



The IT Directors Forum  
The Catering and Hospitality Forum  
PIMS

## Top Ten IHT and Estate Planning Ideas

**Danby Bloch**

Taxbriefs Financial Planning



# Estate planning strategies

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- Estate planning is more than IHT planning
- Focus IHT planning on the rich
  - Prospective increase in the nil rate band
  - Longevity implications
- Inter – and intra-generational planning for wealth and income
- Complicated lives with many different stages
- New wealth – new traditions



- ## 2. Pensions
- The essential foundations for confident IHT planning

Build up retirement income



# Pensions and estate planning

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- Clients make a reasonable retirement income to afford to make regular or lump sum gifts
- Spend pension assets – gift other assets
- Pensions are tax efficient where there is enough tax difference between input and benefits
- Otherwise build retirement funds with other investments



# Pension contributions basic rate tax relief

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## From 6 April 2011

- Tapered down to 20%
- Tapering £150,000 to £180,000 a year

## From 22 April 2009 – anti-forestalling

- Incomes over £150,000 over this year and last 2 years
- Protected:
  - Contributions up to £20,000 a year (the SAA) or
  - 'Normal pattern of contributions' if greater – quarterly or more often

## Wide ranging anti avoidance rules



# Pension contributions from 2011

## The special annual charge (SAAC)

- Restricts the tax relief to basic rate 20%
- SAAC of 20% (30% in 2010/11) on 'excess contribution' by their employer
- Will be collected from the individual through self-assessment

## £150,000 total income

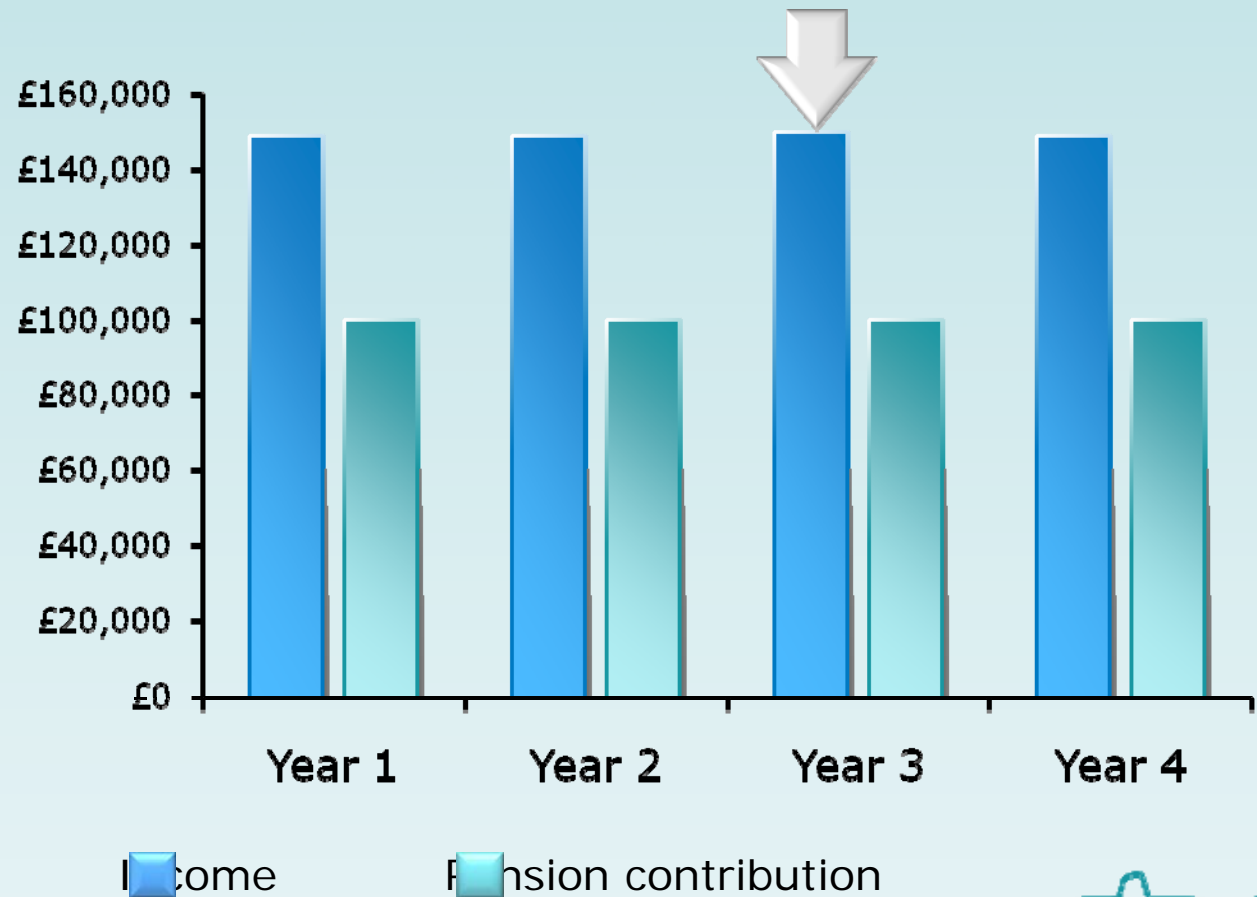
- Based on income in year of contribution & previous 2 years
- Includes redundancy
- Includes salary sacrifice agreed on or after 22 April 2009
- *Less* deductions (eg trading losses) incl. Pension contributions up to £20,000
- *Less* normal gift aid deduction



