



## LOSING CAPACITY: THE SPIRALLING LEVELS OF LEGAL UNCERTAINTY

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The average age of a farmer in the UK is close to 60. At a time when many people are considering winding down to retirement, this is not on the cards for many farmers approaching 60 who often have no intention of hanging up their muddy boots any time soon.

With that being said, there is a concern that in an aging population of farmers there is the possibility that physical or mental incapacity could strike unexpectedly, leaving the farmer in a vulnerable position and the farm business in turmoil. An often physically debilitating and unforeseeable event like a stroke, or the onset of Dementia or Alzheimer's can leave you in the unexpected situation of no longer being able to manage your own affairs.

In such unexpected circumstances, you (or your nearest and dearest) can be faced with the spiralling levels of legal issues, such as:

### Is anyone else involved with the farm business?



- If you are a sole trader how will the day to day management of the farm continue, who will make decisions and ensure the business continues?
- If you farm in partnership, is there a partnership agreement which sets out what happens in the event of physical or mental incapacity?
- If there is no Partnership Agreement, can the partnership continue with an incapacitated farmer?

### Who controls the finances of the business?



- Are you the main or only signatory for the business bank account and, if so, will this now be inaccessible?
- Who can ensure wages and suppliers are paid?
- Can anyone liaise with land agents or the RPA regarding claims for subsidies or approaches regarding possible development of the land?

### Does anyone else know the 'ins and outs' of the farm business?



- Who knows who your vet is, who your key suppliers or customers are, where documentation is relating to all of the regulatory requirements of the farm and such?

### Can you continue to live in the farmhouse?



- Who decides whether staying at home or moving into residential or nursing care is in your best interests?
- If you cannot continue to live in the farmhouse, this may have implications for Inheritance Tax reliefs that may have been available on your subsequent death.



**Is anyone aware of the type of medical treatment and care you would like, or would not like, to receive as the case may be?**



**Have you planned for 'the worst'?**

- Does anyone know what your wishes are in relation to your funeral on your death?
- Have you made a Will to ensure your spouse, partner, children or wider family or friends are provided for?

Whilst these are all challenging and quite bleak questions, it is hoped that they highlight the issues that can arise when the unexpected should occur and someone loses mental or physical capacity.

Aside from the need to review the way in which the farm business operates and how records are stored and maintained, there are 2 key things that can be done to pre-empt these issues and 'plan for the worst':

**1.**

## **Lasting Powers of Attorney**

- This is a legal document which allows you to name someone (referred to as an Attorney) to make decisions on your behalf if you are ever unable to make such decisions yourself.
- There are 2 types of Lasting Power of Attorney, one which allows an Attorney to make decisions about property and financial affairs, and one which allows Attorneys to make decisions about health and welfare.
- They have to be entered into when you still have the mental capacity to understand the authority you are giving to your Attorneys.
- If you do lose mental capacity and have not entered into a Lasting Power of Attorney, then it is necessary for someone to apply to the Court of Protection to be appointed as a Deputy which involves delay and cost.

**2.**

## **Wills**

- Making a Will is one of the things people put off the most, whether it be seen to be tempting fate or a reluctance to consider one's own mortality.
- However, it is the legal blue-print for what will happen to your estate when you die.
- By making a Will, it gives you the opportunity to consider how to provide for those members of the family who farm and those who do not; how assets can pass to beneficiaries in the most tax efficient manner; and ultimately give you peace of mind that everything and everyone will be taken care of when you are no longer here. As part of this process you can also review Inheritance Tax reliefs which may be available on your death and how to structure your affairs in lifetime to maximise such reliefs.