



The Law Society

Family business succession: how to advise your clients

Howard Hackney
Howard Hackney LLP

Phil Whitehurst
DTM Legal LLP

11 July 2018

Representing, promoting and supporting solicitors



The Law Society

Howard Hackney

Howard escaped from Grant Thornton UK LLP in 2008 where he had been a partner for over 25 years to establish his own boutique practice. During his time at Grant Thornton he was head of professional practices for the North West and head of family businesses for the UK. At Grant Thornton he had a variety of roles including office Managing Partner, North West regional marketing partner and membership of the partners appointments panel. Howard specialises in advising mid market professional practices and family businesses. In 2002 he won the CBI's national award as "Best Business Adviser".

Howard's focus is providing "special projects" advice to mid market family businesses and professional practices where he can truly add value from his wealth of practical experience. Recent assignments have included family succession planning for four substantial caravan parks, succession planning, structuring and fund raising for an architects practice, strategic planning for a family business in the chemical distribution sector and the sale of a legal practice. He has a wealth of "war stories" from his long specialism in the subject.



howard hackney^{LLP}

www.howardhackney.co.uk

01925 211270

07968 059363

Representing, promoting and supporting solicitors



The Law Society

Phil Whitehurst

A corporate and commercial lawyer for over 20 years with experience gained at one of the regions heavyweight firms he is well known in the North West business community, advising clients ranging from large institutions owner managed and family businesses. He undertakes corporate transactional work advising on business acquisitions and disposals, private equity and venture capital investment, management buy outs and strategic joint ventures on the one hand, and on the other non transactional corporate and commercial work, covering such things as restructurings, shareholder agreements, employee share schemes, and commercial contracts. Included within this has been considerable experience of advising family business on the often sensitive issues regarding organisational structure and succession planning.

Recommended in 2017's Legal 500, Phil's long standing clients consider him as their trusted adviser who adds value not just in relation to a particular transaction but throughout the life cycle of their business. He prides himself on taking a no nonsense commercial approach that at all times has as its focus his client's strategic objectives.



www.dtmlegal.com

0151 321 0000

07710 709705

Representing, promoting and supporting solicitors



The Law Society

Topics covered

- The conceptual and theoretical background which makes family businesses different
- Why so few family businesses make it beyond the 3rd generation
- A set of guiding principles as a starting point for advice
- Typical governance documents
- How to approach the choice of who should provide management succession
- How to approach a specific fee paying “honest broke” assignment

Representing, promoting and supporting solicitors



The Law Society

Benefits

- An understanding of the issues involved
- How a multi-disciplinary team of accountants & lawyers can work together
- An insight into the professional conflict issues
- The importance of separating management from shareholding succession
- The role of a remuneration and dividend policy
- An appreciation of valuation issues and the creation of an internal market

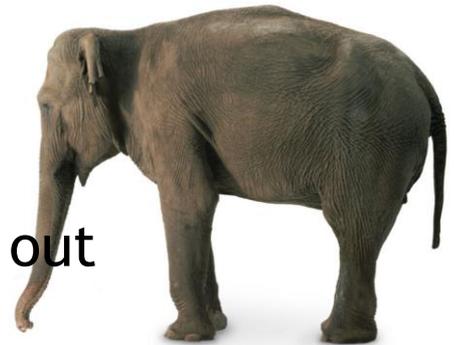
Representing, promoting and supporting solicitors



The Law Society

Working with others

- Objective is to create work - while meeting the client's objectives
- Lawyers to implement (and advise)
- Financial planners on creation of wealth outside the business especially pensions
- Fund managers to manage the external wealth
- Bankers to fund the arrangements - often cash out
- Surveyors to value property
- Accountants - happy long term client without a conflict