# SAAC does *not* affect

Anyone with total income that is **less than £150,000**

- In current year **and**
- In the previous 2 years



# Strategies for high income clients

- Probably not make pension contributions after 2011
- Make the maximum pension contributions with 40% relief
  - Before and after reaching £150,000 a year income
  - By manipulating 3 year bouts of income where possible
  - Using tax shelters - e.g. bonds
  - Via spouses/partners
- Manage existing pension funds with more care
- Still save for retirement but in other ways – EFRBS?
- Pensions still work for most people



# High income business owners

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- Use companies where possible for flexibility
- Where possible stay below the £150,000 level and invest in pensions
- Draw dividends from companies pre 2010/11
- Build up cash within companies in future
  - Money box companies, but.....
  - Impact on IHT and CGT reliefs
  - Other possible anti-avoidance
- Income shifting to spouses and others



## Time to make gifts

Take advantage of low asset values



# Take advantage of low asset valuations

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## Low values for IHT

- Less added back if the donor dies within 7 years
- Easier to stay below the nil rate band for chargeable lifetime transfers

## Lower value for CGT - low rates of CGT

- Sales of assets instead of gifts eg of business assets
- Consider paying CGT rather than holding over on gifts into trust



It is mostly toxic

Beware or equity release  
for the IHT planning

# Equity release and IHT planning – past performance

- Anne aged 68 took out a lifetime loan of £60,600 in 2004
- The interest rate was 7.2% fixed. The fee was £600
- She gifted £60,000 to her children
- No life cover on the gift

What would have happened if she had died

1. After 5 years, i.e. In 2009?
2. After 7 years and one day in 2011?
3. 23 years after the gift (life expectancy)?



# 1. Assuming Anne dies after 5 years - in 2009

## Reduction to the estate

● IHT on £60,000 gift @ 40% added tax	(£24,000)
● Debt and interest	(£86,000)
● Less IHT saving @ up to 40%	£34,400
● Net reduction to the estate	<b>£75,000</b>

## Offset by

● Cash gift to children 5 years earlier	<b>£60,000</b>
● Net loss	(£15,000) (=4.73% net pa)
● Net loss if no IHT chargeable (£86k - £60k)	(£26,000)

