

Business Clinic

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

Should I have a lasting power of attorney?

Q I'm 72 years old and farm in partnership with my wife, son and daughter. I still own and run the farm and I haven't lost any of my marbles. However, my daughter tells me I should have a lasting power of attorney in place. Can you please explain what this is and whether I should have one?

Russell Reeves
Partner
Thrings

A Your daughter is right. A lasting power of attorney (LPA) is a sensible precaution which all of us should take.

An LPA is a legal document that allows individuals to choose one or more people they trust (attorneys) to assist or make decisions on their behalf, in their best interest, when they are unable to do so. There are two types of LPA: one for property and affairs, and one for health and welfare.

It's an unfortunate fact of life, but any of us could lose mental capacity at any time. Sometimes the onset is gradual – as can be the case with dementia, where there are good days and bad days for memory – or sometimes it can happen suddenly owing to an accident.

Agriculture has the poorest safety record of any industry. We all know farmers who take health and safety shortcuts, often because it's the way they have always done things. But even with the best health and safety planning, accidents can happen. This isn't surprising because farming can be high-risk, often involving solitary working with machinery, livestock or hazardous chemicals.

Safety net

An LPA is akin to a safety net, much like insurance. Each year you insure your vehicles, farming equipment, property and so on. This is often irrespective of whether you expect to make a claim – it is done on the premise that you may need it in the future for those "what if" situations.

Therefore, much like an insurance policy, you may never use an LPA, but it is there should the unexpected happen and should be considered essential to minimise interruption to the running of a farm.

Regardless of family relations, or whether



Having a lasting power of attorney in place is sensible for all ages

someone is your business partner or co-director, nobody has an automatic right to manage your affairs should you become incapacitated. Your loved ones would be required to apply to be appointed to manage your affairs.

This is a long, complicated and expensive process. An application to the Court of Protection would be needed and your family would need to prove your incapacity with expert evidence.

The court would then appoint a deputy to run your affairs for you, meaning you would also miss the opportunity to decide who will manage your affairs and how.

There is a common misunderstanding that in appointing an LPA people are giving away control and abuse of power may be exercised by the attorney. This is misleading because there are safeguards in place and the attorney must act within the law in your best interest.

Take control of your affairs

Advanced preparation for incapacity and vulnerability enables you, as the donor, to

carefully decide who you trust to manage your affairs and detail exactly how they should do this and when. Once you have approved the LPA, it simply needs to be registered with the Office of the Public Guardian.

You may never lose capacity, but an LPA is there should you become mentally or physically frail and need assistance in managing your business or personal affairs.

Without an LPA there will likely be a period of time in which no one can deal with your affairs or manage the business, pay wages or contractors. Your wife or children would also not be able to access your bank accounts, insurance policies, assets or bills that might need paying.

Avoid additional family stress

This can be incredibly stressful for your family when they are already trying to cope with the deterioration in your health. It is not just about getting old – which is why I would suggest that your wife, son and daughter have an LPA in place, too.

Is the SFI right for our mixed family farm?

Q We're a traditional mixed family farm with 240ha of combinable crops, 80ha of grass, 400 ewes and a small suckler herd. We're still doing traditional cultivations, but know we should be looking at alternatives. With the Basic Payment Scheme (BPS) cuts starting to really bite from next year, how do you suggest we approach the Sustainable Farming Incentive (SFI)?

James Bradley
Partner, rural
Carter Jonas

A Much about the Environmental Land Management (ELM) scheme and the future of agricultural policy is still emerging. However, the phase-out of BPS and the introduction of the SFI are two things about which we know a reasonable amount.

Direct payments will reduce in value between now and 2027, when it will cease completely, so farmers should definitely be looking into how they could replace lost income.

Regarding SFI, two strands are coming into play imminently that will be available to all existing BPS claimants.

The two strands will relate to soil standards, and payment rates have been confirmed at £22/ha, rising to £58/ha. An advanced level with higher payments rates is expected to be announced at a later stage.

While not relevant to your land type, there is also a fixed-sum moorland rate for SFI. A funded annual animal health welfare review will also be introduced.

Application details

There will be a 10-week window to apply in 2022 and 2023. In future years, application dates will be at six-monthly intervals, with annual opportunities to amend agreements, adding land or options.

The first thing to note about the SFI is that you have nothing to lose by entering into it. Environmental critics of the scheme suggest that it doesn't require much more than business as usual. So, although the payment rates are not what farmers will be used to receiving under BPS, it's not a huge undertaking.

The implications of the soil standards make good business sense and with a view to regenerative farming, changes to management practice should only be minor.

Engage with schemes

Defra will be learning from the early adopters and changing the scheme to ensure it is effective and creates environmental gains. Farmers



An animal health welfare review will be introduced as part of the SFI

should engage with the system to ensure that it remains in place. If it is not used, we run the risk of it being withdrawn.

