

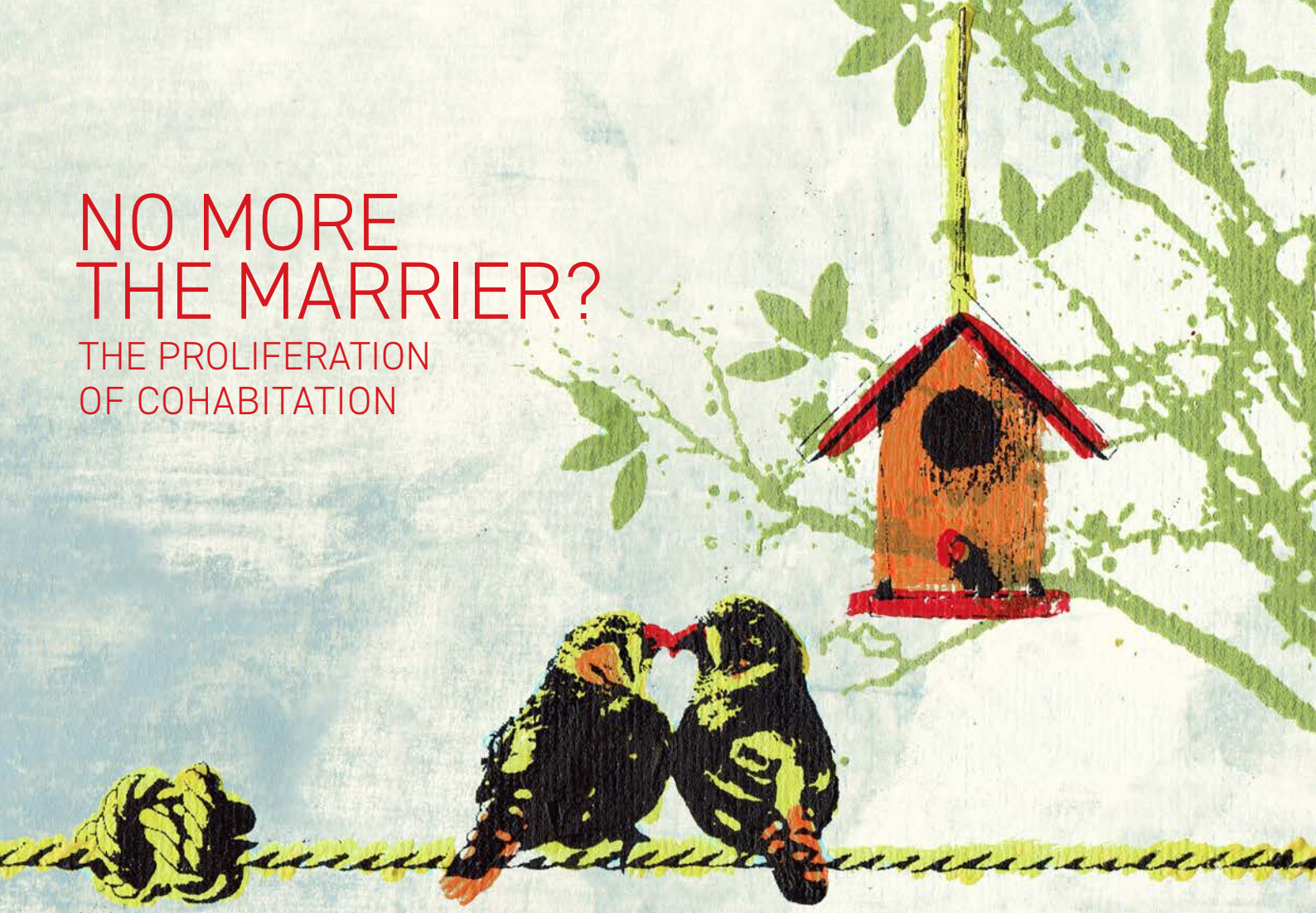
PENNINGTONS MANCHES COOPER  
PUTS THE CHANGING WORLD OF WEALTH IN

# context

ISSUE 02 | AUTUMN/WINTER 2021

## NO MORE THE MARRIER?

THE PROLIFERATION  
OF COHABITATION



THE  
FAMILY  
ISSUE

FEAT. SIBLING  
BUSINESSES &  
INTERNATIONAL  
LIVING





# THE FAMILY ISSUE

**WELCOME!** It's a cliché but therefore true to say that the world has changed since our debut issue of *Context* magazine.

For most of us, horizons shrunk to the four walls of wherever we happened to be living at the time of the various lockdowns. We discovered the challenges of balancing working at home, home schooling and socialising via a screen at home. We were given a glimpse through the window of Zoom into the homes of colleagues, clients and contacts. Family life and work life were no longer separated by the commute to the office but by a door to the kitchen/spare bedroom/home office.

As we move back towards 'normality', working where we live for some or all of the time is looking like the new normal for quite a few of us. For good or for bad, the home has become more than a place to relax, eat, sleep and spend time with family and friends.

In this issue, we open some doors to look at a few of the issues surrounding the home. Why are the rules for cohabiting couples so different around the world? Can you work wherever you happen to be living? And what will be the long-term legacy of spending so much time within one set of four walls?



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## NEWS, VIEWS and ASSORTED INFORMATION

### Getting down to brass tacks

Penningtons Manches Cooper and Oliver Marre of 5 Stone Buildings hosted a webinar about UK tax disputes in October.

Partner James d'Aquino welcomed a sizeable audience to a whistle-stop tour of what the Revenue are currently focusing on, how to remedy matters when one spots an issue and ultimately what to do when it has gone wrong.

Oliver Marre of 5 Stone Buildings spoke about areas of current interest to HMRC, and those which are most likely to see enquiries or litigation in the coming months, ranging from the statutory residence test (particularly in the context of pandemic restrictions on movement), via domicile, to HMRC's keen eye on the asset management industry.

Partner Michael Cash discussed how to put things right where there has been a mistake. He explained the tests for two remedies the law provides: rectification of a document so that it reflects what was intended and rescission of a document. Senior Associate Elizabeth Nicholas went on to discuss voluntary disclosures to HMRC as a way of declaring unpaid UK taxes and settling past errors or omissions. To avoid errors, Elizabeth gave three top tips: invest in record keeping, invest in advice and review matters regularly.

