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Catering for LGBT clients

UK advisors need to be sensitive when dealing with lesbian, gay, bisexual and transgender clients, explains Richard Roberts, but they must not shy away from asking difficult questions.

Private client advisors are used to being sensitive to the needs of their clients, and aspire to provide the best advice possible. However, some advisors are still not as educated as they could or indeed should be about specific issues of concern for lesbian, gay, bisexual and transgender (LGBT) clients.

LGBT clients' concerns

Active discrimination against LGBT clients is mercifully rare. However, there can often be an unintentional lack of understanding and empathy towards the LGBT client in terms of specific estate-planning issues. Advice can fall short of that which the LGBT client really needs. It is not that the law is different but rather that interpretation of the law needs to be tailored to meet the client's specific expectations. Advisors need to understand LGBT clients' concerns, and not trivialise or overlook them. In order to advise your client, you need to engender trust, and allow them to talk freely about their sexual orientation where it has relevance.

Facts and figures

According to the most recent census, in 2011, there were over 700,000 openly LGBT citizens in the UK (the real figure may be much higher). Within that group, 33.3 per cent had a degree and 42 per cent were in managerial or professional employment. Among the general population, only 21.9 per cent had a degree and only 30.6 per cent were in managerial or professional employment.

There are over 55,000 registered civil partnerships and they are increasing at the rate of 5,000 per annum, with few ending in dissolution. The advent of gay marriage will further encourage the previously sceptical that society is now more accepting of same-sex couples living together openly.

Surprisingly, there are a number of same-sex couples who have been in long-term relationships and who have still not realised the enormous tax benefits of becoming civil partners or getting married. This obvious tax-saving strategy should not be ignored. Remember, too, that, as with marriage, entering into a civil partnership revokes an existing will, a fact curiously often overlooked.

Dealing with homophobia

If you are advising an LGBT couple, one of whom is non-UK-domiciled, think about what statements you need to overturn domicile-of-origin arguments and show a domicile of choice

For some LGBT clients, family homophobia and an adverse reaction to their sexual orientation may lead to a total exclusion of their biological family from benefit, and practitioners need to consider statements to counter any challenge to the will, which may involve delicate and highly personal histories. Special care may be needed where the LGBT client is Muslim, since forced heirship rules may apply, or indeed where the LGBT client is from any strong religious background that regards

homosexuality as repugnant and contrary to nature. Post-death battles between a religious family and a grieving gay partner are not pleasant.

Valuable or unusual chattels

A general absence of children among LGBT clients, and a greater emphasis on career development, may mean more disposable income. The LGBT community has an annual spending power of GBP6 billion, and up to 90 per cent of that community support gay businesses or overtly gay-friendly businesses.

Because of this spending power, LGBT clients often amass valuable or unusual chattels, works of art and artefacts, and not just from the UK. Care needs to be taken at the will-making stage, and certainly at the probate-valuation stage, that valuable items have not been overlooked. Practitioners may want to discuss gifts in lieu of inheritance tax under the acceptance in lieu regime, or charitable donations to local museums or galleries, or even how chattels should be properly disposed of to maximise value.

Providing for dependants

We should also not shrink from the fact that LGBT clients may have a rather freer approach to their intimate relationships. Academic research undertaken by Professor Eric Anderson suggests that perhaps as many as 80 per cent of LGBT couples are in non-monogamous relationships. Gay male promiscuity is, according to Professor Anderson, common and many couples have strong, well-defined but open relationships. This may have a knock-on effect in terms of giving clear advice about possible claims under the *Inheritance (Provision for Family and Dependants) Act 1975*. High disposable incomes allow rather more freedom in supporting a third or fourth person in a relationship. Discussions of how a third or fourth partner should be supported post-death need delicate handling if claims are to be avoided.

