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PROPERTY118 WINS AGAINST HMRC

First-tier Tribunal cancels HMRC's Scheme Reference Numbers

HMRC's associated Stop Notice falls away

LANDLORD INCORPORATION CONSULTANCY IS BACK

The Property118 Guide to Strategic Landlord Incorporation

SPECIAL REPORT | PROPERTY118 LIMITED | 2026

THE OUTCOME IN ONE SENTENCE

Property118 won its appeal against HMRC.

The First-tier Tribunal allowed the appeals and cancelled HMRC's decisions to allocate the Scheme Reference Numbers. In everyday language, the legal challenge succeeded and the labels imposed on the arrangements were removed.

Why this publication exists

The Tribunal victory is the reason many landlords will now feel confident enough to revisit incorporation. The rest of this guide explains what the decision means, why financing and commercial objectives matter, and the detailed thinking that takes place before Property118 recommends any course of action.

A PERSONAL MESSAGE

Why we took HMRC to the Tribunal

For more than a decade, Property118 has helped landlords understand their property businesses and make decisions about financing, structure, retirement and succession. We have always believed that clients deserve clarity, transparency and advice that reflects the commercial reality of their portfolios.

When HMRC began allocating Scheme Reference Numbers to incorporation work associated with Property118, we knew that the consequences would reach far beyond our own business. Every landlord who had relied upon our recommendations faced uncertainty. Accountants, solicitors and lenders could see the label and assume that an independent court had already decided the arrangements were avoidance. That was not true.

We could have distanced ourselves from the work and left clients to deal with the consequences. We chose the opposite course. Property118 paused incorporation consultancy, stood behind the landlords who had trusted us, obtained leading legal advice and committed the time and resources required for a full ten-day First-tier Tribunal hearing.

The Tribunal allowed the appeals and cancelled HMRC's decisions to issue the Scheme Reference Numbers.

That result provides the clarity many landlords and professional advisers have been waiting for. It does not mean every landlord should incorporate, nor that every property business qualifies for every relief. It means that HMRC's use of DOTAS against the arrangements did not survive full judicial scrutiny.

This guide explains the victory in plain English. It also shows why a Property118 consultation is much broader than a conversation about tax or company formation. We begin with the business you already own, the return your capital is producing and the life you want that business to support.

Without the unwavering support of our clients, together with the assistance and encouragement of several professional contacts, the clarity we now have for landlords and the wider tax profession may never have been achieved.

Mark Alexander

Founder, Property118

NAVIGATION

What this guide covers

The Tribunal victory is the hook. The consultation method is the substance.

The question at the centre of every consultation

You may arrive asking whether to incorporate. We begin by asking what you want your property business, capital and time to achieve over the next ten or twenty years.

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PART ONE

PROPERTY118 v HMRC

The challenge, the ten-day hearing and the Tribunal victory that landlords had been waiting for.

WHY THIS MATTERED

For more than two years, Property118 paused incorporation-based consultancy while HMRC's decisions were challenged. The case affected clients, advisers and the wider landlord community. Property118 stood behind the landlords who had relied on its recommendations and took the dispute to a full ten-day hearing.

THE OUTCOME

- Property118 won
- HMRC's Scheme Reference Numbers were cancelled
- The associated Stop Notice fell away
- Landlord incorporation consultancy resumed

A plain-English guide for landlords and property business owners

THE JOURNEY TO VICTORY

What happened, in plain English

1

FEBRUARY 2024

HMRC allocates Scheme Reference Numbers

The arrangements were publicly associated with a disclosure regime before an independent Tribunal had examined the merits.

2

2024-2026

Property118 stands behind its clients

Consultancy was paused while enquiries, assessments, evidence and legal submissions were addressed.

3

FEBRUARY 2026

Ten-day First-tier Tribunal hearing

The Tribunal heard extensive evidence from clients, advisers, professionals and HMRC.

4

JUDGMENT

Property118 wins

The appeals are allowed. In plain English, the Tribunal decides in Property118's favour.

5

OUTCOME

HMRC's Scheme Reference Numbers cancelled

The Tribunal cancels HMRC's decisions to issue the Scheme Reference Numbers.

6

ALSO

Associated Stop Notice falls away

With the Scheme Reference Numbers cancelled, the related Stop Notice no longer applies.

7

NEXT

Landlord incorporation consultancy resumes

Property118 returns to helping landlords decide what to retain, refinance, sell or incorporate.

"The appeals are allowed" means Property118 won

The Tribunal decided in Property118's favour, cancelled HMRC's Scheme Reference Numbers and removed the basis on which the associated Stop Notice operated.

DOTAS IN PLAIN ENGLISH

A disclosure regime, not a general label for every tax-efficient decision

The Disclosure of Tax Avoidance Schemes rules, usually shortened to DOTAS, require information to be given to HMRC when arrangements fall within specific descriptions set out in legislation. The regime is intended to give HMRC early visibility of arrangements Parliament has chosen to define as notifiable.

A tax advantage is not enough on its own. Businesses regularly use reliefs, exemptions, allowances and different legal structures that Parliament deliberately created. A transaction may produce a lower tax bill and still fall outside DOTAS because the detailed statutory description is not met.

The Property118 appeal required the Tribunal to examine the particular descriptions relied upon by HMRC. These concerned standardised tax products, premium fees and certain financial products. The question was not whether incorporation can produce positive tax outcomes. It plainly can. The question was whether all the requirements for a DOTAS notification were satisfied.

That distinction matters because the phrase “tax avoidance scheme” carries a meaning in ordinary conversation that is much broader and more damaging than the precise statutory issue before the Tribunal.

NOT THE TEST

Does the arrangement reduce tax? Does it use documents? Has more than one client used a similar route?

THE REAL TEST

Does the arrangement fall within a prescribed description, produce the relevant advantage and satisfy every connected condition?

Why this matters to landlords

An HMRC challenge can be serious without being correct. The appeal process exists so that an independent Tribunal can examine the statutory test rather than allowing the initial label to become the final answer.

WHAT A SCHEME REFERENCE NUMBER MEANS

And what it does not prove

WHAT IT DOES	WHAT IT DOES NOT DO	WHY IT STILL HURTS
Identifies arrangements that HMRC has treated as notifiable under DOTAS. Creates reporting and administrative consequences. Signals that HMRC may have concerns.	It does not make the arrangement illegal. It does not determine that a client's tax treatment fails. It is not a court judgment.	Clients may become anxious. Advisers may refuse instructions. Lenders and third parties may misunderstand the label. Enquiries can remain unresolved for years.