## 2. Assuming Anne dies after 7 years and one day in 2011

Reduction to the estate - £60,000 falls out of account

● Debt and interest	(£98,600)
● IHT saving @ up to 40%	£39,440
● Net reduction to the estate	<b>£59,160</b>

### Offset by

● Cash gift to children 7 years earlier	<b>£60,000</b>
● Net gain/loss - breakeven	<b>£840</b> + growth over 7 years
● Net loss if no IHT chargeable (£98.6k - £60k)	<b>£38,600</b> (7.4% pa b/e)

### 3. Longer than 7 years after the gift – eg 23 years

Reduction to the estate - £60,000 falls out of account

● Debt and interest	£299,911
● IHT saving @ up to 40%	£119,965
● Net reduction to the estate	<b>£179,946</b>

#### Offset by

● Cash gift to children 7 years earlier	<b>£60,000</b>
● Net gain/loss - breakeven	<b>(£119,946)</b> (5.95% pa)
● Net loss if no IHT chargeable (£299.9 - £60k)	<b>£239,911</b> (7.2% pa)

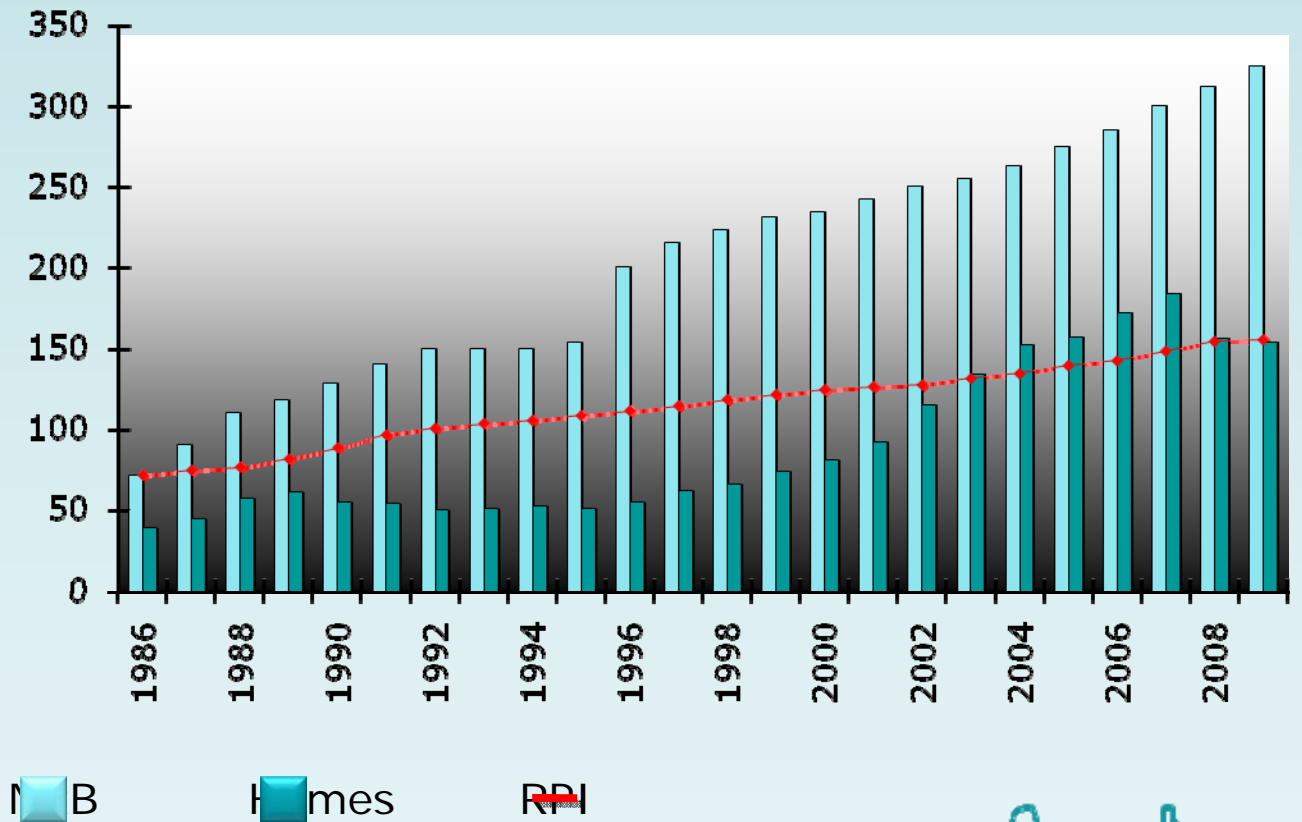
# Property growth v growth in the nil rate band

