Private Client Practice: 
An Expert Guide 
2nd edition 

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Contents

Executive summary .............................................................. vii

About the authors .............................................................. xi

Chapter 1: Introduction – Major developments in private client practice ......................................................... 1
By Victoria Mahon de Palacios, senior associate at Wedlake Bell LLP
  Inheritance tax developments ........................................... 1
  Developments affecting non-doms and non-UK resident individuals ......................................................... 4
  Trust developments .......................................................... 7
  Estate developments .......................................................... 8
  Developments affecting the elderly/ those lacking capacity ... 9

Chapter 2: Giving with one hand and taking away with the other – Recent developments in inheritance tax legislation ... 11
By Charlotte Kynaston, barrister at Ten Old Square
  Winners? ........................................................................ 11
  Losers? ......................................................................... 15
  Conclusions ..................................................................... 19

Chapter 3: Non-Doms – The end of the permanent non-dom and other changes .................................................... 21
By Chris Moorcroft, senior associate at Harbottle & Lewis LLP
  Changes to the remittance basis ....................................... 21
  IHT residential property changes .................................... 23
  Collateral ....................................................................... 25
  Additional SDLT .............................................................. 26
  Conclusions ..................................................................... 27
### Chapter 4: Clean capital

By Martyn Wildney, tax manager, and Mark Davies, managing director, at Mark Davies & Associates

- Definition of clean capital .......................... 30
- Inheritance ............................................ 30
- Gifts .................................................... 31
- Pre-arrival foreign income and gains ............. 32
- Planning with clean capital ......................... 33
- Bank errors .......................................... 34
- Consequences of a mixed fund ..................... 35
- Alternative options if a mixed fund is created ... 36
- Business investment relief .......................... 36
- Practical points ..................................... 37

### Chapter 5: International succession planning and conflicts of law

By Sarah Sarwar, associate at Druces LLP

- Applicable law in England .......................... 39
- The meaning of ‘domicile’ ............................ 40
- Applicable law in common law countries .......... 40
- Applicable law in civil law countries and beyond ... 42
- One will or two? ...................................... 43
- Brussels IV – Is it the answer? ....................... 44
- In summary ............................................ 47

### Chapter 6: Farmland succession

By Julie Butler, managing partner at Butler and Co

- Business property relief (BPR) and hope value .... 49
- Too many investment activities ....................... 50
- Mental capacity and lifetime transfers .............. 51
- Capital gains tax (CGT) and inheritance tax (IHT) planning together ................................. 52
- The risks of the grazing agreement and CFA .... 54
- Scottish legal rights (forced heirship rules) and lifetime transfers ................................. 54
- Action points ........................................... 56
Chapter 7: What impact does *Ilott v Mitson* have on 1975 Act claims? .......................................................... 59
*By Edward Hewitt, barrister at 3 Stone Buildings*
  - The facts. ................................................................. 59
  - The litigation. ......................................................... 60
  - Impact ................................................................ 63

Chapter 8: A question of trusts – Types of trust and their role in tax and succession planning .......................... 69
*By Anna Coakes, senior associate, and John FitzGerald, solicitor, at Gordon Dadds*
  - Choosing the trust. ................................................. 69
  - Trusts and inheritance tax ................................. 71
  - Pilot trusts .............................................................. 73
  - Interaction of trusts and divorce .................. 75
  - Trusts and insolvency ......................................... 76
  - Conclusion ............................................................. 76

Chapter 9: The recent pension reforms and further changes on the horizon .................................................. 79
*By Penny Cogher, partner at Irwin Mitchell LLP*
  - Passing pensions down the generations ........ 79
  - How ready have the providers been for the changes? 80
  - What about the financial advisers? ................. 81
  - Have the other pension freedoms changed the UK’s pension saving patterns? ................................. 81
  - How engaged are investors? ............................. 82
  - What has been the impact on DB schemes? .... 82
  - Is the system working? ........................................... 83
  - Significant further changes for April 2016 ........ 83
  - More again in 2017 with the secondary market in annuities 84
  - So, have the pension reforms been a success? .... 85
Contents

Chapter 10: Paying for care – An update ................................. 87
By Lisa Morgan, partner at Hugh James

- NHS funding ......................................................... 87
- Retrospective reviews ......................................... 88
- Redress ................................................................. 92
- Local authorities charging for residential accommodation ... 93
- The cap on care costs ............................................. 94
- Deferred payment agreements ................................. 95

