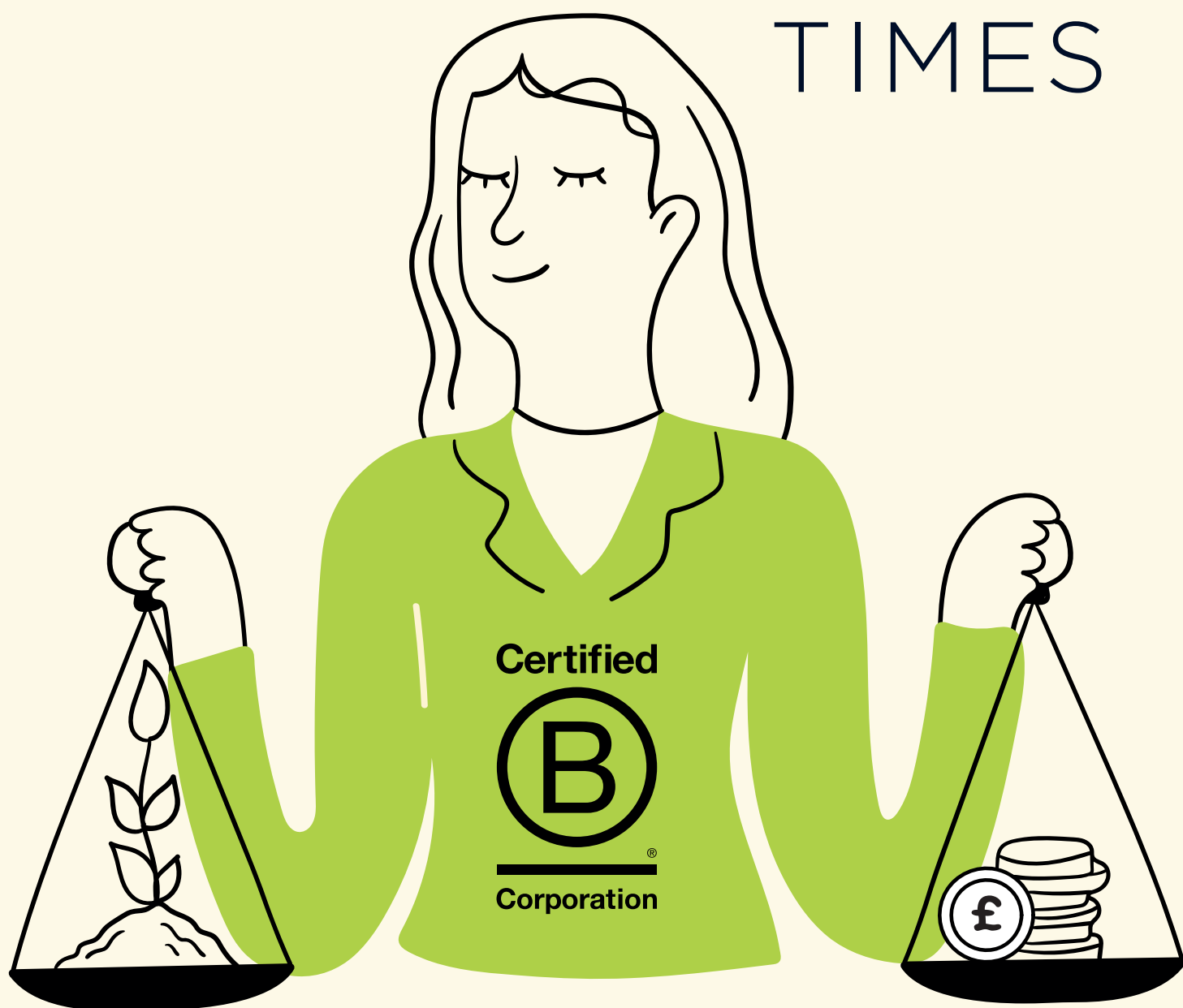


# LIFE

TIMES



WE ARE B CORP

# contents

Addressing some of the most common family law questions	4
Getting to know family lawyer Aasha Choudhary	6
Important changes to Capital Gains Tax	8
Common misconceptions with buying and selling property and land at auction	10
How mediation can help family businesses to thrive and survive	12
Becoming a B Corp	14
Safeguarding vulnerable individuals at risk from financial abuse	16
 Top 10 things to consider before preparing a trust	18



# 10

**Buying and selling property and land at auction**



# 16

**Safeguarding: financial abuse of vulnerable individuals**



# 18

**Top 10 things to consider before preparing a trust**



# hello

Welcome to the first edition of Life Times for 2023.

