

LIFE TIMES

Autumn issue 2020

- New Government changes make tax planning essential
- New rise in divorce rates things to consider...
- Time to make a will?
- Riding the new property sales wave

Delighted!



Victoria Tester
MD - Life and Business

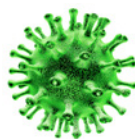
I am delighted to bring you the first edition of our new magazine focused on “Life”.

We will delve into the world of the private individual - be that family matters, financial planning, moving house or family owned businesses. We will be producing a quarterly publication and in the uncertain environment we're in we will be bringing you what's new and what's important to know and introducing you to key members of the team who are here to advise and guide.



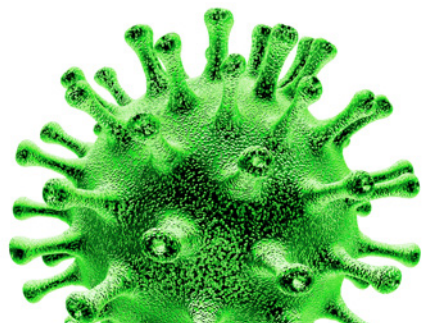
contents

We hope you find it useful and informative and please do contact us for further advice on issues discussed here or anything else affecting you now and into the future.



COVID-19: How the Treasury could replenish its coffers post-pandemic with changes to taxation

It's fair to say that we're living through and dealing with the fall out of a crisis that has affected every aspect of life. The Government's commitment to supporting businesses and individuals with the Coronavirus Job Retention Scheme, the Job Support Scheme, the broad package of business loans, the financial measures to support the self-employed and other injections of financial assistance is to be commended. However, what happens in the future?



As we all try to pick up from where we left off and find our 'new normal', it's very likely that this financial support, which has been so important to keeping business and individuals going through these few months and beyond, will have left the Treasury with a potentially huge budget deficit.

Much has been written about the effects this lockdown will have on economic performance and current forecasting by accountants, PwC estimates a deficit of 10-15% of GDP

in 2020/21 and the hope is that this falls to 4.5%-7% of GDP in 2021/22. However,

with this large deficit, how will the Government find the funds it needs to get the economy back on track?

Tax rises are inevitable

There is no doubt at all that the Government will look to raise taxation somehow, somewhere. It is unlikely that income tax and VAT will be their first port of call as this smacks of taxing the less wealthy and those most in need at a time when people have been living under extremely stressful conditions.

Instead, the more obvious and palatable choice of capital taxation reforms would be perceived as a taxation of the wealthier in society.

It is also possible that any such reforms could be pushed through in an emergency budget with little or no notice and could leave many families without the tools to pass their estates on to the next generation efficiently.

What sorts of taxation could be affected?

The likely targets are inheritance tax and capital gains tax, potentially including the reduction or indeed, abolition of Business Property Relief and Agricultural Property Relief on assets gifted on death.

There is also the possibility that the Potentially Exempt Transfer seven-year clock will be removed or extended. Currently, this works on a sliding scale and comes into play when gifts of over £250 are made during a person's lifetime. Should the individual die before seven years have passed since the gift was made, then a level of tax must be paid depending on how many years it has been. If this relief is removed, then the full amount of tax will always be payable.

Capital gains tax free uplift on the base value of assets at death might be another target. At present, a person who has inherited an asset only has to pay capital gains tax from its value when they receive it to when they sell it. Should the capital gains tax free uplift be removed, then the receiver would have to pay capital gains tax from when the deceased originally acquired the asset instead.

Deeds of variation post-death may also be removed or amended to neuter their tax planning element.

What is key though, is that action is taken now to enable families and individuals to have choice and make the best use of the options out there.

How can I prepare?

There are other vehicles and options available, such as:

- **Utilising existing trusts or creating new settlements** – By using the current nil rate band of £325,000, married couples and civil partners can set up tax-free family discretionary trusts of £650,000. This enables people to support the next generation without immediately having to give assets outright.
- **Gifting assets if possible** - Any changes to taxes are unlikely to be retrospective, so making lifetime gifts now, should people be able to manage without the asset, could be wise.
- **Reviewing and redrawing wills to take account of these possibilities** – Having a flexible will and a letter of wishes can ensure that assets are treated in the most tax efficient manner.