Chapter 11: Active and passive investment strategies – Weighing up the options ......................... 97
By Claire Bennison, regional director at Brooks Macdonald Asset Management

- Efficient markets theory ........................................ 97
- The market capitalisation approach .......................... 97
- Low-cost beta and transparency ............................... 99
- Understanding active management ........................... 99
- Comparing returns .............................................. 100
- Bridging the gap .................................................. 103
- Accessing smart beta products ............................... 104
- Constructing investment portfolios ......................... 105

Chapter 12: How legal and financial advisers can work together more effectively ......................... 107
By Ian Muirhead, chairman of SIFA

- The way we are now .............................................. 108
- Outcomes-focused regulation (OFR) .......................... 110
- Competition ......................................................... 111
- ABS and joint ventures ........................................ 113
- Client referrals ..................................................... 116
- Conclusion ......................................................... 117
Executive summary

The past year has brought a swathe of significant changes affecting the core areas of private client work, including tax, pensions, estates, and trusts. With private client matters often straddling practice areas and increasingly stretching across borders, keeping on top of the developments that might affect clients is becoming an increasingly tall order for all those who work in this area. The second edition of *Private Client Practice: An Expert Guide* shares expert insight into the key changes affecting this busy sector, helping practitioners to offer the most up-to-date, pertinent advice to their clients.

Broken into a series of direct and insightful articles from a broad range of legal and financial experts in the private client sphere, the guide outlines the most important legislative and case law developments and considers their practical impact. Articles also address some of some tricky and related areas that private client solicitors should know about, such as investment strategies, farming law, and litigation.

While private client practitioners are no strangers to change, many of the developments of the past year have sent vibrations throughout the sector. Accordingly, the opening article in this guide provides a broad overview of the most important changes of the past 12 months. These topics are then picked up and built upon throughout the book.

The UK tax landscape, in particular, has undergone a revolution in the past year, especially in the wake of the Summer Budget 2015. As part of the round-up of the latest changes and developments affecting private client work, the next chapter weighs up the potential ‘winners’ and ‘losers’ of the recent inheritance tax changes.
Executive summary

This is followed by an article which takes a closer look at one group of potential ‘losers’ in the shake up: non-domiciliaries. In a climate where ‘non-doms’ have become an easy target for political point scoring, this chapter outlines the particular challenges of advising these clients on their tax status, and explains why it is essential to keep ahead of the curve in this frequently changing sector.

Clean capital is a central component of UK tax planning for non-doms and this is the focus of the next article in this book. Martyn Wildney and Mark Davies of Mark Davies & Associates provide insight into the opportunities, benefits, and pitfalls for clients looking to ring-fence their foreign assets and earnings from UK taxation through clean capital.

Continuing the theme of advising clients on their international assets – a situation which is going to be increasingly common as migration continues to grow – the next contributor discusses the challenges of planning a worldwide estate, commenting on the new EU succession laws, and variations and conflicts in law between countries.

This is followed by a focus on farmland succession, which – with an aging farming population and as the value of farmland increases – is also a growing area of challenging work for private client solicitors. Farm tax expert Julie Butler outlines recent changes in England and Wales and Scotland that those working with farming clients should be aware of.

One of the highest profile cases of 2015 was that of Ilott v Mitson; the decision in the most recent of five court decisions, in July of 2015, has potentially significant implications for testators and their beneficiaries. The next contributor asks what are the practical implications of the Ilott decision, taking the question both from the point of view of the non-litigator drawing up a will to avoid 1975 Act challenges, and that of the litigator who may be asked to fight a claim.

Also amongst the possible ‘losers’ of recent government legislation are individuals looking to safeguard their assets for future generations by settling them in trusts. While the recent
reforms have made trusts a less attractive proposition than they once were, as the next contributors to this guide explain, there are still many circumstances where they may still be justifiable and highly beneficial – the important thing is to keep your client’s principal motivation in mind.

The possibility of passing pension savings down generations is one of the many potential benefits of the new ‘pension freedoms’ introduced in 2015, according to Penny Cogher, pensions partner at Irwin Mitchell. The next article in this guide considers this and other opportunities and pitfalls of the April 2015 pension reforms – much discussed by press and public – and asks what they really mean for individuals and practitioners.