It is important to look at additional sources of grant funding that can work alongside the SFI. One option is Countryside Stewardship (CS). This is always worth considering – it has a full range of management options, so most farm businesses will find something that could complement their operation. There are 20,000 holdings involved with CS, but Defra would like 84,000 holdings to be involved in SFI by 2028.

CS would be potentially useful to provide management options that might support either marginal land or allow a more sustainable system for individual crops or enterprises. Provided there is no element of double-funding, it should also be possible to enter into the SFI, perhaps on areas of the farm where CS options have not been used.

Consider new grants for kit

Additionally, the Farming Investment Fund was recently launched, providing grants focusing on equipment, technology and transformation. The fund covers items including high-value

equipment, such as a new direct drill.

The environmental benefits of direct drilling – such as less soil movement and increased fauna – are well known. For many, however, the initial outlay prohibits investment. The grant could cover much of the overall cost of the new equipment, which may now make it a viable option, with the potential to provide more immediate returns.

However, where we see the real opportunities for farmers to generate income through environmental schemes is in collaboration with neighbours.

This is an area where much detail is still lacking, but it's never too early to start talking to neighbouring farmers and making sure that you know who you could work with to make landscape-scale changes that could provide real environmental benefits and access to funds under local nature recovery and landscape recovery schemes.

In summary, there is no reason not to enter into SFI now, but make sure you're looking at other sources of funding, as well as preparing for the collaboration that will be required for the next phase of the ELM scheme. SFI alone will not balance the books when BPS goes.

DO YOU HAVE A QUESTION FOR THE PANEL?

Outline the issue and *Farmers Weekly* will put your question to a member of the panel.

Send your enquiry to Business Clinic, *Farmers Weekly*, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS, and include a telephone number. You can also email fw-businessclinic@markallengroup.com

Our expert partners



Carter Jonas

THRINGS
SOLICITORS

How can I get better value from insurance?

Q I always mean to do a proper review of my farm insurance, but the renewal comes at a busy time and we usually end up renewing the same cover with the same insurer, after a bit of haggling to get a discount because we have been with them for many years now. We may end up doing the same this year, but I would like some pointers on how I could get better value.



Esther Kane
Head of rural
A-Plan Rural Insurance

A This is a big question, because getting good value, good service and up-to-date cover is vital for all farms and rural businesses.

Cost is always going to be important, especially in the current climate, but be careful to ensure that paying less doesn't result in reduced cover, or a poor claims-handling experience.

Deciding whether to tender

Reviewing too often and involving too many providers (this could be a combination of brokers and direct insurers) can have a negative effect. Building a relationship with your broker or other provider has many benefits, so our advice is not to tender every year. However, it goes without saying that carrying out a tender exercise is good practice if you want to understand what's on offer across the market.

We would suggest you choose no more than three companies to tender. Approaching more won't necessarily yield better terms, and it's more about focusing on asking the right questions.

Ask what markets the brokers or other providers have available, and ensure you will have access to as wide a range of insurers as possible. It's about getting a balance between cost and value.

Farms that demonstrate a good approach to risk – for instance, through a robust risk assessment that puts processes in place to mitigate risk – will usually pay less for similar cover than those that do not. It is also worth considering whether to take some items out of cover – for example, isolated old buildings that would not be repaired if they were damaged in a storm.

What to include in your brief

Consider whether you want someone to provide a like-for-like quotation. If so, a copy of the existing schedules and claims history enables brokers and other providers to give



A farm visit can be useful in identifying issues that may not have been previously considered

a ballpark figure. Do you want a full review with suggestions, improvements and advice? If so, you will probably need to provide more information.

Ask the brokers or other providers you speak to what they need, or if they have a tender guide.

Be open

Regardless of which option you choose, you need to be open and transparent about what it is you are looking to insure. This is for several reasons:

- If you haven't been honest, it could result in your insurer refusing to pay a claim and/or voiding your policy
- Where you are going direct to an insurer, complete information will help them in providing their most competitive terms
- When using a broker, remember they work for you and with comprehensive information can look to secure you the best cover at the best possible premium from multiple markets.

Timeline

Don't leave it until the last minute. An indicative premium can usually be provided in a few days, dependent on the size and complexity of your requirements.

However, the more notice, the better. A month

to six weeks is ideal in most instances and will provide enough time to give you a thorough review but, crucially, also allows enough time to review the terms offered.

Understanding the quotation and making a final decision

Be clear on what cover is not being offered. Speak with the broker or other provider. It is not always easy to fully detail what is being offered in a written presentation. A lot can be gained from a telephone conversation, a virtual meeting or a site visit, which is particularly useful for farm businesses. It is also an opportunity to raise matters that might not have previously been considered.

Ask questions. A good broker or other provider will often distinguish themselves from the competition when answering questions and speaking with you. Good questions to ask include how claims are handled and whether processes are handled online or in person.

Price, cover and service should be considered together when making the final choice to ensure you get the right insurance package.

ONLINE



For more answers to readers' questions, go to fwi.co.uk/business-clinic