The reputational effect often arrives before the legal analysis.

That is why Property118 did not regard the appeal as a narrow technical dispute. Hundreds of landlords had made long-term business decisions after consultations, professional advice and extensive fact-finding. Leaving the Scheme Reference Numbers in place would have allowed an HMRC administrative decision to define those arrangements indefinitely.

The Tribunal process replaced assumption with evidence. Witnesses were cross-examined, documents were scrutinised and the statutory descriptions were considered in detail. The result was that HMRC's decisions were cancelled.

WHY PROPERTY118 FOUGHT

Standing behind clients when the consequences became real

Property118 faced a commercial choice that was also a question of principle.

We could have stepped away from the work, stopped discussing the underlying legal issues and allowed every client to defend their own position. That would have protected the company from some immediate cost, but it would have left the landlords who trusted us facing uncertainty alone.

The alternative was expensive and uncertain. Property118 paused incorporation-based consultancy, supported clients through HMRC enquiries and Discovery Assessments, obtained specialist advice and pursued the statutory appeals to a full hearing.

The decision to litigate was not taken because court proceedings are desirable. It was taken because HMRC's use of DOTAS had implications for clients, advisers and the wider market. If ordinary features of a business incorporation could be treated as sufficient to trigger DOTAS, professionals might over-disclose routine work or refuse to advise on legitimate restructuring altogether.

The objective was clarity. Only an independent Tribunal could determine whether HMRC's decisions met the law.

CLIENTS

We did not leave landlords to defend work we had recommended.

EVIDENCE

We accepted that every aspect of the arrangements would be examined.

LAW

We asked the Tribunal to apply the descriptions Parliament enacted.

ACCOUNTABILITY

We accepted the commercial consequences while the appeal proceeded.

The wider point

Landlords should not have to accept an administrative label as the final word where Parliament has provided a right of appeal. Property118 used that right and succeeded.

WHAT THE TRIBUNAL EXAMINED

A ten-day hearing, extensive documents and real-world evidence

CONSULTATIONS

How Property118 gathered information, analysed portfolios and developed recommendations.

CLIENT MOTIVES

Why landlords wanted to incorporate and why they chose to defer refinancing.

LEGAL DOCUMENTS

The business sale, declarations of trust, indemnities, company documents and finance arrangements.

PROFESSIONAL EVIDENCE

Evidence from accountants, a solicitor, finance professionals and advisers.

TAX OUTCOMES

Section 24, corporation tax, Incorporation Relief and capital account treatment.

DOTAS TESTS

Whether the arrangements met the precise statutory descriptions HMRC relied upon.

Why the evidence mattered

HMRC's case could not be decided by reading a marketing headline in isolation. The Tribunal had to consider the arrangements as a whole, the work actually undertaken, the reasons clients acted and the statutory context in which the arrangements operated.

WHAT THE TRIBUNAL ACTUALLY DECIDED

The outcome translated into ordinary language

HMRC POSITION

1

The arrangements were said to be notifiable under the DOTAS descriptions relied upon.

THE HEARING

2

The Tribunal heard evidence and considered the documents over ten court days.

THE DECISION

3

Neither set of arrangements was notifiable under the descriptions HMRC had chosen.

THE CONSEQUENCE

4

Property118 won. The Scheme Reference Numbers were cancelled and the associated Stop Notice falls away.

The formal wording

The Tribunal stated that the appeals were allowed because the requirements for the relevant DOTAS descriptions were not satisfied. It therefore cancelled HMRC's decisions to issue the Scheme Reference Numbers.

The plain-English wording

Property118 won the appeal against HMRC. HMRC's Scheme Reference Numbers were cancelled and the associated Stop Notice falls away.

LEGAL LANGUAGE TRANSLATED

“THE APPEALS ARE ALLOWED”

MEANS

PROPERTY118 WON

Why we state it so directly

Tribunal decisions use precise procedural language. Many landlords will not know that allowing an appeal means the appellant succeeded. The purpose of this guide is to remove that ambiguity without overstating what the judgment decided.

WHAT THE JUDGMENT DOES AND DOES NOT DECIDE

Confidence without overclaiming

THE JUDGMENT DECIDES	THE JUDGMENT DOES NOT DECIDE
Whether the arrangements were notifiable under the DOTAS descriptions HMRC relied upon.	Whether every landlord qualifies for section 162 Incorporation Relief.
Whether HMRC's Scheme Reference Numbers should remain in force.	Whether SDLT, LBTT or LTT relief applies to every client.
The appeals were allowed, the Scheme Reference Numbers were cancelled and the associated Stop Notice falls away.	Whether incorporation is commercially right for every portfolio.
The evidence demonstrated real commercial and tax reasons for acting.	Whether a particular mortgage contract contains an express restriction.

Why the distinction strengthens the message

The victory is clear because Property118 succeeded on the case that was actually before the Tribunal. Individual incorporation advice remains evidence-led because the tax, financing and commercial position differs from one landlord to another.

WHY THE VICTORY MATTERS

For landlords, advisers and the wider property sector

LANDLORDS	The result removes the Scheme Reference Numbers that caused many landlords to pause, and the associated Stop Notice falls away. It gives owners confidence to reopen a strategic conversation, while still requiring individual analysis.
PROFESSIONAL ADVISERS	The judgment demonstrates that ordinary features of incorporation must be tested against the detailed DOTAS rules rather than assumed to be notifiable.
PROPERTY118 CLIENTS	Property118 did not abandon the arrangements when challenged. It supported clients and used the statutory appeal route to obtain independent scrutiny.
THE PRIVATE RENTED SECTOR	The decision reduces the risk that legitimate business restructuring is avoided merely because advisers fear an expansive interpretation of DOTAS.

The commercial consequence

Property118 is once again accepting incorporation-based consultancy instructions. The consultation does not presume that incorporation is the answer. It establishes whether the client's property business, financing and long-term objectives justify proceeding.

PART TWO

WHY FINANCING MATTERED

The commercial problem that conventional incorporation often failed to solve.

WHY THE MORTGAGE POSITION COULD NOT BE IGNORED

1 Existing borrowing

A landlord may have several mortgages, fixed rates, early repayment charges and different lender policies.

2 Immediate refinancing

Moving every legal title and mortgage at once can be costly, slow or commercially impossible.