## Residential property growth

- Property long term linked to earnings
- Cyclical variations
- Local and individual variations

## Nil rate band

- Unpredictable
- Political adjustments
- Transferable NRB



It could save  
up to £20,000 IHT

Ask about Nil Rate Band Use

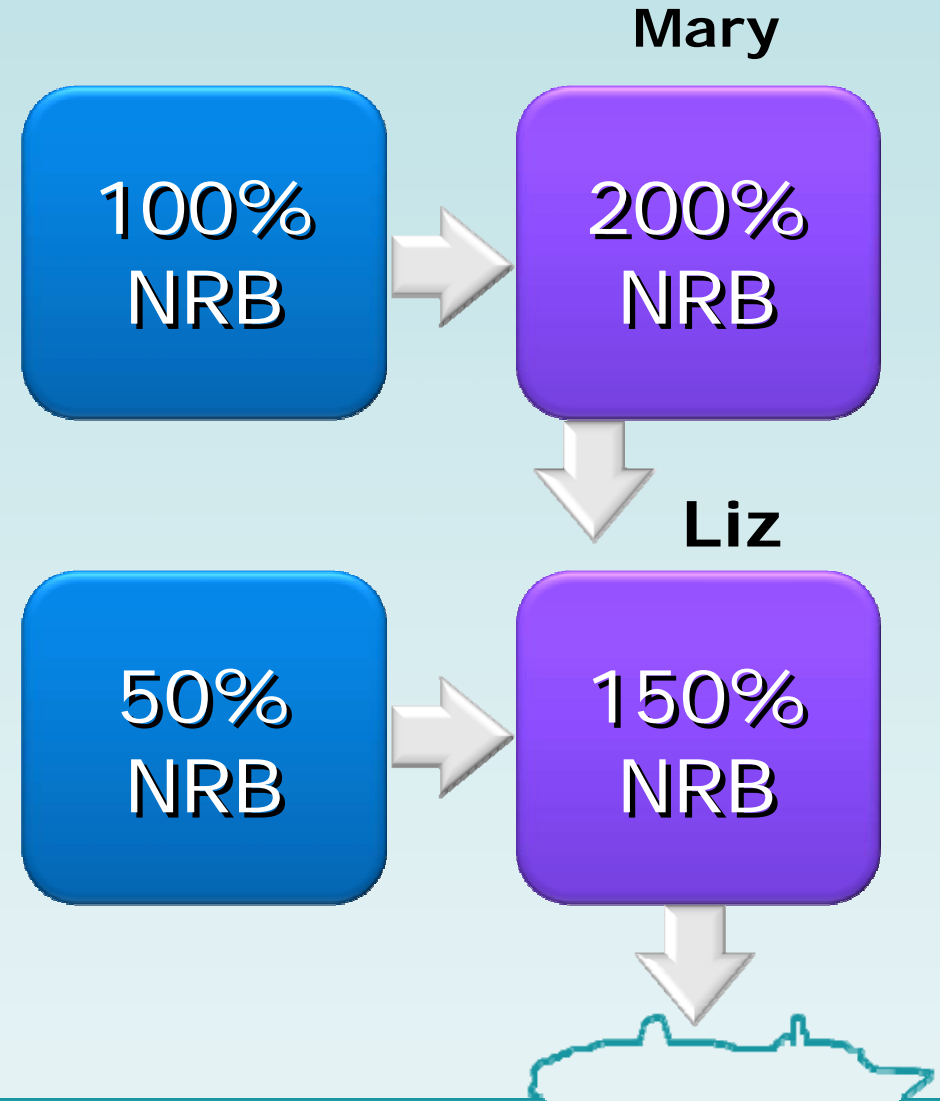


# Transferable nil rate band - NRB

- A surviving spouse or civil partner can have up to double the NRB
  - For deaths on or after 9 October 2007
  - Irrespective of the date of the first death
- Can inherit unused proportion of deceased spouse's NRB
- Extra NRB can only be used on death
- Extra NRB must be claimed by an 'survivor's' death by PRs
  - Within 2 years of the month of the death
  - Or 3 months from date the PRs first act
  - Or longer if HRMC allow
- Lifetime gifts within 7 years of death reduce the deceased's own NRB

