



Left to right: Mark Abrol, Drummond Kerr, Vicki Bennett, Mark Terrar, Peter Gate, Natasha Smith, Jon Croxford, Carl Csukas

## Strong growth drives promotions at Meridian

by Drummond Kerr, Partner at Meridian Private Client LLP



Drummond Kerr

**On the back of several years of strong growth and increasing demand for sophisticated private client legal and tax services,**

**Meridian has promoted three of its senior solicitors to Partner. The new Partners are Vicki Bennett, Peter Gate and Mark Terrar.**

Vicki and Peter have been with Meridian for five years, during which time they have seen the turnover of the practice more than double. Vicki and Peter both specialise in complex trust and estate planning for high net worth individuals, often with cross border issues.

Mark Terrar specialises in advising on contentious private client matters, such

as trust and estate disputes. This is a growing area of law, partly due to more complex family groupings becoming the norm but also the increase in dementia and related illnesses leading to a rise in testamentary capacity concerns and contested Wills.

These promotions follow hard on the heels of a busy 2018 during which time Meridian brought in three new Partners: Natasha Smith, Mark Abrol and Carl Csukas.

The recent promotions bring the Firm's Partner base to eight.

Mark Abrol leads the contentious team of which Carl is also a member. Carl specialises in property disputes and professional negligence litigation.

Natasha joined the Firm as the second tax Partner from an accountancy background. She specialises in advising business owners on their tax affairs and advising on shareholder transactions.

The tax team also has a distinct specialism in dealing with international tax issues, including advising individuals on residence and domicile issues.

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# Estate planning for non-UK domiciled individuals

by Jon Croxford, Partner



Jon Croxford

**Individuals who are born to parents who originate outside the UK may be what is termed “non-UK domiciled”. Domicile is primarily a legal concept but is of great importance**

**for tax purposes. Domicile could be said to equate to the place you consider to be your true home and is difficult to change. In this respect, it is a very different concept to tax residence, which can be acquired or lost relatively easily.**

Until 2017, an individual who was non-UK domiciled in law would become deemed domiciled in the UK for inheritance tax (“IHT”) purposes after 17 years of residence

in the UK. After 5 April 2017, this period was shortened to 15 years and now applies for all tax purposes.

Someone who is neither UK domiciled in law nor deemed domiciled in the UK under the 15 year rule is only subject to IHT on their UK situated assets, whereas a UK domiciled or deemed domiciled individual is subject to IHT on their worldwide assets. There are two areas of estate planning in particular which are very important for a non-UK domiciled individual to consider.

Firstly, before becoming deemed domiciled in the UK after 15 years of residence, a non-UK domiciliary should consider establishing a trust to protect their assets from IHT in the long-term. For other tax reasons, such a trust is best located outside of the UK, ideally in a tax neutral location such as the Channel Islands. Due to the 15 year rule, time is of the essence in establishing a suitable trust structure.

Secondly, the effect of any double tax treaty dealing with IHT should be considered. There are not many treaties which deal with IHT and even fewer which predate the introduction of the deemed domicile concept. Those which do include India, Pakistan, Italy and France. With careful planning, these old capital tax treaties can override the concept of deemed domicile such that a long term resident of the UK who originates from one of those countries can remain subject to IHT only in respect of their UK assets. This is a specialist area of planning in which the overall UK and foreign legal and tax picture must be considered, and Wills structured appropriately.

There are many complications with such planning and our specialists at Meridian can help you navigate your way through them.

“Due to the 15 year rule, time is of the essence in establishing a suitable trust structure”

# Family trustees – your duties

by Vicki Bennett, Partner



Vicki Bennett

**A family member will often find themselves appointed as a trustee over a trust created either during lifetime or under someone's Will. It is vital to remember that all trustees, even non-professionals, owe**

**wide duties to the beneficiaries and must comply with increasingly complex reporting requirements. Ultimately, a trustee can be personally liable for a failure to act in accordance with their duties and, if that results in a loss to the trust, beneficiaries may seek recourse against the trustees personally.**

In exercising their powers and carrying out their duties, the trustees must consider the terms of the trust deed and any associated documentation as well as statute such as the Trustee Act 1925. This may be no easy task for a non-professional. The following list illustrates only some of the decisions and actions the trustees should be considering on a regular basis.

- Investment decisions must be properly taken, having regard to the trustees' investment powers and duty to ensure the investment is suitable.