3 Commercial flexibility

Keeping legal title and lender security unchanged can preserve options until refinancing makes sense.

A plain-English guide for landlords and property business owners

WHY LANDLORDS CONSIDER INCORPORATION

Tax matters, but it is rarely the whole decision

1

LIABILITY MANAGEMENT

Separating business activity from personal ownership and improving governance.

2

REFINANCING FLEXIBILITY

Choosing when to replace mortgages rather than forcing every loan to change on one date.

3

RETIREMENT

Reducing workload, improving cashflow and deciding which assets should continue.

4

SUCCESSION

Bringing children or other family members into ownership and management gradually.

5

BUSINESS CONTINUITY

Creating a structure that can continue after incapacity or death.

6

POSITIVE TAX OUTCOMES

Considering Section 24, corporation tax, Incorporation Relief and the extraction of profits.

The Property118 principle

The client decides what the business needs to achieve. The structure should support that decision. Professional advice validates and implements the chosen route rather than dictating the client's objectives.

THE FINANCING OBSTACLE

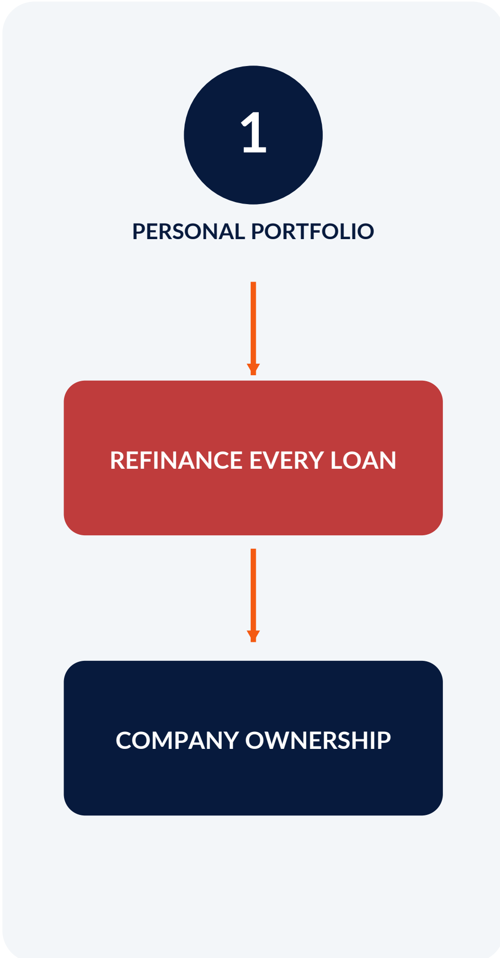
Why a leveraged property business cannot always incorporate conventionally

A property portfolio may contain ten, twenty or fifty separate mortgages, arranged with different lenders on different dates and at very different interest rates.

A conventional transfer of both legal and beneficial ownership to a company may require every existing mortgage to be repaid, novated or replaced. Some lenders do not offer novation. Others may insist upon a completely new application, valuation, legal process and product. Early repayment charges can arise, and the new interest rate may be materially higher than the rate being replaced.

The difficulty is not merely administrative. If one property cannot refinance because of cladding, lease defects, valuation problems or lender criteria, an all-at-once incorporation can become impossible. Even where refinancing is available, replacing favourable historic borrowing may destroy much of the cashflow the structure was intended to improve.

The Property118 approach separated the commercial decision to incorporate from the timing of the eventual legal-title transfer and refinancing. That allowed the business to move while existing finance remained intact until a commercially sensible opportunity arose.



Why this matters

A technically available route may still be commercially unacceptable. The first question is not whether a lender can offer a new mortgage. It is whether replacing the existing finance improves the client's business after arrangement fees, legal costs, penalties and the new interest rate are taken into account.

LEGAL TITLE AND BENEFICIAL OWNERSHIP

Two forms of ownership that can exist separately

LEGAL TITLE The name shown on the Land Registry and the title charged to the lender

LENDER SECURITY The registered charge remains attached to the same legal title

BENEFICIAL OWNERSHIP The right to the economic benefit, income and capital

The legal owner is the person whose name appears on the registered title. Beneficial ownership describes who is entitled to the economic benefits of the property.

English property law has long recognised that these interests can be separated. Trusts, partnerships, nominee arrangements and transfers between spouses commonly rely upon the distinction.

In the Property118 incorporation model, the company acquires the beneficial ownership of the business assets while legal title remains temporarily with the original owners. The company receives the rents and carries on the business. The original owner remains the registered proprietor until legal title is later transferred, usually when refinancing becomes commercially attractive.

This is not the same as pretending nothing changed. The business and economic ownership move to the company. The legal title and registered charge remain where they were until the later conveyance.

WHY THE LENDER'S SECURITY REMAINS CENTRAL

The evidence presented about the Law of Property Act 1925

The practical design of the structure starts with the lender's existing security.

The registered legal title remains in the borrower's name and the lender's charge continues to attach to that title. The borrower remains personally responsible for the mortgage payments as far as the lender is concerned. The company indemnifies the original owners under the incorporation documents, but that internal arrangement does not release the borrower from obligations to the lender.

The evidence before the Tribunal was that retaining legal title and the registered charge meant the lender's security was not altered. Sections 85 to 87 and section 114 of the Law of Property Act 1925 were relied upon in explaining the continuing legal protection attached to the charge and the registered title.

The important point for a landlord is not that mortgage contracts can be ignored. It is that a transfer of beneficial ownership does not automatically mean the lender's registered security has disappeared or been replaced.

REGISTERED PROPRIETOR

Original owner remains on the legal title

REGISTERED CHARGE

Lender retains the same security over that title

PERSONAL COVENANT

Borrower remains liable to make the mortgage payments

ECONOMIC BUSINESS

Company receives the benefits and carries on the rental business

Security and contract are separate questions

The lender's registered charge and the borrower's personal obligations can remain unchanged, while the mortgage agreement may still contain an express restriction on transferring beneficial ownership. These are different issues. The mortgage terms should therefore be reviewed and specific legal advice obtained where a restriction applies. Reviewing the terms does not, by itself, mean lender consent needs to be requested.

CONSENT AND CONTRACT REVIEW ARE DIFFERENT QUESTIONS

Why asking an unnecessary question can create an avoidable obstacle

DOES THE MORTGAGE EXPRESSLY RESTRICT A TRANSFER OF BENEFICIAL OWNERSHIP?