The start of 2023 has certainly been a busy one from a private wealth and family perspective.

Following changes to the Capital Gains Tax (CGT) exemption, and new legislation extending the period of time separating couples will have to benefit from the CGT relief on the transfers of assets, we explain what CGT is, when it's payable, and how you may be affected by the changes.

With recent divorce application figures showing the highest level in a decade, we also address ten of the top questions surrounding divorce, including children-related matters and financial agreements.

In March we saw the launch of National Conveyancing Week; our residential conveyancing experts highlight the common misconceptions of buying or selling property or land at auction.

As always, we'd love to hear from you if there is any subject you would like to see covered in future editions. We are here to guide you through any journey you or your family may be on and look forward to advising and working with you.

**Victoria Tester**  
Managing Director  
– Life and Business

# Top 10 family law questions

Family expert Stephanie Kyriacou addresses some of the most commonly asked questions on family law in the UK.

**1.**  
**My husband/wife has had an affair, will this be taken into account for the purposes of my divorce?**

No. After the amendments to the divorce legislation in April 2022, you cannot apply for a divorce on the basis of your spouse's adultery. The new legislation allows couples to divorce without apportioning blame.

**2.**  
**How much does it cost to issue a divorce application?**

The current court fee to issue a divorce application is £593.00. However, the costs to resolve finances are separate and how much those costs amount to, will depend on how long it takes to resolve financial matters and which route is taken to achieve a settlement.

**3.**  
**I've agreed the arrangements for the children with my ex-partner, do we need to go to court?**

No, the court will only get involved in the arrangements for the children if the parents cannot agree the arrangements between themselves.

**4.**  
**I'm married but I am not on the title deeds to the family home, does this mean I do not have an interest in this property?**

No, as long as you are married or in a civil partnership, the court's starting point is to say there should be a 50:50 division in relation to the family home. It is, however, a starting point and there may be factors which can sway a 50:50 division.

**5.**  
**I'm married and my ex-partner is threatening to sell the family home (I am not on the title deeds), is there anything I can do in the interim?**

Yes, you can lodge a Home's Rights Notice with the Land Registry to let potential buyers know about your interest in the property. This is often enough to put potential buyers off buying the property.

**6.**  
**I am not on the title deeds to my partner's property and we are not married or in a civil partnership but I contribute to the mortgage every month and my partner said I would always have an interest in the property. What can I do legally to protect my interest?**

You can enter into a Declaration of Trust with your partner so that it records your beneficial interest in the property. Without a Declaration of Trust and without being on the title deeds, the legal presumption is that the property is owned legally and beneficially by the person named at the land registry.

**7.**  
**My ex-partner has a business and it's doing really well but they have said I won't be able to claim against the business upon divorce, is this true?**

No. If your ex-partner has an interest in a business, then those business interests will need to be disclosed during the financial process. Your ex-partner's business interests/assets could therefore form part of the matrimonial assets available for division.

**8.**  
**Do the courts determine how much child maintenance should be paid?**

No, it is the Child Maintenance Service that calculates child maintenance liability for a party in the event that the parents cannot agree on an amount directly between themselves.

**9.**  
**I am not married but have dependent children with my ex-partner. My ex-partner has told me that because we are not married, he/she does not have to give me anything, is this true?**

Couples who are not married or in a civil partnership do not have the same financial claims as married couples do upon separation. That said, if there are dependent children involved, there is always recourse to Schedule 1 of the Children Act 1989 which can be used if provision needs to be made for the children of the family.