For many clients, planning for the future also means preparing for the possibility of future care fees. The Care Act 2014 partially came into force on 1 April 2015, but the issue of who pays for care continues to be a contentious topic. With the second phase of provisions now controversially postponed until 2020, the next article in this book, from continuing healthcare expert Lisa Morgan of Hugh James LLP, looks back at how far we have come since this landmark piece of legislation was introduced and considers the likely future of paying for care.

Active or passive? That is the question when it comes to asset management and the answer is never straightforward. In the next article in this book, Claire Bennison, regional director of Brooks MacDonald Asset Management, assesses the relative merits of active and passive investment strategies, and considers where the two can be combined.

The variety of contributors to this guide is illustrative of the breadth of private client practice. More so than in many other practice areas, private client solicitors have to be able to think outside the silo when considering how to provide individual clients with a service that meets their needs – even if that means referring clients to colleagues in other practice areas, or possibly professional contacts outside the firm, for complementary advice. This book concludes, appropriately, with an
article in which SIFA chairman Ian Muirhead discusses how legal and financial advisors can work better together to ensure their clients receive the best, most rounded advice possible.

Private client practitioners provide a variety of services at the heart of which is an individual in need of advice; providing a client-centric service should be the aim of all those who work in this area. The chapters in this guide share a wide range of expertise and experience designed to help practitioners to achieve that aim.
Claire Bennison joined Brooks Macdonald in 2007 as regional director. Claire has over 26 years of investment and management experience. Her most recent role, prior to joining Brooks Macdonald, was as a director of Barclays Wealth, where she was head of technical analysis and currencies and a member of the Asset Allocation Committee, formulating investment strategy across all asset classes and regions for private clients. She has continued to bring this experience to Brooks Macdonald, focusing on both structural and tactical asset allocation as well as looking at developing investment solutions reflecting clients’ specific requirements and circumstances.

Claire is a member of the Brooks Macdonald Asset Allocation Committee and sits on the Brooks Macdonald Asset Management Board. She heads up the three regional offices in the North of England and is responsible for the future development of the region and the teams. Claire has a Master of Business Administration from the University of Liverpool and is a chartered fellow of the Chartered Institute for Securities & Investments (CISI).

Julie Butler FCA founded the firm of Butler & Co in 1986 and currently has two offices in Hampshire with a dedicated and experienced team. She has built up an extensive knowledge of tax issues affecting high net worth individuals, including farmers, landowners, and those involved in equestrian activities, and she has also recently passed her ICAEW probate exam. Her articles are published in the national accountancy and tax press and she is the author of Tax Planning for Farm and Land Diversification and Equine Tax Planning, as well as

About the authors
About the authors

co-author of *Stanley: Taxation of Farmers and Landowners* with Malcolm Gunn.

Julie and her team carry out a large amount of consultancy work for other accountants and solicitors on farming diversification and bloodstock in areas of tax planning and complex tax enquiries. Julie writes regularly in all the technical tax press and has a reputation for a fresh approach to subjects such as wind farms, bio-fuels, woodlands, furnished holiday lets, and all farm property concerns in this current complicated economic climate. Julie lectures regularly to a large variety of audiences through various organisations including CLT, CIOT, Mercia, MBL Seminars, SWAT UK, and the rural community direct.

**Anna Coakes** qualified as a solicitor in New South Wales in October 2003, joining a large regional firm advising on matrimonial and private client matters, including contentious trusts and estates. She moved to the UK in 2005, where she spent time working in the tax department of a large City firm, being admitted as a solicitor to the Law Society of England and Wales in 2006.

Anna moved to a West End firm in 2007 to advise on private client matters and she has continued to develop her private client practice since, focusing on the administration of complex estates and trusts for high net worth individuals, frequently involving complex multi-jurisdictional elements. Since January 2014, she has been an associate at Gordon Dadds LLP and continues to hold her practising certificate for New South Wales.

Anna has been a qualified Trusts and Estates Practitioner (TEP) since 2014, was shortlisted on the 2013 London Super Lawyers Rising Star list, and was recognised in Citywealth’s Future Leaders List 2015. She regularly writes articles for various publications on private client matters and delivers presentations and seminars to trust professionals and family offices.