NO

Do not assume consent is required merely because beneficial ownership moves.

The legal team considers the structure and the lender's security. Approaching the lender can force an operational answer to a question the contract does not require.

YES / UNCLEAR

Obtain specific legal advice.

Some known mortgage terms expressly prohibit transfers of beneficial ownership. The client may need a different route, lender engagement or refinancing.

A refusal of consent does not necessarily prove that the lender's registered security would have been harmed.

A lender asked to approve a non-standard restructuring may have to consider underwriting, legal documentation, securitisation and internal policy. The easiest operational response can be to decline, even though legal title, the registered charge and the borrower's payment obligations remain unchanged.

The Tribunal heard evidence that mortgage conditions were considered where necessary and that known lenders with express restrictions were identified. That is a more accurate description of the process than saying every lender was routinely asked for consent.

WHAT THE TRIBUNAL HEARD ABOUT REFINANCING

Commercial evidence from landlords and professionals

16 PROPERTIES / 6 LENDERS

Estimated refinancing costs exceeded £150,000, with annual interest costs around £20,616 higher.

35 MORTGAGES

The stress, sequencing and risk of replacing every mortgage simultaneously was a main practical concern.

CLADDING

Some properties could not refinance at all, making an immediate transfer of every legal title impossible.

LEASEHOLD COSTS

Freeholder notices, management-company administration and legal work added further friction.

FAVOURABLE RATES

Owners wanted to preserve historic mortgage products and refinance only when commercially advantageous.

REAL-WORLD EXPERIENCE

Evidence was given that many later refinances reunited legal and beneficial ownership without historic loans being called in.

The conclusion for a landlord

Immediate refinancing is not a neutral administrative step. It can determine whether incorporation is affordable, whether existing cashflow survives and whether the transaction can complete at all.

HOW REFINANCING CAN CHANGE THE COMMERCIAL RESULT

A time-based illustration before tax

This compares borrowing arranged at two different points in the interest-rate cycle.

EXISTING FINANCE

3.0%

Illustrative annual interest rate

Secured in early March 2022

Bank Rate at the time: 0.5%

£60,000

Annual interest on £2m debt

No arrangement fee or early repayment charge assumed

REPLACEMENT FINANCE

6.0%

Illustrative annual interest rate

Quoted in June 2026

Bank Rate at the time: 3.75%

£120,000

Annual interest on the same £2m debt

Plus valuation, legal, product and early repayment costs

The difference is primarily about timing, not ownership structure.

The example compares favourable finance arranged when Bank Rate was 0.5% with replacement finance quoted more than four years later, when Bank Rate was 3.75%. It is not intended to suggest that borrowing is always more expensive merely because the borrower is a limited company.

Actual pricing depends on the market at the time, loan-to-value, lender criteria, product fees, the property and the borrower. A company may sometimes obtain terms that are as good as, or better than, those available to an individual landlord.

The commercial risk is being forced to replace satisfactory historic borrowing at an unfavourable point in the interest-rate cycle. A Property118 consultation therefore models the timing and cost of refinancing rather than assuming that incorporation alone produces a better result.

PART THREE

THE WIDER LEGAL PICTURE

Section 162, Ramsay, GCH Corporation and the importance of applying the legislation to the business as a whole.

FOUR SOURCES, DIFFERENT WEIGHT

1. **LEGISLATION**
   Parliament sets the statutory conditions. Section 162 asks whether a business is transferred as a going concern.
2. **COURTS AND TRIBUNALS**
   Decisions such as Ramsay and GCH explain how the statutory language should be interpreted.
3. **HMRC MANUALS**
   HMRC guidance is influential, but it is HMRC's interpretation and is not itself the law.
4. **THE LANDLORD'S FACTS**
   Eligibility depends on the real commercial activity, organisation, evidence and objectives of the particular business.

The practical lesson: start with the statute and establish the facts.

A plain-English guide for landlords and property business owners

INCORPORATION RELIEF EXPLAINED

Why transferring a business can create a tax bill without cash

A transfer from an individual or partnership to a connected company is normally treated for Capital Gains Tax purposes as taking place at market value.

Imagine a landlord bought properties for £1 million and they are worth £3 million when the business incorporates. Without relief, the transfer can be treated as a disposal of the properties at £3 million. That can produce a substantial Capital Gains Tax charge even though the landlord received shares rather than cash.

Section 162 of the Taxation of Chargeable Gains Act 1992 can postpone that charge where a qualifying business is transferred as a going concern, together with the required assets, wholly or partly in exchange for shares issued by the company.

The accumulated gain is not erased. Broadly, it is deducted from the tax base cost of the shares. The tax is deferred until a later disposal of those shares, subject to the detailed legislation and the client's circumstances.

A separate consequence is that the company generally acquires the properties at market value for its own future corporation-tax calculations. This is why commentators often describe the historic property gain as being “washed out” of the properties and rolled into the shares.

ILLUSTRATIVE EXAMPLE

Historic cost	**£1.0m**
Market value	**£3.0m**
Accrued gain	**£2.0m**
Cash received	**£0**
Consideration	**Company shares**
Immediate CGT	**Potentially deferred**

Important

Section 162 does not apply merely because properties are moved into a company. The business test, going-concern requirement, assets transferred and form of consideration all require evidence and professional advice.

RAMSAY AND THE "20-HOUR RULE"

Why an HMRC example is not the statutory test

HMRC's Capital Gains Manual refers to the facts of Elisabeth Moyne Ramsay v HMRC and says officers should accept that relief is available where an individual spends 20 hours or more a week on the activities.

That sentence has become a convenient rule of thumb. Some landlords have been told that 20 hours is a legal threshold, or that anything below it must fail. The legislation contains no such number.

Mrs Ramsay happened to spend around 20 hours a week managing her property business. The Upper Tribunal did not decide that 20 hours was required. Its broader conclusion was that the degree of activity viewed as a whole was material to whether there was a business.

Time can therefore be important evidence, but it is not the only evidence. The number and nature of the properties, the services provided, decisions made by the owners, work delegated to agents, financial organisation, business systems and the intention to make profits may all contribute to the overall picture.

20

HOURS A WEEK?

EVIDENCE, NOT A LEGAL THRESHOLD

THE BETTER QUESTION

What is the commercial reality of the activities undertaken by the owner, the agents and the business as a whole?