**10.**  
**Do I need to appoint a solicitor?**

While it is possible to get a divorce without the support of a solicitor, you may run the risk of missing important legal loopholes, such as the 'remarriage trap'. Put simply; if you remarry without a claim for a financial order you may be barred from seeking maintenance and other financial claims. You may also find yourself out of pocket down the line. Without a legally binding Consent Order severing financial claims, it is possible that an ex-partner could chase you for a share of funds you may accrue later in life - whether that be a pension pot, inheritance or even a lottery win.



**Stephanie Kyriacou**  
**+44 (0)7885 988986**  
**stephanie.kyriacou@shma.co.uk**



## Meet the team

Getting to know

# Aasha Choudhary

### What is your role at Shakespeare Martineau and how long have you been here?

**Aasha Choudhary:** I am a family law specialist and lead the Birmingham office family team. I have actually just recently celebrated my one-year anniversary at the firm - how time flies!

### What do you find exciting about your area of expertise?

**AC:** It is genuinely rewarding to support clients through what can be a very difficult time in their lives and guide them through the process. Initially, some clients can be fragile and vulnerable and it gives me great satisfaction to see positive changes being made by the end of their case.

### What would you like to achieve in 2023

**AC:** I enjoy working on cases which have an international element (e.g. assets overseas), which is my specialist area. I frequently co-work with lawyers from other countries, to provide clients with joined up advice.

In order to further develop my knowledge and expertise, I would like to become a fellow of the International Academy of Family Lawyers ("IAFL"). The IAFL is a worldwide association of family law practitioners who are recognised as the most experienced and skilled lawyers in their respective countries. I would also like to be brave enough to speak at an IAFL conference (usually attended by 1000 leading family lawyers from around the world) - but maybe not in 2023!

### What keeps you awake at night?

**AC:** I take my work very personally, and constantly worry about all of my clients. I have lost count of the number of times I have woken up in the middle of the night when I have had a 'eureka' moment on one of my cases, and had to note it down.

### What are the biggest challenges for your clients/family law right now?

**AC:** There has been a huge increase of litigants in person (a person who goes to court without legal representation), mainly as a result of changes in legal aid provision. The problem this can cause is two-fold. Firstly, a litigant in person is likely to be at a disadvantage because they do not have the benefit of a lawyer and this could lead to an unfair outcome. Secondly, while our legal system states there should be no relaxation of the rules for litigants in person, inevitably courts will exercise some leniency. As you would expect, there is a raft of procedural issues involved in preparing and presenting a case in court and it is therefore understandable that a litigant in person will fail to comply with court timetables and they attend court unprepared and so jeopardise the effectiveness of the hearing, causing delays. In addition, having a litigant in person on the other side can increase costs not only due to poor preparation but also because a litigant in person is less likely to take a pragmatic approach and to compromise or agree. They may also need to be repeatedly chased for a response.

**“I take my work very personally, and constantly worry about all of my clients. I have lost count of the number of times I have woken up in the middle of the night when I have had a ‘eureka’ moment on one of my cases, and had to note it down.”**

**Aasha Choudhary**

**+44 (0)7929 845339**

**aasha.choudhary@shma.co.uk**



# Important changes to Capital Gains Tax

In his autumn statement Chancellor Jeremy Hunt announced a reduction in the Capital Gains Tax (CGT) annual allowance by quite a significant amount - from £12,300 to £6,000 from 6 April this year and again from 6 April 2024 to £3,000.

This is particularly significant for trusts, which are only entitled to half of the personal annual allowance. Thus the allowance available to trustees from 6 April 2023 is £3,000 reducing to £1,500 in 2024.

## What is Capital Gains Tax?

CGT is payable when people sell or gift certain items worth more than £6,000 such as antiques or art, or assets including second homes and shares held outside of an ISA or PEP.

It brings in millions of pounds to the treasury, but as a whole only accounts for approximately 1.5% of all tax receipts.

Capital Gains Tax planning is essential for anyone looking to dispose of assets and given these changes, may wish to consider timing the 'disposal' of their assets or alternative forms of ownership, for example holding buy-to-let investments in a limited company structure."