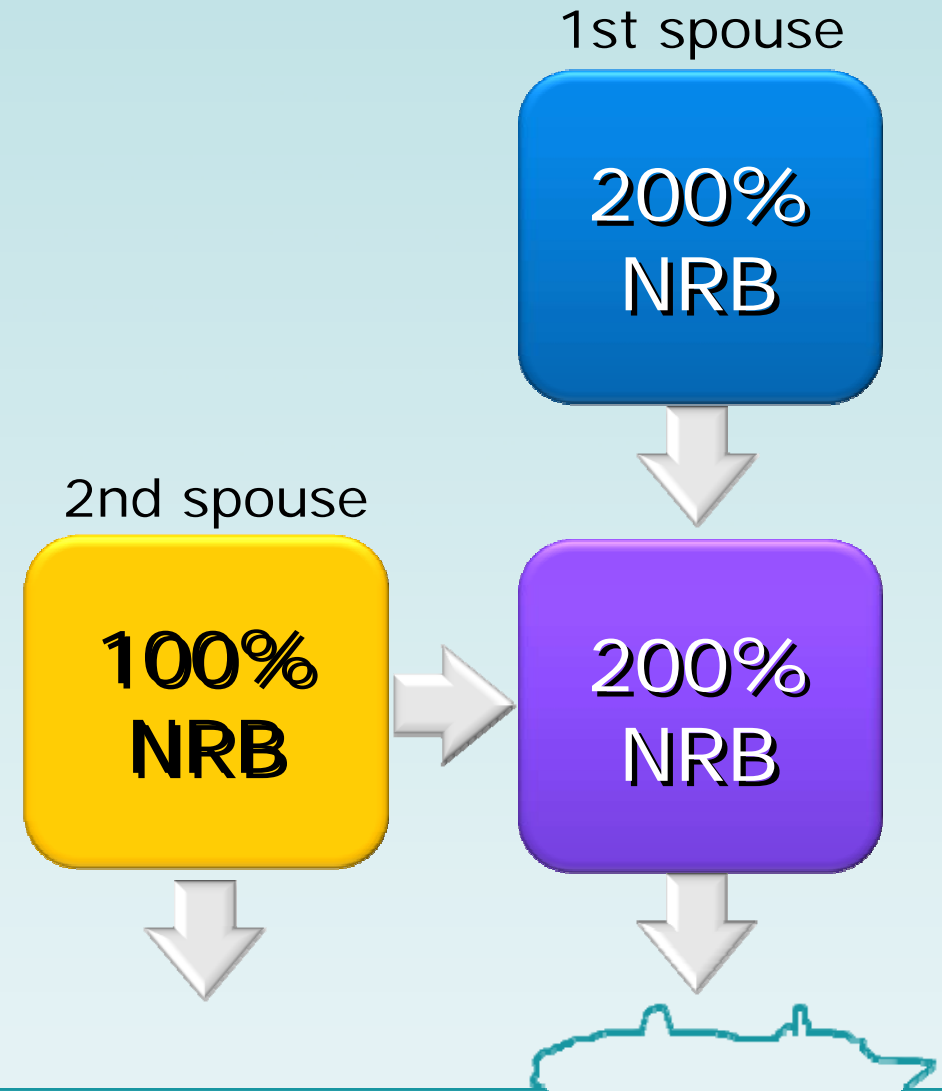
# Widow(er)s' history matters

- Fact finds should ask
  - "Have you ever been widowed?"
  - "When did your spouse die?"
  - "How much of his/her estate did they leave to you – less than 100%?"
- Client inherits proportion of unused nil rate band up to 100%
  - Mary inherits 100% of NRB, she can pass on £650,000 tax free
  - Liz inherits 50% of NRB, she can pass on £487,000 tax free



# Watch out for the second marriages

- If client remarries, the new spouse's NRB might be wholly or partly wasted
  - Mary also inherits new husband's NRB, which she cannot use at all
  - Liz also inherits new husband's NRB, of which she can use only 50%
- Second spouses should use NRB to children or waste £130,000 IHT
- Details of past NRBs on HRMC website
- Urge clients to keep records

