Business Clinic

Whether it's a legal, tax, insurance, management or land issue, Farmers Weekly's experts can help

How will we fund care home fees without damaging farm?

Q My husband and his mother are in a farm business partnership in Northern Ireland. He is 58 and she is 87.

He farms the land, which his mother still owns. He has invested in the business financially and, of course, with his time and expertise.

His mother has Alzheimer's disease and my husband has power of attorney, as she no longer has capacity.

My husband is the beneficiary of the land and property when his mother dies. The spectre of care homes and funding of the same is now raising its head and my husband is worried sick that his life's work will amount to nothing.

I would appreciate any help or advice. Any information we have read concerns people's assets in the form of property and savings, but we can find nothing about farm businesses.

Local authorities take assets such as a share in a farming business into account when assessing care home contributions

INGRAM IMAGE

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A Under the Care Act 2014, the local authority is under a duty to assess the care an individual requires and also to assess their financial resources for funding their care. They will then make a decision as to what that capital contribution towards their care should be.

Some assets can be classified as disregarded capital in the local authority assessment. This means the asset will not be included in the assessment when calculating how the care should be paid for.

Unfortunately a share in a farming partnership is not classified as disregarded capital and would be brought into account in the local authority assessment. On the facts presented, the share in the farming partnership would therefore be included in your mother-in-law's case.

However, the *Charging for Residential Accommodation Guide* (CRAG) published by the Department of Health and Social Care offers useful guidance as to how business assets should be treated by the local authority in their assessment.

The guide states that while the share in the partnership (which is a business asset) does not fall into the category of disregarded capital, it can be disregarded capital for a "reasonable" period of time.

This is on the basis that your mother-in-law should be allowed a reasonable period in which to sell or otherwise realise the partnership share.

The guide further states that your mother-in-law would not necessarily have to have taken steps to realise the partnership share at the point of assessment, but would have to show a clear intention to do so as soon as is practical.

It is therefore important to understand whether a formal partnership agreement is in place between your husband and your mother-in-law. This will help establish the value of her interest in the partnership agreement and what value might be assessed – and ultimately that might qualify to be disregarded for a reasonable period of time.

On the facts presented, it would appear that the share in the farming partnership would be very difficult to sell on the open market.

The reality is that only your husband, as the other partner, is likely to want to purchase the share.

Therefore, while the value of the interest will be assessed by the local authority for funding care, it could potentially be disregarded for a period of time.

If your husband is unable to raise the funds to purchase the share of the farming partnership, the local authority may take this into account when allowing the temporary disregard.

It is sometimes tempting to make efforts to mitigate an individual's financial contribution towards their care fees by gifting away assets.

If an individual has given away assets in circumstances where the local authority could reasonably conclude that they did so to reduce the assets they own that would be subject to assessment, the local authority can invoke the "deprivation of assets" rules.

This would effectively set the gift aside for assessment purposes.

As your mother-in-law has lost capacity, she is unable to make significant gifts herself (which includes a transfer of her partnership capital).

I understand your husband holds power of attorney. This confers only a very limited authority to make gifts on behalf of his mother, such as small gifts on birthdays and at Christmas and to continue charitable donations that she was already in the habit of making.

It would not give authority to make significant transfers of partnership capital and any proposed transfers would require approval from the Court of Protection.

Insurance issues with GPS kit and drones

Q I have recently invested in some new technology and would like to know if my portable GPS system is insured when taken outside the tractor. I have also bought a drone and want to know about the insurance implications of using it.

Dominic Snook
Account executive
Farmers & Mercantile

Insurance companies will need to consider how a drone is used when offering cover

TIM SCRIVENER

A GPS systems are now commonplace on arable farms and can be insured in two ways.

If your GPS system is built into your tractor, it needs to be insured under your motor policy within the sum insured for your tractor.

For example, if your tractor cost £60,000 to purchase and the GPS cost £5,000, the tractor would need to be insured for £65,000.

Under a motor policy, the GPS system would be covered on a comprehensive basis, offering wide cover, but excluding wear-and-tear damage.

If the GPS system is portable and can be changed between tractors, the system needs to be insured under your farm policy, ideally on an all-risks basis.

The all-risks basis will offer you the widest cover available, including UK-wide accidental damage.

Over recent times, GPS systems have become very attractive to thieves – especially the portable systems, as these can be easily taken from an unlocked tractor cab or workshop.

An example of this was reported last month, with eight John Deere Starfire systems being stolen in the Norfolk area, each with a value of about £2,000.

In addition to insuring the actual GPS system, it is worth remembering to insure the GPS base stations. These items can be worth up to £20,000. The base stations need insuring under the all-risks section of your farm policy.

Drone use

Despite the increasing use of drones in agriculture, grey areas remain regarding the insurance implications of using unmanned aerial systems as a farm business tool.

First, it is vital to tell your insurance provider that you have a drone for commercial use on the farm.

All insurance policies differ, with some excluding liability for drone use or imposing certain flying height restrictions.

A drone would normally be covered under an all-risks section of a farm policy.

Most agricultural insurers do not cover the drone while in use. However, there are specialist markets that do cover drones in use.

Insurers are becoming more aware of the risks involved and may consider a number of factors when offering cover. These include how it is used, the weight of the drone, where it is being used, working height and if the drone is registered with the Civil Aviation Authority (CAA).

The most common claims seen so far involving drones are impact and theft claims.

Drones represent a civil aviation risk, meaning that in law you could be held liable for damages to a third party person or property.

There are several key points that every drone operator must consider.

- You are legally responsible for each flight. Take time to understand the rules. Failure to comply could lead to a criminal prosecution. Visit www.caa.co.uk/drones for information from the CAA.
- Keep your drone in sight at all times, and be aware of the operating height restrictions. Stay below 400ft.
- Keep your distance. It is illegal to fly your drone over a congested area. Never fly within 50m of a person, vehicle or building.
- You are responsible for avoiding collisions. You should never fly a drone near an airport or close to aircraft. It is a criminal offence to endanger the safety of an aircraft in flight.
- Consider rights of privacy. Think about what you do with any images you obtain, as you could break privacy laws.

DO YOU HAVE A QUESTION FOR THE PANEL?

Outline the issue in no more than 350 words and *Farmers Weekly* will put your question to a member of the panel. Please give as much information as possible.

Send your enquiry to Business Clinic, *Farmers Weekly*, RBI, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS and include a telephone number. You can also email your question to **fwibusinessclinic@rbi.co.uk**

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