## CGT in a nutshell

CGT is a tax on the profit made on the disposal of assets. The gain realised in excess of the personal allowance is taxed.

For example, a property bought for £200,000 and sold later for £350,000 realised a gain of £150,000.

Individuals in the basic income tax band pay 10% on their gains and 18% on gains realised with a residential property.

Higher and additional rate taxpayers pay 20% on gains and 28% on residential property.

## Will you be affected by the changes?

The government estimates that by tax year 2024/2025 an additional 260,000 individuals and trusts may be liable for CGT as a result of these changes.

Our team of personal tax planning experts can guide and advise you on your potential capital gains tax liability as part of a comprehensive tax planning strategy, and ensure that your allowances and any planning is maximised.



**Lesley Davis**  
+44 (0)7900 056739  
[lesley.davis@shma.co.uk](mailto:lesley.davis@shma.co.uk)





# Buying and selling property and land at auction

## Common misconceptions

An increasing number of people are choosing to buy and sell land and property by auction. It can be a fast, transparent and highly efficient method to acquire or dispose of assets and it's on the rise with 2.2% of all properties being sold by auction in 2022.

The percentage of properties being sold by auction is set to rise in 2023 as the cost of living crisis could mean that sellers are looking for a quicker sale and want to take advantage of the certainty of an exchange in the auction room.

Despite the many benefits, the same concerns and questions arise.

## Selling at auction

### Are auctions only for run down properties or difficult land?

This is not always the case, as any property or land can be sold by auction. Typically the deciding factor is personal circumstances rather than property/land condition. Auction lots can include properties requiring updating, those with short leases, development sites with or without planning permission, repossessions, forced sales, investment properties, farms and land, probates, receivership sales and local authority properties. And as it becomes more common, so will the range of properties continue to increase.

### Are auctions just for desperate sellers?

The auction process is not exclusive to those looking for a quick sale but if you do want a quick sale then an auction can be a good route. However if you have time on your side, the competitive nature of the sale room often leads to a price above the reserve and in some cases can be higher than via the more traditional route.

### What is an auction pack?

The auction pack is an essential part of the auction process. The pack contains the legal title to the property or land, the sale contract and any other relevant paperwork such as search results, tenancy agreements, energy performance certificates and any guarantees available for the property. Sellers also have a legal duty to disclose any defects and to draw the buyer's attention to any onerous conditions such as overage clauses.

### What is a guide price and reserve?

A guide price is an indication of a seller's expectations and a reserve price is a minimum figure agreed in advance which the auctioneer will not sell below.

### What happens if the property/land does not sell on auction day?

If a lot does not sell or it fails to meet its reserve in the auction room, they are often sold after the auction to an interested party, but under auction conditions

## Buying at auction

### Why should I buy at auction?

Buying at auction is an assured way of securing a property or piece land. Once a bid is accepted, contracts will be exchanged on the day of the sale and the seller cannot withdraw from the sale.

### Is it possible to view an auction property/land in advance? Why should I buy at auction?

Yes, there will most likely be a schedule of viewing opportunities for properties and land. Check with the auctioneers.



### I have found a property I'm interested in, now what?

The seller will have prepared an auction pack which will contain copies of all legal papers, required to assist prospective purchasers to make an informed decision regarding the purchase. The pack will include special conditions of sale, title deeds and plans, local authority searches, leases (if applicable), answers to pre-contract enquiries and any other relevant documents. Any purchase at auction takes place under the assumption that all documentation and the terms of the contract have been read and understood. Even though sellers have a legal duty to disclose all of the defects and to draw a buyer's attention to any

onerous conditions, it is strongly recommended that any potential purchasers carry out full investigations for any lot in which they have an interest and involve your legal advisors as soon as possible. Once you have bid at auction, the seller is no longer bound to answer any enquiries in relation to the sale and it may be too late to rectify any issues which could then prove costly.

