

WELCOME TO THE AUGUST 2021 EDITION OF

The Family Business

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Welcome to the August 2021 edition of *The Family Business*, our newsletter for those working within family-owned businesses.



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A warm welcome to this latest edition of *The Family Business*.

With the passing of 'Freedom Day' and the anticipation of returning to some sense of normalcy, we remain available to provide support to businesses adjusting to the new challenges. We hope that for many of you, the change has created new opportunities.

In this edition, we are pleased to open with exciting news from the Family Business of the Year Awards. Presented in association with Birketts, five winners from the East and East Anglia region were recognised at [the virtual ceremony](#), with the vibrant selection of family businesses in attendance demonstrating the resilience of the family business sector in the wake of a tough year.

Next, [Emma Brunning](#) from Birketts' [Family Team](#) examines how divorce can impact a family business, especially when one or both partners are shareholders, by throwing light on how assets are treated by the court.

Finally, [Liz Stevens](#) from Birketts' [Employment Team](#) examines the often overlooked restrictions imposed on the employment of children, which are applicable regardless of whether the child you employ is related to you or not. Liz highlights key points for family businesses to be aware of, including the need for a work permit for school age children.

As always, we welcome questions that you might have, or if there are issues on which you would like us to comment please do get in touch. Our aim is to provide a regular newsletter on the issues that matter to Family Owned Businesses but please register if you wish to receive news, legal updates and seminar information on any other areas that are of interest to you. If you would like to see news stories as they happen, please follow us on [LinkedIn](#), [Twitter](#) and [Facebook](#).

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The awards serve as a fantastic reminder of the quality of family businesses in the East and East Anglia region.

Five family businesses from the region recognised

Family Business United, in association with Birketts, is delighted to announce five winners from the East & East Anglia region at this year's Family Business of the Year Awards which, due to the current pandemic, took place in a virtual ceremony. [Watch the show here.](#)

Caribbean Blinds UK Ltd, based in Sudbury, was crowned overall winner of the East & East Anglia Family Business of the Year, also being recognised on the national stage as the overall winners of the Homes & Gardens title. The Cambridge Juice Company was voted as the East & East Anglia People's Choice. The region also produced this year's national winner for Entrepreneurship, with Milly J Shoes taking the top spot, and Leadership Through Data triumphant in the Financial and Professional Services category.

The awards, which were launched in 2012 by Family Business United, are a celebration of the family business sector and have become a real highlight in the family business calendar, seeking to celebrate the strengths and depth of expertise of family firms across the UK.

Paul Andrews, Founder and Managing Director of Family Business United, explains: “We were delighted to pull together such a vibrant selection of family businesses for the 2020 awards, some that have succeeded for numerous generations and continue to thrive, and others that are relatively young but have great values at the heart of what they do. Given the challenges associated with running a business throughout the pandemic it was fantastic to see so many family firms adopting new ways of working, pivoting their businesses and developing new routes to market. It has not been easy but the family business sector has shown its resilience and continues to be at the fore as the economy reopens and bounces back. The expert panel of judges were really impressed with the way that the winners continue to evolve, building on strong values, their response to changing market conditions, good governance and dedication to the people in the businesses.”

[Alexandra Nelson](#), Partner and Head of Family Business Services at Birketts, added: “The awards serve as a fantastic reminder of the quality of family businesses in the East and East Anglia region. The calibre of entrants was extremely strong but the region's overall winner, Caribbean Blinds UK Ltd, represents a great British family firm that truly deserve all the plaudits that winning this award brings.”



Pictured: Naomi and Alex Tarry (above) and a photo of the Best of Suffolk Team (below)

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My sincere thanks to Alex Nelson and her team for their diligent work, high-quality service and taking the time to understand our specific circumstances.”

Birketts advises Suffolk holiday cottage firm on its sale to national holiday letting agency

Birketts has supported Best of Suffolk, an award-winning holiday cottage business, on its sale to Sykes Holiday Cottages.

Based in the village of Badingham, Best of Suffolk founders, husband and wife Alex and Naomi Tarry, started the business in 2006 after spotting a demand for unique self-catering holiday lettings in the county. The pair grew their business from six cottages to more than 400 in their 15 years at the helm but are now stepping back from Best of Suffolk.

Sykes Holiday Cottages have more than 25 years of experience in the industry and more than 14,000 properties available as holiday lettings across the UK. Previously acquiring other businesses based in idyllic areas of the UK such as Devon, Cornwall, The Cotswolds and the Lake District, they now host more than a million holidaymakers every year. Best of Suffolk will run as a sister agency and their headquarters will remain in Suffolk.

