

CASE STUDY

Background

Three brothers, Peter, 62, Anthony, 60, & Simon, 58 all run a Pharmaceuticals company in England which imports medicinal drugs from abroad and has a chain of chemist shops around the country.

They each own one-third of the shares and are the directors on the company's board. They get on well.

Peter runs the drug import side of the business, Anthony the shops and Simon deals with the distribution to the shops. All are key to the running of the business. If any was unable to work, the business would be in great difficulty

All are married and each have three children between the ages of 16 and 28.

One of Anthony's children, Aaron, who is 28 years old, is working in the business. He currently has a very junior role, but is keen to get more involved. The other children are either too young to work in the business or are not interested.

The business has been doing well and the three brothers estimate that it is worth in excess of £30m. It produces decent dividends and salaries for all three, and they have a comfortable lifestyle.

Planning (or not...)

None have done anything to plan for the future, including how the business would be managed if any of them were unable to do so.

As they had always led healthy and active lives, none of them considered any contingency planning for debilitating illnesses, and none of the brothers made a Lasting Power of Attorney.

Onset of incapacity

One year, Anthony suffers from a sudden stroke. While he survived the stroke, his brain was damaged to the extent that it left him in a persistent vegetative state.

Problems

Following the stroke, the following scenario unfolds:

1. Peter and Simon become very stretched in the business, and extremely stressed. They feel they are working a third of their time for Anthony and his family, and after a while begin to resent it.
2. Anthony's 28-year-old son, Aaron informed Peter and Simon that he ought to take Anthony's place in the family business and on the Board. However, Peter and Simon feel that he is too inexperienced. Aaron insists that he has to sit on the Board to protect his family's interest and that it was his right as Anthony's eldest son, but Peter and Simon ignore him as a petulant member of the younger generation. There is tension between Aaron, Peter and Simon.
3. They can't deal with the shareholdings without Anthony's agreement (which he is not in a position to provide).
4. Peter and Simon start to think about a sale of the business, but that can't be done without Anthony's agreement (which he cannot give).

5. Susan, Anthony's wife, makes it clear to Peter and Simon that the family rely on his salary and dividends, and if these are not paid, his children will have to be withdrawn from school and university, and she makes it clear she has no other source of income. He has no pension.
6. Much to the annoyance of Aaron, Peter and Simon try to employ someone to carry out Anthony's role and tells Aaron to 'learn from him', but Aaron accuses them of trying to replace him.
7. Susan and Aaron apply to the Court of Protection to be appointed as Deputies for Anthony for Anthony's Property and Financial Affairs. They seek specific powers to deal with Anthony's shares in matters concerning the company. Peter and Simon do not make representations in the application process. The application is successful.
8. Peter and Simon approach the deputies to try to reach some compromise about buying out Anthony's shares. However, they cannot afford to do so, and need to refer back to the Court in any event.
9. Aaron and Susan, using their control of Anthony's shares, then calls for Special Resolution to appoint Aaron as a director of the company. As expected, Peter & Simon votes against the Resolution. She also demands that they continue to pay Anthony's salary and dividends. There is an impasse between Susan and Aaron and Peter & Simon.
10. Peter starts to suffer ill health due to the stress, and the brothers decide to cut their losses and sell the business. They received £6 million for it, £2m of which went to Susan and Aaron. Much of Peter's £2m went on healthcare, and so his family ended up with about £1m to last his wife through retirement with no pension or life assurance. All this from a thriving business worth at least £30m.

Practice

1. **What potential issues arise from Susan's and Aaron's appointment as deputies?**
2. **What could have been done differently? What planning could have been put in place prior to the onset of Anthony's capacity**
3. **What could be done on the business law side?**
4. **Would it have made a difference if the business was structured as a partnership rather than a limited company?**
5. **What issues may have arisen if there had been a gradual onset of incapacity rather than sudden?**
6. **What material differences exist between someone acting under a private mandate or court appointed position? Are there advantages / disadvantages to either?**