



Independent Financial Advice

NEWS AND ADVICE FROM BIRKETT LONG

Is your business prepared?

Most have not considered, or are not aware, that they can insure themselves and key personnel within their business

Busy running your business, and focused on the needs of others?

Too busy to put their own personal and financial affairs in order

Why a business needs shareholders' agreements

Plan for the future and protect your position as a shareholder

Is your business prepared?

Andrew Carnegie, the American industrialist and philanthropist, once said “**men and women, not machines, are the real source of profits in any business**”.

Interestingly, whilst business owners insure their equipment, buildings and cars, most have not considered, or are not aware, that they can insure themselves and key personnel within their business against death and critical illness. The proceeds from such a policy could help the business continue trading, if the worst were to happen.

According to research from Legal & General, if a key person died or became critically ill, four out of ten businesses would cease trading within one year. Despite the risks, it is smaller companies that are least likely to have business protection insurance in place, and yet they are the very businesses who may be in most need of this type of

cover. There are various types of business protection insurance available: business loan protection, share protection and key person protection. It is important to seek advice from a financial adviser who specialises in business protection to make sure you get the correct cover for your business requirements. For this article I am going to focus on share protection.

When considering share protection, it is essential that the company has a shareholder agreement in place, which Tim Field refers to overleaf.

What is shareholder protection?

Shareholder protection is an insurance that pays out on death and can include critical illness cover. It pays out a lump sum to enable the remaining business owners to buy back shares. Each owner takes out a life assurance policy equal to the value of their shares

You may be one of the many business owners/leaders we come across who are too busy to put their own personal and financial affairs in order. Failure to do so will probably cause complications in the future and may also result in you paying more inheritance tax (IHT).

Busy running your business, and focused on the needs of others?

Succession planning is key to the effectiveness and sustainability of any business, big or small. The first and essential step is to have a will in place. This ensures that the people you wish to benefit from your estate do so and that the people who you wish to administer

your estate do so. Preparing a will also allows you to fully utilise the tax planning opportunities there are, such as business property relief (BPR).

Estates are subject to IHT of 40% on anything over the nil rate band

in the business, it is written in trust, often via a cross option agreement, for the benefit of the other business owners. The cost of the insurance will vary between the owners, depending upon their age, health and other factors.

A share purchase agreement will be signed, which is a legal document detailing how the shares of the business can be bought and sold. If one of the business owners dies or is diagnosed with a critical illness the insurance policy pays out, providing sufficient funds for the other owners to buy the remaining shares.

Business owners should also consider their wills. A discretionary trust is an invaluable tool under a will for business owners, which Tim Ogle refers to below.

Legal & General's research reveals that the top reasons for businesses not having this protection are:

- 32% of business owners have not heard of it;
- 31% have not got round to it; and
- 28% have deemed it too expensive.

With the possibility that a business could fail within a year of the death of a key person/business owner, can this cover be ignored?

It is important for your business to carry out an audit from time to time to make sure you have all your legal agreements and insurances in place, and that includes insuring **YOU**.

At Birkett Long we offer joined up advice from our independent financial advisers and solicitors regarding your business arrangements.

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and residence nil rate band (currently) of £325,000 and £100,000. In addition, BPR provides relief from IHT on the transfer on death of 'relevant business property' at either 100% or 50%; such property includes a business or a share in a business and shares in unlisted trading companies. Failing to prepare a will, meaning that your business and personal assets pass under the intestacy provisions, may mean that such relief is wasted.

The preparation of a will would also enable you to consider the use of a discretionary trust, whereby the legal title to your business assets would pass to chosen trustees, but who are to run the trust for the benefit of your chosen beneficiaries. Depending on your business structure, and the terms of the articles of association or partnership agreement, your trustees

could then have a say in the running of your business affairs in the immediate aftermath of your death, perhaps for a limited period of time. This might be preferable to passing your business assets on to family members who might not be best placed at that time to receive them, depending on their age or circumstances. It might provide welcome flexibility at a time of uncertainty and need.

The simple step of preparing a will can ensure that the business you have worked so hard to build continues on after your death, in a way that you would wish, and continues to provide for your family members after your death.



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Why a business needs

shareholders' agreements

Often when going into business the last thing that people think about is regulating the relationship between themselves. Invariably, the parties start out as friends, focused on the success of the company and not how their relationship should be managed.

Unfortunately, many limited companies are simply incorporated with model articles, a basic set of rules which do not provide any assistance on how to deal with disputes or provide necessary protections to shareholders. At the outset, often, little consideration is given to exit strategies, how disputes may be resolved and possible tax planning.

So, how can you plan for the future and protect your position as a shareholder? A good place to start is by having a shareholders' agreement drafted. They can provide clarity for shareholders and set out such things as:

- Who should have a right to be a director;
- To whom shares can be transferred and in what circumstances;
- Limits on spending by the company without shareholder approval;
- What will happen in the event of a dispute;
- A dividend policy; and
- Cross option agreements.

Cross options can be a really good way to secure the future ownership of a company in the event of death of one of the shareholders. The proceeds of life policies taken out by the shareholders can be used to purchase the deceased's shares. This provides the deceased's family with an appropriate payment for the shares and allows the surviving shareholders to continue to run the company.

Shareholders' agreements can be tailored to the specific circumstances and concerns of shareholders. Whilst it is beneficial to draft a shareholders' agreement when a company is incorporated, it is never too late, and even if one is agreed, it should be reviewed to ensure it still reflects the parties wishes.

Birkett Long has vast experience in drafting shareholders' agreements and would be pleased to discuss your specific requirements.

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