



Governance in the Family Business

SHARING FAMILY BUSINESS INSIGHTS

FOREWORD BY JULIETTE JOHNSON



The Courts Prize for Family Business, which ran from 2005 to 2010, recognised exceptional success in England and Wales. Over 300 businesses entered and ranged in size from turnover of less than \$1 million to well in excess of \$100 million.

The family's relationship with the business varies from one entrant to another. Younger and smaller businesses tend to be both owned and managed by family members. In larger and older businesses, families are more likely to have delegated management to non-family.

Some entrants are first generation businesses; others are centuries old. One entrant indicated 19 generations of continuous family involvement in the business.

Some entrants are household names and have been keen to play leading roles in their communities. Others – including some very large businesses – are more introverted.

Entrants also demonstrate a wide range of attitudes to business. Some are ambitious for growth, while others focus on sustainability and passing the business on from one generation to the next.

But to a great extent all entrants face similar challenges. This is why we believe family businesses can benefit from the data we have collected.

This is the second report that shares this learning. We're proud to be at the leading edge in family business thinking and collaboration.

We are extremely grateful to those who took part in the Courts Prize. Our particular thanks go to Jonathan Neame, Andrew Wares, Ivor and Gilad Trefenbrun and Nicholas Oughtred for sharing their experiences with us.

Thanks also to Rupert Merson, Adjunct Associate Professor of Strategy and Entrepreneurship at London Business School, and Paul Andrews, Family Business United, for their help in compiling this report.

If you'd like to discuss any of the themes, we would be delighted to hear from you.

Juliette Johnson | *Executive Director,
Family Business Services,
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KEY FINDINGS

Many governance structures are not designed with family businesses in mind. A family business looking to secure its future, needs to acknowledge the particular challenges created by family involvement. The data from the Courts Prize for Family Business highlights the following characteristics and challenges of family business governance.

Keeping the business in the family is a key concern for many family business owners.

For the majority of entrants, shares in the business are held in the family. This has implications around the transfer of shares and how to reward non-family members.

In terms of dividend payments, the majority of entrants who discussed their policy said that performance-related bonuses are paid before dividends, as long as the company can afford them.

Having the appropriate framework is important for getting the balance right.

Complex, multi-shareholder family businesses sometimes use a two-tier board structure to help govern the shareholder's' relationship with the business.

A responsible board plays a crucial role in driving the business forward.

Entrants' board size varies from just one to 22. Typically, larger entrants have boards of six to eight members.

The entrants' boards meet monthly, with some breaking in August and December.

Management succession is as important as ownership succession.

Families find it difficult to choose between siblings when allocating the top job. Shared roles can have significant impact on the business and the family if things do not progress well.

A significant number of the larger entrants expect the next generation to work in the outside world, to gain experience and credibility, before joining the family business.

It's tough at the top and essential to have the right people in place to manage the business.

Over 50% of larger entrants separate the roles of CEO and chairman. The roles are often taken by different generations of the family. This may suggest a family business has a different purpose in mind to that of the regulators.

Successful family businesses acknowledge that they do not have to go it alone.

25% of larger entrants have two or more non-executive directors on the board, although 62% did not have any.

Bringing it all together is fundamental.

About 30% of the larger entrants said they have a constitution or equivalent, or have plans to draft one soon.



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“We tend to deal with most business issues through the board and, as each of the significant family groupings has a board representative, it is their job to go back and discuss with their group of shareholders”

David McLevy Hill, *Chairman, Jarrold & Sons*

INTRODUCTION

This report considers the governance structures and practices of entrants to the Courts Prize for Family Businesses.

Governance provides a framework of rules and practices by which a board of directors ensures accountability, fairness and transparency in the firm's relationship with its stakeholders.

Regulators, including the Financial Services Authority (FSA) and the Financial Reporting Council (FRC), have been making recommendations and drafting codes about corporate governance in listed companies for decades. Family businesses have been taking governance seriously for centuries. Governance in the family business has to take account of one additional group of stakeholders – the family – and can therefore be complex.

In many ways, family businesses, with their overlapping family and business issues, are like PLCs – they are balancing the interests of management, business and shareholders. But the fact that family businesses have been worrying about governance for so long suggests that they have distinct challenges that require further thinking.