Representing, promoting and supporting solicitors



The Law Society

The conceptual background

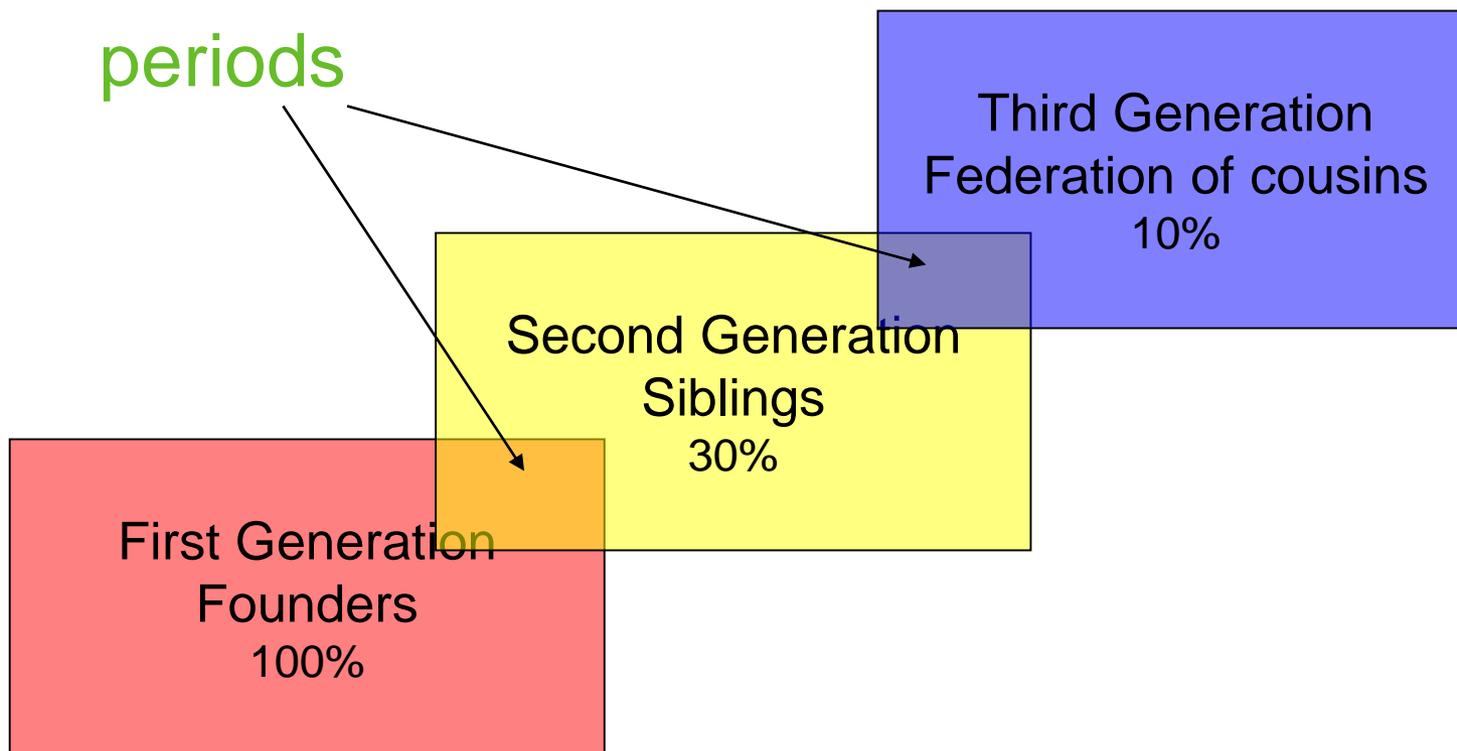
Representing, promoting and supporting solicitors