How Property118 approaches it

Hours are recorded because they are relevant evidence. They are not treated as a substitute for understanding the complete business. A weak factual case does not become strong by inflating a timesheet, and a genuine business should not be dismissed solely because it is efficiently organised.

WHAT GCH CORPORATION ADDS

A wider view of "business" in the Upper Tribunal

HMRC v GCH Corporation Ltd concerned an investment LLP and section 59A TCGA 1992, not a residential landlord claiming section 162 relief.

The Upper Tribunal nevertheless considered the same important statutory word: business. It held that the LLP did not need to carry on a trade. Its acquisition, holding and disposal of investments with a view to profit could amount to a business.

The Tribunal examined the commercial reality of what the LLP did rather than counting the personal hours of the members. GCH is not a landlord Incorporation Relief case, but it supports the argument that the statutory concept should not be reduced to a single numerical benchmark.

WHY GCH MATTERS

1 Business is broader than trade

The legal concept is wider than many landlords assume.

2 Investment activity can qualify

A business can exist even where the activity is investment-led.

3 Hours are not the legal test

The law looks at the commercial reality of the activity as a whole.

GCH is persuasive context, not a guarantee. Ramsay and the section 162 authorities still matter.

The practical implication

A consultation should ask whether there is a genuine, organised, profit-seeking property business when the activities are viewed as a whole. It should not begin and end with a timesheet.

HOW A PROPERTY BUSINESS IS EVIDENCED

The facts that help tell the commercial story

ORGANISATION

Separate bank accounts, accounts, records, systems and regular financial review.

ACTIVITY

Lettings, tenant decisions, repairs, compliance, insurance, financing and capital expenditure.

OWNER DECISIONS

Strategy, acquisitions, disposals, rents, borrowing, agents and long-term planning.

DELEGATION

Work performed by managing agents, contractors and professionals on behalf of the business.

PROFIT MOTIVE

A coherent intention to generate rental profits and long-term investment returns.

CONTINUITY

The business operates over time and can continue despite changes in individual tasks or workload.

Why delegation is not inactivity

A business owner can organise work through employees, agents and contractors. The relevant question is what the business does and how the owners direct it, not whether every repair or tenancy task is performed personally.

ESC D32 AND THE REFINANCING PROBLEM

Why the form of consideration matters for Incorporation Relief

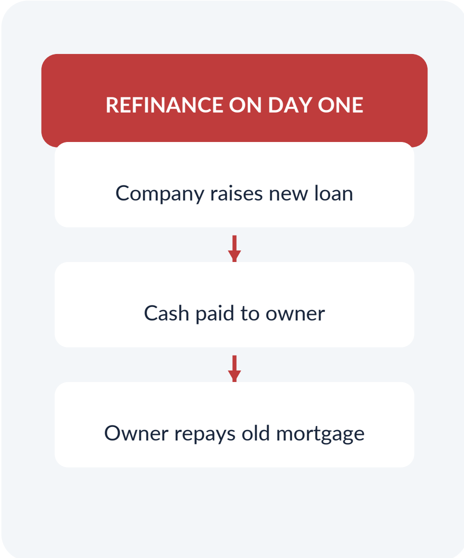
A property business often has mortgages and other liabilities when it incorporates.

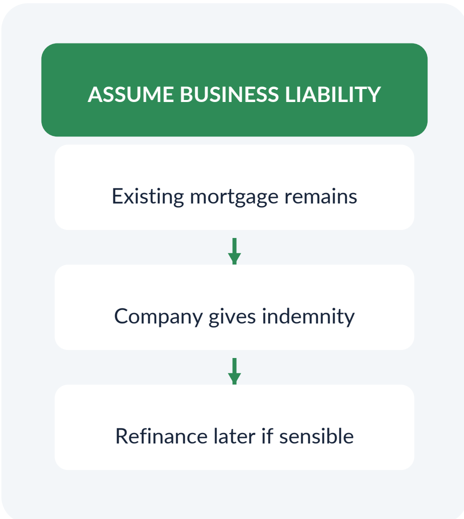
Strictly, liabilities assumed by the company can represent additional consideration given to the owner. That could restrict section 162 relief because the business is not transferred wholly for shares.

Extra-Statutory Concession D32 allows qualifying business liabilities taken over by the company to be ignored when measuring that other consideration. The commercial rationale is that the transferor receives no cash with which to pay a tax bill and the shares are worth less because the company carries the liabilities.

The difficulty arises where the company raises completely new finance and passes cash to the owner, who then uses it to repay the original mortgages. Professional commentary has warned that HMRC may regard the cash as consideration rather than the company simply assuming the same business liabilities.

This is why the Property118 model used an indemnity and deferred the legal-title refinance. The company assumed responsibility for the existing business liabilities between itself and the owners without replacing the lender relationship on the incorporation date.





Important

The availability of the concession and Incorporation Relief depends on the facts and the legal implementation. The diagram explains the commercial issue; it is not a substitute for case-specific tax and legal advice.

WHAT A CAPITAL ACCOUNT REPRESENTS

Historic money already invested in the business

A landlord may spend decades leaving profits in a property business to fund deposits, improvements and debt reduction.

Those retained profits have ordinarily already been taxed on the individual owners. Capital introduced personally and profits left in the business can create a positive capital account balance. Economically, it represents money belonging to the owners that remains committed to the business.

If the business incorporates without addressing that balance, the capital may become locked into the value of the company shares. Accessing it later may require dividends, remuneration, a share sale or a company purchase of shares, each with different tax and legal consequences.

Professional commentary therefore says that a substantial capital account should be considered before incorporation. HMRC's Business Income Manual also recognises that a proprietor may withdraw business profits and capital even where substitute interest-bearing finance has to be introduced.

The commercial objective is not to create artificial value. It is to identify verified historic capital accurately and decide whether the owners need continuing access to it after incorporation.

£

POSITIVE CAPITAL ACCOUNT

Capital introduced

Retained taxed profits

Historic acquisition cost

Less business liabilities

Why this matters in retirement

Landlords who deliberately reduced debt may have large positive capital accounts. Incorporating without a plan can exchange flexible historic capital for shares that are much harder to turn into personal cash.

THE CAPITAL ACCOUNT RESTRUCTURING

The commercial flow explained step by step

1 CALCULATE

Verify the positive capital account using acquisition costs, capital improvements and business liabilities.

2 FUND

Arrange genuine short-term business finance equal to the amount the owners intend to withdraw.