Finally, Senior Associate Oliver Cooke talked about handling investigations, enquiries and notices. He provided an overview of what criminal law powers were (potentially) open to HMRC before giving some practical tips about how to deal with the exercise of these powers should one be faced with them in an investigation (including, for example, in the context of a dawn raid).

Please do contact [taxdisputes@penningtonslaw.com](mailto:taxdisputes@penningtonslaw.com) if you would like a copy of the speakers' presentations or if we can assist with any questions.



### Crypto currency – great innovation or source of frustration?

**Mr Goxx is a crypto-trading hamster that has, so far, out-traded humans and funds with his lifetime career performance up 19.41%. Mr Goxx enters his trading office (in his cage), runs on his 'intention wheel' to select which cryptocurrency to trade and goes through his tunnels to indicate whether to buy or sell.**

Cryptocurrency is, depending on who you talk to, either the first great evolution in currency since bartering evolved into minted coins, or a breeding ground for investment bubbles and crime. Both can be true, as Erica Stanford's new book 'Crypto Wars: Faked Deaths, Missing Billions and Industry Disruption' explores. Penningtons Manches Cooper sponsored the launch of the book, written by the founder of the Crypto Curry Club, in July.

Crypto could be seen as the perfect medium for criminals and scammers as it evades many of the controls and regulation that governments and central banking systems put in place to limit crime: the UK Financial Conduct Authority this year warned that those investing in crypto 'should be prepared to lose all their money'.

While those on the dark web continue to seek to exploit the opportunities that this relatively new technology provides, the law surrounding cryptocurrencies continues to develop with the advancement of the blockchain / DLT technology which underpins cryptocurrencies.

Charlotte Hill, expert on digital assets and Senior Associate at Penningtons Manches Cooper, says: "With the cryptocurrency market continuing to grow exponentially... increased legal certainty will likely provide increased market confidence and ought to offer some form of protection or comfort to retail customers. In the majority of jurisdictions, however, it remains to be seen whether the all-important questions of the status and regulation of cryptocurrencies will become subject to future legislation or regulation."

### PERSONAL PASSIONS Philanthropy

**Large-scale philanthropy is not just on the rise, but increasingly effective when invested correctly and, as the case of Dolly Parton shows, does have a return.**

The Queen of Country has for years been known for her philanthropic leanings, spending huge amounts of money on her Imagination Library charity, which gives books to pre-school children to encourage lifelong literacy.

Over the past year, it emerged that she donated \$1 million to Moderna to help with the development of a successful COVID-19 vaccine.



Parton also donated money to studying convalescent plasma as an effective treatment for COVID-19.

However significant the singer's donations may be, they are dwarfed by those of the Gates Foundation, which has transformed the wealth of Microsoft founder Bill Gates into a massive philanthropic exercise.

The Gates Foundation has invested staggering sums into reducing child poverty in some of the poorest parts of the world and finding new vaccines for diseases associated with poverty.

For example, Gates Foundation funding was responsible for the

initial investment into the Oxford University R21/Matrix M, the first effective malaria vaccine.

Philanthropy has the biggest potential return of all – that of genuine satisfaction. Bill Gates now spends very little time talking about technology and most of his time lobbying and positioning to make what he does more effective.

**"I felt so proud to have been part of that little seed money that hopefully will grow into something great."**

Interviewed by the BBC last year, Dolly Parton explained, "I'm sure many, many millions of dollars from many people went into that [Moderna research] but I felt so proud to have been part of that little seed money that hopefully will grow into something great and help to heal this world – Lord knows we need it."

### watch this SPACE

**AS PRIVATE COMPANIES MAKE SPACE TRAVEL ACCESSIBLE, IS THIS THE ULTIMATE IN PERSONAL WEALTH SPENDING?**



### In the press...



*With a greater earning potential than Sir Andy Murray, Emma Raducanu's on-court prize money will be eclipsed by her off-court revenue. How should those opportunities be managed alongside her tennis career?*

### THE GREAT WEALTH TRANSFER

Older generations to transfer up to \$68 trillion in wealth to younger generations over the coming decades

# upfront



**"I didn't want to be a burden to my family, but I've changed my mind."**



Sibling-run businesses are among the most successful in the world, but they are also the source of some of the highest profile disputes. Claire Coe Smith explores the common hurdles and how to make it work.

BY CLAIRE COE SMITH

In March 2021, two brothers from rural Ireland saw their individual fortunes rise to more than \$11 billion each when the online payments company they started aged 19 and 21, called Stripe, became the most valuable private company in Silicon Valley. A decade after they started it, John and Patrick Collison's March fundraising saw its value escalate to an eye-watering \$70 billion.

Now just entering their thirties, the Collison brothers are a textbook example of why it pays to go into business with a sibling. Growing up in a small town in County Tipperary and entrepreneurial from day one, they launched their first start-up when they were just 15 and 17 and sold it for \$5 million to a Canadian company. Now they are following in the footsteps of the Warner brothers, the Wright brothers, the Barclay brothers and many others.

"There is normally a deep-seated trust between siblings that is much harder to find among other business partners," says Adam McGiveron, a Corporate Partner working with family businesses at Penningtons Manches Cooper. "There is also often a real honesty between siblings. We do see some long-standing disagreements and sibling rivalries

playing out, and it can be like sitting in on a family argument, but it's also true that many of those arguments are surface-level."

#### RIVALRIES AND COMPETITION

History is littered with stories of sibling rivalries bringing businesses to their knees, the most famous example being the case of the Dassler brothers, Rudolph and Adolf, who launched one of the world's first athletic shoe companies in Germany in the 1920s. Despite enjoying enormous success, their arguments became so serious that after World War II Rudolph launched his own company called Puma. Adolf countered with the launch of Adidas, and a fierce sibling rivalry drove the growth of two of the biggest names in international sportswear, which continue to compete today.

But when it works, sibling business partnerships can result in great success. Michael Elghanayan, for instance, founded real estate company Epic with his brother Steven in the 1980s. Michael was based in London while Steven had moved to New York to do an MBA at New York University before starting work at Republic National Bank of New York.

Siblings: Fierce rivals or favoured right-handers?

# Platinum bond?

“Steve is a year and nine months younger than me and left to study in New York when I was doing a foundation course in accountancy in London, so that separated us for a while,” says Michael. “We used to visit each other all the time. We both had a real interest in real estate, it was in our family, and we had family in New York and space to open an office. That’s how it came about: Steve loving New York and wanting to stay there and me loving London and wanting to build on opportunities here. We decided to open offices in both cities and work in real estate together.”