The most important of these include:

- Who should lead the business? Someone from the family or a professional from outside? Who should make the decision?
- Should a role in the family business be a birthright for family members? Should shares only be held by family members? Where do you draw the line? For example, do in-laws count?
- If non-family members don't own shares, how else should they be incentivised when working in the business?
- How should members of the family be held accountable for their performance?
- Should all branches of the family have the same access to opportunities in, and information about, the business?
- How should a family business manage ownership and management succession?
- How do you establish a dividend policy that addresses both the interests of the business and the needs of family members?
- Is the board balanced, with sufficient input from outside the business and the family?

Appropriate communication, planning and governance will address all of these challenges. The stakes are high. Ongoing research suggests that only 13% of family businesses make it to the third generation.

“We try and keep work at work and home at home.”

John Tordoff, CEO, JCT600 Ltd



| 01 | KEEPING THE BUSINESS IN THE FAMILY

Who should own what type of shares in a family business, and how should they be transferred?

Share ownership

For the majority of entrants, shares in the business are held in the family. Entrants discuss the following implications of this:

- How to transfer share ownership from one generation to the next
 - How to treat family members fairly – even if that doesn't mean equally
 - How to motivate and incentivise non-family executives
 - Whether shares should remain with those working in the business
- A number of entrants have no formal mechanisms to ensure shares are kept in the family, though most said they wanted to address this.

Older, multi-generational family businesses tend to have addressed the issue more formally. Some rely on pre-emption rights in their Articles of Association. This gives existing family shareholders the ability to keep shares in the family, or in equal proportions between branches of the family. Others have made formal provision for company share buy-back arrangements when family members want to sell shares.

Rewarding non-family members

Several entrants report that they have established different classes of share. Shares with voting rights are kept in the family, and non-voting shares are offered to other stakeholders. Such structures allow non-family executives to benefit from equity ownership.

Other businesses let non-family executives own shares in subsidiary companies, while the family retains control of the holding company. Some entrants choose to allow non-family members to own ordinary shares and have entered into complex trust-based structures to facilitate this.

A few entrants are listed companies, and therefore have more flexibility in their ability to reward key people with equity. The flip side of this is that they have to work even harder at maintaining 'significant influence' on behalf of the family.

Dividend policy

Dividend policy is influenced not just by a business's attitude to share ownership but also by its approach to reward and to non-family members.

Of the entrants who discussed their policy on dividends, many noted that family and non-family executives are treated in exactly the same way. A few entrants however told us that bonuses are only paid after sufficient provision has been made for the payment of dividends to shareholders (i.e. the family). Far more entrants said that performance-related bonuses are paid before dividends, as long as the company can afford them.

The Courts Perspective

“All family businesses need to address the issue of responsible ownership. Members of the next generation need to understand what is expected of them, the role they are undertaking as shareholders, and how this brings different responsibilities from the role of employee or indeed the role of family member. Everyone needs to be clear about who can own shares and what that means. A clearly defined and documented ownership and dividend policy can help avoid misunderstandings.”

Mark Evans

Executive Director, Courts Institute

Source of tension

Of course, dividend policy can cause tension between family members as well as between shareholders and management. For example, share-owning family members who work in the business may take a very different view of dividend payments to their relatives who own shares but don't work in the business. The former may favour cutting dividends to boost investment in the company. The latter, however, may want to see a better return on their investment. Indeed, they may suspect their cousins of overpaying themselves at the expense of a decent dividend.

CASE STUDY: SHEPHERD NEAME

Jonathan Neame was appointed CEO of master brewers Shepherd Neame in 2003. The company's share structure, however, dates back to the wishes of his great, great grandfather.

He designed the structure before the First World War with the intention of keeping share ownership within the family – and his philosophy was later enshrined in the company's Articles of Association.

Jonathan's forebear had four sons and six daughters. He assumed his sons would come into the company, and he made provision for his daughters to receive an annual income from the business.

Tragically, two sons died in the war and a third had other ambitions – leaving only one son active in the business.

This was all 90 years ago, and today the business has two classes of share. The 2p 'B' share carries – in effect – 50 times the voting rights of the £1 'A' share. The 'B' shares have restricted transfer rights, which keep them in control of the descendants of the son who survived the war.

