#LandedEstates #FarmTax #PrivateClient #TL4



Landed Estates & Farm Tax Conference Your one-stop-shop for advising on Agricultural Land Tuesday, 22nd March 2022 Amba Marble Arch (Guoman), London



Chairs' Opening Remarks



Simon Blackburn *Partner* Payne Hicks Beach



Elizabeth Hartless Partner Saffery Champness



Natural Capital – Issues for Landed Estates



Ben Sharples Partner Michelmores



Jason Beedell Director, Research Strutt & Parker



Natural capital – issues for landed estates

Ben Sharples and Jason Beedell

Landed Estates & Farm Tax Conference

22nd March 2022



Key points

- 1. Estates' motivations
- 2. Setting strategy
- 3. What credits / markets to get involved with?
- 4. What estates in general are doing
- 5. Other thoughts

An example estate



An example estate

	Hectares	GHG flux t / year t / ha / year
Livestock farming	600	-2,300
Arable farming	300	-200
Forestry	200	1,300
Moorland	600	-100
Other	0	
Total	1,800	-1,300 -0.7



An example estate

Present Value of benefits £00 over 60 years				
	In hand	Tenant	Public	Total
Food	5,700	11,100	0	16,800
Recreation & health	200	0	10,800	11,000
Climate regulation	0	0	-6,000	-6,000
Minerals	3,200	0	0	3,200
Total liabilities	-300	0	-1,100	-1,100
Total Net Natural Capital	9,000	11,100	3,600	23,700



The estates' motivations – most common questions

What income can I generate?

Is the estate carbon neutral or net zero?

What changes can I make?



Setting strategy – what could it be?

Should the estate be carbon neutral or net zero before you sell anything? Piece by piece or a whole estate strategy?

On in-hand land only or tenanted too? Should the strategy be able to stand up to scrutiny in public (or by Ben)?



What credits / markets to get involved with?





What estates in general are doing:

- Planning
- BNG
- Woodland planting
- Peatland restoration
- Soil carbon and regenerative agriculture

- Livestock
- ELM
- Housing stock
- Tenanted land



Other thoughts

- Delivering landscape change collaboration agreements
- Who to partner with?

Offsetting for the local village? Local firms?

Work with the council or nature partnerships on local nature recovery strategies?

Will commercial tenants pay more for 'green' leases and green energy?



Natural Capital – Overview

- What are we seeing in the market?
- PES agreements structuring
- PES agreements Landowner issues
- PES agreements Tenant issues
- Carbon ownership and additionality
- Phosphate and nitrate neutrality
- Conservation Covenants



PES Agreements – Market Overview

- BNG
- 2 year transition for Environment Act 2021
- 9 November 2023
- Grey market deals
 - LPA trial areas
 - GDO NSIP mandated in Environment Bill
 - Vanguard LPAs
- ELMS trial spin offs
 - Landscape scale recovery plans
- Nutrient neutrality gathering pace



PES Agreements – Market Overview

- US market \$3.9bn
- Australia mature market
- UK market estimated at £100-300 million
- £3.4 bn ELMS funding use or lose



PES Agreements – Landlord Issues

- New agreements collaboration or control?
- Existing agreements potential stalemate as neither can exploit?
- Reservations
- Derogation from grant
- Additionality stacking and bundling
- Long term security for management costs
- Tax APR, BPR.....CPR?



Landlord & Tenant Issues – Existing agreements

- Covenants likely to restrict tenants
 - Agricultural use
 - Good husbandry
 - Permanent cropping ban
 - Scheme participation
- Reservations unlikely to benefit landlords beyond freehold
- Derogation from grant a handbrake on carefree drafting
- Alienation issues



Landlord Issues - Reservations

- Tension between natural capital assets and agricultural use
- Common reservations in favour of the landlord
- Timber, sporting, mines, minerals, sand, gravel, clay
- Coleman v Ibstock Brick Limited [2008] the meaning of "minerals" in a lease meant substances "exceptional in use, in value and in character", not the ordinary soil.
- Carbon in vegetation, root systems and topsoil
- Issues concerning derogation from grant



PES Agreements – Tenant Issues

- Inability to offer long term agreements under AHA
- 90% FBTs < 5 years
- Agricultural lease restrictions Agriculture Act 2020
- Ability to refer requests for consent, when refused by the Landlord, to arbitration or third party determination
- Request must be made for purposes of either
 - Enabling the tenant to request or apply for "relevant financial assistance"; or
 - Complying with a statutory duty relating to the tenant's use of the holding



Carbon Ownership

- Trees, soil or peat
- Landlord control through reservations not minerals
- Included in freehold ownership
- Tenant type schemes soil based, min till, increasing biomass etc
- A 2 tier market?
- Additionality
- Blended finance DEFRA indications



Additionality

- Having reserved rights can a landowner be paid twice for the same input made to land?
- Nutrient neutrality/BNG/carbon credits for example
- Can landowners claim ELMS and private schemes?
- 'a real increase in social value that would not have occurred in the absence of the intervention being appraised'. – Treasury Green Book 2018 – definition of additionality
- Holistic view of multiple income streams provided separate definable benefits are realised
- DEFRA see value in private sector
- British Standard definition more restrictive
- Clear drafting required of what is granted and what isn't to allow stacking and bundling



Phosphate & Nitrate Neutrality

- Dutch N case NE Guidance
- Offsetting to ensure levels don't rise
- Longer terms proposed legacy levels
- Localised approach soil type and land use
- Credit purchase agreement
- Obvious APR problem ancillary forestry?



Phosphate & Nitrate Neutrality

- Market trends
- Institutional landowner auction
- BNG additionality potential
- Somerset Levels Wessex Water
- Solent demand 5000 houses
- Nitrogen credit £3,000
- BNG credit £20,000



Conservation Covenants

- Landowner LPA executed by deed
- "Qualifying estate" includes a lease > 7 years
- LPA may insist on freeholder being party
- Responsible bodies "some main activities..."
- Local land charge binds successor
- Can apply to UT to modify or discharge
- In force 30 September 2022
- DEFRA discussions leaving it to the market



Could you be the Lord of the Manor: Buying an Estate



Julie Butler *Partner* Butler & Co



Tristan Ward Partner BDB Pitmans



Jim Bryant Managing Director Bryant Land & Property



Could you be the Lord of the Manor? Buying an estate - the buying agent's view.



Jim Bryant

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- Assemble the team
- What do you want?







www.bryantlandandproperty.com







• What is it likely to cost?

NV To buy

To operate

• How long will it take?







www.bryantlandandproperty.com



Who runs what?



Farming



Woodland



Sporting



Main House/Estate

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Could you be the Lord of the Manor: legal aspects

Tristan Ward

Head of Landed Estates and Agriculture BDB Pitmans LLP



Contents

- 1. What do you want it for?
- 2. How do you pay for it?
- 3. How long will it take?
- 4. What are the costs?
- 5. Who does what?
- 6. What are the (legal) pitfalls?

BDB Pitmans LLP



Legal Implications

What do you want it for?

- Enjoyment and privacy
- A financial asset
- "Go Green"

BDB Pitmans LLP



Legal Implications

- How do you pay for it?
- Cash
- Debt
- Running the Estate

BDB Pitmans LLP


Legal Implications

How long will it take?

