

# Business Clinic

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

# Messy family situation calls for caution before investing

**Q** I am thinking of investing in a farm but nothing is clear. The father died in 2004 and probate has just been given – the estate passes to the mother. The mother died two years ago and the district valuer has yet to agree the value of her estate.

The daughter lived in one of the cottages and farmed the land for the mother in the years before her death and thereafter. The estate is left to the four children, one being the daughter. Her siblings want to sell.

Nothing was in writing, payments were vague and bank statements have been lost. The daughter has animals on the farm. No Defra payments were registered or claimed. I wish to go into partnership with the daughter. Does she have any rights as a sitting/farm tenant or preferential rights to buy the farm?



**Duncan Sigournay**  
Partner and head of agriculture, Thrings

**A** You are right to be cautious about investing without clarifying things, not least given that at some point the farm will be vested in the four children.

As it will be a jointly held property, any one of the owners could seek to force the sale even without the agreement of the others. A court application would be required.

You also raise the issue of the daughter possibly having rights of her own in the farm. It is unclear what those rights might be at this stage. She could potentially have been occupying part the farm as a tenant from her mother.

Rent is not a prerequisite for establishing a tenancy. One would also need to understand when the alleged tenancy commenced since that will dictate which legislation applies. It would seem unlikely that it commenced prior to the father's death, in which case the daughter may, at best, have a farm business tenancy.

Such tenancies are relatively easy to terminate, subject to notice being served, and so would not provide any significant leverage against her siblings or her mother's estate.

Alternatively, the daughter could potentially have been working in partnership with her mother. Again, evidence would be required



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to support such a claim. She could even have been an employee of her mother or a contractor. In either case one would expect to see some kind of paper trail. From what you say, evidencing the arrangement may be difficult.

It is possible the daughter was none of those and that it was never the intention to create any legal relations between her and her mother – in other words it was just an intra-family arrangement. In such a scenario, the daughter would have no obvious leverage.

You also mention that the daughter occupied a cottage. That could give rise to a claim to a residential tenancy, although as mentioned, there may never have been an intention to create a landlord-tenant relationship.

Clearly those potential claims could have an impact on the value of the mother's estate and the ultimate distribution of the estate assets to the children. They could also put her

in a strong position to buy the farm from her siblings if she can show that those rights lower the value of the farm and that she is the key to unlocking a higher value.

However, if she has no residual rights she may be prepared to pay more than the market rate for the farm, given her history and eagerness to continue farming it.

Even if you resolve what rights, if any, the daughter has, you should ensure any arrangements with her are documented correctly to avoid any future difficulties. Your involvement could be structured in several ways, including via a partnership, joint venture, share farming or contracting agreement. Seek professional advice to protect your position.

Ensure the daughter's interests in the property are resolved before you invest. Once you have certainty, seek professional advice and ensure everything is documented correctly.

## 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*, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS, and include a telephone number. You can also email your question to [fwbusinessclinic@rbi.co.uk](mailto:fwbusinessclinic@rbi.co.uk)

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**Carter Jonas**



## Will residential letting affect my VAT status?

**Q** I am an arable farmer and am looking at different business ventures in order to generate more income. I am thinking of buying some cottages to rent out on residential lets. I am presuming this will not affect my VAT registration and I can continue not paying any VAT to HMRC and reclaiming all the VAT on my expenses. Please advise.



**Mary MacLachlan**  
VAT manager  
Duncan & Toplis

**A** The grant of any interest in or right over land or of any licence to occupy land is exempt from VAT. Therefore, the renting of cottages on residential lets is exempt from VAT. This will mean that you cannot charge VAT on the rents received from residential letting of the cottages.

However, given that you are now making exempt supplies you are classed as a partially exempt business. This means you cannot reclaim input VAT on expenditure incurred on your exempt supplies unless the exempt input VAT is classed as what is known as a de minimis level.

To be de minimis, your exempt input VAT can be no more than £7,500 a year and no more than half of total input VAT incurred by the business.

This also includes general overhead expenditure incurred in relation to the whole business which must also be apportioned between your exempt and taxable income to determine whether you come within these de minimis limits for full VAT recovery.

However, if you decide to rent the cottages out as holiday lets these are not classed as residential lets.

Supplies of holiday accommodation are standard-rated supplies and 20% VAT would need to be charged on this income.

However, it would mean that you could reclaim all your VAT because you are making fully taxable supplies rather than any exempt supplies of residential lets.

In summary, by deciding to have this new business venture you will have to first determine what the VAT liability of your income is, and so whether it is taxable or exempt. You will then need to determine what VAT you can reclaim and consider whether you may have to do a partial exemption calculation.



STEPHEN DAVIES/ADOBE STOCK

## How to approach a compulsory purchase road threat

**Q** There are plans to build a bypass just south of my farm. If the chosen route cuts across my land, what can I do to minimise the impact of the works? If I am entitled to compensation, will this cover any costs involved?



**Deborah Lund**  
Associate  
Carter Jonas

**A** Whether it be a new road, railway line, water pipe, high voltage power line or gas pipe over or under your land, or access required across your land to maintain a previous scheme, a lot of similar principles apply when a new project is planned which will affect you.

The first official information you will hear of the scheme will probably be a letter from the authority intending to carry out the works (or its appointed agents) to check that you do either own or occupy the land which will be affected.

The authority could be, for example, the water company, local or national electrical network or local or national government, depending on the nature of the scheme.

All of these can take access to your land with the use of compulsory powers, either through existing legislation or with the use of specific Compulsory Purchase Orders.

Once the authority has confirmed what your interest in the land is, then they may contact you to ask for permission to carry out surveys (such as ecological, topographical and also intrusive ground surveys) on the land, so they can make sure that the route they will be proposing is feasible.

At this early stage, you should look to appoint an agent experienced in compulsory purchase and compensation matters, such as a chartered rural surveyor or a Fellow of the Central Association of Agricultural Valuers.

They will be able to guide you through the process, act on your behalf and make sure that you are fairly dealt with at all times and that your interests are best represented, while you continue to focus on running your business.

Their fees should also be paid by the authority, which ought to be confirmed before they start any work for you.

Once the authority is decided on its preferred route, it should consult with you regarding its proposals.

Ideally this should be done with face-to-face meetings, so that you can properly discuss any implications of the scheme on how your farm functions.

This should be well before any planning application has been submitted, so you can best consider how the scheme will affect your day-to-day activities, during construction or after they have left the site.

Often, designs are "frozen" once planning applications are submitted, reducing the chance of getting any significant changes made, so it is important to get your views listened to, and acted upon, before this point.

When it comes to the construction of the scheme itself, your agent will be able to help identify measures which the authority could put in place during the works to reduce the impact of the scheme, such as stock fencing, access gates, acoustic fencing and so forth.

In addition, they will be negotiating compensation for any losses you incur and advising you on what items can be claimed for, such as having to pay for temporary extra grazing, permanent loss of land area, your time in dealing with the scheme, or re-establishment of land.

Such infrastructure schemes will not make you rich, as the principle of compensation is that you are no worse off financially after the scheme than before it.

It can also often take a year or so after the scheme has completed for all the final elements of the claim to be identified, set out, negotiated and agreed with the authority, and any final payments made.