

# Guide for Ambassadors

**PRIVATE & CONFIDENTIAL**



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## About You

You want your existing and future property clients to acknowledge the care you provide to ensure their businesses operate as effectively as possible.

Your reputation is your most valuable business commodity, and your objective is to enhance it with credibility. By doing this you know that your business will grow.

## About Us

We are passionate about connecting with UK landlords and property investors.

With the support of Cotswold Barristers, we offer comprehensive business consultancy and legal services to help property business owners to optimise their investment returns and to achieve their short-, medium- and long-term objectives.

Any recommendations we make to clients are as personal as their circumstances. Before any action is taken the work carried out by Property118 is referred to Cotswold Barristers for their independent review, before they engage with a client to provide bespoke professional advice and any subsequent implementation.

Experience has taught us that a Family Investment Company is the ultimate ownership structure for all property investment business owners to aspire to operate within. The reasons for this are:

- 1) Ring fencing business risk from personal affairs.
- 2) Business continuity and legacy planning.
- 3) Mortgage affordability criteria is more generous.
- 4) Significantly more scope for inheritance tax planning.
- 5) The ability to offset finance costs against rental income to reduce taxable profits (individuals and Partnerships can no longer do this).
- 6) Flexible profit allocation by creating multiple share classes, thus facilitating the allocation of income to fully utilise the personal tax allowances and lower rate tax bands of family members.
- 7) A Family Investment Company should be regarded as the foundations for a successful property business. If a house is built without foundations it might look great at first, but the longer it stands the more likely it is that cracks will start to appear before it eventually collapses. The same applies to property investment ownership structures.

For anybody currently looking to acquire an investment property, a Family Investment Company is an easy and obvious choice. The same applies for anybody who is operating a property business through an 'off-the-shelf' Limited Company with model articles of association, a single class of shares and no shareholders agreement.

The best time to plant a tree was twenty years ago.

The second-best time is now.

The best time to convert an 'off-the-shelf' company to a family investment company was before buying a property.

The second best time is ... *OK you get it!*

However, the transition process from a different ownership structure into a Family Investment Company requires very careful consideration.

## GAAR, DOTAS and why we ask so many questions.

It is no secret that Government does not like 'tax-dodgers'. This is why they have granted HMRC so many powers to close Tax Avoidance Schemes where a series of steps are entered into with the primary outcome of reducing or avoiding tax.

Anti-avoidance regulation is complex, which is one of the many reasons a specialist tax Barrister is a vital part of the advice team for any property business owner who is considering the transition from one ownership structure to another.

A very simple example of this is forming a Partnership to avoid SDLT at the point of incorporation. That is why we never recommend that route as a series of stepped transactions.

Instead, we always consider and advise on structures that stand-alone to achieve objectives that are not primarily tax motivated. A Limited Liability Partnership is a good example of this, because it serves non-tax-related purposes, including separation of business risk from personal affairs, business continuity and legacy planning opportunities.

We generally recommend reviewing the continued viability of ownership structures every three years. This dovetails with several of HMRC's anti-avoidance provisions too.

## Our Relationship With HMRC

To date, Property118 and Cotswold Barristers have jointly assisted 22 of our clients and their Accountants to deal with HMRC post-incorporation Compliance Checks. All of these have been resolved in correspondence with no further tax to pay. We have several [testimonials](#) on our website to evidence this.

Membership of Property118 is free, as is confidential messaging between Members. This makes it very straightforward for our members to verify testimonials left by other members.

HMRC have always been very reasonable to deal with. They are professional, courteous and mindful of other business and real-life pressures when setting sensible timescales for responses to their information requests. They are open minded to many forms of communication including post, email, meetings in person or video conference (recorded or not). Their motives are clear and for that reason we have never had any hesitations in answering their questions.

Part of our terms of business is that we always assist when HMRC approaches a client on any aspect of what we have advised and executed. These approaches are typically in the form of a Compliance Check, where varying degrees of information are requested. This will almost always involve explaining the narrative of the business operation prior to the restructure, the nature of the transaction (with supporting document suite), the consideration provided including indemnities, and the justification for entitlement to any tax reliefs.

## Frequently Asked Questions

- 1) Do the structures you recommend default existing finance terms, insurance conditions or lease contracts? If not, why not?*

The answer to the first part of this question is a resounding NO! If they did, we would never recommend them.