**Penny Cogher**, pensions partner at solicitors Irwin Mitchell, has nearly 25 years’ experience in advising on the legal aspects of pensions. Her specialisms include advising on the
complicated pension tax changes arising from the government’s 2014, 2015, and 2016 pension changes. She advises both individuals and employers on the impact of these changes on high earners, and on how to reshape the high earner’s remuneration package in a tax efficient way, including for example increasing the levels of life assurance and introducing excepted life assurance arrangements to top up the benefits payable on the death of key individuals.

Penny also advises on the successful resolution of pension disputes, many of which arise from partnerships or family arrangements going sour where the individuals have entered into small self-administered pension schemes (SSASs) or self-invested pension plans (SIPPs).

Pension sharing on divorce is another of Penny’s areas of interest where the rules are currently changing to reflect the government’s 2015 pension flexibilities. She understands the importance to both parties of achieving the right pension settlement. Additionally, Penny advises the trustees and employers of defined benefit and defined contribution schemes about all types of compliance.

Penny’s services are provided at reasonable rates reflecting the fact that Irwin Mitchell is a truly national firm with many out of London offices.

Mark Davies is managing director and founder of Mark Davies & Associates, which he established in 2007 to focus on foreign domiciled persons who are resident in the UK. Mark trained with a Big 4 firm in Guernsey and has over 20 years of experience giving proactive tax advice with a personal touch.

Mark has regularly lectured on the subjects of residence and domicile. He is a co-author of chapters on tax planning for non-uk domiciled people and non-residents investing in the UK, which are published in Tolley’s Tax Planning.

John Fitzgerald read Classics at the University of Oxford and obtained Masters degrees at Oxford and UCL in Classical
Archaeology and Forensic Archaeological Science respectively, before commencing his legal training at BPP University.

John joined Gordon Dadds LLP in September 2013 as a trainee solicitor and remained with the firm upon qualification in September 2015. He is a solicitor and member of the firm’s Private Client and Dispute Resolution departments.

He advises on the drafting of wills for UK and non-UK based individuals, trust and estate administration, contentious probate and Inheritance Act claims, trust disputes, and claims involving breach of fiduciary duties. John is a student member of STEP and has written for various publications, including the Solicitors Journal and The Times.

Edward Hewitt has a traditional Chancery practice with a particular interest in private client work. He is regularly instructed in relation to challenges to the validity of wills, claims brought pursuant to the Inheritance (Provision for Family and Dependants) Act 1975, and all manner of trust disputes, both on and offshore, where he has appeared unled in the Grand Court of the Cayman Islands. He has experience in advising and acting in claims brought pursuant to the Variation of Trusts Act 1958, applications for directions as to the proper construction of wills and trust instruments, applications for the replacement of trustees and personal representatives, and disputes in the Court of Protection. He also undertakes a wide range of non-contentious drafting and advisory work in relation to wills, trusts, and estates and ancillary tax issues.

Outside the private client sphere, Edward’s practice encompasses all areas of land law, insolvency law, and business disputes with a Chancery dimension. He is frequently instructed in relation to landlord and tenant disputes and proceedings involving the enforcement of mortgages and of all forms of property rights, particularly beneficial interests in land. In the insolvency context, Edward has experience advising and acting in all types of claims brought by liquidators and trustees in bankruptcy. Edward is a native Italian
speaker and is often instructed in cases involving an Italian element.

Charlotte Kynaston is a barrister at Ten Old Square Chambers. She has a traditional Chancery practice with a focus on non-contentious private client work. She regularly advises on estate planning, capital taxation, and trust and estate administration. She is also experienced in drafting complex trust deeds.

Charlotte was recently seconded to the private client department of a major City firm, where she advised on the full spectrum of private client practice. She gained particular expertise in international private client taxation, trust administration, and probate matters.

Charlotte regularly writes articles and gives talks on issues relevant to her practice area. She assisted the editors of the most recent edition of Williams on Wills. Charlotte is a member of the Chancery Bar Association and a committee member of the Junior Chancery Bar Association. She is also an associate member of STEP, having gained a distinction in the STEP Advanced Certificate in UK Tax for International Clients.