Partner [Alex Nelson \(Corporate\)](#) led the Birketts team advising Best of Suffolk, with support from Solicitor [Sarah Branwhite \(Corporate\)](#), Legal Director [Stacy Aspden \(Commercial Property\)](#), Partner [Catherine Johnson \(Employment\)](#), and Senior Associate [John Kahn \(Tax\)](#).

Speaking after the acquisition, Partner Alex Nelson said: “Alex and Naomi were a delight to work with and I wish them the very best moving forwards. Best of Suffolk is a fantastic business with a unique collection of more than 400 properties and we very much look forward to seeing its continued success alongside Sykes.”

Alex Tarry added: “My sincere thanks to Alex Nelson and her team for their diligent work, high-quality service and taking the time to understand our specific circumstances. Their attention to detail made us confident the difficult decision to step back from the company was the right one at the right time. Our team, Naomi and myself are all immensely proud of the work we have done to make Best of Suffolk a leading holiday lettings provider in the county. We know our customers will enjoy the same wonderful properties and exemplary customer service, and that the future of Best of Suffolk is sure to be bright thanks to our new partnership with Sykes.”



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Divorce and the family business

Dealing with a divorce is stressful at the best of times, but matters can become very complicated where one or both of the spouses are shareholders in a [family company](#).

The divorce can cause uncertainty amongst the wider family members and cause instability for the company. A basic understanding of how the company shares could be treated within the divorce can help the family to pull together to protect the company.

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Generally, the net value (after deducting notional tax and costs of sale as if there were to be a disposal) of all assets are ascertained, regardless of how or when they were acquired.

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In the context of a family business, the court can order sale or transfer of shares.

How are assets treated in divorce?

The shareholding will be one of the assets of the marriage. They can and often do form part of the assets to be divided between the couple. Generally, the net value (after deducting notional tax and costs of sale as if there were to be a disposal) of all assets are ascertained, regardless of how or when they were acquired. The court will then consider how best to divide the global value to achieve its view of ‘fairness’.

How is the shareholding valued?

Depending on the nature of the Company, there is often a ‘single joint expert’ valuation of the shares. Whilst the view of the company accountant may be helpful, the non-shareholder spouse will often require an independent valuation due to the subjective nature of valuations. If the parties cannot agree who should value the company shares, the court can make orders specifying whether a single joint expert should be appointed, identify them and specify the nature of the report required. The valuer will consider which method of valuation should be used and can address issues such as the value of the company, what discount should be applied to a minority shareholding, the tax likely to be due on sale or transfer of shares, whether any funds can be extracted from the company and likely dividend income.

How will the court address the shareholding?

The court has far reaching powers when dividing assets on divorce. In the context of a family business, the court can order sale or transfer of shares. However, this is often not the best outcome for the company or the non-shareholding spouse! The company is often the source of the couple’s income. The court can order the shareholder to pay a lump sum to their spouse, based on the report as to liquidity within the company by the single joint expert. It can order that the non-shareholding (or departing) spouse receive more of the

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Outside the tax year of separation, transfer can and often does trigger payment of CGT which can cause real issues with liquidity in many divorce settlements.

other assets owned within the marriage to offset the shareholding. Frequently there is a series of lump sum over a set period of time, rather than a single lump sum if that cannot be afforded. In very limited circumstances, the spouses may continue to own shares between them after the divorce, perhaps with the assistance of an independent Director to protect their respective interests.

The approach adopted by the courts will depend on the overall circumstances of the case. For example, in a short childless marriage where the shares were owned prior to the marriage the value in the business may well be ignored, depending on the other assets available. In a long marriage, where the company was started or grew substantially during the marriage, the value of the business may play a more central role.

How do we protect the shares?

Transferring shares to a third party in order to avoid a financial claim against them is likely to make the divorce more complex. The court has the power to overturn such a transfer and to make adverse inferences as to the timing of the transfer of the shares. Courts take a dim view of this behaviour and it rarely ends well for the original shareholder. The court can also make adverse inferences where it is found that assets have been transferred out of a company without justification.

The best protection is to act early, before the shareholder(s) marry or whilst they are happily married. In the context of a wider family company, a shareholders agreement can persuade the court to value the shareholding in the context of that agreement. A pre-nuptial agreement before the shareholders marry or a post nuptial agreement being a condition before shares are transferred to family members can be very effective in protecting the company.

What next?