The 'A' shares were originally allocated to all of Jonathan's great great grandfather's children, including the daughters – these were intended

to be much more easily tradable. In the 1970s, they were traded on the over the counter (OTC) market. When OTC was closed, Shepherd Neame couldn't list on AIM because it had two classes of share. More recently, their shares have been traded on OFEX and PLUS.

No new 'A' shares have been issued via these markets – but it does mean that the company is able to use equity to motivate employees. It also provides opportunities for a small number of external investors. Meanwhile, a total of 85% of the voting rights stay with the family.

The company's governance structure follows its share structure – which means its approach to governance is now more formally documented than before, as well as being more transparent than it used to be. The change was triggered in part by a family dispute several years ago – and the current governance arrangements go well beyond what's legally necessary.

Shepherd Neame's Articles of Association say the board must include two executive family members and two non-executive family members. Apart from this, all other directors are independent of the family.

For Jonathan, transparency and openness with shareholders is key to good governance.



“We have a meritocracy, not a heritocracy.”

John Ibbert, *Chairman, Bedfordshire Group plc*

| 02 | THE RIGHT FRAMEWORK

Formal channels of communication for managing family participation are crucial in family businesses.

Management, board and corporate

structures, together with clearly defined reporting lines, are vital components of effective family business governance. Some family businesses, particularly larger ones, also create structures to manage the relationship between the business and the family. These help improve communication and ensure that the expectations of all stakeholders are managed.

Corporate and divisional structures

From our entrants, it can be seen that established family businesses with an extended range of commercial activities often structure themselves as a number of separate business units or divisions. These are usually managed by a mix of family cousins and non-family professional managers. Elaborate governance structures can be created to supervise the operations of more complex businesses. These can include a hierarchy of companies and sub-groups, with operating boards, holding company boards and supervisory boards.

Family councils

A family council represents the interests of all generations and branches in a business-owning family. It works as a bridge between the board of directors and the shareholders. It can be a means for individual family members to influence the business's vision and culture without having too many shareholders in the boardroom.

For smaller families, the council may be made up of all the family shareholders. In complex, cousin-owned businesses, with large numbers of family shareholders, representatives of the various branches or generations of the family are often appointed.

As the business expands and the family becomes more dispersed, the family council will often switch its focus to communication, social, education and charity issues. A family council usually has no formal business authority – but it encourages the family to speak with one voice to the board and gives the board a clear channel to communicate with its shareholders.

Family assemblies

Particularly large family businesses may have family assemblies as well as councils. Assemblies give opportunities for wider family representation. One of the entrants has two family events a year which are attended by up to 120 family members. Another spoke of attaching a family shareholder meeting to the end of an AGM to encourage wider family discussion.

However, many of the larger entrants talk more about the informal ways the family meets. It is important that not too great a reliance is placed on these mechanisms or there is a risk that governance issues will not be properly addressed. One entrant notes that the family meets '7 days a week' for example through daily visits to the pub. However, this family business also reports that the company's top managers meet every month with an external consultant, suggesting that governance is not entirely an informal matter. Taking an informal approach may also lead to business discussions impacting on family time – and several entrants suggest this might indeed be the case.

The Courts Perspective

“All family businesses are different and their governance needs to reflect this. From defining values and vision to setting up a family council, the right structure depends on many factors – including the nature of the business, the degree of family involvement and the size of the family. It's important to find the right structure to meet both the needs of the family and the business.”

Chloe Elms, *Associate, Family Business Services, Courts Institute*

The Courts Perspective

“The purpose of the Board of Directors is to manage the business for the benefit of the shareholders, rather than dealing with family issues. Board positions should be awarded based on competence and merit rather than emotion, to ensure that the people who are appointed are the best for the business and of the highest calibre. Employing non-family management can bring a wealth of experience and ideas to the business which the family may not possess.”

Juliette Johnson,
*Executive Director, Family Business Services,
Courts Institute*

| 03 | A RESPONSIBLE BOARD

A board of directors has statutory responsibility for directing the business. It's where good governance starts.

From the information shared with us by entrants it's clear that there is an enormous range of practice when it comes to boards.

Board size

When a business gets more complex, the skills needed may exceed the capabilities of the founding family. It's inevitable then that more non-family members will occupy senior management roles. This will have implications for board structure and size.