Victoria Mahon de Palacios is a senior associate at Wedlake Bell LLP. Her practice includes all aspects of private client work. She has particular expertise in Court of Protection and vulnerable person’s work to include advising on applications to the Court regarding deputyship appointments and widening of deputy’s/attorney’s powers to deal with an incapacitated person’s assets, mental capacity issues, lasting/enduring powers of attorney, and protection of assets for vulnerable beneficiaries. Victoria’s general practice also includes advising on methods of mitigating inheritance tax and capital gains tax through lifetime gifts, trusts, and tax-efficient wills, together with advising on the administering of estates and trusts. Victoria also advises on the establishment of new charitable structures, charity mergers, and variations to charitable trusts.
Victoria writes a quarterly column for Solicitors Journal on wealth management and is a contributing author to Lexis Nexis PSL’s practice notes on lasting powers of attorney and issues relating to elderly clients. She has been named one of the country’s ‘Top 35 Under 35’ private client advisers in Private Client Practitioner magazine for 2011, 2013, and 2014. Victoria is also a member of the Society of Trusts and Estates Practitioners (STEP) and the STEP Mental Capacity Special Interest Group.

Chris Moorcroft advises clients on international tax, succession planning, and trust matters. His clients include internationally mobile individuals with complex cross-border tax problems, frequently involving two or more high-tax jurisdictions. He advises on succession planning including the design of a wide range of sophisticated trust, foundation, and other estate planning structures, aimed to protect assets and facilitate the passing of wealth between generations. In addition, Chris also works with trust companies on the mitigation of fiduciary risk alongside other associated matters.

A significant element of his expertise involves advising UK and international high net worth individuals who are resident, investing, or spending time in UK on how to structure their assets. Chris also has experience in advising clients with US connections on estate planning matters. Chris was named on the Private Client Practitioner magazine’s ‘Top 35 Under 35’ list for 2012 and 2013, which recognises the rising stars of the private client community.

Lisa Morgan is a partner with Hugh James. Lisa is the leading expert in NHS Continuing Healthcare and has been instrumental in developing a niche team of 90 lawyers specialising in the recovery of wrongly charged nursing care fees. The team has recovered in excess of £80 million on behalf of claimant families. Lisa won the prestigious and highly acclaimed Junior Lawyer of the Year at the Law Society’s Excellence Awards in 2010.

The team at Hugh James acts for over 6,000 elderly clients.
and families in England and Wales and their work has been highlighted in *Legal 500* which stated: ‘Lisa Morgan’s nursing care team is “second to none”’, and ‘Lisa Morgan was singled out for her “knowledge and tireless work” in nursing care’. Lisa is regularly turned to by the media as an expert the field and has undertaken numerous television and radio interviews for BBC News, BBC Breakfast, The One Show, ITV News, and BBC Radio.

Lisa lectures widely on the subject of continuing care to professionals and the voluntary sector and has also advised members of the Welsh Government on her experiences in challenging NHS decisions and the difficulties encountered by the elderly and their families in Wales in securing NHS funding. Since 2006, Lisa has also been the supervising solicitor for the award-winning Cardiff Law School’s continuing healthcare pro bono scheme and a committee member for the South Wales’ Solicitors for the Elderly Regional Group.

**Ian Muirhead** is a solicitor who began his professional career in the 1960s at City firm Norton Rose and subsequently went into industry as a legal adviser, personnel director, and company secretary. In the 1980s, he returned to private practice and became a partner in what is now TWM solicitors in Surrey, where he established an in-house financial services department. This led to interest in financial services on the part of other law firms and, in 1992, Ian set up SIFA (Solicitors Independent Financial Advice) to address this demand. SIFA now provides regulatory compliance, consultancy, and marketing services to firms of independent financial advisers and their solicitor connections. SIFA is recognised by the Law Society and the Financial Conduct Authority and its *Directory of Professional Financial Advisers* is endorsed by the Law Society. Ian is the author of the Law Society’s handbook *Financial Services for Solicitors*, and of a range of client booklets and technical handbooks focusing on the connection between legal and financial services.
Martyn Wildney specialises in the field of private client tax and is a tax manager at Mark Davies & Associates. He enjoys helping individuals and their families to navigate the complexities of the UK tax system, with a particular focus on the needs of non-domiciled clients who are living in the UK or seeking to move to the UK.

He joined Mark Davies & Associates in May 2015 having experienced working in two Top 50 accountancy firms with a focus on international clients. Martyn graduated from Loughborough University with an Economics degree in 2007. He is a chartered tax adviser and a member of the Association of Taxation Technicians.