The Law Society

Transition

Transitional periods

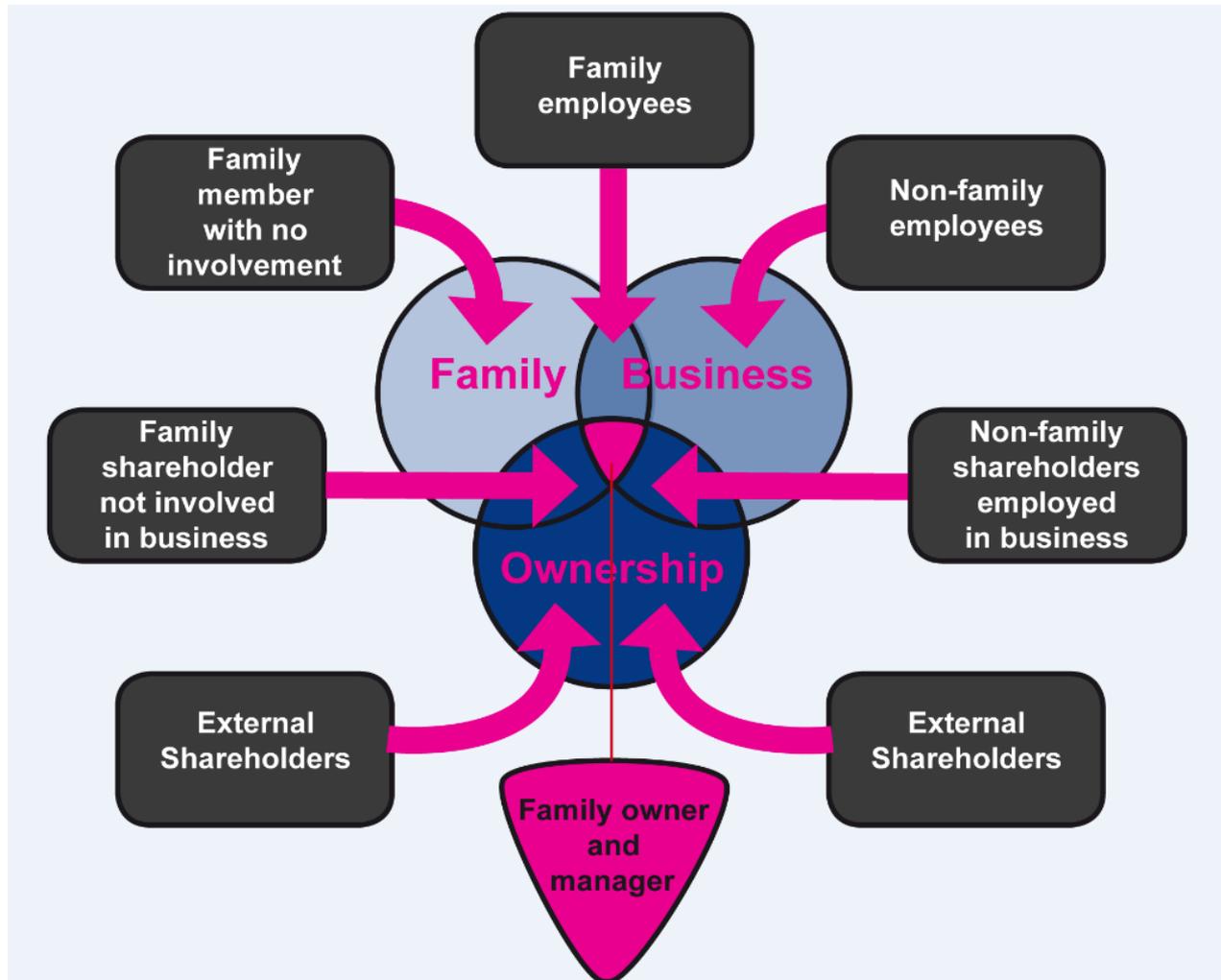


Representing, promoting