

Take an active role when acting for family businesses

Bitter family disputes can be avoided if practitioners take the time to understand their client's business model and future plans, says **Jonathan Silverman**

Fans of *Coronation Street* will know of the dispute between Audrey and her grandson David over the ownership of the hairdressing salon run by Audrey but 'transferred' to David last year.

It highlights the type of problems that a practitioner can face when acting for the small family business where various relatives are involved and where informality rules; yet experience should demonstrate the need for business arrangements to be properly documented rather than simply relying on trust and good behaviour within the family.

Problems arise both with regard to promises as to the future transfer of a business to family working within it, and between family members over issues of control and management, delegation and supervision, especially when the proprietor becomes more elderly. Family disputes tend to be bitter and divisive, but can be avoided with good advice and properly drafted documentation.

Regrettably, in many cases the client neither shares with his lawyers the existence of any informal arrangements nor seeks advice before it's too late, and this really places the onus on the lawyer to be proactive.

Trying to understand the client's business model is central to being able to offer any meaningful advice. In many cases it will mean treading carefully so as to avoid upsetting those informal arrangements that may have been in place for many years, but it is imperative to identify with the client how they see things working over the next few years and encourage them to discuss with you key issues before they become incapacitated or die.

Too often the client is simply not advised as to their full range of options. An outright transfer of the business in the belief that this is essential to mitigate inheritance tax may be misplaced bearing in mind the business asset exemption that may be available, and may in any event trigger capital gains tax liability. Think creatively with the client as to whether, if they are operating from their own freehold premises, there is any opportunity to deal with assets separately.

However, if a client is about to commence on the new venture or extend their business into a new direction proper consideration should be given to setting up a new

company with the majority shareholding vested in the next generation (or even two down) and protecting the position of the client by way of a longish-term service agreement.

Failing to make sensible long-term plans may create a problem for the surviving spouse or partner who may not know the deceased's wishes and maybe neither able nor willing to run the business once the founding proprietor has died. Suddenly what may have been an attractive viable business will become a liability unless proper plans are in place to deal with the ownership.

Consider with the client the appropriateness of either an appropriate shareholders or partnership agreement and try to disabuse the client of the belief that he will be able to muddle through. It is surprising how many small businesses operate blindly, believing that their company's memorandum and articles of association will address every possible cause of conflict.

Key employees

Helping the client to address succession issues is just one aspect; another is identifying the key members of management and ensuring that agreements are in place to secure their ongoing services, and taking appropriate steps to keep confidential information secret.

This is the case especially when dealing with older clients who believe that long service is equivalent to perpetual loyalty, without appreciating that people do move to take up new appointments. Sometimes convincing them of this is a challenge, but one which is an important obligation, particularly where, for example, a business

is heavily reliant upon one employee who may have crucial knowledge about the client's computer system, website or an area of know-how. This is quite common where someone has been running a business for an appreciable time and has only recently started adopting new technology and may not realise how central it has become to the business.

Similarly, a small business may quickly get out of its comfort zone quite inadvertently once it starts to engage in business activities outside of its core area of activity. I recently advised a well-known hairdresser who had licensed his hair care product range through a contract-filler and suddenly found himself in the invidious position that the person concerned had manipulated matters and seemingly acquired the client's long-standing trademark rights.

It is crucial to maintain a regular dialogue with commercial clients to ensure that they discuss with you their future plans rather than the recently concluded deals!

Inevitably, accountants have the 'inside track' in that they tend to have the opportunity to carry out an annual review of a client's business affairs when they finalise their annual accounts, and perhaps this is another reason to ensure that one does not accept a passive role when acting for the smaller business.

It highlights the need for practitioners to take an active and constructive role in advising business clients, otherwise, like Audrey and David in *Coronation Street*, they will find themselves involved in a fierce row that is likely to destroy family unity entirely when proper documentation could have easily avoided the problem arising in the first place.



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