

Checklist for Wills where TNRB is relevant

Question	Comment	Action
1. Are the clients married or civil partners?	Must be married or CPs in order to benefit from TNRB.	
2. Has either client been married or in a civil partnership before? If so, did the previous relationship end in divorce/dissolution of CP or on death?	The serial widow(er)/surviving CP produces the prospect of more opportunities to use or lose unused NRBs. Care is needed and clear instructions required.	
3. If a previous marriage/CP ended on death are there any children of that marriage? If so, what are their names, addresses and dates of birth?	Knowing whether there are any children and whether or not they are minors will create additional issues as to the provision for them as well as any surviving spouse/CP	
4. Is there any intention to benefit these children on the death of the deceased? If not, what about a claim under IPFD or a dispute with the surviving partner/spouse?	If there is no intention to benefit children is there a reason? Would it be helpful to set out the reason in a separate memorandum?	
5. Is the priority to benefit the surviving spouse/CP? If so, is the intention to provide an outright gift to that person without any protection for the children of the first marriage?	If the intending testator/trix wishes to leave their whole estate to the survivor then previous spouse/CP's NRB may be wasted.	
6. If protection is required for the children whilst providing for the surviving spouse/CP	If the intending testator/trix does not want to waste the previous spouse/CP's TNRB	

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<p>then consider a trust:</p> <ul style="list-style-type: none"> ▪ NRB discretionary trust for spouse/CP and children ▪ IPDI trust for spouse/CP with remainder to children 	<p>then a chargeable gift to capture it is required.</p> <p>Choosing the IPDI of the whole estate would be the same for IHT purposes as making an outright gift to the surviving spouse/CP.</p> <p>A compromise might be a NRB discretionary trust to capture any TNRB and an IPDI over the residue.</p>	
<p>7. If a trust is chosen who are to be the trustees?</p>	<p>A trust will need at least two trustees. The chances are the surviving spouse/CP will want to be one of them but who should be the other?</p> <p>Trustees need to be able to work in unison as decisions are collective and unless otherwise stated must be unanimous. Is there likely to be a tension between the persons the testator/trix proposes?</p>	
<p>8. If an IPDI trust is chosen is it to include overriding powers which do not require the life tenant's consent before exercise?</p>	<p>The intending testator/trix should understand the practical effect of the surviving spouse/CP asking for and having a power to appoint all the capital to them at the expense of the remainder beneficiaries.</p> <p>Similarly, can you act for both spouses/CPs since this creates a conflict of interest between the preferred wishes of one for total security and control and of the other for protection of their children</p>	

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	from new relationships of the surviving spouse/CP in the future?	
9. Are there any other IHT considerations?	<p>Such as the on-going IHT regime for the trust:</p> <p>IPDI – s.49(1) IHTA 1984 Discretionary – relevant property regime s.71A – no IHT on vesting s.71D – relevant property regime from 18</p>	
10. Are there any CGT considerations?	Should be entitled to PPR relief for any trust in respect of property occupied by a beneficiary provided a power to permit occupation is included in the trustees' powers and is exercised in relation to that beneficiary.	