- Looking
- The buying process

BDB Pitmans LLP



Legal Implications

What are the costs?

- Costs of getting it wrong
- Fees

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Legal Implications

Who runs what activity (once bought)?

- Day to day management
- Offshore involvement
- Trustees, beneficiaries and settlors

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Legal Implications

What are the pitfalls?

BDB Pitmans LLP



Could you be the Lord of the Manor: Buying an Estate

Julie M Butler FCA Butler & Co Chartered Accountants www.butler-co.co.uk



Contents

- 1. What do you want it for?
- 2. How do you pay for it?
- 3. How long will it take?
- 4. What are my tax costs?
- 5. Who runs what activity (once bought)?
- 6. What are the tax pitfalls?



What do you want it for?

- Drives the tax advice need to understand
 - CGT Rollover Relief
 - IHT escapes IHT trading Balfour
 - Repairs and improvements claiming VAT back on run down estates
 - Sideways relief business plans
 - SDLT mixed rate mitigation



How do you pay for it?

- Tax allowability of interest
- Check assets secured
- Purpose of the loan



How long will it take?

- Time scale impacts on tax changes?
- Consider Budgets APPG report
- Structure to buy in and tax consequences
 - Partnership Sideways Loss Relief
 - LLP protection with partnership
 - Ltd Co ATED, BIK, trapped losses

Must have tax efficient partnership



- What are my tax costs?
- SDLT mixed rate
- Tax efficient use of costs, claiming back VAT
- Early tax planning essential
- Plans with structures chosen and depth of tax planning prior to purchase
- Removing tax pitfalls? E.g. tenancies etc



Who runs what activity (once bought)?

- Need for active involvement for business tax reliefs
 - Sideways loss trade
 - Business CGT BADR, Rollover
 - BPR for IHT
 - APR for Farmhouse (active occupation)
 - Is farmhouse too large?

On disposals or death need to protect the relief



What are the tax pitfalls?

- Disadvantages of <u>let</u> not trading post purchase Rollover, BADR, BPR, e.g. *Balfour, Vigne, Graham*
- Non-compliance with the rules
- Pushing the tax boundaries too far, e.g. Heather Whyte
- Disadvantage of <u>let</u> not trading pre-purchase, e.g. rollover of gain, check SDLT
- No legal agreements or Wills to support putting tax reliefs at danger



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Thank you for watching today's seminar

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Butler & Co provide a full tax consultancy service. Please do not hesitate to contact us if there are any issues we can assist you with

Julie is editor of Farm Tax Brief, which is published 10 times per year and available in hard copy and online. For more information or to subscribe or request a free trial please visit <u>www.farmtaxbrief.com</u>

Private Client



The Modern Trust: Contentious Trusts in a Changed Social

11th May 2022

Ironmongers' Hall, London

- 🖬 5th Jul 2022
- loD Building, London



The New Dawn for Agricultural Land: Transition in Business and Land use in the New Environment



Jeremy Moody Secretary and Adviser CAAV





The New Dawn for Agricultural Land Transition in Business and Land Use

Jeremy Moody

Landed Estates and Farm Tax Conference London – 22nd March 2022





Ukraine: Early Market Effects

Jeremy Moody

Landed Estates and Farm Tax Conference London – 22nd March 2022

Arable Outputs

AGRICULTURAL VALUERS

- Black Sea (warm water ports) shut for trade
 - 30% of grain exports and 80% of sunflower oil exports
 - Affects world prices but most to Middle East etc political risk
- Removes large stocks from 2021 harvest trade
 - When carryover stocks expected to be low
 - May prices for feed wheat c. £300/t, rapeseed c.£740/t
- What will the 2022 northern hemisphere harvest be?
 - Ex-Ukraine: Russian harvest disrupted?
 - Fertilisers, fuel, etc feed wheat c.£250/t in November (Friday)
- This autumn will help shape the 2023 harvest

Inputs and Grass/Feed



- Fertiliser problems before Ukraine invasion
 - High gas prices to reduced N fertiliser volumes at higher costs
 - Issue at present more for livestock farmers?
 - Pressures worse now and autumn to come for arable farming
 - Where for winter feed? Other options? Farming Rules for Water?
- Oil market now disrupted diesel short soon?
 - Red diesel sharply up c. double last June's Costings
 - NB Construction etc to lose red diesel in April
- Feed costs for pigs, poultry etc sourcing maize?
- Supply chains and energy increase costs of building materials

And Then?



- Accelerating change and restructuring global supply chains
 - Started with Covid, then recovery effects, now Russian sanctions
 - Ukraine/Russia Neon for computer chips to food and energy
- The need for a strong growing economy to pay for all
- Energy and Climate Change initial move to gas and coal?
 - Real move likely to be acceleration of renewable and nuclear
 - Planning guidance and permitted development? Grid capacity?
- Food production issues of fertilisers, energy, pricing, etc
 - Driving change, not reverting to old policies productivity, resilience
 - Need for climate change/nature policies does not go away





Agricultural Policies and Land Use in Transition

Jeremy Moody

Landed Estates and Farm Tax Conference London – 22nd March 2022

Some Headlines

- Policy is now framed by climate change and biodiversity with concerns over air and water quality – The Environment Act
- Agriculture is treated as a business to adapt in the market place The Agriculture Act
 - Gets much support from tax to planning
 - Supported through the transition period
 - With productivity support
 - But to find its new place in the market
- Offer of public money to buy change "public goods"
 - Options, not salvation



Watch the Money Move



- Basic Payment phased out last payment in 2027
 - Know path of payments to 2024
 - Delinked from land and farming after 2023
- The money is moved with:
 - 10% throughout to productivity support
 - 90% to buy change as "public goods" largely the environment
 - Planned later this decade (but challenged) as:
 - 30% to Sustainable Farming Incentive alongside farming
 - 30% to Local Nature Recovery more serious change, woodland, peatland, habitat creation – some instead of farming
 - 30% to Landscape Recovery larger scale habitat creation

View from the Farm or the Environment?



- The farm business this is the client's challenge
 - Is in production markets with prices and costs
 - Loses Basic Payment over seven years
 - Has that Transition Period to adapt, press on costs, change structure, new approaches, generational change, etc
 - Productivity grants and can take up SFI 55-70% of farmers?
- 60% of the money to LNR/LR focused spending for change
 - Creating/restoring 300,000 ha of new habitats 3% of farmland
 - Say <5% of farmland (arable and grass) overall
 - NB Up to 600,000 ha of arable went into set-aside

The Value of Nature

- Dasgupta report
 - Independent report commissioned by Treasury
- Drawing on Nature's Bank
 - Using resources that are not replenished
 - Resources that underpin the economy and society
- True rate of growth is lower than reported
- The "natural capital" analogy
 - Payments for Ecosystems services what price?
- Public schemes and private markets



Headline Policy - A Time for Nature

- The Government's repeated aim
 - Deliver environmental improvement; Not just slowing decline
- 25 Year Environment Plan
- Environment Act
 - High level targets for species abundance, etc
 - Across Government policy agriculture included
 - Local Nature Recovery Strategies = local plans
 - Forest risk products changing markets?
- "30 by 30" 30% of land "consecrated" to nature by 2030 what does that mean?