Amongst the entrants to the Prize, board size varies from just one to 22. Typically, larger entrants have boards of six to eight members.

Frequency of meetings

The boards of the majority of entrants meet monthly, with some breaking in August and December. A very small number meet more frequently – either fortnightly or weekly.

Boards at other companies meet less frequently – such as quarterly, and more than one entrant reported meeting only once every six months. Several entrants said its board met 'rarely', but that its management team met weekly.

Two-tier structures

Complex, multi-shareholder family businesses sometimes use a two-tier board structure to help govern the shareholders' relationship with the business. Here an operating board reports to a 'supervisory' board. This approach is common in big businesses across Europe and in some jurisdictions it is mandatory.

This two-tier structure allows non-family managers to run the business from an operating board in the best interests of the shareholders.

They generally have free rein, with the exception of strategic decisions or matters of particular concern to the family. These may be reserved to a main board controlled by the family.

Separation of the main board from the operating board can be achieved in several ways. In some businesses, the main board is the board of the holding company – and the 'operating board' is the board of a subsidiary.

Other companies may have both boards within the same company – though in the UK only one will have the statutory responsibilities.

Many of the larger entrants work successfully with a hierarchy of boards and management committees.

CASE STUDY: WATES FAMILY HOLDINGS

The Wates Group is one of the UK's largest family-owned construction service and development companies. Andrew Wates is its third generation former chairman. He believes formal governance arrangements have played an important role in the successful development of the business.

“Our governance arrangements reflect our transition from being owner managers to being governing owners,” he says. For Andrew, good governance gives clarity and transparency to relationships between the family itself, and the family and Wates Group.

Wates Family Holdings arrangements are comprehensive – reflecting the age and complexity of the business. At the heart of the company's governance is its vision and values.

“Of course, PLCs take vision and values seriously nowadays too,” says Andrew, “but in family businesses, they are passed from generation to generation. The emphasis is on sustainability.”

The Wates Family Enterprise Implementation Plan has several key areas:

- A formal shareholders agreement is in place, establishing rights and responsibilities
- The Governing Owners Forum comprises five elected family shareholders, who look after matters that concern both the family and the business, including Wates Giving*. Members also sit as directors on the group board, where they act as fully independent non-executive directors, rather than as a group representing the family

- The group board also includes three non-family executive members and three non-family, non-executives. Ordinarily, the board is chaired by a member of the family and the role of CEO is held by a non-family director. However, at present the board and the company are led by a non-family executive chairman. One of this person's roles will be to develop a family chairman
- The Family Office supports the Forum with administration and resource

- The Family Council is where all family shareholders meet. It has no executive authority, but it allows future shareholders to be introduced to the family philosophy
- There's also a Board Charter that outlines the roles of board members, including family non-executives, and a blueprint of how the family and the group should work together

The company makes frequent use of specialist family business advisers, and Andrew values specialist organisations such as the Institute for Family Business and the Family Business Network. He says they give insight into how other family businesses have faced governance challenges.

“There are few rights and wrongs” he says. “Each family has to find the way that's right for them.”

* for more information on Wates involvement in local giving, see the Courts Local Giving Report 2011



The Courts Perspective

“Management succession is an area that many family businesses struggle with because it can mean making a choice between family and non-family members for key roles. Businesses that manage succession successfully plan to involve the next generation at an early age. They encourage their involvement and select the next leaders on merit – or they’re prepared to source non-family leaders where necessary.”

Juliette Johnson, Executive Director, Family Business Services, Courts Institute



The Courts Perspective

“Leading a family business can be a lonely and difficult role. The biggest challenge for leaders is satisfying the competing needs of the business and the family. Clear roles and responsibilities are key as are the right development plans to support individuals.”

Chloe Elms, Associate, Family Business Services, Courts Institute

| 04 | FUTURE LEADERS

Management succession is just as important as ownership succession.

Changing needs

When the leaders of a family business are looking for successors they will consider younger members of the family. But succession, even if kept in the family, is an opportunity for change. A chip off the old block isn't always the best solution. Businesses are constantly changing.

Running a business that has passed the early stages and reached sustainability requires a different set of skills from those demanded of the founders. A more mature business may need more discipline, process, control and analysis – and perhaps less gut feel; it needs more focus on bottom line than top line, and an ability to prioritise skills, capability and qualifications over instinct. It may need someone who can convert personal aspirations into corporate vision and commercial plans.