The answer to the second part of this question is complex, requires bespoke legal advice and contains valuable Intellectual Property reserved for paying clients and their professional advisers after engaging Cotswold Barristers to proceed with implementation of a new structure.

- 2) Will the process of transitioning into a new ownership structure result in any immediate tax falling due? If so, how much? Also, how much will the restructure cost in terms of legal and professional fees?*

To answer those types of questions we need to understand the starting point and the objectives. We then need to consider the optimal route to achieve the objectives, considering all hurdles such as taxation, eligibility for tax reliefs and any other obstacles to be overcome. Only when we get to that point are we able to put together costings and financial projections to consider fiscal viability.

### *3) Do the structures you recommend impede future financing?*

This depends on the objectives, which is why the Fact Find discovery process in our consultations is so vital to the recommendations we make. If no impediment to future financing is an important outcome, then our recommendations will take that into account.

## **The Importance of Instructing Cotswold Barristers**

Consider the analogy that most properties are built by a variety of skilled contractors.

Transitioning from one ownership structure is not much different.

An Accountant will be required to report on the transition and the future performance of the business to HMRC in a compliant manner.

Finance specialists and conveyancing solicitors may also be required to play a part in any planning.

The role of Cotswold Barristers is to advise on the legal aspects of the transaction(s) and to draft legal documentation, which might include:

- 1) Business Sale and Purchase Agreement
- 2) Indemnities
- 3) Exchange of Contracts and substantial performance
- 4) Shareholders Agreement
- 5) Bespoke amendment of Company Articles of Association
- 6) Members Agreement (for LLPs)

Sadly, we are often contacted by professional advisers seeking assistance after they have botched the legal work associated with a transition from one business structure to another. There is usually very little we can do in such circumstances, because what's done is done. We cannot turn back time and in many such circumstances their clients find themselves facing huge tax bills and/or the inability to raise new or even replacement financing. Furthermore, given that specialist legal advice is a reserved legal activity, damages caused by an unregulated adviser can be very difficult to recover.

## Structures, Fees and Referral Payments

Property118 and Cotswold Barristers proudly offer fixed fee quotes and absolute transparency in charging structures, so that you and your clients know exactly what their costs will be before they decide to instruct us.

### Consultation Fee

This is priced at £400 inc VAT and includes as much correspondence by email, telephone, or Zoom meetings as necessary for us to understand your objectives and to recommend the optimal business structure(s) to meet those objectives.

We actively encourage our clients to involve their existing trusted professional advisers in the consultation process. If we feel we are unable to assist, or you decide at any point not to proceed with the consultation process, we guarantee a no-quibble full refund policy. This is very much a loss leader for us, so we do not pay referral fees on this income.

### Payments to Ambassadors

We pay Ambassadors 5% of the costs of implementation fees that we charge.

Some of our Ambassadors credit their referral fees towards the work they do for their clients relating to the consultation process. Others simply ask us to reduce our fees. Some of our Ambassadors are professional Affiliate Marketers and choose to retain the full referral fees we pay to them. We are happy with any of these approaches.

Please note that it is very common for the implementation of structures we present to include a combination of the following. However, this is by no means an exhaustive list of the services we provide and is provided purely for guidance.

## Project Management Fees "PMF"

These fees are only ever quoted when a client has been through the entire Property118 consultation process, culminating in a recorded video conference, which their existing trusted advisers are encouraged to attend. They are only ever invoiced if a decision to proceed with the recommendations presented has been agreed by all parties.

Once the PMF has been paid, Property118 will produce a detailed written Report and Recommendations with supporting links to all relevant legislation and HMRC manuals, prepare the Barrister's Brief and deal with Anti-Money-Laundering compliance checks. This work will then be independently reviewed by Cotswold Barristers and, if they agree to adopt the Property118 recommendations as their own professional advice, the PMF will be regarded as earned. If not, it will be refunded in full. The level of this fee depends on the complexity of the case, which is scored on a scale of one to ten. For example, a complexity level three case would be charged at £3,000 + VAT, whereas a complexity level nine case would be charged at £9,000 + VAT. The Property118 Consultant working on your case will decide the level of complexity.

## Substantial Incorporation Structure

The Substantial Incorporation Structure "SIS" has **nothing whatsoever to do with avoiding tax**. Its sole purpose is to assist property rental business owners to comply with HMRC manuals including [CG65745](#) at the point of incorporation.