Policy is to Reverse Decline



"This Government's pledge is not only to stem the tide of loss, but to turn it around - to leave the environment in a better state than we found it"

Inherited policies try to "to protect what is left and stem the tide of decline" so:

"if we really want to realise the aspirations that the public have for nature then we need policies that will not only protect but that will build back – with more diverse habitats that lead to a greater abundance of those species currently in decline."

George Eustice, July 2020

Air Quality; Water Quality

- Air quality major challenge for DEFRA
- Ammonia not a climate change issue
 - Agriculture produces 88% of UK ammonia
 - Nitrifying sensitive sites
 - Air pollution further afield
 - From livestock, slurry store, fertilisers
 - Answers include covering slurry stores
- Water quality
 - Slurry, soil, nutrients, chemicals
 - Slurry stores again effective storage capacity
 - Buffers against water courses, larger deals



Proposed Environmental Targets



- New consultation proposes legal targets including:
 - Reduce N, P and sediment run-off from farming by at least 40% from 2018 by 2037
 - Increase tree canopy and woodland cover from 14.5% to 17.5% of total land area in England by 2050.
 - Halt the decline in species abundance by 2030
 - Then increase it by at least 10% by 2042
 - Improve England's Red List Index for extinction risks by 2042
 - Create/restore 500,000+ ha of wildlife-rich habitats outside protected sites by 2042

Environment Act – Some Specifics

- Local Nature Recovery Strategies
 - Local planning policies for species and habitats
 - Also national guidance on species and habitats
 - Do these link to both planning policies and ELM?
- Biodiversity gain of 10% on development
 - 30 year on-site/off-site commitments or money
 - Drives values, markets and behaviour
- Conservation Covenants
 - Positive obligations to run with the land
- Change valuation basis for drainage rates?



Nature Recovery Green Paper

- AGRICULTURAL VALUERS
- A step to the 2023 Environmental Improvement Plan
 - Replacing the 25 Year Environment Plan of 2018
- Reform of protected sites
- 30 by 30 requires land to have "a" purpose of conserving and delivering biodiversity outcomes
 - Nature Recovery sites important in that
 - Looking for more on this from National Parks and AONBs
- New English EIA rules
 - Protecting hedgehog, water vole, red squirrel, curlew

Also a Time of Farming Change

- A generation's change in a decade 2020s
 - The past generation of area payments goes
 - The generation of climate change response comes
- Policy Change The 1947 moment
 - The move from subsidy to public goods purchase
 - Carbon, air and water quality, biodiversity, ...
- Real market change
 - Prices Changing markets, trade, changing tastes
 - Means Technology both asset and competition
- Good businesses not waiting on Government



Deeper Change

- 1947: policy support for commodity farming
 - Smoothing the path with deficiency payments
 - Consumer benefited from free market in prices
 - Deficiency payments gave farmers stability
 - BUT came to depend on the Annual Price Review
- CAP north European plain corn/beef policy
 - Supported commodities, then land occupation
- Now in the open market
 - Support for productivity, not production
- How will we now farm and use land?



Some Issues for Farming

- Climate change
 - Fact, mitigation, adaptation
- Land use and business pressures for carbon, biodiversity, water quality, air quality
- Energy the electrification of the countryside
- Changing technologies
- Pressures on sprays, pollution, etc
- Changing markets
 - Changing demands and public tastes
- Labour pressure





Review Business and Land Use



Reviewing a Business: An Introduction for Agricultural Valuers

CAAV Numbered Publication 236





December 2019 £100 CAAV Discussion Paper
Future Rural Land Uses in the United Kingdom A Review of Pressures and Opportunities CAAV Numbered Publication 246





Which Land Uses Where?

- Historic competition with development
 - What changes now in farming uses and crops
- "30 by 30" land used for nature?
 - 60% of output by value from 30% of land
- National Food Strategy Food White Paper to come
 - 20% of our land produces 3% of calories
 - Consequences of the Ukraine War?
- New competition with carbon, nature, energy, floods, etc
 - What happens to marginal arable land?
 - Peatland restoration but lowland peat?
 - Are trees worth having? More solar and turbines


Forestry's Real Role

- Larger scale commercial forestry:
 - Is not about carbon offsetting
 - But supplying future low carbon materials
- Markets are strong
 - Bidding £5,000+/acre to be competitive with land in mid Wales and Scotland (some arable)
 - Giving the change of ownership likely to be needed for this to be well done at scale
- Carbon offsetting deals risk getting in the way
 - But some "insetting"



Competition for Land Use

AGRICULTURAL VALUERS

- All pressures intensifying more so with Ukraine
 - Development constrained by biodiversity, phosphates, water
 - Infrastructure
 - Commercial forestry
 - Carbon sequestration peatland restoration, etc
 - Renewal energy solar wind and crops
 - Nature, flood management, ...
 - Food production
- Reactions as Basic Payment ends What is grown where?





Agriculture

Generation's Change in a Decade

Business Before Schemes

Look to the Business

- The average farm takes 85% of income from trade (produce sales) and 15% from subsidy
- 10% change in yield/price = 50% in subsidy
- Varies between sectors and by performance
 - 4t/acre of wheat @ £150/t: 10% price is £60/acre = 80% of BPS
 - 3.5t/acre@ £250/t: 10% yield change is 117% of BPS 2022
 - Higher output sectors less exposed to subsidy
 - More subsidised sectors more exposed to subsidy
- New schemes are not BPS substitutes but options
 - Buying change with its costs and may offer profit
- Produce prices generally strong



Value of Output and BPS

- Supports a third of output: corn and grazing
 - Grazing livestock: BPS equal to 34% of sales
 - Cereals: BPS equal to 22% of sales
- Another third gets relatively little
 - General Cropping: BPS equal to 7% of sales
 - Dairying: BPS equal to 6% of sales
- Another third gets none
 - Horticulture, Pigs and Poultry get almost no BPS
- Is a third of output by value now produced under cover?



The Range of Performance

Going Farming? Start with £100

- Grazing livestock top Q £112; bottom £47
- A quarter devalued their inputs by more than half

Add Subsidy, Environment and Other Business

- Grazing 53% achieved more than £100
 - Top quartile £134; Bottom quartile £73
- Cereals 55%



Manufacturing: The Model?

- Farming's cost structures like manufacturing
 - But all small businesses living with exchange rates
- Manufacturing had to change in the 1980s
 - Radical restructuring to be competitive
 - Farming getting support through change
- UK now 9th largest manufacturing nation with
 - better quality; more skilled workforce
 - a shift from low to high productivity goods;
 - improvements in automation and technology;
 - increased investment in R&D



Change Through the Market



- Basic Payment and tariffs against non-EU world have acted to buffer change
 - Fed into costs, protected business structures
 - Managed decline
- Those now to change as businesses adjust
 - Putting pressure on costs
 - New ways of working and lines of business
 - Who will be farming what land how?