3 WITHDRAW

The unincorporated business pays the verified capital balance to the owners before incorporation.

4 INCORPORATE

The company acquires the business and assumes responsibility for qualifying liabilities under the documents.

5 LEND BACK

The owners lend the withdrawn cash to the company. The amount is credited to their shareholder loan account.

6 REPAY

The company can repay that shareholder loan over time as capital, subject to cashflow and proper accounting.

What this is not

It is not a licence to invent a capital balance or withdraw future profits in advance. The balance must be calculated from the business records and supported by the accountant, legal documents and banking evidence.

PART FOUR

WHAT A CONSULTATION ACTUALLY DOES

The Tribunal victory creates confidence. The strategic analysis creates direction.

THE CONSULTATION JOURNEY

1 UNDERSTAND

Objectives, family, income needs and future plans

2 ANALYSE

Property-by-property cashflow, equity and refinancing risk

3 COMPARE

Keep, improve, refinance, sell, incorporate or diversify

4 DECIDE

A client-led strategy supported by coordinated professional advice

The consultation moves from understanding the client to comparing practical options and agreeing a client-led strategy.

A plain-English guide for landlords and property business owners

THE CONSULTATION DOES NOT START WITH "YES"

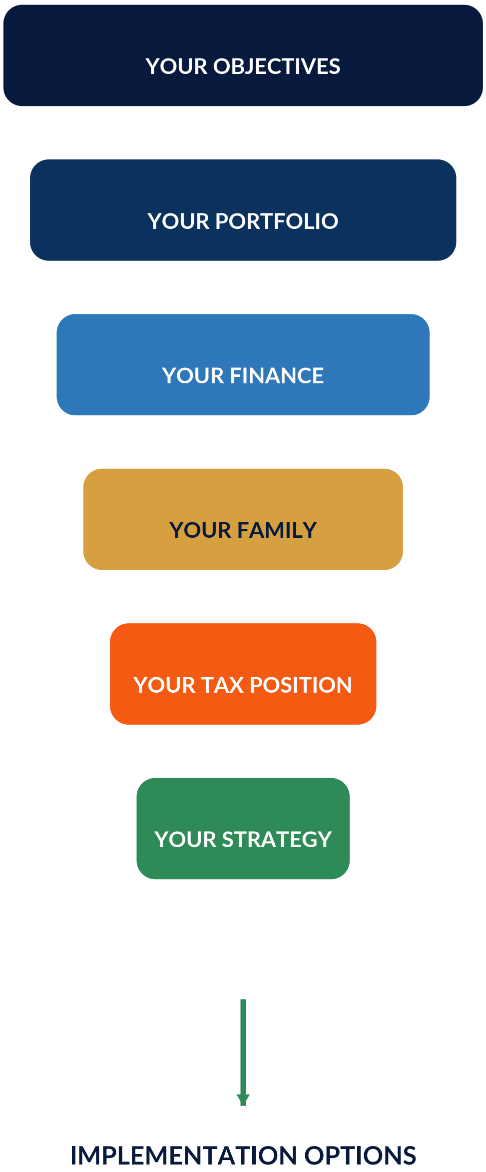
It starts with the business the landlord already owns

Many landlords contact Property118 with a single question: "Should I incorporate?"

A useful answer cannot begin with a company formation. The consultant first needs to understand what the properties are producing, how the mortgages will change, what the owners need from the business and what role property should play in the rest of their lives.

Some clients will benefit from incorporating most or all of the retained business. Others may need to refinance particular properties, sell weaker assets, reduce debt, change management, address succession or pause until the evidence for relief is stronger.

The consultation is designed to help the client make those choices. Incorporation is one implementation route within a wider commercial strategy, not the predetermined product being sold.



The client remains the decision-maker

Property118 explains the commercial choices and coordinates professional input. The client decides what outcomes matter. Accountants, lawyers, brokers and regulated advisers then validate and implement the selected route.

WHY THE FACT-FIND COMES FIRST

Better recommendations require better evidence

PROPERTY DATA

Values, rents, costs, mortgages, rates, fixed periods, ownership and acquisition history.

BUSINESS EVIDENCE

Time, activities, agents, systems, bank accounts, accounts and partnership history.

FAMILY POSITION

Ages, income needs, retirement plans, children, succession and management capacity.

TAX DATA

Other income, capital costs, principal residence history, losses and unused finance costs.

OBJECTIVES

Keep, sell, grow, reduce debt, release capital, retire, pass on or simplify.

CONSTRAINTS

Cladding, leases, lender terms, residency, health, co-owners and available cash.

Why this saves time rather than creating bureaucracy

The current process begins with a short form and may lead to further fact-finding before the calendar and payment stage. This allows the 60-minute consultation to focus on decisions and analysis rather than spend most of the meeting collecting basic data.

RETURN ON EQUITY (ROE)

The first commercial question: what is each property producing now?

Rental yield compares rent with property value. Cashflow return on equity asks a different question.

Equity is the current property value less the mortgage debt. Cashflow return on equity compares the annual cashflow, after estimated operating costs and mortgage interest, with the equity tied up in the asset.

A property bought for £100,000 and now worth £500,000 may have been an excellent historical investment. That does not answer whether leaving £500,000 of present-day equity in that property is still the best decision.

ROE provides a common measure for comparing different properties, testing future interest rates and considering the opportunity cost of capital. It does not capture every benefit of property ownership, such as future growth or active value creation, but it exposes questions that headline yield and portfolio value often hide.

CASHFLOW RETURN ON EQUITY

ANNUAL CASHFLOW
÷
CURRENT EQUITY

SIMPLE EXAMPLE

Cashflow	£20,000
Equity	£250,000

8.0%

Why this matters before incorporation

Moving a weak portfolio into a company does not make the properties stronger. The client should first understand which assets deserve to be retained, improved, refinanced or sold.

CASE STUDY: A £3.4 MILLION PORTFOLIO

Why the headline value did not answer the clients' question

20 PROPERTIES	**£3.405m** VALUE	**£208,740** GROSS RENT
£2.334m MORTGAGES	**£1.071m** APPARENT EQUITY	**68.5%** PORTFOLIO LTV

The portfolio was substantial and profitable. The question was whether the capital, workload and refinancing risk were producing a satisfactory result.

Nineteen properties were owned personally and one was already in a company. The assets included residential and commercial properties across England, Scotland and Wales. Partnership accounts were being prepared and family members or employees were already involved in the business.

