

Outside the business – preparing your case

Being on the outside of the business can be difficult. It can feel as though you sometimes get all of the anxiety and none of the satisfaction of being involved.

On divorce, the anxiety may well increase.

Although the business may have been central to family life, the subject of discussion and a major preoccupation, those on the outside often feel they know very little about what is really going on. When divorce happens, those feelings of powerlessness and ignorance move to centre stage.

This should not be the case. With good legal advice, it is possible to find out all that you need to about the business so you are well prepared to think about:

- whether you want to share the benefits that flow from the business;
- whether you want to share the ownership of the business – and potentially the decision making; and
- whether you prefer to remain on the outside, away from the rollercoaster of commercial life.

Preparing your case

When you are preparing your case with your solicitor, it helps to sit down and go through everything you know. You probably know more than you think!

Early on, it will help to think about these points:

- who else owns the business (your solicitor can help you by searching Companies House to find out);
- who are the most influential people in the business – it does not have to be the owners – for example, they may have finance directors who call the shots;
- have there been many changes in the business recently – for example, have new commercial properties been bought, or new equipment;
- what was the intention behind setting up the business – was it to produce a quick profit or to sell on retirement; and
- what sort of lifestyle do you have, and to what extent is that supported by the business?

If you go through these points with your solicitor, a picture may start to emerge as to the true wealth that lies within the business. Some businesses – many private businesses particularly – produce a lifestyle that could not be available if the business was sold.

It will help your solicitor to “get a feel” for what is happening in the background.

What is your attitude to the business?

In the negotiations about the business – or when the business is the subject of court proceedings – you will need to think carefully about what you want from it. For example, different approaches to the business will colour what you are asking the court to do, or what settlement you want to achieve.

- Do you want an income stream and, if so, do you want the shares themselves which produce a dividend or are you happy to receive maintenance (you will lose maintenance if you remarry)?
- Do you want to share the ownership of the business so you can get some of the sale proceeds if it is eventually sold?

- Do you want to pass the business on to the next generation, perhaps to your children – and if so is this realistic from your financial point of view?

Although a single joint expert may value the business on behalf of the court, you may wish to speak to an accountant of your own. It is worth involving your solicitor in these discussions, to see which approach is best to take.

A separate accountant may be able to look at the business accounts and assess what your best options are. Equally, it can be helpful to know, for example, that it is not worth going for ownership because the business is doing badly.

This is a highly specialised area of law. It is important to take legal advice from somebody who is experienced in handling these issues.

Litigate or collaborate

Just because a business is involved does not mean that it has to be an all-out fight through the court.

In the section of the website called [approaches](#), we have set out information about collaborative law. This approach is particularly helpful where businesses are involved. Discussing these matters face to face – assuming your spouse is prepared to – can save a lot of the unpleasantness and uncertainty of court proceedings.