The point of the transition period

Use the Transition Period

- Have been on notice for four years
- The good have started, others wait
- Subject to tariffs, not a New Zealand cliff edge
 - Australia deal has 15 year tariff transition
- The 7 year transition to 2028 will allow:
 - market dynamics to manage change
 - values, investment, debt, labour, structures, etc
 - families to manage change within life cycles
 - time to build new or changed business
- It is not time to waste



Who Will Farm What Land How?

- Key changes are likely in the WHO of farming
 - Who comes into farming? Who goes out?
 - Generational succession in family or not?
 - Facilitating issues advice, housing, etc
- Key changes are likely in the HOW of farming
 - Production, structural, technological, marketing and land use changes
- How to manage these changes well?
- How to find and hold commercial margin?



A New Mix of Five Outcomes?



- More food production under cover
- Focused commercial commodity farmers based on land that suits them
- Businesses built on land and farming but finding ways to do so with more value
- Land management by using more extensive agricultural means in conjunction with other income streams
- More directly environmental land management by other means.





English Schemes: The Big Picture: Fitting the Jigsaw Together

Jeremy Moody

Landed Estates and Farm Tax Conference London – 22nd March 2022

The New Policy Structure

- Basic Payment phased out over the transition period
- Farmers to make their own business choices
- Regulatory baseline to replace cross compliance
 - Watch rising standards for water, welfare, chemicals
- Agriculture Act offers financial assistance schemes
 - To aid productivity
 - To buy public goods above the regulatory baseline
 - Payment principles paper transactions, not compensation
 - Priced to attract sellers but not to crowd out private money
 - NB 1986 Act tenants have s.19A for financial assistance schemes



The End of Basic Payment

- Phased out for 2028, last payments in 2027
- Path set to 2024
 - All halved by then, larger claimants lose more earlier
- Delinking for 2024 name of payment changes?
 - No longer tied to having land or farming
 - May 2023 is last use of entitlements and area-based forms
 - Payments based on average BPS 2020. 2021, 2022
 - Will need a 2023 claim so only 5ha+
- Lump Sum Exit Scheme
 - Rolls up Basic Payment for leaving subsidised farming



Lump Sum Exit Scheme

- Opens in later April to 30th September 2022
- Open to claimants in 2018 or earlier
 - Also those inheritors of farmland or 1986 Act successors since
- Payment is 2.35 x average pre-penalty BPS 2019 to 2021
 - Capped at 2.35 x £42,500 = £99,875
- Give up all but 5 ha of farmland on May 2021's BPS form
 - By sale, 5+ year FBT, gift, surrender, tenancy succession
 - Take care over existing agri-environment agreements
 - With any associated common rights (and all rights in gross)
 - Or plant it to woodland under a scheme
 - Can keep houses, buildings, woodland etc anything else



Lump Sum Exit Scheme – Entitlements

- Payment requires entitlements surrendered/cancelled
- Payment reduced if surrender a lower payment value of entitlements than was held in May 2021 (or earlier last claim)
 - Reduction in payment is proportionate to the shortfall
 - Leased out entitlements not surrendered would see reduction
 - If transferred entitlements, might be able to buy new ones for this
- Delinking might overtake this from 16th May 2023
- New occupier of land could use own/bought entitlements
- New and young farmers taking on land in May 2022 can only apply for entitlements if already had land by 17th May 2021



Lump Sum Exit Scheme – Exit by 2024



- All actions for entitlements/ 2021 land done by 31st May 2024
 - Exceptions for probate and when a succession is at Tribunal
- Many will make BPS claims in 2022 and some in 2023
 - Taken as on account payments for a successful application for the Lump Sum
- Then excluded from BPS, delinked payment, SFI, some CS/LNR options – as area-based payments
- But can, in principle, farm other land unsubsidised and have productivity grants

Lump Sum Exit Scheme - Partnerships

- Rules for partnerships and limited companies
 - That are entitlement holders
- Partners with 50% or more of profit shares can take the scheme with its payment
 - Personally, not as the partnership
 - Complying with scheme transferring their land
- Remaining partners can continue but drop out of the subsidy system all entitlements surrendered
- Similar rule for shareholders in companies not directors
- Does not affect individuals' interests in separate businesses



Lump Sum Exit Scheme - Taxation

- HMRC has determined that the Lump Sum will be treated as capital
 - Is to be stated in legislation with all CGT reliefs as relevant
- Money only covered by BPR if in a continuing business
- Land if let out retains APR
- Can there still be a "farmhouse" for APR?
 - Day-to-day farming and character appropriate
- Effect of retaining let property on BPR
- Loss/Negligible value claims for entitlements
- Using Business Assets Disposal Relief



Regulatory Baseline



- Public Money for Public Goods means paying for things to be better than required by law
 - To be set by the Regulatory Baseline
 - Cross compliance goes on Delinking
- Likely to be legislation requiring more slurry storage capacity
- Air quality, water quality, animal welfare, chemicals
- Now out of CAP, change in inspection regime
 - Risk focused, proportionate penalties
 - CS now advice on outcomes, no penalties

Countryside Stewardship/HLS

- Now seen as the bridge to Local Nature Recovery
- Now open for 2023 starts and then for 2024 starts
- New and mirror agreements under English rules
 - Inspections more outcomes- and advice-based
 - Penalties not under EU rules
 - But if rolled forward, then still under EU rules
- HLS annual extensions where appropriate
 - How much longer?
 - Subject to EU rules and penalties back to the start



DEFRA'S Three Workhorses from 2024



- National from 2024 Not a single "ELM" scheme
- Sustainable Farming Incentive measures compatible with farming
 - one use of first cuts from Basic Payment
 - Experimental wider ranging Pilot from 2021
 - SFI 2022 (soils, moorland, vet diagnostic visits) later in year
- Local Nature Recovery measures alongside or instead of farming for species and habitats
 - To include woodland creation and peatland restoration
- Landscape Recovery larger scale collaboration for habitat change – first pilots now being invited

Sustainable Farming Incentive

- SFI Pilot closed with over 900 in
 - Part of co-design exploratory and learning with payment
 - Access to later options and payment rates
- SFI 2022 to open in the summer
 - Soils: arable/horticulture; improved grassland two levels
 - Moorland appraisal just one level
 - Animal Health and Welfare Pathway diagnostic vet visits for cattle, sheep and pigs – knowledge of disease
 - Landlord's consent not required by DEFRA
- Later standards to come IPM, agro-forestry, etc



Other Schemes



- Protected landscape payments for more environmental improvement or access
 - Interim scheme aimed at National Parks/AONBs until 2024
- English Woodland Creation Offer (EWCO)
 - To go into Local Nature Recovery
- Tree Health Pilot launched
 - Removing diseased trees, restocking, biosecurity
- Animal Health and Welfare Pathway
 - Welfare: a public good the market does not always pay for
 - Health: a productivity goal

Productivity Schemes



- Farm Investment Fund from autumn 2021 Strong demand
- Farming Equipment Technology Fund offering smaller grants to help purchase specified items
 - Wider range of items and lower minimum scale First round closed
 - More money found to meet most demand scoring rules to come
- Farming Transformation Fund larger grants for equipment, technology or infrastructure to transform the business
 - Water Management theme last autumn
 - Now open for Improving Productivity: automation, slurry acidification
 - Next theme Adding Value to aid processing

Productivity Schemes



- Slurry Investment anti-pollution from later 2022
 - To be in Farming Investment Fund version of Transformation Fund
 - First round is for farmers with slurry systems later versions to come
 - New/extended covered stores above legal requirements to 6 months
- Farming Innovation Funds Industry led R&D
 - Also Farming Futures for strategic R&D; adoption on the farm
- Future Farming Resilience Support from 2021
 - Contracts for advisers to give free farmer advice on facing change
 - Soon closes for the main round September 2022 to March 2024

- **Policy support for new entrants –** more generic than specific

Environment "Crop": Worth It?

