

# Trust or Trap?: The Hidden Dangers of Asset Protection Trusts

Jade Gani TEP | CEO | Chair of  
Lifetime Lawyers | Law Society  
Committee



# About me

- Solicitor, Head of Private Client & CEO at Circe Law Ltd.
- Fully Accredited Member of the Society of Trusts & Estate Practitioners ["STEP"].
- Fully Accredited Member and Chair for the Association of Lifetime Lawyers (formerly Solicitors for the Elderly ["SFE"]).
- Law Society's Estates & Private Client Committee Member.
- STEP Global Private Client Awards 2021/2022 "Young Practitioner of the Year".
- Modern Law Private Client Awards, Probate Industry Awards and British Wills & Probate 2025 "Lawyer of the Year".



# Welcome & Scope

Today, we will explore various aspects of Asset Protection Trusts (APT), including:

- What APTs actually are
- Key findings from the '*Trust or Trap*' report
- Common mis-selling patterns
- Legal, tax and care-fee implications
- What practitioners should watch for

*This is not about banning Trusts, it's about using them properly.*



# Asset Protection Trusts – What Are They?

## **In simple terms**

- A Trust created during lifetime
- Usually transferring the family home
- Client often remains living in the property
- Promised protection from care fees/IHT

## **The reality:**

- Complex tax consequences
- Loss of control and certainty
- Vulnerable to challenge



# Classification

## **APTs are usually types of Relevant Property Trusts (RPT – IHTA 1984)**

- Often Discretionary Trusts in nature
- Subject to the RPT regime
  - Entry, Exit & Anniversary charges to IHT
  - Trustee rates for Income Tax & CGT
- Creation of the Trust deed is a regulated activity
- Requires registration with TRS & annual reporting (Money Laundering Regulations 2017)



# Are APTs Appropriate?

**The short answer? Sometimes...**

It will depend on the individual circumstances of your Client. Discretionary Trusts can be effective Estate/tax planning tools.

However, often mis-sold in inappropriate circumstances as a fee-generating exercise and/or to “avoid” care fees and Inheritance Tax.

Where it involves settling the main residence, extra caution should be taken.

Is the Estate even taxable?



# Tax Implications

## HMRC sets out various ways to mitigate IHT avoidances, including:-

- Potentially Exempt Transfer Rules (PETs) (IHTA 1984, s 3A)
  - Must not retain a benefit
  - Survive 7 years from the date of the gift
- Gifts with Reservation of Benefit Rules (GWRs/GROBs) (Finance Act 1986, s 102)
  - If benefit retained, no 7-year clock
  - Gift clawed back into Estate for IHT purposes



# Tax Implications

## It should also be noted:-

- Residence Nil Rate Band might not be available
  - Property must be “qualifying residential interest”
  - Discretionary Trust structure usually negates “closely inherited” requirement.
- The Trust might become “Settlor-Interested”
  - Disposal for CGT
  - Principal Private Residence Relief might be lost
  - Possible SDLT if mortgage



# Care Fee Implications

**Care Act 2014, Care and Support (Charging and Assessment of Resources) Regulations 2014, and Annex E (Deprivation of Assets) of the Care and Support Guidance, deal with the avoidance of care fees:-**

- Deliberate Deprivation:-
  - Avoiding Care was “significant” motivation
  - The Donor could reasonably foresee a need for care and support
- If Deliberate Deprivation is Established:-
  - Gift clawed back into Estate for care fee assessments
  - LA could seek recovery of Asset



# When APTs Might Not Be Appropriate

- Where there would be no IHT to pay anyway
- Where the Client relies on those assets to fund future care
- Where doing so would give rise to deliberate deprivation claims
- Where doing so would create a GWR
- Client wants to retain control of the assets
- Clients can't/won't pay any entry charge applicable
- Clients don't want to/can't meet ongoing reporting requirements



# ALL Report

## Why Lifetime Lawyers investigated

- Growing complaints from families
- Inconsistent advice across providers
- Increased disputes at probate
- Lack of regulatory oversight

The result: *Trust or Trap?* A sector-wide evidence review.