### What happens on auction day?

Arrive early and register to bid. Once the hammer has come down a legally binding contract has been executed. Contracts are then exchanged and the successful purchaser will be required to pay the 10% deposit and to sign

the sales memorandum, at the end of the auction. If you are the successful bidder you are legally obliged to complete the sale, usually within 28 days, therefore it is essential to have your finances (if required) in place prior to attending the auction.

If you are thinking of buying or selling a property or land at auction and need advice preparing or reviewing the legal packs please contact



**Esme Barker**  
**+44 (0)7811 693782**  
**esme.barker@shma.co.uk**

# Mediation:

Allowing family businesses to keep calm and carry on

Family-owned businesses come in all shapes and sizes – from small or micro-businesses run by a sole proprietor to larger firms led by a structured management team. With close relatives often involved we know it can be difficult to separate business from leisure, with challenges or potential issues arising with family dynamics, investments and succession planning.

However, not all complications need to be settled in court. Mediation can be a useful process to help reach a successful solution that works for everyone involved.

## What is mediation?

Mediation is a voluntary form of dispute resolution, where an impartial third-party facilitator helps people to find their own solutions. A final decision is never forced onto the participants, with the mediator there only to guide those involved through the various options available to them.

It is particularly effective in situations where power imbalances and deadlocks between family members must be overcome.

## What disputes can it solve?

Mediation can be effective for the majority of family business disputes, including:

- **Succession planning**
- **Bringing new people into the business**
- **Diversification**

Once a persistent issue begins to get out of hand, mediation should be considered.

## How much control do participants have?

Mediation allows the participants to have ownership of the process, and in what can be emotive circumstances, this can make all the difference. They can adjust the amount spent on sessions, the time scale the sessions are held over, and who takes part in the discussions.

## What does the process look like?

Although emotionally challenging, the process itself is simple. To assess whether a case is suitable for mediation, mediators speak to each party separately first. If it is suitable, a joint session is arranged, the main topics for discussion are identified, and an agenda is created. Flip charts are used to allow the situation to be visualised and contrasting opinions are talked through. Mediation will usually comprise of three to five sessions spread over a few weeks.

## How to ensure mediation is a success.

An open mind is vital for families entering into mediation. Unless participants are willing to listen to the opinions of others without instant disregard, there is no point in them taking part in the process. Everyone must also feel

comfortable with the mediator, as they need to be happy sharing their honest views in front of this person.

When people are living and working with family members, it can be difficult to separate the two worlds. However, mediation can stop disputes from carrying over into family life, ensuring bonds are maintained and businesses continue successfully.

## Understanding the mediation process

Having advice from a solicitor during your mediation process can provide a huge advantage. Mediators are completely impartial and cannot provide any legal advice, it is therefore crucial that you obtain your own independent legal advice to fully understand the issues in dispute. Solicitors are familiar with the mediation process and are able to provide assistance throughout your journey. It is also very important keep in mind that an agreement made in mediation is not legally binding, however, you can instruct a solicitor to draw up the necessary paperwork to make it so.

For further advice around mediation, contact:



**Helen Bowns**  
**+44 (0)7891 338054**  
**helen.bowns@shma.co.uk**



**KEEP  
CALM  
AND  
CARRY  
ON**

Using business as a force for good:

# Becoming a B Corp

We are thrilled to have been awarded B Corporation certification – demonstrating our commitment to using business as a force for good.

Organisations with certified B Corporation status are legally required to consider the impact of business decisions on their people, customers, suppliers, communities and the environment – ultimately ensuring a balance between purpose and profit.

The benchmarks in order to achieve accreditation are incredibly high and the auditing process is rigorous, with non-profit B-Lab independently scoring companies across governance, workers, community, environment and customers to determine the business' social and environmental performance.

Part of the B Corporation certification process is identifying and shedding light on hidden areas that are in need of improvement when compared to peers.

For us, benchmarking our performance in this way can help us to accelerate change.

Since its launch in 2007, more than 6,400 companies working in 161 industries across the globe have achieved the certification and as more leaders recognise that businesses need to play their role in driving societal and environmental change, the number of companies actively seeking B Corporation status is growing.