The clients initially approached the issue from an incorporation perspective. The analysis showed why incorporation could not sensibly be considered until the properties and mortgages had been examined individually.

THE CURRENT RETURN LOOKED REASONABLE

Until the cost of future finance was considered

CURRENT CASHFLOW RETURN ON EQUITY

7.8%

GROSS RENT		OPERATING COSTS		MORTGAGE INTEREST		CASHFLOW
£208,740	−	£52,185	−	£73,100	=	£83,455

Non-finance operating costs were estimated at 25% of gross rent.

That allowed approximately £52,185 for repairs, management, insurance, compliance, voids and other expenses. After deducting those costs and the current mortgage interest of £73,100, estimated cashflow before tax was £83,455.

Measured against apparent equity of £1,071,000, the portfolio produced a cashflow return on equity of approximately 7.8% before tax.

Whether 7.8% is satisfactory depends on the owners' age, workload, risk, future growth expectations and available alternatives. There is no universal percentage at which a property must be sold. The value of the calculation is that it gives the owners something measurable to evaluate.

THE 6% REFINANCING STRESS TEST

Around 80% of current pre-tax cashflow disappeared

CURRENT POSITION

£83,455

Estimated pre-tax cashflow

7.8%

Cashflow return on equity

Average mortgage cost: 3.13%

AT 6% MORTGAGE COST

£16,515

Estimated pre-tax cashflow

1.54%

Cashflow return on equity

9 of 20 properties became negative

The stress test did not assume that every mortgage would refinance on the same day.

Its purpose was to understand what could happen over time as existing products matured and were replaced. At 6%, annual mortgage interest increased from £73,100 to approximately £140,040. Estimated cashflow fell to £16,515.

The portfolio had not suddenly become a bad investment. The test showed how dependent the current result was on historic low-cost borrowing. A landlord might accept the work and risk for 7.8%, but reach a different conclusion if the return falls towards 1.5%.

PORTFOLIO AVERAGES CONCEALED VERY DIFFERENT ASSETS

The strongest property did not contain the most equity

PROPERTY	VALUE	EQUITY	CURRENT ROE	AT 6%	WHAT IT SUGGESTS
Welsh commercial	£115k	£32k	21.9%	Positive	Retain / investigate growth
High-equity residential	£275k	£130k	3.4%	Slight loss	Review rent or capital use
Expensive small loan	£140k	£100k	4.65%	Improves	Refinance the debt
Highly leveraged residential	£125k	£15k	9.3%	£2.1k loss	High ROE masks fragility

Sometimes the finance is the problem, not the property.

The property with a 12% mortgage looked weak until the debt was isolated. Refinancing a £40,000 balance at 6% materially improved its cashflow. Selling the asset without testing the finance would have addressed the wrong problem.

A high percentage can also mislead. The property showing 9.3% contained very little equity and depended on a mortgage rate of about 2.8%. At 6%, it produced a loss. The apparent strength came from leverage rather than resilience.

APPARENT EQUITY IS NOT INVESTABLE CASH

Why the sale proceeds can be much lower than the balance-sheet figure

HEADLINE EQUITY

£1.071m

Property values less mortgages

Before selling costs

Before Capital Gains Tax

Before timing and ownership differences

SEVERE DISPOSAL MODEL

£426,610

Illustrative net cash after debt,
selling costs and pessimistic CGT assumptions

Not an exact tax calculation

Designed to expose the gap

The owners could not simply sell the portfolio and invest £1.071 million elsewhere.

The case study used deliberately severe assumptions: selling costs equal to 15% of value, the highest applicable Capital Gains Tax rates, no annual exemptions and no personal reliefs. The actual figure would depend on ownership, acquisition costs, improvements, available reliefs and the timing of sales.

The model was not a recommendation to sell. It showed that opportunity-cost comparisons must use realistic net cash, not headline equity.

THE STRATEGY SHOULD FOLLOW THE ANALYSIS

Keep, improve, refinance, sell or incorporate

RETAIN	Strong cashflow, resilience or strategic value
REFINANCE	Good property, weak or expensive debt
IMPROVE	Rent, management or capital expenditure can change the result
SELL	Weak return, poor prospects or capital needed elsewhere
INCORPORATE	Use a company to support the selected commercial strategy

The central lesson

Incorporating an inefficient portfolio does not make its underlying assets efficient. The company structure should be designed after the client decides what to retain, what to change and what role the released or retained capital should play.

WHAT HAPPENS TO CAPITAL RELEASED FROM PROPERTY?

Opportunity cost and regulated institutional investment referrals

A recommendation to sell or release equity creates a second decision: what should the capital do next?

Cash can reduce other mortgages, fund pensions, provide retirement income, support family members, finance new property opportunities or be invested outside property. Each choice has different liquidity, tax, risk and return characteristics.

Property118 uses Return on Equity to make the opportunity cost visible. That does not mean property should be compared mechanically with one headline investment rate. Property can offer leverage, rental growth, capital appreciation and active value creation. Other investments may offer fixed contractual income, shorter management time or clearer repayment dates, but carry issuer, market, inflation and liquidity risks.

Where a client wants to consider pensions or institutional investments, Property118 can introduce an FCA-regulated adviser. The regulated adviser, not Property118, assesses eligibility, suitability, risk tolerance and the particular product.

This wider conversation matters because a landlord who sells six weak properties may have made an excellent property decision but still need professional help to allocate the resulting capital.

REDUCE DEBT

RETIREMENT CASH

PENSION

NEW PROPERTY

INSTITUTIONAL INVESTMENT

The regulatory boundary

Property118 explains capital allocation as a commercial question and can make introductions. It does not recommend regulated investments or present a referral as the predetermined destination for sale proceeds.

PART FIVE

WHAT HAPPENS NEXT

Retirement, succession, the professional team and the route from consultation to implementation.

This section explains:

- What a £400 consultation includes
- How the professional team fits together
- When implementation starts and who does what

A plain-English guide for landlords and property business owners

RETIREMENT, SUCCESSION AND BUSINESS CONTINUITY

What is the property business ultimately for?

1

INCOME

How much net income do the owners need now and after retirement?

2

WORKLOAD

Which responsibilities do they want to keep, delegate or stop?

3

FAMILY

Who genuinely wants to participate and what role have they earned?

4

CONTROL

Should founders retain votes while transferring income rights or future growth?