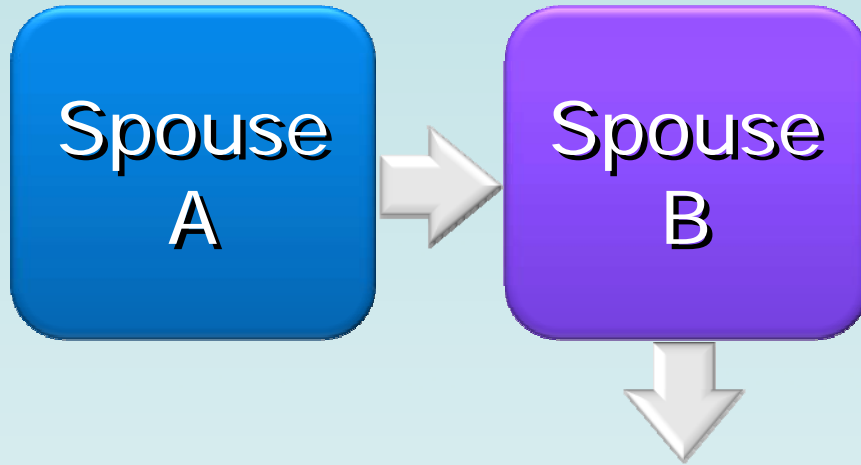


They still make sense

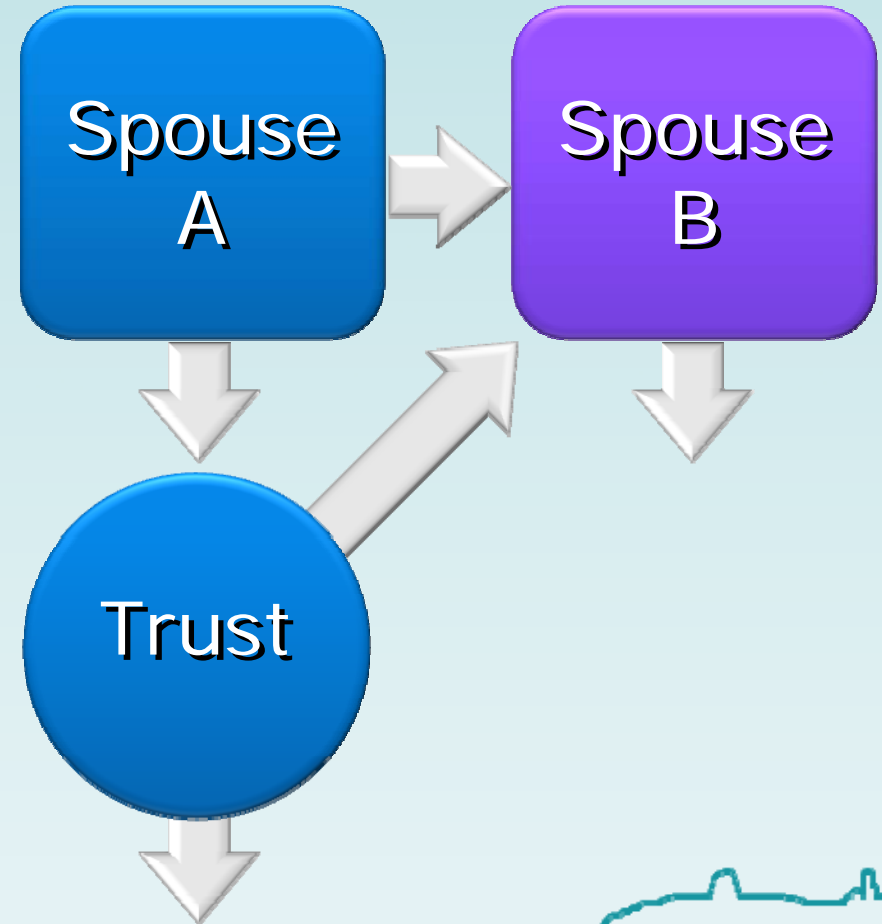
Discretionary Will Trusts

# The discretionary will trust choice

Leave direct?



Leave through trust?



# Flexibility of the discretionary trust

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- Loan or gift to survivor
- Assets might increase faster than NRB
- Protect assets in case of survivor's remarriage
- Give trustees control for the children
- Jump generations
- Preserve for care home fees
- But – periodic charges etc