- The trustees should hold formal meetings to discuss and record various matters and decisions. They should be aware of the beneficiaries' personal/financial circumstances to inform their decisions.
- The trustees should consider capital distributions, income payments or loans from the trust to the beneficiaries. The tax position of the trust and the beneficiaries should be considered.
- Trust records should be properly maintained and decisions recorded. Trust accounts may be required and any necessary tax reporting must be dealt with.
- In exercising their powers, trustees must act in the best interests of all the beneficiaries and should not put themselves in a position where their personal interests conflict with the beneficiaries.



**"It often comes as a surprise to a trustee that they can be personally liable for a failure to act in accordance with their duties"**

- Trustees of most trusts are now required to register under the Trust Registration Service. There are also various FACTA and anti-money laundering reporting requirements that apply to an active trust. Being a trustee can be demanding and time-consuming and the risk of personal exposure for trustees who have not upheld their duties, unknowingly or otherwise, is a real concern. As such, we are often approached to advise trustees and assist with administering trusts. If you are a trustee and uncertain as to whether there are steps you should be taking to fulfill your duties, please contact Meridian.

## Professional negligence: a case study

by Carl Csukas, Partner



Carl Csukas

**Not all disputes arising out of a deceased's estate involve challenges to the validity of the will. It may be that through the negligence of the will draftsman or any other solicitor instructed to act in the estate**

**administration, either the estate or named beneficiaries will suffer a loss.**

**The professional involved may then be visited with a professional negligence claim.**

A few years ago I was instructed by a mother (W) and son (S) who were the executors of the estate of their husband/father's (H).

H died in October 2003. His estate was worth circa £1.35m. In his will he left the Inheritance Tax (IHT) nil rate band sum (then £255,000) to his children and the residue to W. Due to the spouse exemption the residue passed to W free of IHT. She was at that time 65 and had her own assets of £1.1m. That left her with an IHT issue in that she was left with an estate far above the IHT nil rate band. Proper estate and tax planning was required in order to mitigate any IHT bill that might otherwise materialise on the death of W.

Rather than consult the family solicitor, W and S consulted a solicitor who specialised in estate planning. The advice was that

the executors (W and S) could vary H's will within two years of H's death to create an interest in possession trust for W, deemed to be created by H so that due to the spouse exemption there would be no immediate IHT issue. Further, as soon as two years from H's death passed, W's interest in the trust could be terminated, with the assets in the trust then being held on life interest for S and his siblings. That would constitute a Potentially Exempt Transfer (PET) of W's interest in the trust. If W went on to survive for seven years, all IHT on the value of the PET would be avoided. If she died within four years, IHT at 40% would be payable on the full value of the PET. If she died between four and seven years there would be taper relief, so IHT would be payable, but at less than 40%.

W and S showed the letter of advice from the specialist estate planning solicitor to the family solicitor. He said that he could implement the advice. Due to a longstanding relationship they felt obliged to instruct him to do so. Unfortunately, that family solicitor did not properly understand what he had to do and got it wrong. H's will was varied by a deed, but the trust set up was a discretionary trust, not read back in to H's will for IHT purposes. This made W the settlor, not H. The solicitor did not realise that there was a charge immediately payable and so it was not paid. He also failed to do anything after two years from H's date of death had passed. He did not do anything until 2008. This meant that when

W died in 2012, there was an IHT liability.

The family solicitor's errors were only discovered after W's death when he came to administer the estate of W. S, her executor, consulted the estate planning solicitors that had advised in 2005 and they confirmed that errors had been made in implementing their advice. They took over the administration of W's estate and negotiated with HMRC to unravel the mess. W's estate had to pay the greater of the unpaid entry charge, penalties for late payment and interest from 2005 as against the IHT payable on the failed PET. The loss, being the sum paid to HMRC which could have been avoided, was £193,943.07. I sent a letter of claim alleging negligence to the family solicitor. Eventually we held a mediation with solicitors appointed by the family solicitor's professional indemnity insurer, and a monetary settlement was agreed.

If you suspect that a solicitor (or professional in another field) that is acting for you has been negligent it is important to seek independent advice at an early stage. In any event there may well be an existing problem to resolve before any negligence claim can be pursued (such as negotiating with HMRC in the case above) and allowing the miscreant solicitor to try and resolve that may make matters worse. There may also be a conflict of interest in that the miscreant professional may put its interest in avoiding a claim before the interests of the impacted party.

# At board level...

Continuing a series of informal interviews with members of the Meridian team. This time around, we catch up with solicitor, Tim Brewster.



Tim Brewster

## What is your role with the firm?

I am a solicitor and I work in the private client team advising on Trust administration, the preparation of Wills and Estate Planning. I have been at the firm since 2017.