Therefore, successors, even if from the same family, will often have very different jobs from their predecessors; and, consequently need to be different sorts of individuals.

Facilitating succession

Many entrants highlighted succession as a key area of concern. For family businesses, it is particularly important to ensure that development plans, including experience, coaching and support mechanisms, are in place for the next generation. A significant number of the larger entrants said they expected the next generation to work in the outside world before they join the family business to gain experience and credibility.

A robust board structure can help make succession seamless. Some entrants report using the holding company board to involve the senior generation in making key decisions,

but allowing the next generation to manage the day-to-day business at operating board level.

What is clear from many entrants is that successful succession is a process rather than an event. It takes time and requires objectivity. It's important that family businesses start early and involve others. Non-executives can be particularly helpful in succession management.

| 05 | IT'S TOUGH AT THE TOP

The top role has been the focus of much corporate governance thinking in recent years.

Chairmen and chief executives

The separation of the roles of chief executive and chairman is a key element of the Corporate Governance Code for UK listed companies. Under this arrangement the chairman is responsible for leading the board whilst the chief executive is responsible for running the business. Although private family businesses are under no formal obligation to separate the roles, many entrants have thought hard about the definition of the most senior roles in the businesses.

More than half the larger entrants have separated the roles of CEO and chairman. However, the roles are often taken by different generations of the family, with a member of the first generation as chairman and a member of the second as chief executive. This suggests that, when separating the roles, a family business

has a different purpose in mind to that envisaged by the regulators and governance code makers.

Some entrants report that the father was in an “executive chairman” role, suggesting he has kept many of the responsibilities usually taken by the chief executive. Some entrants report having both an executive chairman and a chief executive or managing director, suggesting significant overlap between the roles, or perhaps an on-going process of succession from one generation to the next.

Other top roles

Some entrants differentiate between the roles of chief executive and managing director even though the terms are usually considered synonymous. Some have even more subtle variations, reflecting more complex family involvement. One entrant is led by two brothers as joint chief executives; another has two

brothers as joint chairmen, with a single non-family managing director reporting to them.

These structures possibly suggest that some families find it difficult to choose between siblings when allocating the top job. Shared roles could have a significant impact on the business and the family if things do not progress well.

Our review of the data shows a flexibility in the use of job titles and roles in family businesses. Titles ultimately don't matter. Effective governance happens when the right people are in the right roles with clearly defined decision-making responsibilities. What works for one family business won't necessarily work for another, and what works this year won't necessarily work next year.

| 06 | BRINGING IN OUTSIDE HELP

Making sure there is objectivity can be a challenge in a family business. Well-chosen non-executive directors can help achieve this.

Of the larger entrants, 62% did not seem to have any non-executive directors – though many of these say they have made alternative arrangements. One entrant has three ‘mentors’ who attend board meetings. Several companies refer to their use of outside ‘advisers’ on the board. In total, 23% of larger entrants have two or more non-executive directors on the board.

Objectivity and independence

Many entrants say their non-executive directors are useful in shaping strategy and providing a sounding board for the executives and family members.

Non-executive directors have no executive responsibility. This gives them an ability to stand back and consider the bigger picture.

A non-executive director from outside the family will also have the ability to be more objective with regard to family matters.

However, the data indicates that not all non-executives in family businesses are independent. For example, a non-executive director appointed by investors to monitor their investments or someone who has been involved in the business for a long time is less likely to be truly independent.

Data gathered from entrants also shows that it’s common for non-executive directors in family businesses to be family friends and long-standing professional advisers. And in some of the larger businesses that entered, family members have the non-executive seats on the board, leaving executive roles to non-family.

Non-executives who are members of the family, or who have had a long association with the family, will improve decision taking, but they cannot always be relied on for an entirely objective view.

When is a non-executive director not a non-executive?

Several entrants say they have given their non-executive directors important management roles within the business. This suggests that in some family businesses the role of non-executive is not sufficiently well understood. Although it is common for non-executive directors to take on occasional projects as consultants, these responsibilities mean they are not a non-executive. There is also a difference between a part time executive and a non-executive.