Any abolition or amendment of one or a combination of the above reliefs and measures could result in significantly higher taxes and a reduction in the options available, so it's important that families think ahead and plan now.

[Read more about efficient personal tax planning.](#)

For further information, please contact Lesley Davis or a member of the private capital team.



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Keeping your business as part of the family

No matter the business, succession will eventually need to be considered, and for some, keeping succession a family affair is important.

For example, it could be for tradition's sake, or it could be due to a lack of understanding of the alternative options available. However, not every family successor will want to take on the responsibility and may take over the business only to sell on immediately without the consent of the previous owners. Founder shares offer a possible solution to this problem.

What are founder shares?

Founder shares can be issued to the current owner or incorporated into a trust. They are a group of shares that give a minority group of family members the ability to control the future of a business. As well as preventing the sale of a business without the previous generation's consent, they also require the successors to buy out the previous owners over time. Considering introducing founder shares should be done as early into the succession process as possible.

Ensuring a seamless succession:



1. Think ahead – Succession is not an overnight process. Aim to look five or six years ahead when beginning the process, as this makes it far more tax efficient. If this isn't done, successors can face heavy tax liabilities.



2. Assess what control you want to retain – If external shareholders are to be involved, growth shares can act as an incentive for them to grow the business with the successor. Founder shares also help to maintain a level of control through stopping family members being removed from the board or the business by new shareholders.



3. Communicate – The succession process should not come as a surprise to those who are to be involved. As soon as the thought of succession arises, discussions need to be had with the family to ensure the wishes of the owner manager are known. Failure to do this can lead to animosity and significant tax issues for the successor.



4. Seek legal advice – Specifically seek advice from a professional experienced in family business law and succession issues. Succession is a sensitive topic that requires an understanding as well as a knowledgeable approach.



If preventions, such as founder shares, are not implemented, successors are within their rights to immediately sell on a family business. In order to ensure a business keeps its family roots, discussing any doubts the potential successor has and considering founder shares at an early stage is vital.

To discuss how founder shares can offer protection for your family business, contact Duncan James, head of our family business team.



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The residential property market

It's fair to say that it has been a challenging year for the property market in many ways but there have been some definite signs of the green shoots of recovery.

The lockdown in March/April made it very difficult for the property market to function, and activity in the market dropped significantly overnight.

When the Government lifted restrictions on the housing market in May there was huge pent up demand, which led to a surge in new enquiries, instructions and completions. This positive momentum was further enhanced when the Chancellor announced that there would be no stamp duty payable on any property under £500,000 until 31 March 2021.

So what does the next six months hold for the property market?

We are still in uncertain times, with the fragility of the jobs market and a potential no deal Brexit on the horizon. However, there appears to be a lot of positivity around the housing market and there are no real signs that this will end in the coming months. In addition to a reduction in moving costs, lockdown also appears to have created an 'itch factor' for people wanting to move after spending so much time at home in recent months.

First time buyers

The market is still difficult for first time buyers with mortgage lenders restricting some products aimed at that sector. First time buyers were already benefitting from a stamp duty break on any property up to £300,000 so the new stamp duty holiday did not benefit them as much as others. However, there has long been an issue with demand in the market outweighing the number of properties being listed for sale. Hopefully positive activity in the market will see more properties being listed, which may mean more affordable houses for first time buyers. Although the opposite could also be true as prices could rise in line with demand.

Downsizing

For the older generation who may be looking to downsize, it could also be a good time for them to consider their options as they could potentially save a significant sum of money on their stamp duty payments. The outlook is also looking good for those purchasing at the higher end of the market as, although stamp duty is payable on properties over £500,000, the amount payable will be lower than it was before the stamp duty holiday was announced.

What next?

Due to the factors mentioned it is difficult to know what will happen to the market in the medium to long term. However, there are clear signs of recovery and the activity in the market shows this.

If you are looking to buy or sell a property, or would like any further advice, please contact Tom Ansell or another member of the residential conveyancing team.



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Resolving relationship disputes out of court

Many couples about to embark on divorce and financial remedy proceedings are blissfully unaware that there are other forms of dispute resolution to help them resolve issues, such as who is to keep the family home or how pensions are to be divided.