A simple way to save  
a lot of IHT

Use Spousal by Pass Trusts



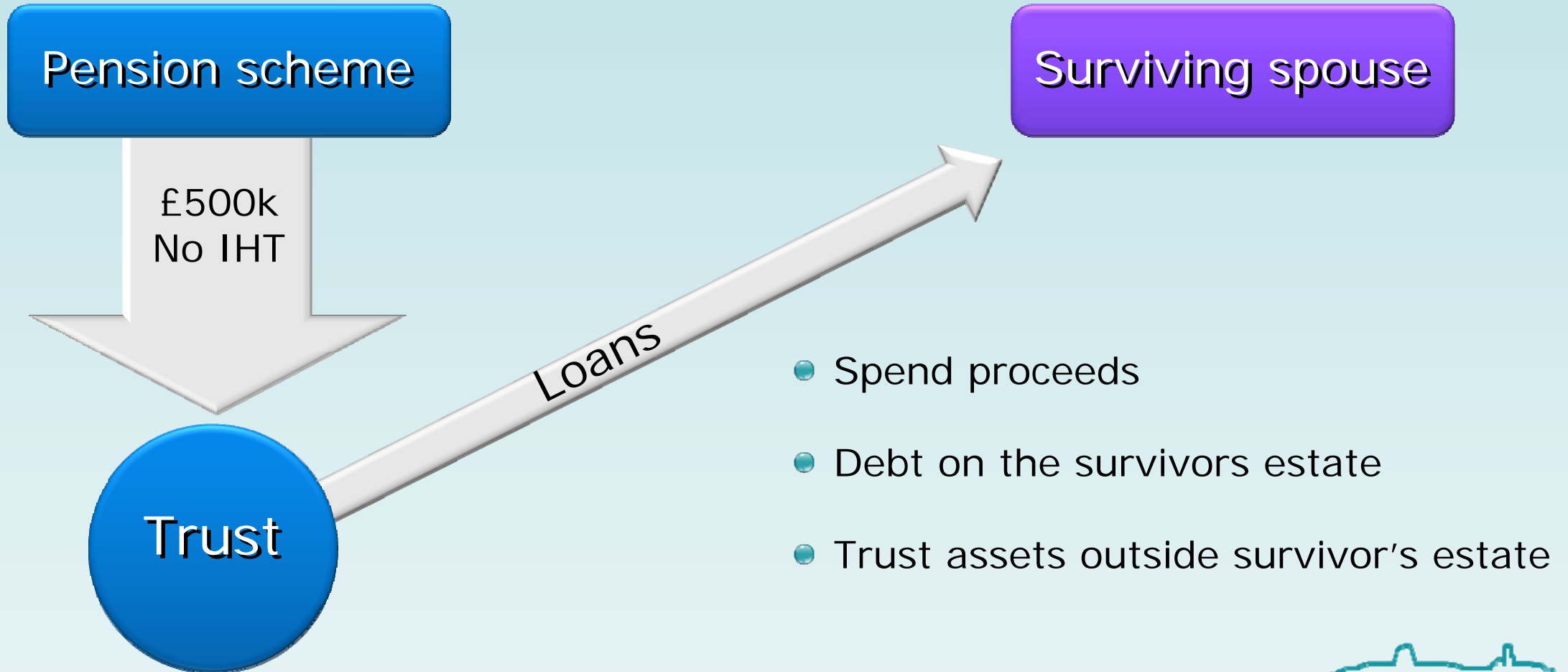
# Use a spousal by-pass trust

- Lump sum benefits free of IHT if paid out within 2 years of death
- Mostly paid to spouse - so normally IHT free anyway
- The part of surviving spouse's taxable estate

## Example:



# By pass trust



The intestacy rules have been updated but it is still best to have a will

Make A Will - And Update It



# Make a will

- Wills are effectively revoked by marriage or civil partnership
  - Make a new one
  - Choose how the estate is distributed
  - Choose guardians for children
  - Use memorandum to executors for details
  - IHT planning
- Deeds of variation might disappear
- New intestacy rules
  - Spouse and issue – survivor gets £250k + interest in 50% of residue
  - Spouse no issue – survivor gets £450k + 50% of residue



LPA's are essential planning

Recommended LPA to All Clients



# Recommended lasting powers of attorney

- Everyone should have LPAs
  - Donees have to act in the 'best interests' of the donor
  - Objective test – not just what the donor would have wanted
- Covers
  - Property and affairs LPA
  - Personal welfare LPA

Alternative is Court of Protection
- Must have certificate and be registered before it can be used
- But take into account 'past and present future wishes' statement - recommend set out values, beliefs and wishes if possible, especially on welfare



# Permitted gifting under LPA

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- Customary gifts - eg Christmas and birthday
- Already ongoing - eg grandchild's school fees
- Cannot make IHT planning gifts - unless the donor has made declaration and donee applies to the court