The business thrived and Michael says that part of the reason things worked is because the two brothers are different. “We both have different strengths and weaknesses,” he says. “We complement each other well. Steve is very extrovert and I am more shy and introvert; Steve is stronger on the finance side of the business due to his banking experience. I’m stronger on the organisational side due to my accountancy experience.”

#### TRUST AND SECURITY

Another secret to success has been staying nearly 3,500 miles apart: “Being on different continents and being masters of our own territory brought out a healthy competitive spirit between us and allowed us both to thrive, made us stronger, allowed us to take calculated risks together, having the security of knowing that all our eggs were not in one basket,” says Michael. “The other advantage of working with my brother is trust – we have the security and knowledge that each is watching the other one’s back.”

There have, of course, been challenges, and Steven and Michael know what can happen when relationships sour. Their grandfather was one of seven brothers who together built a hugely successful business in Iran, only for the arrangement to splinter when the revolution occurred in 1979. After a successful partnership spanning 45 years, some of the brothers had relocated to the US ahead of the revolution and built the business there, while others lost everything back in Iran. Huge disputes resulted.



“THE KEY CHALLENGE FOR SIBLING BUSINESSES, WHICH IS NEVER GOING AWAY, IS WHAT TO DO WITH THE NEXT GENERATION. OFTEN, THEY ARE NOT INTERESTED IN ENTERING THE FAMILY FIRM, OR SOME ARE MORE INTERESTED THAN OTHERS, AND THAT IS WHEN DISPUTES CAN START TO SET IN.”

#### WATER-TIGHT AGREEMENTS

“Steve and I learned from day one to have water-tight agreements so that we never got into a situation like that,” says Michael.

“Even though we may never need to refer to those documents, we made sure we had solid understandings on everything. We have disputes, disagreements and arguments, but they don’t last too long – we have genuine respect for each other.”

It is often the issue of bringing other family members into the business and succession planning that create tensions. In the case of the billionaire British twins, the Barclay brothers, owners of *The Daily Telegraph*

and countless other businesses in media, retail and property, it was the arrival of the next generation that caused public fallouts. In 2020, Sir Frederick Barclay and his daughter sued three of his twin brother Sir David Barclay’s sons after secretly recording their conversations at the Ritz Hotel, arguing they had to bug the hotel over fears their uncle’s conduct was damaging the family’s business empire.

McGiveron says: “The key challenge for sibling businesses, which is never going away, is what to do with the next generation. Often, they are not interested in entering the family firm, or some are more interested than others, and that is when disputes can start to set in.”

Andrew Bayles is General Counsel at SwissIndependent Trustees, working with many siblings that are forced together after a parent puts the business into a trust and desires that they should run it as part of the succession planning of the family.

#### CLEAR GOVERNANCE

It can be particularly challenging if one sibling moves into the business and the other goes off into a separate career.

“One of the best ways we have found to address that is to have some form of family council that includes family members that are in and out of the business, plus a blend of external professionals to help break through any deadlock that occurs,” Bayles says. He also advises that children are educated about the business from a young age, allowing parents to establish their appetite, and most importantly aptitude, for long-term engagement in day-to-day management.

Laura Dadswell, an international tax and trusts Partner in the London private client team at Penningtons Manches Cooper, says sibling relationships are the longest relationships we have in our lifetimes and often sit at the heart of successful businesses. Coming out of the pandemic, she anticipates a future trend of entrepreneurialism among Gen Z where sibling-owned, parent-funded businesses spring up due to fundamental changes in the traditional job market and professional career paths.

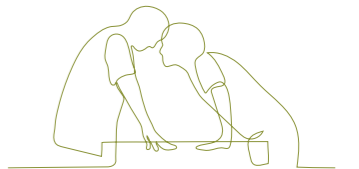
“WE MUSTN’T LOSE SIGHT OF THE ADVANTAGES OF BEING IN BUSINESS WITH SOMEBODY THAT YOU KNOW SO WELL THAT YOU CAN WORK IN A WAY THAT YOU PERHAPS CAN’T DO WITH SOMEONE ELSE.”

Dadswell says: “Siblings often assume everything will be fine as they are working with family and in doing so sleepwalk into problems, but the best thing is to sit down with advisers as early as possible. Bringing on non-executives or people with a little bit more emotional distance may help overcome challenges.”

But she adds: “We mustn’t lose sight of the advantages of being in business with somebody that you know so well that you can work in a way that you perhaps can’t do with someone else. We’re going to see an increase in sibling start-ups coming out of lockdown and where that works well, it can be really powerful.”

#### How can we help?

Please contact [Laura Dadswell](mailto:laura.dadswell@penningtonslaw.com) on +44 (0)20 7457 3158 or [laura.dadswell@penningtonslaw.com](mailto:laura.dadswell@penningtonslaw.com)



#### AVOIDING DISPUTES

“The key thing from our perspective in this situation is to avoid disputes – that is the worst possible outcome for a business and a family,” says Bayles. “What we’ve found is that whilst the initial settlor, the matriarch or the patriarch, is alive and active, everything is pretty plain sailing. There are very few disputes while the creators of the wealth are there. But when those individuals pass, that’s when the trouble begins, and that’s usually because they haven’t sought professional advice early enough in the process to put the proper governance and structuring in place to manage the inevitable friction that can occur.”



Claire Coe Smith has written for *The Times*, *Financial Times* and *City A.M.*



Steps to take when mental health falters

# WORRYING TIMES AND LIFELINES

BY LYSANNE CURRIE

The pandemic has stretched resilience to the limits. With mental health problems on the rise in all sectors of society, we look at what practical help there is.

**T**here's no getting round it: the past year-and-a-half has paid a heavy toll on the nation's mental health.

According to the Royal College of Psychiatrists, nearly 400,000 children and 2.2 million adults sought help for mental health problems during the pandemic. Over one million more treatment sessions were given to adults between April and December 2020 (1,078,539), an increase of 8% on 2019. There were also 159,347 urgent crisis referrals made for adults, an all-time high, and a 2% rise on 2019.

Laura Dadswell, Partner at Penningtons Manches Cooper specialising in private wealth, has been well-placed to observe how psychological issues are impacting on "pretty much anybody, no matter their age, no matter their capability", and that includes high net worth individuals (HNWIs). She says: "We've all been in a pressure cooker. I have seen mental health issues in clients of all ages."