- The emerging world of new markets
 - "Public money to buy public goods"
 - Prospect of developing private markets
- Why sell them?
 - Margin? Synergies with other business?
 - Opportunity costs woodland?
- What is the price for a willing deal?
- To achieve change or reward practice?
 - Additionality to buy change?



Look at the Facts

- Do not look at labels, analyse the deal
 - See what is actually happening and test it
- What are the actual commitments?
 - Management practices or sale of control?
- What is being sold and bought?
 - What does that mean? Is it worth it?
- Does let land qualify as an agricultural holding?
 - Fyffe v Esslemont Other terms may answer that
- Does the use meet tests for APR and/or BPR?
 - How is it treated for other taxes?



Land Use Agreements?

- What is being sold?
 - How fettered is the landowner?
- On what terms?
 - See CAAV website paper on Heads of Terms
- For what price?
 - Capital or revenue? How taxed?
- What are the associated costs?
 - The agreement, monitoring and assurance
- When to deal?
- Is it worth it? Carbon, biodiversity, phosphates ...?



Biodiversity Gain - A Test of Value?

- Could be significant value in these deals
 - Another call on (any) development uplift
 - Overage issues on farm sales?
- Deters development of high biodiversity sites
 - Often brownfield land
- Might low diversity sites offer most gain?
 - A wheat or silage field could stay agricultural

The principle/problem of additionality

- Not buying what is already to happen
- If carbon is locked up or water quality improved by biodiversity gain what is left to sell?



Biodiversity Gain Agreements?

- Land on-site, next door or off-site?
 - Does owner retain/use next door land for this?
- To be at least 30 years
 - First agreements end in 2053?
 - But landowners agree 30/40 year solar leases
 - Question of terms and value
 - Risks of designation? SSSI, TPOs, etc?
- Interaction with other uses and options?
 - Farming uses, future development?
- How big might this market really be?



Additionality

AGRICULTURAL VALUERS

- Can deals be stacked? adding payments
- What is left to sell after the last deal?
 - State scheme, offsetting for development or infrastructure, a water company agreement,
- The issue of additionality how defined?
 - DEFRA will not pay for same thing twice
 - BSI Do not pay for something that would happen anyway – *a tougher definition*
- Feasible to sell a tree for carbon and biodiversity?





Valuing the Environment:

Carbon? The Carbon Paradox

"All that Glisters is not Gold"

- Despite the talk, does carbon have much value?
- Agriculture = 8% UK greenhouse gas emissions
 - Hard job to reach net zero Ireland capping cattle?
- Farming is managing carbon
 - Can you be a farmer if you have sold carbon?
 - Farmers will need to hold carbon for own net zero progress
 - Helping another be net zero will not help the farm
 - What could a landlord's reservation even mean?
 - Loss of control, penalties, ...
- Low value £7-£15/t at farm scale. Carbon price to rise?



Carbon: An Example



- Microsoft Wilmot Farms Deal as part of Microsoft reducing its emissions
- WF 10,000 acres of Australian cattle ranch £275,000 (£27/acre) for soil carbon to rise from 4.5% to 6%
 - 40,000 tonnes (below average size for MS deals)
- What has been bought and sold?
- Is that a restrictive covenant? Does the farmer have any rights in carbon? Penalties on what breaches? For how long?
- Can you be a farmer if you have *sold* carbon?

Woodland and Carbon

- Unless kept for a century, woodland only defers emissions still helpfu but
 - Carbon is emitted on felling except what is used for construction
 - Risks of disease, storm, fire, ...
 - Keeping credits back as a buffer reduces value
- WCG Scheme auction prices at c.£20/t
 - 80 year old oak wood £800/acre of carbon
 - Under Forestry Act, so can only replant
- Does additionality leave anything left to sell? Public access?
 - Most soils can store more carbon?
 - Blue carbon a larger answer?


Soils – A Bigger Issue for Farming

- Many soils have become depleted
 - Improvement supports good farming
 - Soil organic matter, biota, ...
- Can hold carbon and be productive
 - Gives fertility and workability
- Improved structure aids water issues
- But improvement is a net cost
 - How to value?
 - How to support the change?







Valuing the Environment:

Water and Phosphates

Water Quality

- Water quality is a major issue
 - Cost of cleaning it for use
 - Ecological consequences
- Point source pollution largely tackled
 - Environment Act tightens storm overflows
- Diffuse pollution remains much from farming
 - Slurry, silage, nutrients, soil, chemicals ...
 - Tolerance now failing across the UK
- Tightening regulations
 - Slurry also links to air quality ammonia



Phosphates: From Problem to Market?



- 2018 ECJ "Dutch N" decision protecting designated habitats from development unless scientific *certainty* of *no* adverse effect
- Phosphates a powerful nutrient
 - Algal bloom, oxygen depletion, species loss
- Natural England/NRW written to LPAs
 - LPAs frightened, lacking guidance, delaying
- Development to be "nutrient neutral"
 - Package treatment plants, land management
 - Cost for developer, opportunity elsewhere

Phosphates - Deals?



- Managing or offsetting phosphate
 - Developing metrics and answers
 - A century's commitment?
 - Costing £5,000-£7,500 per house
- A 100 house estate could have a package treatment plant or a reed bed or buy a change in land use
 - Abandon agricultural use of 110 acres
 - Waterside buffers, planting, etc
 - Export produce (woodchip) from the catchment
- Problem for small developments

Review and Act

- Review the business and the family
- Where do they want to be in 10 years?
- Resources, strengths, opportunities?
- Liabilities, weaknesses, threats?
- Understand the outside pressures
 - Raise performance
 - Consider enterprise choices or other business
- Options for structural change or retirement

MANAGE CHANGE BEFORE IT MANAGES YOU

No good argument for deferring improvement



Key Messages

- This is bigger than government
 - Time to take responsibility for the business
 - Schemes are an option, not a salvation
 - Much change and diverse answers
- Manage change before it manages you
- Where do you want to be in 10 years time?
- Use the transition period
- How to give opportunity to the best?
- Review technology and innovation

THINK NOW, TALK, DECIDE, ACT







Questions?



Performance and Sustainability: Maximising Alternative Sources of Income



Giles Dobson *Managing Partner, Rural* **Biswells**



Retain or sell assets?



History of the Estate





Family Aspirations





Define your Core Estate





Assets to Retain





Assets for Sale





Timeline





Means of Sale





Liquidity Risks and Gearing



Historic Perceptions of Borrowing







Why Borrow?





From Where?







Level of Gearing





Fixed or Variable?





Borrowing Repayment Plan





Liquidity





Buying Assets Off-Estate



Core Estate









What?





Where?