Mr Charles Sommer, *Non-Executive Director, World Transport Agency*

“I have experience in other businesses and companies, and I’m qualified as a chartered accountant. My role really is to question how and why we do things. It’s also to make sure there is a clear logic to what we do and that the values of the family are maintained.”

Mr Charles Sommer, *Non-Executive Director, World Transport Agency*



CASE STUDY: LINN PRODUCTS

Glasgow-based Linn Products have been at the cutting edge of audio technology since Ivor Tjefenbrun founded it in 1971. But it takes more than technology skills to keep the business at the forefront of the industry. In particular, Linn Products has learned the value of a well-structured board and the contribution of non-executive directors.

Ivor’s son, Gilad Tjefenbrun, joined the business on a full time basis in 2003 as Head of Research and Development. He moved to the role of Director of Engineering in 2005.

Father and son acknowledged from the outset that they were very different personalities, and that it would be better if Gilad never reported directly to his father.

However, in 2007 the company was facing difficulties and Ivor stepped back into the role of Managing Director to lead a turnaround. It was a stressful time for both father and son – but Gilad now sees that it was an invaluable experience to help him prepare for succession.

When they first began to consider the possibility of Gilad taking over from his father, they took advice which resulted in Gilad enrolling on Harvard Business School’s Owner/President Manager Program.

He attended a series of three-week education sessions in Boston from 2006-2008. Gilad came back convinced of the need to separate the needs of the family from the needs of the business. He was also aware of the important role non-executives might play in facilitating succession and running the business effectively.

Gilad became Managing Director in 2009. He is now a member of a board that is chaired by his father and has seats for the Finance Director and three non-executives. The non-executives were all known to Linn Products as customers or other business contacts.

“The non-executive directors and the way we use our board have formalised my business relationship with my father – which has helped safeguard our personal relationship, as well as ensure the business is run effectively,” says Gilad.

In the early days Ivor was tempted to dictate the board agenda. Now, however, he is part-time and not directly involved with operations.

The board agenda is a product of a calendar of activities agreed a year in advance and tied in with business planning and management cycles.

In consultation with Gilad, executive managers – including some who don’t have a seat on the board – bring items of significance to the board agenda.

“After our last management away day,” says Gilad, “members of the management team presented their findings and recommendations to the board.”

“When we first brought our board together there were perhaps inevitable questions about the non-executive directors, but everyone now appreciates the value they bring. I certainly appreciate how much they have benefitted the relationship between me and my father.”

| 07 | BRINGING IT ALL TOGETHER

Governance arrangements need documenting. The process of creating a family constitution, when done properly, can help safeguard the best interests of the business and the well-being of the family.

Family businesses that want to take governance seriously will often record their governance mechanisms in a formal document. Family businesses will use different names for this document: family charter, statement of intent, and value charter have all been used by entrants. Perhaps the most common label is ‘family constitution’.

- Even though family constitutions are rarely legally enforceable, their existence helps to foster clarity and reduce the potential for dispute. There is no standardised form for a family constitution, but comprehensive family constitutions include:
 - The family’s agreed long-term vision and goals for the business.
 - The family’s values and management philosophy.
 - Equity ownership policies, clarifying the rights and responsibilities of owners.
 - Rules governing how family members join and leave the business, and acquire and sell shares.
 - Rules about family employment, including reward, appraisals and reporting lines.
 - The relationship between the family shareholders and the board management succession.
 - Relationships within the family, including the responsibilities of family members towards each other, how communication is promoted, and how conflicts and differences are settled.

“The real value in creating a family constitution is in the process of discussion and reaching consensus, rather than the actual document produced. If they are established properly and regularly updated, constitutions can help to safeguard the best interests of the business as well as the family and they can add real value and direction for decades to come.”

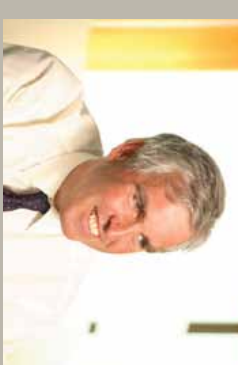
Juliette Johnson, Executive Director, Family Business Services, Courts Institute

The Courts Perspective

About 30% of the larger entrants said they have a constitution or equivalent, or have plans to draft them soon. Many other entrants have already considered the issues in a constitution and are in the process of documenting their conclusions. Failing to agree and sign off on areas that can cause conflict can expose family businesses to risk.