While anxiety in young people is a huge and growing issue, older clients, whose families couldn't visit them, were also suffering loneliness and uncertainty.

## MIND SHIFT

However, one of the positives to come out of a difficult 18 months is that a certain amount of taboo has been stripped away. For Penningtons Manches Cooper Partner Tom Walker, who specialises in employment and private wealth, the conversation around mental health is really part of a longer shift in both high-pressured law firms and other sectors. "It was well-regarded that stress was part of life, or part of the job, but that has been changing in recent years," says Walker. "Now in the pandemic we've seen colleagues, barristers, clients and opponents open up about their mental health, one even saying, 'Yesterday, I fell apart a bit'."

## PRACTICAL HELP

With burnout reaching epidemic levels – 60% of leaders report they feel 'used up' at the end of the day, according to Forbes – what immediate initiatives can we put in place to help? Forward-thinking firms such as Penningtons Manches Cooper have a wide range of resources to support the

mental health of their staff: "If you haven't heard from someone recently, or maybe seen changes in their behaviour, you need to really watch out for that and, if needs be, put support in place," says Walker.

Starbucks EMEA Finance Director and mental health campaigner Jonny Jacobs concurs: "Listening to everyone is going to be fundamental. We're at a real stop and think moment."

Mark Pigou, Founding Partner at MAD World Summit and Make A Difference Media, agrees that de-stigmatising and communication are important but adds that investing in workplace initiatives is key. "We all need to take care of our mental health, just as we take care of our physical health. As we look to 2022 and beyond, we need to maintain the momentum and ensure stigma shifts to investment in sustainable workplace mental health and wellbeing solutions."

But what about those who think you should just get on with it? "In some ways, they're vulnerable as well," says Dadswell. "Things can come out of the blue and hit them harder than those who've developed coping mechanisms."

## LASTING POWER OF ATTORNEY: WHAT IT IS AND WHY YOU NEED ONE

What happens if you find yourself unable to make decisions for yourself or manage your own affairs? Such a situation is not something that should be left to chance, which is why putting a Lasting Power of Attorney (LPA) in place is a sensible precaution.

An LPA allows an individual (known as the donor) to appoint the friends or relatives they deem suitable to make decisions on their behalf and manage their affairs when they are unable to do so – due to an accident, dementia or other illness or incapacity.


LPAs are made for decisions around property and finances or for health and wellbeing issues such as care and treatment, with the ability to place restrictions on any decisions. An LPA can be set up by anyone over 18 and changed or ended at any time. However, it's key that the donor still has mental capacity to do this and not wait until things have started to deteriorate before trying to put the arrangement in place.

## LEGAL FRAMEWORK

There are legal structures to consider too if a family member is experiencing mental health problems. Central to this is the Lasting Power of Attorney (LPA), which gives individuals the opportunity to appoint others to make decisions on their behalf, if they're incapable of doing so. It is imperative though that people set one up in advance before the illness takes hold.

However, this has added complications. For Dadswell, the legal framework "which supports people who cannot cope and need to take a period of time acknowledging they cannot manage their own affairs is currently not really fit for purpose [internationally]... there isn't a joined-up network of attorney appointments that enables people to step in and take over for individuals".

So, what's her advice? "Look at the assets in each jurisdiction and make sure you've got the appropriate document power. There are moves afoot to create an internationally recognised power of attorney but we're not there yet."

However, she adds: "If there's one positive to come from this, it'll be an acknowledgement that even the most successful of us are not bulletproof; that it's perfectly fine to say, 'I can't cope and I need help'. I think that's a really healthy thing." 

## How can we help?

Please contact Tom Walker on +44 (0)20 7872 8609 or [tom.walker@penningtonslaw.com](mailto:tom.walker@penningtonslaw.com)



Lysanne Currie was previously Head of Content at the Institute of Directors and has written for the *Guardian*.



Has sharing a home eclipsed the tradition of tying the knot?

# NO MORE THE MARRIERS?

BY CLAIRE COE SMITH

The rapid rise of unmarried couples living together has highlighted how UK law hasn't kept pace, with cohabiting couples often unaware that they don't have the same rights as those who are married. Claire Coe Smith looks at the different ways in which non-married, cohabiting couples are treated around the world.

In the past 18 months, we have spent more time in our homes than ever before and those that we choose to share those spaces with have featured far more heavily in our lives. A growing number of couples choose to live together rather than marry – with cohabiting couples now the fastest-growing family type in the UK.

According to the UK's Office for National Statistics, in 2018 61.4% of the English and Welsh population over the age of 16 were living with a partner. Nearly half, 48.3%, were living as married or civil partner couples, while 13.1% were cohabiting, with 10.4% of those cohabitants having *never* been married or in a civil partnership. With Boris Johnson the first cohabiting prime minister to enter No 10 Downing Street (and since married), data shows the number of couples living together has increased 25.8% in a decade.

The problem is that the law hasn't kept pace with the social acceptability of non-married couples and, according to the British Social Attitudes Survey from 2019, 46% of the population believe they have the same rights whether they choose to marry or not, when in fact they don't.





“There is no such thing as a common law marriage,” says Jane Craig, who heads the family department at Penningtons Manches Cooper. “It doesn’t matter if you have been living with someone for 25 years and have five children together, you still do not have the same rights as people that are married.”

### DIFFERENCE IN LAW

The misconception can have quite serious adverse consequences, particularly for the economically vulnerable partner in the relationship, which is usually but not always the woman.

If a couple has been living together for 25 years, has three children and a shared home in the father’s name, the outcome of a separation will be dramatically different for the mother depending on whether she is married or not. “If the couple is married, all the assets built up during the marriage are shared in the event of a separation, with the starting point being a 50/50 split,” says Craig. “The court treats the contribution made by a spouse who looks after the children and the home as being of equal value to that of the spouse who is the main breadwinner. If the wife is not working at the time of the break-up and her earning capacity has been reduced because she took time out to bring up children, the court can award spousal maintenance for a period of time.

“The court can also adjust the capital split and give more than half the capital assets to the economically weaker party if it is necessary to do so in order to meet housing need.”

But if the couple is unmarried, the situation is very different: “The contribution made by looking after the children and the home has no bearing at all on the outcome and there is

“IF THE COUPLE IS MARRIED, ALL THE ASSETS BUILT UP DURING THE MARRIAGE ARE SHARED IN THE EVENT OF A SEPARATION, WITH THE STARTING POINT BEING A 50/50 SPLIT.”