- Not disproportionate to client's estate
- Gifts of £15,000 or more - formal application to the court

## Office of the Public Guardian - PN 9

- Can write to the court at no cost for gifts up to £15,000
- Gifts from income - should provide a letter each year



Prenuptial agreements  
can work

Build PNA into Estate Planning



# Divorce - A higher cost than IHT

- Pre-nuptial agreements are not binding on English courts
- But in increasing numbers of cases, PNAs are taken into account if they meet some criteria
- PNAs typically ring fence
  - Assets owned by the parties at the date of marriage or civil partnership
  - Assets acquired during marriage / CP by gift, inheritance or from a trust
- Crossley v Crossley [2007]  
K v K (Ancillary relief: Prenuptial Agreement) [2003]



# Conditions to make PNAs accepted

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- Each party gets separate, good quality legal advice
- Each party makes full financial disclosure
- The terms are fair and reasonable – with a minimum level of provision, especially for any children
- No pressure on either party to sign – probably with 21 day cooling off period



# Implications for trust planning

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- Older generation can help stop the assets that pass to the next generation from being lost through divorce
- Ask each member of the next generation to participate in a PNA before getting married – if they want to get the family wealth
- Asset protection clause in trusts to exclude from the class of beneficiaries those who
  - Marry without a PNA
  - Cohabit without a cohabitation agreement





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