SIS is a legal process used to transfer a rental property business from private ownership into a Limited Company without the need for refinancing. The transfer occurs at market value, which is funded by exchanging equity for share premium and an indemnity for debt. The legal work is priced at £8,000 + VAT for up to 10 properties and a further £350 + VAT for each additional property.

The legal work entails drafting a Business Sale and Purchase Agreement (including the indemnity), exchange of contracts, checking mortgage lender T&Cs and obtaining their permission to implement where necessary, Agency Agreement to enable the previous owners to service indemnified liabilities until they are discharged by the company, as well as drafting and filing the appropriate updates to Companies House records for compliance purposes.



## Capital Account Restructuring

Where business liabilities are less than the acquisition costs of the business assets it makes sense to increase the business liabilities to finance the extraction of 'owner's capital' prior to incorporation. This is because capital can be extracted from the business tax-free prior to incorporation.

Failing to extract such capital from the business prior to incorporation would result in that capital being rolled into shares at incorporation. In turn, that would make it impossible to access post-incorporation without taxation consequences.

Any form of legitimate financing is acceptable, including mortgages. However, where the cash is not immediately required, it can often make sense to borrow short-term using an overdraft facility or bridging finance. The increased liability is then caught by the indemnity at the point of incorporation.

Post incorporation, the owners can choose whether or not to loan the cash back to their company in the form of a Directors Loan, which can be repaid by the company to the owners without personal tax consequences, whenever the company has cash resources to do so. Meanwhile, the company can use the cash loaned to it by its Director(s) to redeem the short-term finance it indemnified at incorporation.

Property118 charges a bridging finance arrangement fee of 1% of any short-term funding arranged.

We are happy to work with any lender our clients choose to appoint, or to recommend them to a lender with whom we have an exclusive arrangement with for this type of financing. There are no valuation fees and no charges taken against properties if a client chooses to work with our recommended lender, who charges £750 for account administration and a further 1% interest for their short-term lending.

Please note that capital and equity can be two very different things. If you are unclear about the difference please visit the following pages:

- [Capital Account Restructure - Case Study](#)
- [Incorporation relief and latent gains explained](#)
- [Benefits of incorporating a rental property business with no mortgages](#)
- [£1.7 million landlord tax planning success](#)

## 'SmartCo' Family Investment Company

This is by far the most popular structure we recommend.

To understand the benefits of the Smart Company Structure vs an 'off-the-shelf' company that can be formed online for as little as £12.99 please see [What is a Family Investment Company?](#)

The fixed cost legal fees associated with implementing a typical SmartCo structure for a married couple are £12,605 + VAT. This includes company formation or restructuring an existing company to include multiple classes of shares with different rights, drafting and filing of bespoke Articles of Association, drafting of a bespoke shareholders agreement, a pair of Mirror Wills, a pair of Lasting Powers of Attorney for each of the two founders of the business, a Discretionary Trust and Letter of Wishes to Trustees.

## Limited Liability Partnerships

Forming an LLP is relatively straightforward, but drafting a legally robust Members Agreement to provide maximum flexibility for profit allocation without triggering CGT or SDLT is far from straightforward.

The legal fees for this work are £4,995 + VAT for a two Member LLP and a further £1,000 + VAT for each additional Member, which includes legally documenting transfers of beneficial interest of properties into the LLP, which is a reserved legal activity under Section 12 of the Legal Services Act 2007.

## Is our advice regulated and insured?

The role of Property118 is to source and 'triage' cases by completing an initial discovery and fact-finding process to determine the current position and future objectives, then considering and presenting possible options to meet future objectives, together with the costs of implementation.

Every Barrister at Cotswold Barristers is regulated to provide Direct Public Access legal advice by the Bar Standards Board and carries £10,000,000 of Professional Indemnity insurance, per client, per case.

## The role of a Property118 Ambassador

As a Property118 Ambassador, you will have the resources you need to make valuable introductions. We provide you with tracked website links, a dashboard to track your progress, and access to the “Property118 Inner Circle” for marketing advice and inspiration.

Every successful introduction you make will earn you a competitive referral fee and you have the option to pass these on to your clients or reduce your own invoices.

Your reputation is enhanced by referring clients to us. This is due to our unique pledge to guarantee total satisfaction or a full refund of consultation fees.

You must NOT attempt to provide legal or tax advice unless you are qualified and insured to do so. Property118 Limited and Cotswold Barristers will not take any responsibility for your actions.

Subject to the above, you are welcome to use the Property118.com/Tax logo on your website and other business stationery.

For further information, please contact your dedicated point of contact at Property118.