### THE US AND CANADA

In Ontario, Canada, Sarah Boulby of Boulby Weinberg says that after three years of cohabitation, couples are treated as spouses and have the same rights for separation and estate purposes as if they were married. The same does not apply for property, however: “In Ontario, married couples share the wealth generated during marriage, with certain exceptions, and if you’re not married you don’t have those rights. There is little public awareness that that’s the case, even though it has been so for decades.”

Others fail to realise that cohabitation rules vary between different provinces of Canada and different states of the US. “There are jurisdictions in the US where spouses that aren’t married have all sorts of rights and others where they have none, like Florida,” says Boulby. “We have a lot of Canadian citizens who move back and forth. We had a case involving someone from Florida and he was shocked to discover he would have any support obligations at all to the woman he lived with because he was coming from a state of the US where he had none.”

no presumption that assets built up during the relationship will be shared. The woman is living in a house that isn’t hers, she has made no financial contribution and so she is not entitled to anything: no maintenance and no share of the house.”

Lawmakers in England and Wales have recognised this inherent unfairness and a new Cohabitation Rights Bill was drafted and put before the House of Lords in 2020, but it is a long way off becoming law. The proposed legislation would apply to cohabitants with a minor child and those that have been cohabiting for three years, and would cover property, pension sharing and extending intestacy rules to include qualifying cohabitants.

### GLOBAL APPROACH

Other countries have come up with meaningful legislative changes. In Australia, the law was changed in 2009 to give so-called de facto couples, whether same sex or opposite sex, the same rights and obligations as married couples. The country uses the concept of spouses, who can be either married or unmarried but have the same entitlements.

Ian Kennedy AM, of Kennedy Partners in Melbourne, says: “To have a claim under the Family Law Act, the couple needs to have been in a de facto relationship for at least two years, or have a child of the relationship, or one of the partners has made a substantial financial or non-financial contribution, including as a homemaker or parent. If you meet those criteria, then the court can make an order for the division of property and/or for spousal maintenance. It works well in most cases and produces equitable outcomes.”

Meanwhile in Ireland, Jennifer O’Brien of Jennifer O’Brien Solicitors, Irish Family Law Chambers, says the law changed in 2010, with the original intention of giving civil partners the same rights as married couples: “If you are cohabiting, you don’t have rights to the other person’s property as you would if you were married, but in the event that the relationship breaks down, then if you want to bring proceedings, you can make a claim,” says O’Brien. “If your partner passes away, you can also make an application to court. It is not easy – you have to show how long you lived with someone and that you were financially dependent on them, and a lot of cases fall down at that hurdle. There are also very strict time periods such that a claim must be made within two years of the relationship breaking down.”

In Ireland, as elsewhere, the rules do not deal with children, who come under separate legislation. But even where child maintenance is being agreed, there can be further issues for the unmarried parent, who is not entitled to any capital provision. Schedule 1 of the Children Act in England and Wales allows a mother with whom the children of a former cohabiting relationship are living to apply to the court for an order that the father provides a home for the children and herself while the children are minors. However, when the children grow up and leave home, the property reverts to the father and the mother can be left homeless with no capital, despite the father potentially being extremely wealthy.

Craig explains: “The clear message is that you need a cohabitation agreement if you plan to live with someone and you need to

“IF YOUR PARTNER PASSES AWAY, YOU CAN ALSO MAKE AN APPLICATION TO COURT. IT IS NOT EASY – YOU HAVE TO SHOW HOW LONG YOU LIVED WITH SOMEONE AND THAT YOU WERE FINANCIALLY DEPENDENT ON THEM, AND A LOT OF CASES FALL DOWN AT THAT HURDLE.”

### ISRAEL

Common law marriages are recognised in Israel and cohabiting couples have the same rights except when it comes to the division of assets, says Lawyer Edwin Freedman. Today, about 30% of Israelis do not formally marry and, in some cases, they are better off than married couples.

Common law spouses must prove their partner intended for a property to be jointly owned, whereas a married couple is subject to the equal distribution of marital assets.

But once a couple is divorced under Jewish or Islamic law, the former spouse is not entitled to spousal maintenance, whereas under common law rules there is no impediment to asking for alimony.



“THE CLEAR MESSAGE IS THAT YOU NEED A COHABITATION AGREEMENT IF YOU PLAN TO LIVE WITH SOMEONE AND YOU NEED TO TAKE PROPER LEGAL ADVICE TO CONSIDER YOUR POSITION.”

take proper legal advice to consider your position. Advice from a friend might not be relevant to your particular situation and may well be based on misconceptions about common law marriage.”

It is also important for unmarried couples who move between countries to take legal advice in all relevant jurisdictions if they are planning to live together or, just as importantly, if their relationship is rocky. Craig concludes: “Investing in legal advice at an early stage can avoid many thousands of pounds (or dollars or euros) worth of litigation at a later stage.”

### How can we help?

Please contact Jane Craig on +44 (0)20 7753 7533 or [jane.craig@penningtonslaw.com](mailto:jane.craig@penningtonslaw.com)



Claire Coe Smith has written for *The Times*, *Financial Times* and *City A.M.*



## Owning and running a yacht



# Whatever floats & antidotes

BY REBECCA THOMSON

Yachting has rocketed in popularity in response to the pandemic, as high net worth individuals (HNWIs) look for holiday and lifestyle options that offer both freedom and safety.

The freedom to travel anywhere, the lack of crowds and the comfort of a luxury yacht: it's not hard to see why demand for yachts has soared since the pandemic began.

Ashley Spencer Hurrell, Founder of Spencer Buley Group & NZE Energy, says: "If you want to get away from Covid, what's better than being on a private yacht?"

The freedom to roam has always been a significant part of the appeal of yachting, but as borders closed at the beginning of the pandemic and travel restrictions remain unpredictable, its attraction has grown further.

Richard Lambert, Head of Sales at Burgess, says the ability to remain in control has boosted interest in ownership: "It's a very safe environment – we've seen an increase of people who were previously chartering yachts decide to move into ownership."

### RULES DO APPLY

But while the attractions are obvious, yachting isn't quite as easy as setting sail and dropping anchor. Most countries closed ports at some point during the pandemic and space at the most popular destinations is often limited. Plus, quarantine rules still may apply.

However, Lambert points out: "People are subject to the same restrictions but you can quarantine on board. And there is always pressure on certain ports at the height of the season but you can always anchor easily. There's usually a way around things."