and supporting solicitors



The Law Society

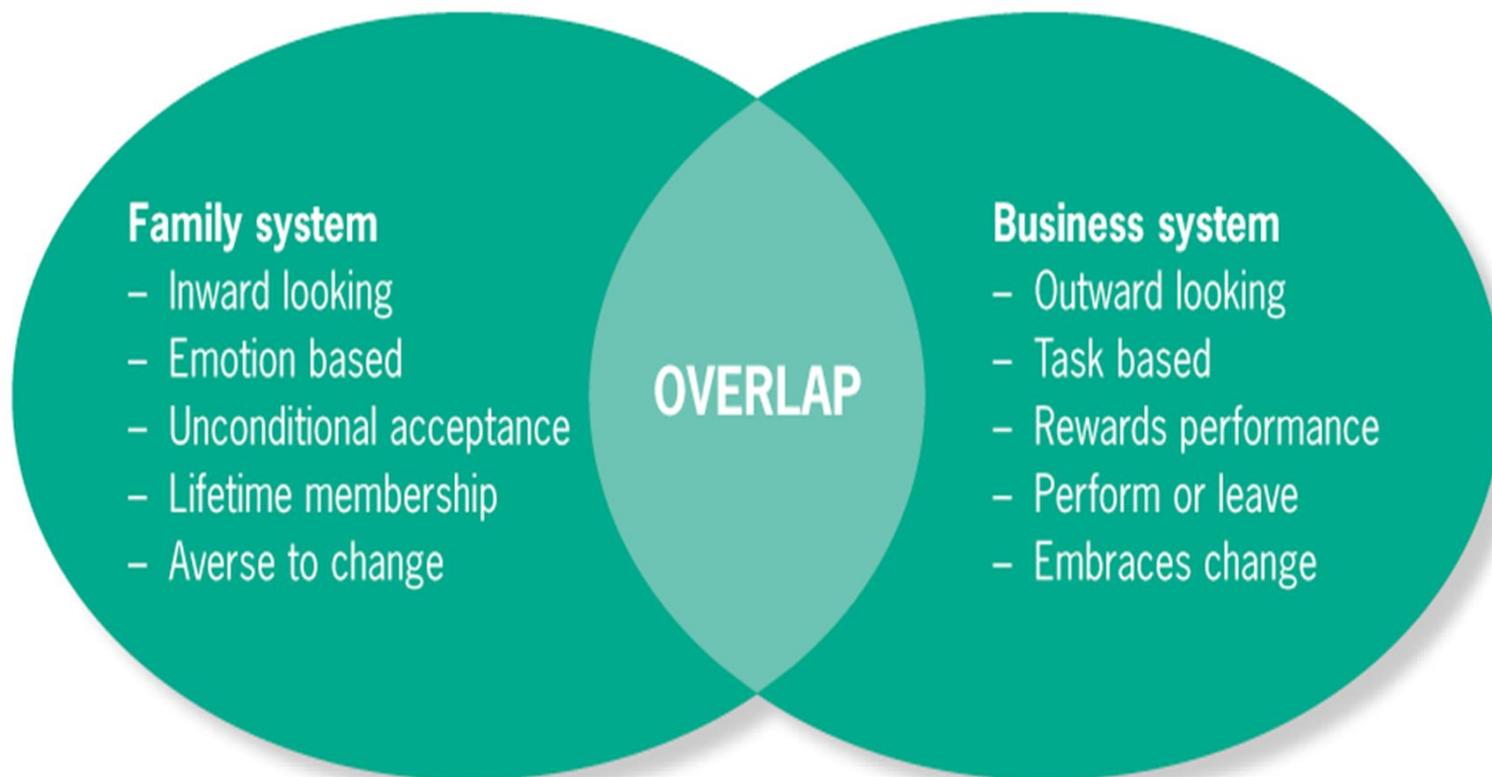
The “stakeholders”