This rise is reflective of a sea change in society, and a focus on climate change and social good, with consumers demanding purpose-led businesses and employees wanting to work for companies with clear values.

We know how important it is to you to be working with legal professionals you can trust to do the right thing for you, your local community and our planet. We're proud to be changing business for good.

# WE ARE B CORP



# Safeguarding

## Financial abuse of vulnerable individuals

Unfortunately, some vulnerable adults become victims of abuse at the hands of those who seek to either take advantage of their lack of capacity or manipulate them for their own personal gain.

If you feel at risk, or are worried about the financial security of someone you love, taking immediate action to protect yourself or them should be your first step.

### What is financial abuse?

Financial abuse can take many forms, but some common examples include:

#### Taking money or property

This might be theft from a purse or taking more money from a cashpoint than authorised. It might also involve over-claiming of benefits by overstating the severity of the situation. It might mean taking away small items from the property without authority.

#### Overcharging for services

Being asked to pay a large amount of money for simple tasks such as gardening or basic property maintenance.

#### Forging signatures or documents

Where someone's signature becomes more fragile, it might be easier to forge – perhaps on a cheque or even a will. Forged wills can sometimes result from family difficulties but sometimes fraudsters target lonely and vulnerable people who do not have any close relatives or friends. In these situations, there may be nobody to challenge the will as no-one knows the true wishes of the person who has died..

#### Signing documents by coercing or influencing them to sign

Has someone been asked to sign a transfer of shares or a car? What about making a gift?

#### Wrongful use of powers of attorney or court orders

Acting as an attorney means that someone must abide by the provisions in the Mental Capacity Act 2005 and its Code of Practice. An attorney cannot use the money that belongs to the donor (other than in very limited circumstances) for anyone other than the donor of that power of attorney. They must keep all money separate and will need authority from the Court of Protection to make large gifts, transfer of property to family members and borrow money. However, mixing money in bank accounts or borrowing money can be financial abuse as this is also not permitted.

### What should victims of financial abuse do?

Victims of such abuse are often reluctant to act against their abusers because they feel ashamed of having been taken advantage of, or because they do not want the abusers to withdraw their care and support.

If you, or someone you know, believes they have been a victim of financial abuse then you should consider whether to contact the police, adult social care, or the Office of the Public Guardian who may start their own investigations.

### We're here to help

If you feel your finances are unsafe under someone's care or are worried about the financial security of a loved one, don't hesitate to get in touch. We know it's a tough subject to talk about, but with a helping hand from our specialist solicitors, we can stop the abuse and prevent it from happening in the future.



**Heledd Wyn**  
**+44 (0)1179 069438**  
**heledd.wyn@shma.co.uk**



# Top 10 things

## to consider before preparing a trust

Families have used trusts for centuries to protect their wealth and maintain its value for the benefit of future generations. While many people have heard of trusts, most struggle to understand exactly what they are and the benefits they can bring.

### What is a trust?

A trust is the formal transfer of assets (such as a property, shares or simply cash) to a small group of people, usually two or three, known as “trustees”, with instructions that they hold the assets for the benefit of others.

- *If the trust is to be made in your lifetime*, to take immediate effect, then it is usually evidenced by a trust deed and often referred to as a ‘settlement’.
- *If it is to be created on or shortly after your death*, then the trust rules must be set out in your will itself and would be known as a ‘will trust’.

Whether created by lifetime settlement or by a will, the trust document states who is responsible for looking after the gifted assets (the trustees), who is to benefit (the beneficiaries), and any rules or conditions to which the trustees and beneficiaries must adhere. The separation of the legal ownership and beneficial ownership, which were once inseparable, is the unique characteristic of the trust concept. The trustees are the legal owners but the beneficial owners are the beneficiaries.

Here we outline the top ten things to consider before preparing a trust:

### 1. Identify the assets you want to give away

This could be cash, property, or even shares in a business. It is important to appreciate the different tax implications of transferring these different types of asset into a trust, as this may influence what assets, and the value of the assets, you wish to put into the trust.