## How did you get into law?

I came to law in a slightly unorthodox route. Studying Politics at university meant that there was no obvious career path. After working in marketing communications, I decided I wanted a different challenge.

## How did you start surfing?

I was born in Birmingham, but my parents decided to move us to West Cornwall when I was seven. It is a great place to grow up but unless you were keen on sport and the

outdoors there was not a lot happening. I always loved going in the sea and so it came naturally, I suppose. I can remember telling people at university that we surfed in Cornwall and how good it can be, especially in the winter, but most of them didn't believe me. It is much more mainstream now.

## What is your most challenging piece of work currently?

Over the last year I have worked on a couple of separate matters concerning the unravelling of a complex series of Trusts, which were established using some quite aggressive but ultimately unreliable schemes. That has been quite an eye-opener, not least to see how some providers in the market operate. Being able to approach these with the benefit of input from the litigators and cross-border tax expertise that we have in house is great.

## Do you have a claim to fame?

I had dinner with the Hobbits from *The Lord of the Rings* once. Their feet looked quite normal.

## Has surfing taught you anything?

The endless variety and the travel. If you were to spend your whole life travelling the globe following the swells and going to new places to surf, you could never see it all. There is always a new place to go and the only limit really is just how intrepid (or foolhardy!) you are. There are no two surf breaks the same, the wave and the setting will always be different. Even the waves themselves have a singular characteristic, each one is individual and different.

Surfing teaches patience, because you can only surf when the ocean is providing it. Mostly it is just a great escape, if you are

battling to get beyond the white water or taking wave after wave on the head and getting held under the water for a long period of time, you aren't thinking about anything else.

Getting into big surf can also be very humbling, but a good lesson in how to work in a dynamic situation, assessing your limits and knowing when to call it a day.

## Have you ever seen any sharks?

I spent a year in Australia and fortunately I didn't see any, but you know they are always there. You try and surf with other people but if you are unlucky the ocean could suddenly go quiet and you would find yourself 250 metres offshore with no-one around, looking at shadows under the surface and trying not to think of *that* music. I learnt to sit with feet on top of my board, not that it would have helped! By far my favourite encounter was with few friendly dugongs (sea cows) in Indonesia.

## What are your biggest professional challenges?

Probably keeping up with some of the exceptionally bright people here. The depth and quality of work that is done means that there is a huge emphasis on learning. We come together as a group a few times a month and have a lot of fun. It's something that I really enjoy.

## If you could choose anyone, who would pick as your mentor?

If I could then I would pick two: Joel Parkinson as the most graceful surfer of all time and Dennis Mortimer, European Cup winning captain of the best football team of all time (Aston Villa).

## • IN THE NEWS • IN THE NEWS • IN THE NEWS •

### THE EU SETTLEMENT SCHEME

The controversial EU Settlement Scheme is now open. EU, EEA or Swiss citizens can apply to the Scheme for either settled or pre-settled status to continue living in the UK after 30 June 2021 (which is also the deadline for applying). With the ongoing uncertainty over Brexit and teething problems with the application process, many are delaying making the application. If you are eligible to apply, it would be sensible to keep such an application under review with Brexit developments.



### NO TIME TO LOSE

There have been two notable cases this year concerning applications made by claimants under the Inheritance (Provision for Family & Dependents) Act 1975 to bring their claims for reasonable financial provision well after six months after the date of the Grant of Probate. In *Cowan v Foreman*, an application brought by the deceased's widow some 17 months out of time was rejected. In contrast, in *Bhusate v Patel*, the deceased's wife was granted permission to bring her claim some 26 years after the deadline. Both of these cases have been/are being appealed. The *Cowan* appeal has recently been heard so judgment will follow shortly. What is abundantly clear from both of these cases as they stand though is that anyone who has not been left reasonable financial provision needs to act quickly after the death of their loved one to ensure that crucial deadlines are not missed.

### HMRC'S TRUST REGISTRATION SERVICE (TRS)

A reminder that if your Trust has a liability to Tax, including for example capital gains and income tax, for the first time in the 2018 to 2019 tax year, you will need to register with the TRS before 5 October 2019 to complete a return by 31 January 2020.

The TRS was created by the EU's Fourth Anti Money Laundering Directive (4AMLD). The EU's Fifth Anti Money Laundering Directive (5AMLD) is currently at consultation stages but shall be transposed into UK Law on the 10th January 2020, regardless of Brexit negotiations. The proposed new rules on customer due diligence (CDD), enhanced due diligence (EDD) and Trust registration will expand compliance and transparency of beneficial ownership. The new TRS requirements are likely to include the registration of most Trusts, whether they have a liability to tax or not.