An alternative route to traditional forms of financial remedy proceedings

Due to the current COVID-19 pandemic, the family courts have been more stretched than ever and it's no understatement to say that the family justice system is at breaking point. In light of this, it can take parties' years to resolve their financial matters flowing from their divorce if they choose to go down the traditional route of financial remedy proceedings. However, there are other approaches.

Many people are completely unaware about arbitration and how it can be effectively used as an alternative 'out of court' method for resolving financial matters.

What is arbitration?

Arbitration is a form of formal dispute resolution that has been available for family law issues since March 2012 (although many people still don't know this exists).

During arbitration, the parties enter into an agreement under which they appoint a suitably qualified person (an arbitrator) to adjudicate their dispute and make an award – essentially the outcome of your case is decided by a neutral arbitrator as if they were a judge in court.

Many couples have also turned to arbitration as they do not wish to have their life on hold for months (or even years!) whilst their financial remedy case makes its way through the painstakingly slow family judicial system, adding time and money.

How and when should start arbitration be started?

If a divorce is about to commence, now is the time to speak to a specialist family lawyer about the alternatives to court proceedings. There are a number of helpful out-of-court ways to work together to sort out finances that could save a significant amount of time and money.

What are the advantages of arbitration?



Parties choose their own judge

Once a suitably qualified arbitrator has been appointed (i.e. the judge), that same person will deal with the matter until the conclusion of the case, creating continuity.



Confidentiality

Possibly one of the most favoured benefits with arbitration is that confidentiality can be assured, meaning national and regional press publications are unable to report on the case.



Degree of flexibility

Parties have more control and flexibility over the proceedings and the decisions being made, i.e. in respect of the time, date and venue for any hearings within the arbitration process.



Keeping matters out of court

Issues can then be resolved in a non-confrontational way, that can save time and money. Therefore, many people tend to prefer the arbitration process, as opposed to the timely, costly and significantly delayed financial court proceedings.

Guiding you through the process

Whichever route is taken, our experienced family lawyers will support you and equip you with the information and guidance you need to reach a solution that works for you.

If your relationship has recently broken down, and you're finding it difficult to agree with your ex-partner regarding a financial settlement or childcare arrangements, then arbitration may allow you to reach a solution you're both happy with, and more importantly, may save you costly court action.

To see how this process could work for you, please speak to Katherine Marshall or a member of the family team.



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When is a building, not a building?

That is the question

It may have gone unnoticed in the middle of the current pandemic but a crucial decision handed down by the Supreme Court could have important and potentially costly implications for house owners. If your house or parts of the gardens are listed, this complex case is particularly relevant to you.



Following defeat in both the High Court and Court of Appeal the owner finally obtained permission to take the case to the Supreme Court who in May 2020 ruled in his favour, holding that the Enforcement Appeal Inspector had erred in not considering whether or not the urns were 'buildings'. The court also provided guidance as to the factors that should be taken into consideration in deciding whether or not an object was a 'building' for the purposes of listed building enforcement.

How NOT to find yourself in the same situation

Although this is a highly unusual case, given the fact that the family did not know the urns were listed when they were sold, it does open up the possibility that this could happen to other families too.

Our advice is to check the listed building statutory register before you sell anything that could be of potential historic importance. Items may have been incorrectly listed on the register as 'buildings' without your knowledge many years before.

For advice regarding listing building consent, or the statutory list, please contact Simon Stanion or another member of our planning team.



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The background to the case

The case involved the sale of two lead urns from a private house in 2009. The urns had stood on either side of the current driveway for years, having moved with the family from home to home over a number of decades. The urns were sold in good faith by the owner via an auction house and moved out of the jurisdiction on their sale to their new home.

The local council became aware of the sale of these urns six years later and served an enforcement notice on the previous owner as it transpired that the urns had been placed on the listed building register 23 years previously (although no paperwork could be located detailing why and by whom the urns had been listed). This meant consent should have been obtained from the council before they were moved or sold.