For those new to yachting, both Lambert and Spencer Hurrell advise trying it first. "Chartering is a good way in, to get to know what type of boats you like," says Lambert.

Once potential owners have a few trips under their belt, they often look to buying a second-hand yacht before embarking on the process of designing a new build.

"WE'RE LOOKING AT A LOT OF EXPEDITION YACHTS – GREAT ESCAPE, GO EVERYWHERE VEHICLES. ANOTHER BIG ONE FOR US IS SUSTAINABLE AND GREEN YACHTS."

### LOGISTICAL AND FINANCIAL CONSIDERATIONS

While many yacht buyers will have a family office looking after their assets, working with a brokerage firm is an option for buyers exploring the market. Lambert says: "A good broker will know the market and can guide from a pricing standpoint. If it's second hand, they'll also have a good knowledge of the history of the yacht." To complete a purchase, legal advice should be sought, and a surveyor instructed. Lambert explains: "A super yacht is a complex asset with perhaps 10 or 20 crew – it's a small business. There's a lot going on and you need to make sure the transition is smooth and handled correctly."

Sarah Allan, a Partner specialising in yachting and shipping law at Penningtons Manches Cooper, says: "Given the international dimension, specialist maritime legal advice is essential whether you are considering chartering, buying or building. We often work closely with family offices, yacht brokers and managers to provide the tailored advice that they need." Considerations include where the yacht is registered, its ownership structure and whether it is built and maintained to class regulations. Depending on how the yacht is used, tax advice will be necessary on whether and when tax becomes due and payable.

Equally, the right captain and crew is important. A yacht manager will manage operation and maintenance, not only ensuring regulatory compliance, but also maintaining the value of the asset. Yacht managers can also give an indication of the likely annual running costs of a yacht, which a purchaser will want to have in mind for financial planning.


Allan explains: "Inevitably the larger the yacht, or the more complex and ground-breaking the design, the greater the need to engage a wider team of experts." However, only the buyer can know what they want out of their yachting experience, and this often evolves as they become more experienced. Asking other peers or professionals in the industry can be a good way to pick up information. Whilst there are undeniable logistical hurdles in owning a superyacht, many HNWIs looking for privacy and safety while also enjoying a sense of adventure see these as worth overcoming.

Spencer Hurrell says that "knowledge, experience and trust really come into play" for new build projects. Career-focused individuals may not have spent much time on yachts or have the time to work on a concept. For many others, however, the build and design phase is the most enjoyable part.

For those who do build, a clear idea is needed at the outset of how and where you are going to use the yacht. Lambert says some people "rush in and then, for example, say at the end of a build that they want to explore the ice fields", which will be impossible if the yacht does not comply with Ice Class. Equally, if you want to charter to earn income, the yacht must comply with commercial regulations based on where the yacht is registered and operates.

### DESIGN TRENDS

The planning, design and build process is time consuming: the lead time for new build yachts is currently around four years, although this can be shorter for semi-custom boats where the hull is built and then fitted out to a desired specification. There is increasing pressure on available build slots where people have, as a result of the pandemic, brought forward their plans.

Spencer Hurrell notes an increasing desire to build yachts that are environmentally friendly. "We're looking at a lot of expedition yachts – great escape, go everywhere vehicles. Another big one for us is looking at sustainable and green yachts. The technology is there to make even motor yachts carbon neutral." Some owners are building expedition yachts, not only for personal use, but to be used for scientific charter and environmental research. 

### How can we help?

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Rebecca Thomson has written for the Guardian Labs and The Daily Telegraph.



Relocation, relocation, relocation?

# HOME IS WHERE THE HAT IS



High net worth individuals (HNWIs) are typically very mobile, often with multiple homes around the world. For many, this mobility and way of life will have been severely curtailed by lockdown. Here, we look at how the pandemic has changed behaviour and the trends most likely to stay.

BY LYSANNE CURRIE

**T**he super-rich, whether for business or pleasure, are invariably on the roam. But how has the pandemic affected their lifestyles? And where exactly is 'home' now?

In the past 18 months, there has been an increase in ultra-high net worth individuals (UHNWIs) choosing to base themselves in homes previously only used for holidays, be they Mediterranean villas or south-east Asian beach homes. Knight Frank's 2021 Wealth Report suggests that many are considering more secure ties to other countries, noting that, "nearly a quarter of UHNWIs are planning to apply for a second passport or citizenship – a remarkable 50% growth in a year".

"A number of clients have remained surprisingly mobile throughout the last year and a half," says Elizabeth Nicholas, a Senior Associate in the Private Client and Tax Team at Penningtons Manches Cooper. "Typically, these are clients who are working or running businesses; they have obligations to fulfil."

Then there are clients who don't necessarily have those working obligations but have family in different places. And there are those in the unfortunate position of finding themselves stuck in the wrong place. Nicholas explains: "I have clients, for example, who have unexpectedly been out of the UK for over a year. In their case, this is

potentially helpful in terms of their UK tax position. Others have been forced to stay in the UK and have inadvertently been UK tax resident as a result, which has had unintended tax consequences for them and the trusts and other structures they are involved with."

Kevin O'Shea, Executive Director at Julius Baer International, concurs: "Some clients have become unintentional tax residents in holiday home jurisdictions where lockdowns, restrictions in travel and fears over health have held them in place longer than originally anticipated. This has brought to the fore the importance of understanding both the tax landscape and visa requirements of both holiday home destinations and relocation jurisdictions."

O'Shea has also seen clients' priorities changing: "Pre-pandemic we would regularly see taxes feature highly as a key driver in relocation decisions, often at the expense of other factors such as local healthcare, proximity to family/friends, education, political/economic stability and infrastructure. Since the pandemic began though, these other factors have become increasingly important as clients have had to live with the decision of their lifestyle choice when relocating. This has led some to reconsider where they lay their hat and broadened the scope of potential jurisdictions to call home."



## GLOBAL SPREAD

According to Penningtons Manches Cooper's Hazar El-Chamaa, who is a Partner in the Immigration team: "There is a growing number of countries offering residence and citizenship by investment programs all competing to make their particular offering as attractive as possible."

As Nicholas acknowledges, having more than one bolt-hole is often routine. "Personal and financial security are a concern for our clients. So, for them, having a global footprint is quite normal. This has not diminished even though we've been through a period where they've been more physically constrained than normal. Clients have certainly been impacted by the way different countries have implemented travel restrictions and they are looking at ways of managing this so that they can continue to operate in the way they always have done."