Obtaining legal and accountancy advice early can be invaluable. For example, if assets (including company shares) are transferred between spouses during a marriage or in the tax year of their separation, they can generally be transferred for ‘no loss no gain’ for Capital Gains Tax purposes. The latent CGT passes with the asset. Outside the tax year of separation, transfer can and often does trigger payment of CGT which can cause real issues with liquidity in many divorce settlements. Getting the timing of the separation right can be very helpful in mitigating tax.

It is imperative that a court order is obtained within the divorce to protect the company against future claims by the non-shareholder spouse: A divorce does not automatically sever the spouses’ financial claims against each other during their joint lives or on death without a court order providing for a ‘clean break’.

Our Family team are on hand to assist with any queries you may have regarding this. For further advice in relation to the divorce or separation process, please contact [Emma Brunning](#) or another member of the [Family Law Team](#).



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Can a child legally work in our family business?

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You need an extra bit of help on the weekends or during the school holidays. Your teenage son or daughter is crying out for an extra bit of pocket money. It's the perfect fit and one of the many reasons why children end up helping out in the family business.

What's often overlooked however are the restrictions imposed on the employment of children, which are applicable regardless of whether the child you employ is related to you or not. Note that separate provisions apply in relation to children undertaking work experience placements as part of their education, and in relation to public performances by children. A 'child' is any person under compulsory school age (in England and Wales a child ceases to be of compulsory school age on the last Friday in June of the academic year in which the child reaches 16).

Restrictions will vary somewhat between local authorities, but some of the key restrictions are that it is illegal for a child to work:

- if they are under 14 years of age (note however that many local authority byelaws do permit 13 year olds to be employed)
- during school hours or before 7.00am or after 7.00pm
- for more than two hours on a school day or a Sunday
- for more than 12 hours in any school term week
- for more than five hours on any non-school day other than a Sunday (for more than eight hours if aged 15 or over)
- without a one hour rest break after working four hours in any one day
- without the employer notifying the local authority and obtaining a work permit, if the local authority in question operates a permit system (most do).

Many will be familiar with the prohibition on employing under 14s and the restrictions on the hours that children can work, but in our experience it is the need for children of compulsory school age in employment to have a work permit which is most often overlooked, particularly in family owned businesses.

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Any employer found to be employing a child without the necessary work permit may be liable to prosecution by the local authority, as well as by the enforcing authority under health and safety law.

Any employment of a child, whether paid or voluntary, is illegal without a work permit and this applies to parents employing their own children in the family business. Any employer found to be employing a child without the necessary work permit may be liable to prosecution by the local authority, as well as by the enforcing authority under health and safety law.

The potential fine for an employer failing to have a work permit is £1,000. However a failure to carry out a risk assessment (part of the work permit application process) can result in a fine of up to £2,000 (unlimited in the Crown Court). There is also the risk that your employer's liability insurance would not cover a child who has been employed without the necessary permit.

What you need to do

The work permit application process is not onerous and is in most cases simply two sides of an A4 page long. Along with the application form the employer will need to provide certain information to the local authority, within one week of employing a child. This information includes:

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The work permit application process is not onerous and is in most cases simply two sides of an A4 page long.

- the hours and days on which the child is to be employed, the occupation in which the child is to be engaged, details of the task involved and the place of employment
- a statement, by a parent of the child, that the child is fit to work and that the parent agrees to the employment
- details of the school at which the child is a registered pupil
- a statement to the effect that an appropriate risk assessment has been carried out by the employer.



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Children are not entitled to be paid the national minimum wage, so there is no statutory restriction on what they should be paid..

Provided the local authority is satisfied that the proposed employment is lawful, that the child's health, welfare will be looked after and that it will not negatively impact on their education they will issue a work permit which will then need to be kept by the employer for the duration of the child's employment.

Can a child work in a family business?

Yes, but they will need to be at least 13 years old and there are restrictions on the days and hours that they are legally permitted to work.

What type of work are they allowed to do?

Children are only permitted to do 'light work', which means work unlikely to be harmful to the child's safety, health or development, to their school attendance or participation in work experience. Local authority byelaws may place other restrictions on the work that a 13 year old is permitted to undertake. In addition, unless local byelaws permit it, a child cannot be employed in street trading.

What should they be paid?

Children are not entitled to be paid the national minimum wage, so there is no statutory restriction on what they should be paid. Young workers, under 18 but above the compulsory school age, and apprentices are entitled to receive the NMW at the appropriate rates.

For more information contact [Liz Stevens](#). Alternatively, please contact another member of the [Employment Team](#).