station financial (wales):
Independent Financial Advisers

Case study

Solicitors and financial planners working together

1. A typical family business

Background

Kenneth successfully runs a family business that he and his brother inherited from his late father. Kenneth owns 80% of the company shares and he is the primary business generator for the business. His brother, Anthony owns the remaining 20% and is employed by the company on a part-time basis.

Kenneth (aged 56) is married to Rosemary (aged 46) and they have 2 children aged 11 and 20. They own a number of other assets, some jointly. Their overall wealth currently exceeds the inheritance tax threshold by some margin, even without the company shares because the shares qualify for a full inheritance tax exemption.

Kenneth and Rosemary put in place a Will when their children were very small so their priority at that time was to make sure that guardians were in place for the children. They opted for a simple Will, gifting all assets to the surviving spouse. Kenneth hadn't inherited the shares at that time, so he didn't need to think about the fact that the wording of the Will meant that the business shares would be passed to Rosemary.

Kenneth and Rosemary enjoy a high living standard; they draw high income from the business because Kenneth has not generally favoured funding a pension.

Concerns

Kenneth is worried because Rosemary will inherit the shares. He wants to makes sure his family inherit the value of the business. However, Rosemary would have no interest in running the business after Kenneth's death and it's very unlikely that she and Anthony would share a vision for the future of the business. Simply transferring the 80% shareholding to Rosemary on Kenneth's death is unlikely to meet anyone's objectives or contribute to a successful business in the long term.

Kenneth also wants to make sure that his children's legacy is protected. If Rosemary were to remarry after his death, he doesn't want the value from his father's business, or their other wealth, to be transferred to any future partner of Rosemary's.

Rosemary is concerned to make sure that she and the children can maintain their current standard of living after Kenneth's death. She would not want to spend the value of Kenneth's company shares. She would not want to start running the business.

2. The issues

Kenneth and Rosemary need to consider:

Creating a trust to control the division and transfer of the company shares, either by Will or by lifetime trust planning;

Creating flexible wills to ensure that the survivor on first death has the ability to determine their financial need and select the assets that would enable those needs to be met;

Powers of Attorney to assist with the control and protection of their individual wealth should either of them lose their mental capacity at any stage, even if temporarily;

Life assurance to make sure their expenditure needs are met. If Kenneth were to die, a drop in the standard of living would currently be inevitable, because Kenneth has very little pension provision and the business might struggle to pay Rosemary, having just lost its key earner.

We recommend life assurance for Kenneth to meet those needs, until the children and Rosemary no longer depend upon his income.

Kenneth and Anthony should also consider:

Implementing an agreed business succession plan, to determine what will happen on the death of either of them.

Working without a plan potentially threatens the long-term stability and profitability of the company;

Powers of Attorney should either of them be unable to fulfil their respective business roles because of incapacity;

Keyman and Share Protection Insurance options to cover the possibility of either of them not being able to fulfil their respective roles or to enable the company to buy back shares from their estate when they die. How long could the business afford to pay either of them, without their day-to-day contribution to the business?

3. Action plans

It is clear that immediate action is needed. If Kenneth were to die without taking any action, here are the risks:

- The business fails and loses its value to his family and Anthony
- Rosemary and the children face a substantial drop in their standard of living.
- If Rosemary decides to remarry it may mean that Kenneth's wish to preserve the children's legacy is overlooked.

The good news is that Kenneth and Rosemary can easily meet their objectives with Will planning, business planning and financial planning. Here you see what we changed, with planning. Now, if either Kenneth or Rosemary dies or they both die, their Will and trust ensure that:

- Rosemary benefits financially from the value of the shares, without needing to run the business with Anthony
- Anthony assumes control of the business
- Rosemary has full access to whatever funds she needs
- Should Rosemary remarry later, the assets she inherited are ring-fenced so the children benefit from them

If either Kenneth or Rosemary become unable to manage their affairs:

- The power of attorney appoints their chosen attorneys to make decisions on their behalf
- If either Kenneth or Anthony become unable to manage the business:
- The power of attorney appoints their chosen attorneys to make decisions on their behalf.

By undertaking a financial review with cash flow modelling Kenneth and Rosemary can:

- Make the most of their earnings
- Ensure they can maintain a reasonable standard of living in retirement
- Make sure their children are protected from inheritance tax
- Arrange the life assurance they need to protect the family's standard of living

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