How?





For How Long?





Develop Over Time





Development Strategies



Core Estate





Legacy Developments




Residential, Commercial or Other?







In-house or with help?









Retain or Sell?









Biodiversity Net Gain



Private Client



The Modern Trust: Contentious Trusts in a Changed Social

11th May 2022

Ironmongers' Hall, London

- 🖬 5th Jul 2022
- loD Building, London



Farm Subsidies



Dr Nerys Llewelyn Jones Managing Partner & Director Agri Advisor



Ross Kent *Partner* Carter Jonas



Farm Subsidies

Carter Jonas

Ross Kent MRICS FAAV

Partner, Rural

Carter Jonas LLP, Oxford



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- 1. Basic Payment Position in England
- 2. Responsible Farming
- 3. Moves Towards Self Reliance

Basic Farm Payment

- Post war era <u>Focus on food production</u>
- 1962 Common Agricultural Policy (CAP)
- 1972 UK Joined the EU
- 1984 & 1988 Quota to Limit Over Production and waste
- 1993 Integrated Administration and Control System IACS
- June 2003 Single Farm Payment
- January 2015 Basic Farm Payment
- December 2020 Left EU

TRANSITION PERIOD

• 2021 – 2027 – Phasing out of Direct Payments

POST EU

- The Agriculture Bill (Domestic)
- ELMS

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Basic Farm Payment

- Reductions 2022 2024
- Will be gone by 2027
- £233/ Ha in 2020

Payment band	2021	2022	2023	2024
Up to £30,000	5%	20%	35%	50%
£30,000 - £50,000	10%	25%	40%	55%
£50,000 - £150,000	20%	35%	50%	65%
More than £150,000	25%	40%	55%	70%

Scheme year

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Basic Farm Payment

In real terms -

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Payment value before progressive reductions	2021 payment	2022 payment	2023 payment	2024 payment
£5,000	£4,750	£4,000	£3,250	£2,500
£10,000	£9,500	£8,000	£6,500	£5,000
£20,000	£19,000	£16,000	£13,000	£10,000
£40,000	£37,500	£31,500	£25,500	£19,500
£80,000	£70,500	£58,500	£46,500	£34,500
£160,000	£134,000	£110,000	£86,000	£62,000

Basic Farm Payment

- Lump Sum Exit Scheme ENGLAND ONLY
- 2.35 x Average (pre-penalty) BPS 2019, 2020, 2021
- Up to Maximum payment £99,875
- Application Window April '22 September '22
- Open to pre-2018 claimants (or inherited)
- Retirement
- Next Generation
- End farming occupation of farmland

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Basic Farm Payment

- Surrender all but 5Ha as claimed on 2021 BPS
- Owner Occupied Land
 - Sell
 - 5+ yr FBT
 - Gift (not to spouse)
 - Plant trees under Grant Scheme
- Tenanted Land
 - Surrender
 - Succession
- Evidence?



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Basic Farm Payment

De-linking

- Brings about the end of BPS in 2023
- Delinked payments from 2024
- No need for land or entitlements
- Based on average BPS in 2020, 2021, 2022 (different reference period to Lump-Sum Exit Scheme)
- MUST have claimed BPS in May 2023
- Not available for those that have opted for Lump Sum



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Countryside Stewardship – CSS

• 1987 – Environmentally Sensitive Areas (ESA) scheme

- 1991 Countryside Stewardship (V.1)
 - Ministry of Agriculture, Fisheries and Food (MAFF)
- 2005 Environmental Stewardship
 - ELS & HLS (Natural England)
- 2015 Countryside Stewardship (V.2) (CSS)
 - DEFRA (Department for Environment, Food and Rural Affairs)
 - Granted before 31.12.2020 Governed by EU until their expiry
 - Granted after 01.01.2021 Govern by New UK Policy

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Countryside Stewardship – CSS

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- Friday 29 April deadline to apply for Higher Tier
- Friday 29 July deadline to apply for Mid Tier or Wildlife Offers
- Capital Grants will remain open for applications throughout 2022
- Monday 16 May submit CSS (and HLS/ ELS Environmental Stewardship) revenue claims for existing agreements without penalty





Countryside Stewardship – CSS

- Two remaining Start Dates Jan 2023 & Jan 2024
- Well designed scheme useful revenue income, compliments farm finances and land management
- Payments rates under question Oxford Farming Conference, increased payment rates by 30% for 2022 & 2023
- Conflict Environment v's Food Production
- 5 year term 2028/ 2029, when the new regime is clearer
- Get Applying...



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Countryside Stewardship – CSS

GM £/ha

1200.00 Milling WW @ £230/t, Feed WW @ £200/t, S Barley & Oats @ £170/t, WOSR @ £500/t, Linseed @ £475/t, Beans @ £230/t and Peas @ 325/t. 1000.00 34.5% AN @ £645/ T Urea @ £725/T 800.00 600.00 400.00 200.00 0.00 8.5t/ha WW 9t/ha WW 6.75t/ha S 3t/ha WOSR 7t/ha W Oats 6.5t/ha S Oats 4t/ha W 3.5t/ha Peas 2t/ha S 35t/ha AD AB15 Gp1 Feed Barley (230kg/ha N (150kg/ha N) (125kg/ha) Beans (0 N) (0 N) Linseed Maize (300kg/ha N) (240kg/ha N) (150kg/ha N) inc Aut) (100kg/ha N) (150kg/ha N)

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Farming & Fertiliser



Countryside Stewardship – CSS

If you miss Milling Wheat quality -

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GM £/ha



Countryside Stewardship – CSS

If cereal prices drop but fertilizer cost don't -

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The New Regime - ELMS

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It is this Government's ambition to leave our environment in a better state than we found it."

"We will replace BPS with a system of public money for public goods"

"I believe the most important public good we should pay for is environmental protection and enhancement."

The Rt Hon Michael Gove MP

Secretary of State for Defra (June 2017 - July 2019)

Oxford Farming Conference, January 2018





Through this scheme, we will pay farmers to produce public goods such as water quality, biodiversity, animal health and welfare and climate change mitigation, alongside food production.



These public goods are essential to meeting our 25 Year Environment Plan, Net Zero and animal health and welfare ambitions, alongside our ambitions for a productive and competitive agriculture sector.

(Defra)



1 – SFI (Sustainable Farming Incentive)

Pilot will be launched in October 2021, with a wider roll-out in 2022.