"THERE IS A GROWING NUMBER OF COUNTRIES OFFERING RESIDENCE AND CITIZENSHIP BY INVESTMENT PROGRAMS ALL COMPETING TO MAKE THEIR PARTICULAR OFFERING AS ATTRACTIVE AS POSSIBLE."

"Some clients are looking at their own government's handling of the pandemic and this is a factor for some when making the decision to move elsewhere," El-Chamaa says.

While there hasn't been a mass exodus of UHNWIs jetting to 'Doomsday' bunkers in New Zealand, Nicholas notes: "I think there will be some fallout: the pandemic might be the final straw for families choosing to leave or not to return."

"Depending on what life stage they're at, UHNWIs will have to consider investment and business opportunities, tax regimes, quality of education, where their friends are. Language and culture are also important," adds Nicholas. Such familial factors could explain why there hasn't been a huge uptake for the likes of the Barbados Welcome Stamp visa, or the Work from Bermuda Certificate, which both offer tax breaks to attract foreign entrepreneurs and 'digital nomads'.

## DECISIONS, DECISIONS

The choice is now great, says El-Chamaa: "There are so many programs available, it's best for people to consider which one suits them and their needs when considering other countries."


El-Chamaa advises clients who want to come to the UK from the Middle East, the US, South America, India, Hong Kong and Russia.

"UHNWIs tend to come to the UK under the investor visa, as this visa route allows them to live in the UK with virtually no restrictions on what they can do here," says El-Chamaa. "And similarly, when they're looking to go elsewhere, and considering these citizenship-by-investment programs, this is what they are looking for – a visa or a passport that will give them the maximum freedom to travel; the visa that has the fewest restrictions and demands the least of them. For the UK, the investor visa requires an investment of at least £2 million in UK trading companies for a period between two and five years depending on how much they invest. There are cheaper alternatives of course but these do not give access to the UK."

But before anyone thinks it's as simple as jumping on a plane, El-Chamaa gives a word of caution: "You need to think about the fact



"THERE ARE ALL KINDS OF SHORT- AND LONG-TERM RISKS AT THE MOMENT, INCLUDING THE POTENTIAL FOR TAX INCREASES BECAUSE OF THE ECONOMIC CRISES CAUSED BY THE PANDEMIC."

Whether UHNWIs choose to linger longer in their sunnier bolt-holes or return to business hubs such as New York or Hong Kong may not be known until next year. "The full effect of this is yet to be seen," says Nicholas. "It all depends on how people respond once their freedoms are returned to them." 

### How can we help?

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that there are implications to buying property overseas or to relocation." She highlights that tax considerations are often overlooked, sometimes until it is too late.

"It might be too early for people to really make any kind of sensible judgement about where to move to next," says Nicholas. "There are all kinds of short- and long-term risks at the moment, including the potential for tax increases because of the economic crises caused by the pandemic."

El-Chamaa agrees and emphasises that it's important to work through decisions in stages: "Don't start going to see schools for your children until you have properly explored the mechanics of your move to the particular country, the visa, the tax regime etc. Our private client team sometimes has to say, 'Actually you need to wait, we need to organise this properly for you'. Make sure you're doing your relocation properly."

## LA DOLCE VITA

Among the southern European countries offering advantageous tax regimes to new residents, Italy has proved particularly attractive, including to those who were previously non-UK domiciled and paying tax on the remittance basis. The Lake Como area has been especially sought-after for its proximity to Milan, major airports and international schools.

The tax regime allows new residents in Italy to pay a fixed annual fee of €100,000 to shelter their foreign income and assets from other Italian taxes, including inheritance and gift tax. Nicholas says: "I don't think people move to Italy only for tax reasons, but the potential tax savings under these programs have become an added bonus."



Lysanne Currie was previously Head of Content at the Institute of Directors and has written for the *Guardian*.



# the INTERIORS fixer

We talk to Anna Daccache of Atelier Ada about how the pandemic has changed approaches to interior design.

**What have been the most commonly tackled home and garden design projects since the pandemic started?**

**AD** Many people are in a place of transition, so might be moving and need somewhere to rent short term. We've been asked to do a lot of luxury staging, filling the house with high-end pieces so it sells quickly, and we've also been asked to fill rented homes with rented furniture. People want to live in a beautiful place, but they are renting furniture instead of buying new.

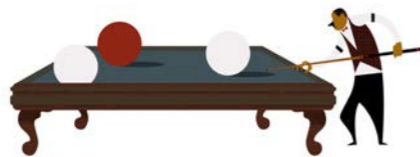


For those staying put, many used their homes in different ways. I had projects where all I did was go in and reshuffle – for instance, moving the gym from the basement to the second floor, where it overlooks the garden. The basement might then be dedicated to home schooling, while parents' offices are on the third floor. Post-pandemic, few people want to go back to the office full-time – I don't think I will be asked to put things back how they were.



**What do you think spending more time at home has taught people about where they live?**

**AD** No matter how big a house is, it could still feel like a golden prison during the lockdowns. Lots of people found it felt good to have dedicated spaces for different activities and, for my clients, spaces such as cinema rooms and gyms took on a new importance.

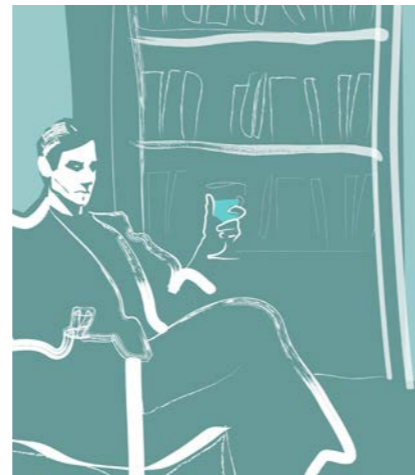


Plus, of course, everyone wants more space. Everyone is looking for options and are much less tied to central London. London is not empty, but I can see it becoming a second home for many. However, you do still have the schools in central London, and the younger generation – those in their 20s – want to be here because they want the vibe and excitement of the city.

**As we slowly emerge from the pandemic, what can people do to ensure their homes fit their new ways of life?**

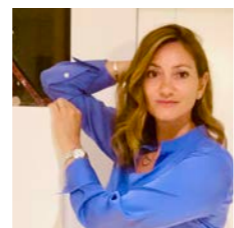
**AD** It's important to rethink the spaces in your home – you can change a lot without

necessarily moving walls or refurbishing. A drawing room can become a home office; what was an office could become a spa room. Little changes can make a big difference.