The fact that the urns were listed came as a complete surprise to the previous owner but more particularly it was clearly impossible for him to comply with the enforcement notice (which required their restoration to the property from which they had been sold) as the urns were no longer in his possession. The previous owner therefore appealed against the enforcement notice on the basis that the urns were not 'buildings' and therefore were incapable of being listed. The Appeal Inspector, however, concluded that the fact that the urns were on the statutory list was decisive of their status as buildings and upheld the enforcement notice. The owner, facing the threat of criminal proceedings (for not complying with the enforcement notice) and if found guilty also facing the possibility of imprisonment - therefore began a long, expensive and emotional legal appeal against the enforcement appeal decision.

Keeping things moving with powers of attorney

What are powers of attorney? What can I use them for? And are they right for me?

Power of attorney is a legal document where one person gives another person the right to make decisions on their behalf. There are different types of attorney and here we give a brief snapshot of what they are and what they can and cannot be used for.

Ordinary Powers of Attorney

They can only be prepared if you have capacity and become void if you lose capacity (governed by Powers of Attorney Act 1971). They should be time limited or task specific but can however, be more general and enable an attorney to manage all property and financial affairs as necessary

Types of tasks that can be completed:

- Completing commercial transactions and signing all relevant paperwork
- Delegating voting powers in shareholder affairs
- Signing contracts or deeds on your behalf
- Delegating partnership voting rights
- Enable legal advisors to progress matters on your behalf
- To manage all property and financial affairs as necessary (general power) during periods of your extended absence – consider a Property and Financial Affairs LPA instead.

Can't be used for (not limited):

- Managing your affairs if and when you lose mental capacity – they are revoked automatically
- Your job! – such as tasks you would undertake in your personal capacity such as a solicitor, priest, doctor
- Your duties as a husband or wife/civil partner
- Your duties as a director of a company

Ordinary Powers of Attorney can be revoked by you at any time unilaterally provided there is no provision in the Deed requiring the attorney's consent.

Property and Financial Affairs Lasting Powers of Attorney

They can only be prepared if you have capacity but do not become void if you lose capacity (governed by Mental Capacity Act 2005).

They're generally very broad powers delegated relating to the management of your property and financial matters only but can be limited in the Power of Attorney document itself.

Their use is subject to oversight by the Office of the Public Guardian and must be registered with such before they can become effective.

They can be used by your Attorney both while you still retain capacity (with your consent) and once you have lost capacity.

Types of tasks that can be completed:

- In essence any decision that you would otherwise be lawfully able to make yourself to manage your own property and financial affairs e.g.:
 - Selling/buying houses
 - Selling/buying shares – investing
 - Writing cheques
 - Opening/closing bank accounts
 - Dealing with pensions/annuities and insurance products
 - Entering into contracts with care providers
- Your duties as a director of a company – provided the Company Articles allow for this.

Can't be used for (not limited):

- Making a will for you
- Making gifts for you (unless approved by the court and all of the circumstances are reasonable)
- Make a profit as your attorney
- Your job! – such as tasks you would undertake in your personal capacity such as a solicitor, priest, doctor
- Your “duties” as a husband or wife/civil partner
- Consenting to marriage or civil partnership
- Consenting to divorce or dissolution of civil partnership (on certain grounds)
- Consenting to sexual relations
- Consenting to a child's adoption
- Consenting to treatment for certain mental disorders
- Voting in an election or referendum.

Can be revoked by you at any time even once registered provided you still have capacity to revoke it.



Health and Welfare Affairs Lasting Powers of Attorney

They can only be prepared if you have capacity but do not become void if you lose capacity (governed by Mental Capacity Act 2005) Generally very broad powers relating to your health and welfare such as medical treatment are delegated but can be limited in the Power of Attorney document itself.

Their use is subject to oversight by the Office of the Public Guardian and must be registered with such before they can become effective. Can only be used by your Attorney when you have in fact lost capacity and cannot be used, even with your consent, while you have capacity.

Types of tasks that can be completed:

- In essence any decision that you would otherwise be lawfully able to make yourself to manage your own health and welfare matters e.g.:
 - Decisions about your medical treatment
 - Decisions about your diet
 - Where you live
 - How you spend your time
 - Who you have contact with
 - Access to medical records
 - Decisions about life sustaining treatment (if specifically permitted in the LPA)

Can't be used for (not limited):

- As per restrictions on LPA for property and finances.

Can be revoked by you at any time even once registered provided you still have capacity to revoke it.