Representing, promoting and supporting solicitors



The seeds of conflict



Representing, promoting and supporting solicitors



The Law Society

Personal experiences

- Overview
- Dinner party discussion
- Cousins in a farm and plant hire business



Representing, promoting and supporting solicitors



The Law Society

Guiding principles

Representing, promoting and supporting solicitors



The Law Society

Distinguish between

- Shareholding succession
- Management succession

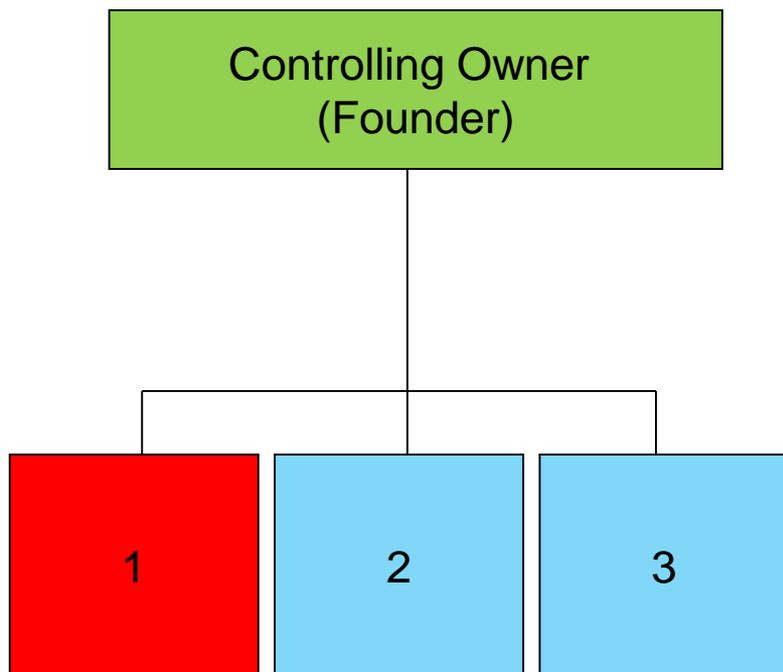
- Business issues
- Family issues



Representing, promoting and supporting solicitors



Transition to sibling partnership



Favoured by many parents who want harmony, equality and business survival through the family with more or less equal division amongst a group of siblings

BUT

Please avoid if possible

Some parameters

- Try to limit the spread of shareholding
- Try to give management voting control
- Use other wealth (or loan notes) to balance fairness between siblings
- Have independent wealth outside the business - but pensions & tax?
- Allows management to be able to risk passing on control



Representing, promoting and supporting solicitors



The Law Society

Avoiding shareholder disputes

- Keep shareholding base narrow
- Shareholders agreement and family constitution
- Have agreed valuation criteria - perhaps higher of
 - Net assets
 - Multiple of 4 to 8 X post tax profits
- Create an internal market for shares
- Agree a dividend policy
- Board appointment based on skills alone not shares

Representing, promoting and supporting solicitors



The Law Society

With a wide base of shareholders

- Family council
- Elected blood line representative to vote all blood line shares
- Role akin to an Institution
 - Approve a business plan
 - Agree Board appointments and bonus arrangements
 - Approve changes in dividend policy
 - Approve sale or purchase > agreed limits
 - Approve borrowing > agreed limits
- No involvement in management
- Family forum for extended family



Representing, promoting and supporting solicitors



The Law Society

Personal experiences

- Remuneration policy and allocating bonuses -1/3rd 1/3rd 1/3rd
- Owner in 70s with no children



Representing, promoting and supporting solicitors



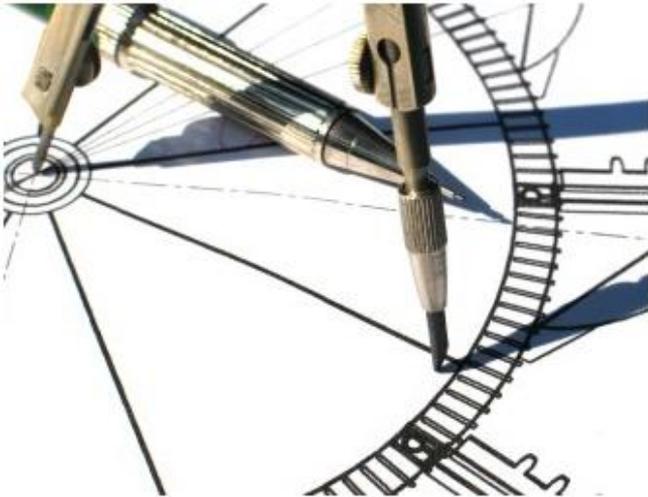
The Law Society

Choosing the right successor

Representing, promoting and supporting solicitors

Management attributes

- The desire
- The skills
- Support
- Motivation
- People
- Organisation
- Intellect
- Credibility
- Need for an equity stake?



