Trusts on divorce

Should we consider trusts as part of the finances on divorce?

If either yourself or your spouse has a trust then these need to be disclosed and considered as part of the divorce. Often trusts are set up as way of passing assets from generation to generation and/or to save tax. It needs to be disclosed even if at the end of the day you may be successful in arguing that it should be treated differently to other assets in the divorce.

What should I consider first?

Find out what information you can about the trust. If you are a beneficiary, you have a duty to disclose it to the court and to your spouse.

Whether you or your spouse are the beneficiary of a trust you will need to consult a divorce lawyer. It is important to find out everything you can about the trust as often large sums of money will be at stake.

What orders can a court make about trusts on divorce?

This depends on what kind of trust it is. Sometimes the court's powers are very limited. If the interest is not immediately available, and if no distributions have been made by way of income or capital, then there may be little impact on the financial settlement.

Alternatively, if one of you has been receiving income and/or capital on a regular basis, then the courts are more likely to look at this as a financial resource – and one that can be relied on as continuing in the future.

If the trust is "nuptial", then the courts have much wider powers.

What orders can a court make about "nuptial" trusts on divorce?

If the court considers a trust to be "nuptial", then it has very wide powers:

- It can change the trustees and appoint new ones
- It can transfer monies out of the trust
- It can change who benefits from the trust

What makes a trust "nuptial"?
Whether or not a trust is "nuptial" is complex. The trust has to be made in reference to your marriage, and it must have a "nuptial element", i.e., be made for you and your spouse.