Elderly LGBT clients

Elderly LGBT clients – those born before the *Wolfenden Report* – may still have issues with their own sexuality, and therefore require sensitive and careful discussions. To them, their sexuality may still be ‘unspeakable’. First reactions are very important – if you express surprise at an alternative relationship, this may curtail the discussion and prevent proper and holistic advice being given. Remember that older LGBT clients may not identify with modern terms like ‘gay’ and so non-judgmental language is vital. They may have a ‘special friend’ who they want to benefit and yet not necessarily want their biological family to have a ‘poorer’ view of them.

Non-dom partners

Increasing use of the internet has led to many LGBT clients forming relationships with same-sex partners from outside the UK, which can raise cultural issues, as well as the more obvious legal issues

of domicile.

If you are advising an LGBT couple, one of whom is non-UK-domiciled, think about what statements you need to overturn domicile-of-origin arguments and show a domicile of choice. However, remember that, if the non-UK-domiciled client has come from one of the 76 countries where homosexuality is illegal, or one of the many countries where homosexuality is still not culturally accepted, obtaining such an admission to back up the choice of domicile may not be straightforward. Why would someone want to openly admit to sexual practices that might cause real issues if they then return to their homeland?

Where both clients are non-doms, clear, accurate statements and advice are paramount in relation to succession or inheritance tax issues, especially if there is a risk of forced heirship rules being applied.

Choosing an executor

Choice of executors can be problematic: the biological choice (family members) may be far outweighed by the often logical choice (close LGBT friends), especially if the disposal of personal possessions requires careful and sensitive handling. In recent years, there has been a worrying trend among the gay male professional class aged 35 to 55 of tragic deaths in which drugs have been a contributing factor. If such a death is coupled with intestacy and elderly parents have to deal with an inquest, as well as disposing of their deceased child's personal possessions, think about how they might be supported by one or more of the deceased's close friends.

Philanthropy

The concept of philanthropy is central for many LGBT people. In recent times, much charitable good, especially in the area of AIDS research and support, has been done by the LGBT community. However, it is worth encouraging an LGBT testator to think beyond direct charitable giving in favour of a private charitable trust. In that way, their memory can live on in perpetuity and the trust can provide annual support for a whole range of activities. If the estate is modest, think in terms of the Charities Aid Foundation or other community-based foundations. If charitable donations to the LGBT community are considered, think not just of the major charities, such as the Terrence Higgins Trust, but also smaller local support groups or charities for the young gay homeless, such as the Albert Kennedy Trust.

Incapacity

Advisors should be aware that, among those who are on long-term HIV medication or who are chronic Hepatitis C sufferers, there can be a higher-than-normal risk of early-onset dementia, and so advising on powers of attorney, advance directives and plans for longer-term residential care may be more relevant than for heterosexual clients of a similar age. Again, choices between the biological attorney and the 'logical' attorney can be fraught with complexities and may require careful risk analysis.

If you are involved in long-term care decisions, especially where funding may be an issue, do not forget to consider impaired-life pension or annuity schemes. For those living with HIV or untreatable Hepatitis C, there can be a considerable financial loss if the wrong pension or annuity is chosen.

Attempts to disinherit an LGBT child

Finally, what of the client who wishes to exclude their child from benefit, solely because their offspring is gay? Any such will would be open to challenge on several grounds. The courts show a progressive narrative of recognising that sexual orientation should not, of itself, allow someone to be treated in any worse a manner than others. Parliament, too, has passed several anti-discriminatory Acts. Now we must all recognise that, gay or straight, everyone deserves to be treated with respect and advised accordingly.

Same-Sex Marriage in the Limelight

Same-sex marriage was the topic of a stimulating discussion held at STEP's offices in London on 23 June. Richard Frimston TEP, Richard Roberts TEP and Julian Washington TEP led the discussion, which focused on unresolved issues stemming from the Marriage (Same Sex Couples) Act 2013, including: the unintended revocation of wills, the effect of the legislation on cross-border couples, and conversion from civil partnership. For a review of this discussion, go to www.step.org/same-sex-marriage-limelight

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