For further guidance and support please contact Matt Parr on another member of the wills team.



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Protecting your future – How and why it is so important

If a marriage or a civil partnership, and the protection of assets they provide, breaks down or ends, it can be a stressful time for everyone involved.

However, there are types of relationship agreements that are available to everyone that can help provide clarity and certainty to both parties and their families and why they should be considered proactively when family circumstances change.



Living together agreements

A living together agreement is a written agreement between parties detailing the respective wealth and assets of both parties and when signed and witnessed, provides security should a couple separate, so this type of agreement can act as a safety net for the whole family – an attractive option.

A living together agreement or cohabitation agreement can be a very worthwhile consideration, for the following scenarios:

- Moving in together into a new home, or moving into a property already owned by one party
- Parents wishing to invest in a property for a cohabiting child; and/or
- A divorcee planning to cohabit with a new partner.

Pre/post-nuptial agreements

Pre-nuptial agreements are not just the preserve of the rich and famous. These can often be invaluable in circumstances where one or both of the soon to be married, or those entering into a civil partnership have acquired wealth prior to the relationship or would like to protect wealth to pass on to children from a previous relationship. While it is often the couple that initiate these, a parent or close relative can be instrumental in suggesting these if there is family wealth or business assets at stake too.

Should a marriage or partnership end through divorce or dissolution, a post-nuptial agreement details how a couple's assets will be distributed.

The advantages of a post-nuptial are numerous:

- They can be drawn up at any stage in the marriage or partnership
- They can provide clarity on matters not outlined at the start of the marriage or partnership or that have changed since, and
- They can often offer an objective solution to what could be a particularly emotional time.

Each of these types of agreements has their own value and will suit different situations and scenarios. For couples considering cohabitation, marriage/civil partnership or have already started their journey, they should consider how they will protect their future.



For more information on how this could work for you, please speak to Katherine Marshall or a member of the family team.



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No-fault divorce a step closer ...but a step too far away for some

The Divorce, Dissolution and Separation Bill (commonly referred to as the no-fault divorce bill) received royal assent in June 2020 ... but the earliest it will become law is Autumn 2021!

The passing of the bill and news that no-fault divorces are to become law will have led to a sigh of relief for many. But for others the wait will be too long.

The new bill means that couples will no longer have to agree to be separated for two years or have proof of their partner being at fault in order to file for divorce. Only one person needs to desire the divorce, and their spouse will not be able to refuse the application.

The news in June meant that the UK was one large step closer to ending unnecessary mudslinging and allowing couples to divorce with dignity. The Justice Secretary's firm commitment to bring the legislation to Parliament was cause for celebration and meant that for many people, separation could be far less acrimonious.

Being able to apply for a 'no-fault' divorce will spare couples the emotional stress and strain of finding blame for an unreasonable behaviour petition or when they can't, or don't want to, wait two years to divorce on the grounds of separation.

The Government has spent a significant amount of time over the past few years trying to make the divorce process simpler – and now there is to be a further delay until 2021.

The COVID-19 pandemic has proved too much for many and we're seeing a significant rise in the number of divorce enquiries. Once people have realised that they are able to talk to someone who can help and move forward, they are keen to proceed. Some may be happy waiting until the legislation changes but for many this is too big an ask and are now still having to find blame. It's been a long time coming and it feels like we are nearly at the finish line. 'No-fault' divorces will eventually take a huge amount of anxiety away from the process, benefitting a significant number of people

To see how this process could work for you, please speak to Prem Ahark or a member of the family team.



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Where there's a will, there's a way



Having a will also makes an already difficult time much easier for friends and family, simplifying the inheritance process and reducing the likelihood of arguments breaking out.

So, what should people be considering during their estate planning process?

Choosing an executor

An executor is someone who carries out the instructions left in a deceased's will. It does not have to be a family member, however, that is usually the case - it all depends on who the person believes would be most trustworthy and capable. Should a person wish to appoint two executors, they need to be sure that they will be able to work together without issue to ensure the estate is administered efficiently.

Although executors don't need to know the contents of the will, it is sensible to let them know of their role beforehand, just in case they have any strong objections.

Everyone who has assets they want to protect should create a will. Without one, assets will be shared out in a way defined by the law, which might not necessarily reflect the wishes of the deceased.