### 2. Consider the reasons for wanting to give your assets away

One reason might be because you would otherwise face an inheritance tax bill if you still own the assets when you die. Read out more about how personal tax planning, including creating trusts, can assist with minimising tax liabilities.

Another reason may be that you simply wish to ensure that others, such as your children, can benefit from the assets now because you do not need to anymore. It could also be part of a wider estate planning exercise involving the procurement or sale of a business. Once you've thought about why you want to give the assets away, it will help form your decision on whether a trust is the best option for you.

### 3. Decide who will act as trustees and safeguard the assets

This could be you, or a spouse/civil partner, or it could also be other family members or close friends. It is worth noting that professionals can also act as trustees.

### 4. Decide who will be named as the beneficiaries of the trust

This could be named individuals or a class of beneficiaries, such as your “children” or your “siblings”. Trusts are a useful way of safeguarding assets for vulnerable beneficiaries as they can protect them, as well as the funds, into the longer term.

### 5. Review your options and decide what type of trust is most suitable for the beneficiaries

There are several different types of trust to choose from and each of them affords the trustees and beneficiaries different responsibilities or rights respectively. Each one is treated differently for tax purposes so it is important to select the right one.

### 6. Think about your long-term plan for the trust

Trusts can be in place for up to 125 years if they are non-charitable. While it is often the case that more modern trusts do not last this long in reality, you should think about who you would want to benefit from the assets if they remain in the trust for a longer period of time; for example, your grandchildren, wider family members or a charity.



### 7. Understand the practical implications of setting up a trust

Once assets are transferred into a trust, it is generally the case that you cannot benefit from those assets again. This is often to ensure that the establishment of the trust is advantageous to you from a tax perspective. Therefore it is important to ensure you do not need access to these assets once you have given them away.

The trustees also need to be prepared to file tax returns for the trust, prepare trust accounts, hold trustee meetings and otherwise ensure ongoing administration and safeguarding of the assets is managed.

### 8. Assess whether you expect your trustees to seek legal and tax advice to assist them in administering the trust

If your trustees are likely to need legal advice and support when administering the trust then you will need to consider ensuring that there is sufficient liquid assets in the trust to meet the costs of obtaining the advice – your trustees are not obliged to use their personal funds to discharge these costs.

It is also worth noting that if you are a trustee yourself, and you pay these fees on the trustee's behalf, you will in effect be ‘adding to the trust fund’ each time you contribute to the fees.

### 9. Use a trust to safeguard compensation pay-outs

A trust can be used to safeguard personal injury or medical negligence compensation, but it is important you seek this advice before, or as soon as possible after, you have been awarded the funds. A personal injury compensation trust can be an extremely effective way of ring-fencing your compensation, so it doesn't impact on your entitlement to certain benefits.

### 10. Consider if you'd like to benefit charitable causes

A charitable trust can be an extremely effective way of ring-fencing assets for the exclusive benefit of charitable causes close to your heart. There are many tax advantages too if a trust is set up for these purposes. Read more about how a charitable trust can be included as part of your estate planning.

It is always best to seek professional advice if you are thinking about setting up a trust. Speak to a member of our private client team to find out more about how we can help, and to guide you through the process.



**Suzanne Leggott**  
**+44 (0)7850 508853**  
**suzanne.leggott@shma.co.uk**



Working with organisations of all sizes, we deliver a broad range of specialist legal services for life and business. In addition to providing services for families and private clients, we have particular expertise across areas including, but not limited to, energy, education, banking & finance, healthcare, investment funds, manufacturing, agriculture, family business, Islamic finance, later living, social housing and real estate.

With more than 1,000 people, Shakespeare Martineau has offices in Birmingham, Bristol, Edinburgh, Leicester, Lincoln, London, Milton Keynes, Nottingham, Sheffield, Solihull and Stratford-upon-Avon.

ISSUE 6/2023  
ref.0443

 [@SHMALaw](https://twitter.com/SHMALaw)

 [Shakespeare Martineau](https://www.linkedin.com/company/shakespeare-martineau)

 03300 240 333

 [www.shma.co.uk](https://www.shma.co.uk)