The constitution also needs to be regularly reviewed and updated as the family and business change; but creating a constitution in the first place sends a powerful message to stakeholders about how seriously the family is taking its governance; and that it is planning for success for many more generations.

CASE STUDY: WILLIAM JACKSON AND SON LTD



William Jackson and Son Ltd was founded in 1851 and is now beginning to involve the sixth generation of the family. The company takes governance very seriously, and the family’s structures are documented in their family constitution.

Their first family constitution was drafted in the 1990s, and the family is now putting the final touches to its fourth iteration. Does this mean they’ve struggled to get it right?

“Far from it,” says company chairman and family member Nicholas Oughtred.

“The business and the family have evolved and the constitution has to evolve too.”

William Jackson’s constitution covers both corporate and family governance matters. It describes all the elements in the governance structure – but it tries to leave some room for the exercise of judgement as it is not possible to predict every eventuality.

In addition to describing structural elements and setting out rules about share ownership and guidance on dividends, the document sets out key business values. William Jackson measures its values and keeps them fresh with the help of annual attitude surveys.

At the heart of the governance structure is the Family Steering Group (FSG) – their version of a Family Council. The FSG has seven members, comprising four from the older generation and three from the next.

The FSG elects its own chair. Its role is to make recommendations, and it has no decision-making authority. The company’s Group Board, which itself comprises three non-family executives, Nicholas as chairman, two independent non-executives and two family non-executives, is obliged by the constitution to consult the FSG

on pre-defined business matters. Nicholas is the only member of the family who currently has a full-time role in the business.

The FSG therefore has a key role linking the family with the business. Also sitting between the family and the business is the Charity Committee which includes both family and business members. There is also the Development Advisory Group (DAG) which is chaired by one of the independent non-executives and includes a human resources specialist, the chair of the FSG and Nicholas Oughtred.

The DAG helps support the personal development of family members whether or not they are looking forward to a role in the business. It reports both to the Group Board and to the Family Meeting, a formal assembly of all family members over the age of eighteen, which meets four times a year to allow all family members to keep up to date with business matters.

The FSG also organises family socials and factory visits for all family members, regardless of age. “These gatherings are a good way of involving generation six,” says Nicholas.

What has the family learned as their constitution has evolved? “Perhaps in the early days our constitution was a bit too forbidding,” says Nicholas. “It contained too many ‘Thou shalt nots’. In the latest version we have sought to be more positive and encouraging.”

The document is referred to frequently. “The board has carefully considered the implications of the constitution so that they understand the family’s intentions,” says Nicholas. “As for me, the constitution sits in my top drawer, and I’m often referring to it when there are important decisions to take.”

CONCLUSIONS AND RECOMMENDATIONS

Every family business is unique but the findings highlight a number of common themes that can be addressed by effective governance.

- A family business considering introducing or reviewing governance in their business can learn from other companies, such as entrants to the Courts Prize for Family Business. Key messages from entrants include:
 - Governance arrangements are important in family businesses where there are family, business and ownership interests to manage and reconcile. Good governance creates clarity and ensures that expectations are managed.
 - The governance of the business and the governance of the family both need to be considered and planned for.
 - Particular care needs to be taken when using equity or equity-based mechanisms to reward non-family executives in family businesses.
 - Non-executive directors can play an important role in the family business, particularly in planning for succession.
- Succession, for both ownership and management, is one of the biggest challenges faced by any family business. It helps if succession is recognised as a process and not an event. Early arrangements need to be in place to support effective succession and mitigate the risks.
 - The roles of chairman and chief executive need careful definition. Good governance starts with a well structured and balanced board.
 - Governance arrangements can work informally but will be more robust and reliable when they have come about as a result of a rigorous process and discussion and where the principles have been agreed and documented.
 - The development of effective governance mechanisms needs careful planning and wide consultation.

KEY QUESTIONS

Here are some key questions to ask yourself about governance in your family business.