The full version will launch in 2024

[Pilot Farms – cannot be in HLS/ CSS to be selected]

8 'Standards' -

- Create greener landscapes and improve biodiversity
- Promote cleaner air & water
- Guard against environmental risks such as climate change & flooding





2 – LOCAL NATURE RECOVERY - pilot in 2022 and launch in 2024

Pilot - 1st February – 24 May 2022

Competitive application process – impact, feasibility & cost

- Restore nature
- Reduce flood risks
- Boost biodiversity

Up to 15 projects will be taken forward within the total project development budget available of £7.5m

Local collaboration



3 – LANDSCAPE RECOVERY

10 pilot projects in 2022

Launches in 2024

- Restoring wilder landscapes in places where it is appropriate
- Large-scale tree planting
- Peatland and salt marsh restoration



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Landowner/ farmer feedback & observations -

- Conflict Business v's Environment
- Payment Rates Perceived Value for Money
- Fertiliser Prices & Commodity Prices
- Food security
- Change in mindset & approach to land management not conventional farming
- To deliver environmental benefits not free money
- Not a merger of the BPS and CSS a many had originally thought

Other Grants/ Schemes

- Farming Investment Fund
 - Farming Equipment & Technology Fund
 - Farming Transformation Fund
- Productivity Schemes
 - Future Farming Resilience Support
 - Slurry Investment
- Tree Health Pilot scheme
- Farming Innovation Programme
- Local/ Regional Grants









Land Management Consideration

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Carbon

Biodiversity Net Gain

Biodiversity Offsetting

Net Zero



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- 1. Basic Payment Position in England
- 2. Responsible Farming
- 3. Moves Towards Self Reliance



Managing Tax Liabilities



Peter Harker *Partner* Saffery Champness



Tom Hewitt *Partner* Burges Salmon





- Two OTS reports (November 2018 and July 2019)
- Treasury letter March 2021 adoption of a couple of first report recommendations
- Treasury letter 30 November 2021 "decided not to proceed with any changes at the moment"
- APPG report Jan 2020
- Flat rate tax on death and lifetime transfers
- No APR/BPR
- Lifetime gift allowance
- No CGT uplift on death
- No reference to heritage reliefs



- S105(3) IHTA.1984 "Wholly or mainly"
- Many businesses are carefully balanced to maximise BPR on investment assets
- OTS suggested that the CGT 80% trading threshold to be applied to IHT
- Could have been very bad news



- Holiday let BPR case
- Large house in Fife converted to 5 flats
- Deceased lived in one_ let out 3 on FHLs
- Rent included linen, towels, gas and electricity and a separate washing machine and dryer
- Small garden
- Investment activities and incidental or ancillary activities and non-investment activities
- No BPR Judgement
IHT



Natural Capital – tax considerations



Carbon credits

- Woodland carbon code
- Peatland carbon code
- Soil carbon
- Income tax/corporation tax
- VAT
- IHT



Rewilding projects

- Availability of Agricultural property relief
- Need to look at wider picture and other activities
- Impact on CGT position



Biodiversity Net Gain

- BNG requires a 10% increase in biodiversity after development, compared to the level of biodiversity prior to the development taking place. Requirement for planning permission in England by late 2023
- Tax treatment of BNG payment, lump sum or annual?
- Tax profile of land



CGT planning

- BADR
- Rollover relief
- Compulsory purchase

BADR

- 10% on £1m
- Material disposals
 - Christopher Thomson v HMRC
- Associated disposals
- Ceasing a business

Rollover relief

- Qualifying assets
- Timeframe
- Partial re-investment
- Partial business use
- Depreciating assets
- Provisional claims

Compulsory purchase

- Compulsory purchase
- 'New land'
- Land including buildings on the land, any interests in or rights over land
- Does not include the cost of buildings, or additions to buildings on land that is already owned
- Gov response to OTS
- Small part disposals
- Case study





- Landowner A agrees to pay owner B a % of development land sale proceeds (and vice versa)
- Landowner A receives £2m and pays £500k to B. B pays CGT on 500k received and A pays CGT on £2m
- The payment is not tax deductible
- Why did it once appear to work?





- Works well for CGT
- But...
 - HMRC and SDLT?
 - Multiple landowners
 - Farming practicalities
 - Unpooling



- A and B's land valued at £5m and £10m respectively now
- A grants B an option to acquire a 1/3 undivided share of its land at the market value at date of option grant
- B gives A similar option to acquire 2/3 undivided share of B's land
- Developer wishes to buy the whole.
 A sells a release of option over B's land (and vice versa)
- No CGT trading relief on option value
- But more deliverable



Development land sales - deferred consideration

- Tax point
- Deferred consideration instalments
- Unascertainable
- Companies vs individuals





- Both can separate control and benefit
- Trusts
 - trustees have control; beneficiaries benefit
- FICs
 - split between voting / control shares & dividend / growth / capital value shares



Trusts

- limited by availability of APR/BPR or NRB
- potential ten year charges
- FICs
 - the gift of cash/ B shares is a PET



Trusts

 more upfront + ongoing compliance than previously. But still relatively straight forward

FICs

- private client lawyer + corporate lawyer + accountant?
- standardised 'FIC products'?







Trusts

- TRS, The Economic Crime Act etc.
- FICs
 - Companies House + PSC register



Trusts

- Trustees' rate or beneficiaries marginal rate
- FICs
 - Lower rates of tax
 - Corporation tax increasing to 25% in 2023
 - Dividend income recieved no further tax so gross roll-up





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The Modern Trust: Contentious Trusts in a Changed Social

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- 🖬 5th Jul 2022
- loD Building, London



Agricultural Land Succession Planning



Philip Whitcomb *Partner* Moore Barlow



Matthew Woods Partner Withers



Strategies for inheritance planning

- What is the objective?
 - tax mitigation covered in previous session
 - preservation and continuity of farm / estate, or will it be sold?
 - providing for family members
 - custodian v those not involved on the farm/estate
 - fairness v equality
- Understanding of destination is key



Threats to farm / estate

- Principal risks
 - the 'big' house not always relevant but a cost centre
 - relationship breakdown
 - family disputes
 - capital taxes
- Common to most farms / estates
- Order of risk?



Relationship breakdown (1)

- Uncertain outcome of cases covered in next session, but 2 cases:
- *Robson* v *Robson* [2010] EWCA 1171
 - 21 year marriage, mostly inherited wealth
 - extravagant lifestyle one half of carcass of golden goose
 - 'the more and the longer that wealth has been enjoyed, the less fair that it should be ringfenced'
- AR v AR [2011] EWHC 2717 (Fam)
 - 25 year marriage, mostly inherited wealth
 - modest standard of living weight was on needs received c.20%
 - approach nothing happened to bulk of non-matrimonial property to change it into matrimonial property



Relationship breakdown (2)

- Indicates that inherited wealth better protected but uncertain approach / lottery of the Courts
- Can go horribly wrong and scupper your inheritance planning strategy
 - manageable through nuptial agreement and so arguably now a managed risk
 - lower down the list of threats if have a nuptial agreement



Capital Taxes

- Arguably the lowest risk?
 - IHT cost predictable (is change afoot?) and payable over 10 years
 - can be a cost of farm / estate business and built into planning
- Despite not always the greatest threat, it is often *the* focus. Challenge that position from a business perspective:
 - number of farms / estates where cashflow and viability is compromised to maximise IHT relief that may not apply for more than 20 years
 - is term life insurance an interim solution so as not to compromise annual cashflow / unsuitable business models? On one farming estate this was a 0.14% fixed cost to insure until age 90 and daughter does not have to be a dairy farmer for now !