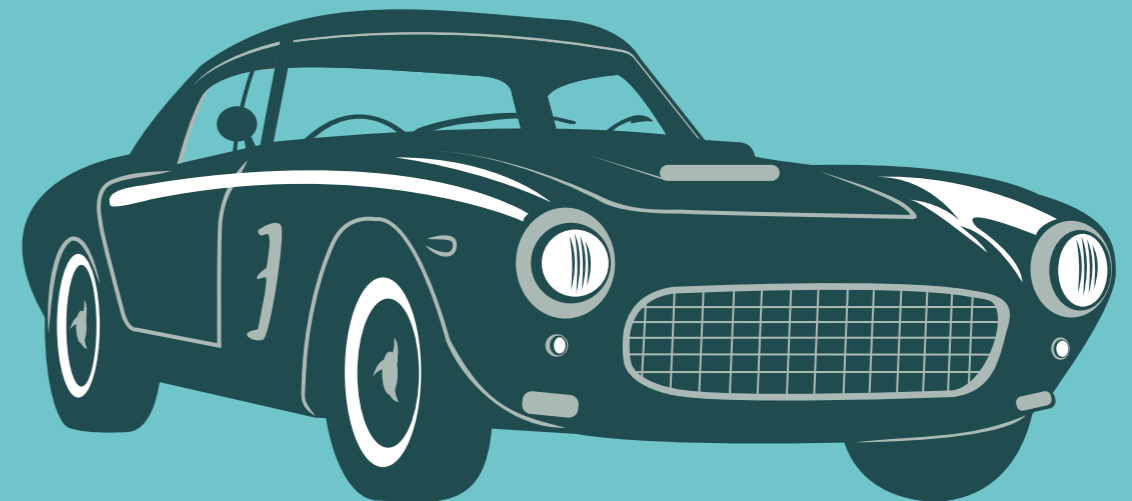


**What is the biggest change you've made to a home during the pandemic?**

**AD** Taking everything out of every space, relabelling everything, and putting everything back again. Then I was asked to add to it – for example, buying coffee table books. Clients haven't been able to go to shops and galleries where they would normally get these things. So, I've been asked to source very specific things relating to art, culture and entertainment. I get to know clients very well and source books and items that respond to their personality. Before, this was unusual, but it has suddenly become part of the interior design package.



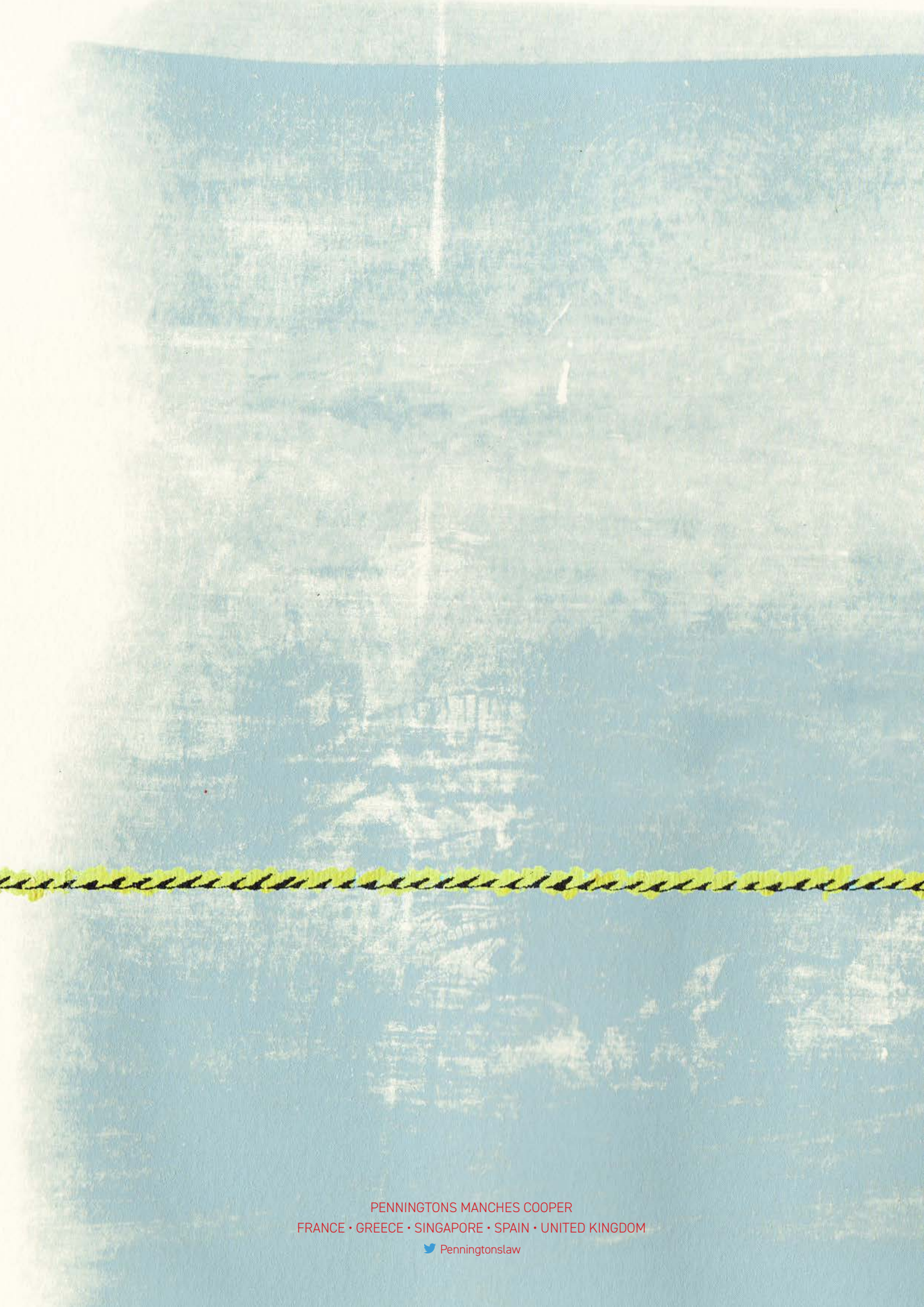
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