- What type of board does your business need to take it forward in line with your family's vision?
- Is there a clear mandate from the shareholders to the board of directors?
- How is the board accountable to the shareholders?
- Is there clear separation between ownership and management?
- How often does your family meet to discuss family business issues? Where and how are difficult issues discussed and resolved?
- How is information about the family business disseminated within the family?
- How does your family plan to introduce the next generation to the business and to the role of shareholder?
- Should you introduce a family constitution to your business?
- Could establishing a family council be useful for your business and family?
- Does your business have the right people and does it need to attract people from outside?
- What are the rules about appointing executive and non-executive directors to your business?
- How should your family attract, retain and motivate non-family executives?

THE COTTTS PRIZE FOR FAMILY BUSINESS

Judged by a panel of independent experts and chaired by Roger Pedder, former chairman of C & J Clark Ltd (Clarks Shoes), the Courts Prize for Family Business looked at what makes family-run businesses successful.

The competition aimed to:

- Acknowledge best practice in family governance, business governance and social responsibility from family businesses.
- Identify and raise awareness of the economic and social benefits of family businesses, and the challenges they face.
- To be eligible for nomination for the Courts Prize for Family Business, businesses had to:
 - Have their headquarters in England or Wales.
 - Be wholly or mainly carrying on a trading activity.
 - Be companies where the family has significant influence over the company.
 - Consider themselves a family business, though family members need not be involved in the management of the firm.
 - Have been profitable in at least two of the last three years.

The 300 entrants were assessed against a set of detailed criteria under the following headings:

Corporate governance

Family governance

Business strategy and financial planning

Corporate social responsibility and philanthropy

Successful entrants all participated in structured interviews conducted by independent facilitators, as well as providing detailed descriptions of the family and the business, and key financial information.

The Courts Prize for Family Business did not set out with the purpose of collecting data for academic research; nonetheless it has succeeded in generating a huge amount of qualitative and quantitative data about family businesses in the UK.

PREVIOUS WINNERS

2009/10 National Winners

Turnover category £25 million+
Shepherd Neame Limited

Turnover category £5-25million
M I Dickson Limited

2008/09 National Winners

Turnover category £25 million+
Nelson and Russell Holdings Limited

Turnover category £5-25 million
Norbar Torque Tools Limited

Turnover category £1-5 million
Aliscooper Limited

2007/08 National Winners

Turnover category £25 million+
Caretech Holdings Plc

Turnover category £5-25 million
Jesse Brough Metals International Ltd

Turnover category £1-5 million
The Hotel and Extreme Academy Ltd
Waregate Bay

2006/07 National Winners

Turnover category £25 million+
Wates Group

Turnover category £5-25 million
BCMS Corporate

Turnover category £1-5 million
Active Assistance

2005/06 National Winners

Turnover category £50 million+
Peremps Ltd

Turnover category £5-50 million
English Lakes Hotels Limited

Turnover category £1-5 million
M Newitt and Sons Limited

COURTTS SERVICES FOR FAMILY BUSINESS OWNERS

Whatever your business, whatever challenges it faces, our family business team will provide you with a bespoke selection of services, advice and support.

Helping you plan for the future

The key to a healthy family business is careful planning and open communication. Successful family businesses must have a clearly defined vision which the whole family buys into, live their values and make time to understand their family's concerns and the needs of individuals.

In addition, success often means having a process for managing family as well as business risks. Most important, is not to see the business caught completely off-guard by something unexpected like the sudden death of a business leader or disagreement over who is entitled to own shares or can work in the business. Agreeing how issues will be managed before they arise can help to ensure that the family focuses on prevention and long term harmony, rather than cure.

Our team is here to help.

Helping you tackle the issues you face

Working with you and your family, we can facilitate and provide neutral, independent advice to help you plan for the future and protect the interests of both the family and the business. This could include advice in areas such as:

- articulating the family's vision and values
- succession planning
- writing a family constitution
- professionalising the family business
- recruiting non-executive directors
- next-generation training and development
- managing family conflict
- developing family communication
- developing family governance
- developing a philanthropy strategy and setting up a family foundation

Building the family business community

Our family business team regularly publish articles and materials on matters of interest to the family business sector. Please take a look at the family business section on www.courtts.com to see the latest publications. You can also subscribe to be sent our latest family business newsletter:

Meeting other like-minded family business owners can also be a great source of support and insight. With this in mind, we run forums to give family business owners an opportunity to learn from each other's experiences and hear from keynote speakers across a range of subjects.

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Disclaimer:

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