# ALL Report

## Why Lifetime Lawyers found

- Of members who participated in the study:
  - 95% had Client who were mis-sold APTs
  - 82% had Clients who were misled into thinking APTs would protect their homes/reduce tax
  - Many victims paid between £3,000-£5,000 to set up APTs
  - Unregulated providers were behind 90% of reported schemes
  - 70% of victims were older homeowners with significant equity
  - 4 in 5 cases had firms appointing themselves as Trustees
  - 1 in 5 say mis-selling is on the rise



# Advice That Should Be Given

The specific advice provided to clients in these situations will depend on the specific matter circumstances. However, as a general rule, the following should be included:-

- Trust Provisions
  - Are they bespoke provisions?
  - Is the Trust revocable?
  - Have you explained Trustee discretion?
  - Can beneficiaries be added?
  - Who are the beneficiaries?



# Advice That Should Be Given

- Tax considerations:-
  - Have you explained the impact of Settlor interested Trusts?
  - Are there entry charges to IHT?
    - Is the amount being settled over the NRB £325,000?
    - Have you calculated the entry charge?
  - Have you explained exit and anniversary charges?
  - Have you advised on PETs/GWRs?
  - Have you advised on the possible loss of PPR?
  - Have you considered CGT consequences?
  - Have you advised the RNRB might be lost?



# Advice That Should Be Given

- Care fees:-
  - Have you advised on the mandatory disregard?
  - Have you advised on Deliberate Deprivation?
  - Have you discussed the standard of care the Client would like in later life, and the associated costs?
  - Have you discussed the likeliness of needing care and support in the future?
  - Have you referred to financial advisor to assess their cost-of-living needs over time?
  - Have other care fee mitigation avenues been explored, such as care annuities?



# Advice That Should Be Given

- Reporting Requirements:-
  - Have you explained the TRS requirements?
  - Have you explained an annual return will be required?
  - Have you advised that exit and anniversary need to be calculated and submitted to HMRC?
- Trustee Fiduciary Duties
  - Are the Trustees aware of their fiduciary duties?
  - Do they know they could be personally liable should they fail to meet their obligations/duties?



# Advice That Is Given (or Not!)

- Often claims it will “protect” your home from IHT and/or care fees.
- Often lacks an explanation that the RNRB could be lost, and the subsequent IHT implication for a person’s Estate including PET/GWR, entry exit and anniversary charges.
- Often fails to explain the assets will no longer be in the Settlor’s control, instead they are managed at the Trustees’ Discretion.
- Little to no explanation/advice in respect of Deliberate Deprivation risks.
- Usually Claims you can avoid “lengthy and costly” probate process.



# Red Flags

- Advisors without legal or financial regulation
- Claims a Trust will protect the home from care fees
- Claims a Trust will eliminate IHT
- Firms automatically appointing themselves as Trustees without discussing other options
- No assessment of future living needs
- Lack of detailed tax implication breakdown
- Suggesting multiple Trust structures across lifetime and after death



# Red Flags

- Overall fees amounting to several thousands of pounds for template documents with little to no bespoke advice
- Discouraging of seeking a second opinion from a regulated provider
- No consideration as to whether the planning can be undone in the future
- Applying pressure/emotionally manipulative sales tactics to upsell products



# Consumer Protection is the Goal

- The Trust or Trap campaign centres around consumer protection as the key issue
- Arguing on expertise/qualifications of regulated vs non-regulated practitioners detracts from the key issue
- There are excellent practitioners (and cowboys) in both groups
- The key issue is around recourse for consumers
  - Is there appropriate insurance to help recover funds?
  - Will the Estate be re-instated?
  - Can the practitioner be prevented from future wrongdoing?
- What impact does this have on consumer



# Regulated vs Unregulated

The preparation of Trust documentation is a “reserved instrument activity” under the meaning of the Legal Services Act 2007 (s.12(1); Sch 2). However, unregulated providers have found ways to offer Trust services by:-

- Providing generic precedent documents as a “document supply” service; and/or
- Gathering information to pass to a regulated practice under a referral arrangement



# Regulated vs Unregulated

Why is it important who prepares the Trust document?

- Often high risk, requiring bespoke advice based on specific circumstances of each client
- Improper advice could give rise to financial loss to the Trust/Settlor
- Claims for negligence could be brought
- Undoing these structures can be costly and time-consuming
- Some Trusts are irrevocable and can't be undone
- There could be tax implications for unwinding the trust



# Regulated vs Unregulated

Both regulated and unregulated providers are subject to:-

- Consumer Rights Act 2015 – reasonable care and skill
- Consumer Protection from Unfair Trading Regulations 2008 – prohibits misleading actions/omissions and aggressive practices
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 – pre-contract information and 14-day cancellation rights
- Competition & Markets Authority 2014 Guidance – transparency, fairness, complaints & non-pressure selling