Family disputes (1)

- Greater threat but often *not* a focus. Unpredictable and so how do you plan?
- Unclear documents or intentions
 - trust and will disputes next session
 - poorly drafted partnership agreements
- Proprietary estoppel claims against the farm / estate be careful of what you promise – 'one day this will all be yours'



Family disputes (2)

- Proprietary estoppel, broadly
 - representation, reliance and detriment
- Cases
 - Moore v Moore [2019] 1 FLR 1277
 - everything to the son but basis of 'equity' successfully appealed; demonstrated complexity of issues
 - *Habberfield v Habberfield* [2019] EWCA Civ 890
 - farm had to be sold detriment £220,000; court awarded £1m+



Road test the plan

- relationship breakdown, family disputes and unplanned tax charges are a threat to inheritance planning
- cases where it goes wrong highlights the importance of family governance to improve chance of your inheritance plan being successful
- nobody likes surprises transparency and buy in from family and advisers – common intention
- ensure plan is flexible to deal with changing circumstances so less likely to go wrong



"it is unhappily common for this type of issue not to be clearly dealt with in partnership agreements. It is an obvious problem in relation to farming partnerships, where the land forms an asset of the firm. It is hoped, that in future, those preparing such agreements will take note of the anxiety, expense and delay which such unnecessary uncertainty can cause"

(Ham v Ham (2013) EWCA Civ 1303)


Kingsley v Kingsley (2019) EWHC 1073 (Ch)

No single partnership agreement Farm business between brother and sister Extent of partner's interests in the partnership Extent of partnership property Process



Guest v Guest & Guest (2019) EWHC 869 (Ch)

Trump Farm

Odds over whether the dairy herd should be expanded

Morton v Morton (2022) EWHC 163 (Ch) Family frictions Ownership of property Application of the principle of proportionality







Succession versus estate transfer

Succession = the transfer of control and ownership of the business. One generation reduces their input in the business and the second generation seeks to move in their own direction.

Estate transfer = the transfer of the major fixed assets – the land. Does not necessarily need to happen at the same time as the transfer of the business















The circle of communication





Getting good governance right

Alleviate potential disagreements Clarity over decision making Avoid "off the shelf" – requires bespoke solutions Family charter Suitable structure for the business Land ownership properly documented Onward review and adaptable succession plan Dovetailed legal paperwork







Estates Disputes



Emily Stoneham Senior Associate Payne Hicks Beach



Connie Atkinson *Partner* Kingsley Napley



Thomas Middlehurst *Partner* Moore Barlow



Farms and Estates – Family Law Considerations

- Context
- Common challenges
- Overview of the court's approach
- Brexit and change in subsidies
- Prevention rather than cure practical steps

Farms and Estates – Validity of Wills / Negligence

- Introduction
- Validity of Wills
- Negligent Drafting of Wills
- Practical Tips
 - Before Taking Instructions
 - When Taking Instructions

1975 Act Claims

- Brief overview
- Factors to consider at the will drafting stage
- Points to consider for different claimants:
 - o Spouses including interaction with divorce
 - o Children including claims by adult children
- Particular issues arising in the context of landed estates



Selling Up



Ross Kent *Partner* Cartner Jonas



Simon Blackburn *Partner* Payne Hicks Beach

Michael Thomas *Barrister* **Pump Court** Tax Chambers



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- Sales strategy
- Land registration and title defects
- Environmental issues/contamination
- Access issues



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STRATEGY

○ Clients' needs

- Trustees or private
- Quick or Delayed completion
- Retention of parts
- Holdover
- Overage





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$\,\circ\,$ Buyer type and nuances

- Institutional
- Private
- Planning / development led
- Foreign investor / individual
- Marketing exposure
 - On market
 - Off market
 - By invitation



o Collateral

- Photos / Floorplans / EPC
- Plans
- Data room
- Planning brief
- Listing
- \circ Timing
 - consideration given to photos best introduction
 - when property is at its best trees, farm and crops, assets of particular note
 - time taken to pull collateral together
 - all relevant prep works within the professional team completed

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• Property Considerations

- Condition of property
- Rent reviews up to date
- Regularise tenancies
- Occupations
- External decorations
- \circ Legal / Other consideration
 - Contamination
 - Planning review
 - Access
 - Covenants

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General presentational points





Advanced Pro ₽ Insert Combine Files 👌 Right abc 냄 \$≡ w X Extract 🗋 From File 🗗 Left MS Excel PowerPoint Other Make PDF Edit Typewriter Reduce Split Document Combine Search \times Delete 🖆 From Scanner 🝷 Advanced Assembly ΔII Word Searchable * Text Pages Create Page Rotate Convert Tools Search Bookmarks Troughter or barrier ⊕× 9 @. BROCHURE, MEMORANDUM, VALUATION AND PL/ Approved Brochure If you need more room than is provided for form. Alternatively use continuation sheet - Knight Frank Valuation Report 12 November 2020 Sale Plan U12915 Leave blank if not yet registered. Historic OS map 💾 Indicative Plan TTTLE When application for registration is made 2 these title number(s) should be entered Index Map Search in panel 2 of Form AP1. Official Copy (Register) Insert address, including postcode (if 3 Official Copy (Title Plan) any), or other description of the property transferred. Any physical exclusions Root Conveyance 31.03.1941 such as mines and minerals, should be defined. Conveyance into marriage settlement 16.4.1963 Official Copy (Conveyance) 29.09.1967 Place 'X' in the appropriate box and complete the statement. 🗉 💾 Official Copy (Conveyance Wood Farm) 27.02.19 For example 'edged red'. 🕀 💾 Official Copy (Transfer South Green Farm) 29.09.3 Plan No. 1 For example 'edged and numbered 1 in Plan No. 2 Any plan lodged must be signed by the Conveyance dated 15.7.1969 \bigcirc transfero 🗄 💾 Official Copy (Transfer 5 Southern Green) 10.11.1 ⊕ ⊕ Official Copy (Transfer 0.25 acres at Southern Gre 4 🗄 💾 Official Copy (Transfer 2.43 acres at Southern Gre 5 Give full name(s). E 🗄 Official Copy (Transfer Southern Green Farmhous) Plan No. 1 Complete as appropriate where the Plan No. 2 transferor is a company 🗄 💾 Official Copy (Transfer Barns at Southern Green F E-P Official Copy (Transfer Land at Julians Park Estate Plan SEQ227 Official Copy (Transfer Land at) 30.09.2011 Plan Official Copy (Transfer) 30.09.2011 💾 Plan 🖻 💾 Official Copy (Transfer The Lodge) 30.09.2011 Give full name(s). 6 Plan 🗄 💾 Official Copy (Transfer 1 Julians Park Cottages) 07 Plan (Transferee-signed)) Complete as appropriate where the transferee is a company. Also, for an Plan (Transferor-signed) overseas company, unless an arrangement with Land Registry exists, 🖻 💾 Wayleave Agreement 16.12.1953 (DOES NOT REL 8.27 x 11.69 in < >

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Land Registration

Register before you sell?
Land registry processing times
Adverse possession and boundary discrepancies





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- Title issues
 - Pretend you're buying what's going to be an issue?
 - Restrictions
 - \circ Leases
 - \circ Overage
 - Mortgages
 - \circ Title plans



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- Searches and enquiries
 - Pre-sale searches discuss...
 - Enquiries how to annoy agents and sellers.



Chairs' Closing Remarks



Simon Blackburn *Partner* Payne Hicks Beach



Elizabeth Hartless Partner Saffery Champness

Thank you for joining us!