Appointing a solicitor as an executor

It is not necessary for a solicitor to be appointed as an executor, but it can be a wise move if it is likely that the administration process will be a complex one. This may be due to estate value, asset makeup or certain assets, such as business or agricultural holdings, needing a more expert eye.

There will be a charge for carrying out this role, so the appointment needs to be justified by the complexity of the estate. However, if a person feels that there is no one else they can trust to carry out the role, solicitors are a good second option.

Telling family members

Once a will has been written, family members do not have to be told. This being said, it is usually a good idea to do so, especially if it includes details about funeral plans. It can also act as a form of reassurance, letting family know that future plans have been considered.

Once a person has passed away

A Grant of Probate may be needed for executors to deal with certain assets, such as property, shareholdings or bank accounts containing larger sums of money.

On death, the appointed executors will take responsibility for the administration of the person's estate. This includes:

- Securing assets
- Checking insurance policies
- Protecting the estate from loss
- Distributing the estate in accordance with the details of the will
- Discharging any taxes e.g. Capital Gains Tax, Income Tax and Inheritance Tax
- Notifying those who have an interest in the estate of their entitlement: and/or
- Providing beneficiaries with estate accounts.

Estate planning may be an uncomfortable thought for many, but it is vital to ensuring a person's wishes are met on their death.

For further guidance and support please contact Matt Parr on another member of the wills team.



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Family business: Planning for the future



No sector has escaped the effects of COVID-19, including ultra-high-net-worth family businesses, family offices and the private wealth space. As such, all family businesses should review their structures and assets to ensure they stay afloat and prosper into the future.

Protecting wealth from the family business

Although COVID-19 has and continues to cause financial issues for many businesses, now could well be a good time to reorganise the share capital, with depressed values creating an ideal opportunity for this.

The pandemic has already led to an increase in people looking for ways to pass on their wealth to the next generation. However, how the capital value, dividend income and control of the business is split, depends on the family structure.

By looking at the individual needs of the family, issued share capital can be reorganised to create different levels of shares, splitting them in a way which satisfies all parties and makes sense from an inheritance, income and capital gains tax perspective.

Tax saving opportunities

Now that markets have dropped, it may be a good time to make gifts or dispose of assets as part of capital gains or inheritance tax planning.

- **Capital gains tax (CGT)** - This often prohibits the direct gifting of assets to individuals. However, as it is calculated using the gain that's been made on that asset (not on the value received), if asset value decreases then so does the impact of CGT.
- **Inheritance tax** - This is potentially charged when someone dies, but can also be triggered when lifetime gifts are made. As this tax is based on the value at the time the asset passes,

a fall in general market values potentially means there are opportunities to make lifetime gifts either to individuals, companies or through trust structures.

We may be in a time of uncertainty, but there are still numerous opportunities for family businesses to protect their wealth through effective wealth planning and to support their family both now and long into the future.



Prospering through COVID-19 top tips for family businesses



Look to making gifts of shares and other assets potentially chargeable to capital gains tax and inheritance tax when values are depressed.



Seek advice across the board – legal and financial – to make sure all opportunities and tax savings are maximised.



Review your will as part of an overall estate planning exercise, especially if your, or your family's, circumstances have changed.



Consider making Powers of Attorney or reviewing existing ones to ensure your financial affairs are looked after should loss of capacity occur.



Philanthropy Charities are desperate for donations, and inheritance tax isn't paid on charitable gifts. This can be done directly or through trust arrangements.

For further information on planning for the future please contact Anne Tromans or another member of the private client team.



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Strength in depth

Shakespeare Martineau is a top 55 law firm that brings creativity, commerciality and clarity to complex challenges. We have big ambitions and work with blue-chip companies, leading organisations, high street brands and individuals across the world.

It's our business to understand yours. That's why we're committed to being just as driven, dynamic and diverse as our clients. Our multi-disciplinary team combines pragmatic advice and deep understanding of the challenges affecting businesses of all sizes. That means experts that collaborate together to think bigger about your strategic goals and how to get there.

Our approach is to think beyond just legal solutions. As long-term partners, clients continually trust us to advise on what's possible, what's prudent and what's coming around the corner.



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