5

INCAPACITY

Who can make decisions if an owner loses capacity?

6

DEATH

What happens to mortgages, legal titles, shares and management?

Why a company may help

Shares and directorships can change without conveying every property title. Different rights can be created for income, votes and future growth, subject to legal and tax advice. The structure is valuable only when it reflects the family's actual wishes.

NO SINGLE ADVISER DOES EVERYTHING

How the professional team fits together

Property118 coordinates the commercial thinking, but the client remains at the centre.

The accountant validates accounts, acquisition costs, improvements, losses, finance costs and tax information. The lawyer advises on the business, ownership, mortgage terms, contracts and implementation. The broker analyses current and future borrowing. A regulated adviser deals with pensions and investments. Surveyors and agents support values and property evidence.

The purpose of coordination is not to replace professional advice. It is to ensure that each adviser is answering the same commercial question and that the client understands how the pieces fit together.

WHAT TO EXPECT FROM THE £400 CONSULTATION

A focused strategic review, not a sales script

1 **INITIAL FORM**

A short form identifies the broad issue and whether the timing feels right.

2 **FURTHER FACT-FIND**

Depending on complexity, more information is gathered before booking.

3 **BOOK AND PAY**

The client selects an available time and pays £400 including VAT.

4 **60-MINUTE ZOOM**

A private recorded meeting focuses on financing, structure and cashflow.

5 **SUMMARY NOTES**

The client receives agreed action points and a link to the recording.

6 **NEXT STEPS**

Further analysis, introductions or implementation are agreed only if appropriate.

Satisfaction guarantee

The current consultation page states that clients can request a full no-quibble refund if dissatisfied and they explain why within seven days. Current terms should always be checked on the booking page.

WHAT THE CONSULTATION IS DESIGNED TO GIVE YOU

Clarity about the next decision, not a predetermined product

01

A CLEARER BASELINE

What each property contributes and how much equity is tied up.

02

REFINANCING VISIBILITY

What may happen as mortgages mature and rates change.

03

A PROPERTY-BY-PROPERTY VIEW

Which assets deserve to be retained, improved, refinanced or reviewed for sale.

04

STRUCTURE OPTIONS

Whether incorporation, an LLP, a phased restructure or no immediate change supports the objectives.

05

FAMILY DIRECTION

How retirement, succession, control and continuity should influence the structure.

06

PROFESSIONAL NEXT STEPS

Which questions require the accountant, lawyer, broker or FCA-regulated adviser.

The intended reaction

You should leave with a better understanding of the decisions in front of you, even where the immediate recommendation is to gather more evidence or delay implementation.

FREQUENTLY ASKED QUESTIONS

The questions landlords ask before deciding what to do next

Does the Tribunal decision mean every landlord should incorporate?

No. It means Property118 won the DOTAS appeal and HMRC's Scheme Reference Numbers were cancelled. Commercial suitability and relief eligibility remain individual questions.

Does the decision prove that my section 162 claim will succeed?

No. The FTT appeal concerned DOTAS. Section 162 still requires evidence that a qualifying business was transferred as a going concern on the required terms.

Do I need exactly 20 hours a week?

The legislation contains no 20-hour threshold. Time is relevant evidence, but Ramsay requires the activity to be considered as a whole.

Must I ask every lender for consent?

Not automatically. The legal team must consider the structure and any express contractual restriction. Requesting consent and determining whether consent is legally required are different questions.

Will I have to refinance every property?

Not necessarily at incorporation under the Property118 approach. Legal title and financing may be transferred later when commercially sensible, subject to the legal documents and mortgage terms.

Is the capital account money tax-free?

A verified positive capital account ordinarily represents capital and profits already taxed in the unincorporated business. The calculation and withdrawal must be properly evidenced and advised.

PLAIN-ENGLISH GLOSSARY AND FURTHER READING

Key terms and source links

Blue underlined items below are clickable.

BENEFICIAL OWNERSHIP

The right to the economic benefits of an asset, including income and capital value.

LEGAL TITLE

The registered ownership shown at the Land Registry.

DOTAS

The Disclosure of Tax Avoidance Schemes information regime.

SCHEME REFERENCE NUMBER

A number allocated by HMRC to arrangements it treats as notifiable under DOTAS.

INCORPORATION RELIEF

Section 162 relief that can defer Capital Gains Tax when a qualifying business is transferred to a company for shares.

ESC D32

HMRC's concession concerning qualifying business liabilities taken over on incorporation.

CAPITAL ACCOUNT

The owners' capital and retained taxed profits committed to an unincorporated business.

SHAREHOLDER LOAN

Money owed by a company to a shareholder, normally recorded as a liability in the company accounts.

RETURN ON EQUITY

Annual property cashflow divided by the current equity tied up in the asset.

NOVATION

A legal process replacing one party to a contract with another, with the required agreement.

Further reading

Property118 articles relevant to the topics covered in this guide.

PROPERTY118 ARTICLES

1. Why experience matters when incorporating a property business
2. Case study: What is this £3.4 million portfolio really earning?
3. HMRC loses Upper Tribunal appeal over the meaning of "business"
4. Has GCH exposed a flaw in HMRC's landlord Incorporation Relief guidance?

Primary sources

Legislation and HMRC material referred to in the publication.

LEGISLATION AND HMRC SOURCES

TCGA 1992 section 162

HMRC manuals

CG65715
CG65745
BIM45700

First-tier Tribunal judgment

Property 118 Limited and Cotswold Barristers Limited v HMRC

property118.com

PROPERTY118 CONSULTANCY

YOU MAY HAVE DOWNLOADED THIS GUIDE BECAUSE PROPERTY118 WON.

The next question is what the judgment, your properties and your financing mean for your business.

ARRANGE A PORTFOLIO REVIEW

A private recorded 60-minute Zoom consultation focused on whether your financing, structure and cashflow are aligned with where you want to end up. The current fee is £400 including VAT and the process starts with a short initial form.

SCAN TO START

property118.com/consultation/

Private • Recorded • Bespoke • Summary notes and agreed action points

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Standing up for landlords. Standing behind our clients.

THE TRIBUNAL VICTORY CREATED THE CONFIDENCE.

THE CONSULTATION CREATES THE DIRECTION.

Understand what your properties are earning, how future refinancing could change the result, and whether incorporation, selective disposal or another strategy best supports the life you want.

BEGIN AT PROPERTY118.COM/CONSULTATION/