# Regulated vs Unregulated

- Regulated practices also:-
  - Are subject to strict professional standards and supervision
  - Have minimum PII cover in place
  - Must have run-off cover as a regulatory requirement
  - Have independent complaints redress with the Legal Ombudsman
  - Have greater transparency obligations
- Regulated practices could also:-
  - Face sanctions and fines by their regulator
  - Re-instate the trust/Settlor from PII cover
  - Settlers/Trustees could claim against regulator compensation funds



# SRA Rules

- Principle 1 – uphold rule of law/justice
- Principles 3-5 – independence, honesty, integrity
- Principle 7 – act in your Client's best interest
- Code of Conduct
  - Not mislead, No unfair advantage
  - Service & Competence
  - Conflicts of Interest
  - Firm governance structures
- Accounts Rules
- Supervision, Transparency & Complaints



# Oversight of Unregulated

- Trading Standards
  - Ban on misleading actions/omissions
  - Ban on aggressive practices
- Competition & Market Authority
  - Misleading claims
  - Unfair contract terms
  - Broader market harm or significant detriment
- Consumer Rights Act
  - Reasonable skill and care
  - Unfair terms



# Accreditation is Not Regulation

- Regulators
  - Set strict standards
  - Can take enforcement action
  - Require strict insurance minimums
  - Usually require contribution to compensation funds
- Accreditations
  - Usually membership based
  - May or may not require entry examination
  - May revoke membership



# HMRC Guidance

- TSEM1903
  - ‘Mistake’
  - In the absence of a court order, HMRC would normally adhere to the tax consequences that flow from the disposition.
- TSEM1904
  - ‘Hastings-Bass’ error resulting in tax
  - Fetter and another v HMRC and Pitt and another v HMRC [2013] UKSC26 removed the possibility of Trustees invoking ‘Hastings-Bass’ merely to get round an error based on incorrect tax advice.



# Scale

- 95% of members surveyed have encountered a Client who has been mis-sold an asset protection scheme
- 82% say they were misled into thinking the trusts would reduce tax/protect their homes
- Many victims paid between £3,000-£5,000 for the Trusts
- Example: Over 2,000 older victims lost a total of £44 million from Trusts created by Philips Trust Corporation (according to BBC Morning Live)



# How to Help

- Conduct reviews of all Trust and Estate planning undertaken for your Client
- Explain the limitations and legal realities
- Make complaints on behalf of your Clients to the Trust seller
- Assess whether you can unwind the Trust
- Ensure and assist with reporting requirements



# Unwinding If Not Constituted

- Objectives for both include:
  - Closing down mandate
  - Obtain full file
  - Pursue refund/redress
- Immediate steps:
  - Demand written confirmation that no deed was executed, no asset transfer steps taken, no TRS registration
  - Obtain full file
  - Data protection hygiene



# Unwinding If Not Constituted

- Regulated
  - Confirm no Deed was Executed
  - Request file is closed
  - Verify no 3rd party steps taken (TRS, HMLR)
  - Lodge complaint with firm, escalate to LeO/SRA/CILEX Regulation/CLC as appropriate
  - Recover fees paid
- Unregulated
  - Confirm no Deed was Executed
  - Request file is closed
  - Lodge complaint with firm, escalate to Trading Standards/ASA/CMA as appropriate
  - Recover fees paid



# Unwinding If Constituted

- Both should unwind
  - Using Trust Powers
  - By consent (deed of appointment, indemnities, releases)
  - By application to Court
- Mitigate
  - Stop further transfers
  - Stop paying maintenance fees
  - Investigate title position



# Unwinding If Constituted

- Regulated
  - Create a formal unwinding plan
  - Provide Client with advice on tax/care-fee implications of reversing
  - Lodge complaint with firm, escalate to LeO/SRA/CILEX Regulation/CLCas appropriate
  - Recover fees paid
- Unregulated
  - Unwind Trust – usually requires Solicitor/FCILEx intervention
  - Lodge complaint with firm, escalate to Trading Standards/ASA/CMA as appropriate
  - Recover fees paid



# Trust or Trap: Next Steps

- Mis-selling of APTs is an ongoing issue
- The issue is staggering; it requires a multi-agency approach to push for greater protection, including:
  - More substantial guidance
  - Changes to regulation
  - Better options for consumer recourse

**It will take time to see proactive change in the industry, but it is an issue the ALL are dedicated to, and we will continue to push for change.**