Representing, promoting and supporting solicitors



The Law Society

Personal experiences

- Ships chandlers
- 4th generation facilities managers
- Professional practice



Representing, promoting and supporting solicitors



The Law Society

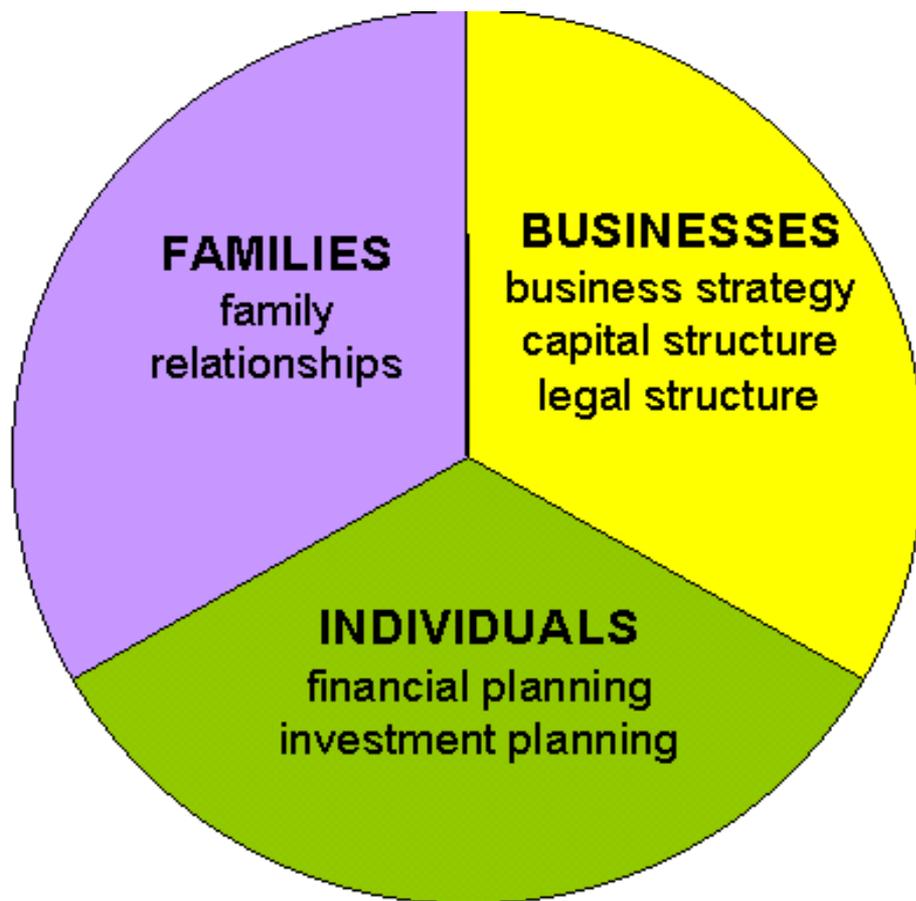
Reaching agreement

Representing, promoting and supporting solicitors



The Law Society

Holistic approach - range of disciplines



Representing, promoting and supporting solicitors

Addressing the issues & persuading the family

- Obtaining and crafting the assignment - conflict issues
- A formal fixed price assignment
 - Information gathering
 - Preparation of structured questionnaire
 - Confidential one to one interviews
 - Development of proposals
 - Testing of proposals
 - Family meeting
 - Set of agreed actions
- Implementation separately thereafter

Representing, promoting and supporting solicitors



The Law Society

The adviser

- People, people, people
- Independence which is paid for tends to be more highly valued
- Must never take sides - but can be robust
- Same facts often = different interpretation
- Never be surprised - “I have nothing now so I have nothing to lose” - “I am frightened of him”
- Accept you cannot resolve everything
- Try to meet all sides at first meeting
- Stress at outset the need for compromise



Representing, promoting and supporting solicitors



The Law Society

Thank you

Thank you for participating.

Representing, promoting and supporting solicitors



The Law Society

Professional Development Centre

The home of legal learning

The Law Society's Professional Development Centre is your free, enhanced eLearning portal that helps you to:

- Capture all your learning in one free online record
- Assess yourself against the SRA Competence Statement
- Create your own personal development plan
- Receive training suggestions tailored to your areas of interest and competence needs.



Available from November 2016.

Visit www.lawsociety.org.uk/professional-development-centre for more information.

Representing, promoting and supporting solicitors