



Agriculture and Estates

NEWS AND ADVICE FROM BIRKETT LONG

Heralding the new



The summer months have been dominated by politics, with the Brexit vote taking centre stage.

The vote to leave Europe was supported enthusiastically by the farming community, and we expect our farming clients to prepare themselves for the challenge of an anticipated drop in subsidies following the reduction in guaranteed government support in 2020. This will herald a major change in the industry as those who rely too heavily on subsidies will struggle, giving opportunities for stronger farming businesses.

Developments at Birkett Long

You may notice we have changed the heading of this newsletter. This is to ensure it better reflects the spectrum

of work we do. Birkett Long takes a holistic approach to working with farmers and their families. We have a dedicated specialist team advising on all aspects of law relating to rural agricultural business, property, development and farming diversification, but we also have some of the best private client lawyers in the region, who advise farming families on succession planning, wills, lasting powers of attorney and trusts, among other things.

David Wybar will be retiring from the firm at the end of May 2017. You'll find more on page 2.

Our multi-disciplinary agriculture and estates team will now be led by partner, Caroline Dowding, who has over 16 years' experience in succession planning and estate administration, and over 10 years' experience of working with farming and landowning families.

The team continues to expand, with two secretaries moving into the team from elsewhere in the firm; Georgina Jones joins us as an agricultural administrator, and we welcome lawyer, Miles Coates. You'll find an introduction to Miles on page 3.

Our team remains informed and proactive; we understand the demands and requirements placed on those operating in the agricultural sector. As a client, you can expect us to have a thorough understanding of rural issues, and to provide seamless advice on all aspects of your business and family life.

Our new team head, Caroline Dowding, says:

“ There are exciting challenges ahead in continuing David's work in developing a larger, innovative and more specialised agricultural team for the future. I look forward to working with you. ”

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Succession planning

and the importance of partnership deeds

It is not unusual for farming businesses to be run through a partnership, but it is often a family event, such as a marriage, divorce or death, that prompts the hunt for the illusive partnership document because there is a disagreement over policy or money.

This year has seen another busy year for the courts as they try to resolve farming disputes over many diverse issues. One that has stood out is assumptions around property held within partnerships, the most recent case being heard in the High Court this year.

In 1986, farmers, Ron and Jean Ham, bought a dairy farm consisting of the farmhouse, farm buildings and 220 acres. Like most farmers, they spent years working hard and growing the business, eventually adding a residential unit and a further 330 acres of land, as well as tenanted 350 acres on top of that.

During all of this they had three children; Judith, Catherine and John. At different periods in their lives all three worked on the farm. Judith married and left the farm in the mid 1980's, Catherine in September 1997.

In 1997 Ron and Jean decided to bring their son John into the partnership giving him a

25% share in the business. This was later increased to 40% in 2001. Before John was brought in, the farmhouse, buildings and land had all been partnership assets. They continued to be shown as assets in the partnership accounts between 1998 and 2003. However, after a change of accountants in 2003, the assets did not form part of the accounts.

Sadly, John died in a farm accident in 2015.

What is the significance here? If the farmhouse, land and buildings were true partnership assets, ownership would pass in accordance with the partnership agreement. If they weren't, it would all pass in accordance with John's will. In this case there was a conflict: John's will read differently to that of the partnership agreement in that he had left part of the farm to his daughter, Catherine.

The court decided that the farm was not partnership property and Jean, as defendant, won the case against her son. However, more important than the court decision was that:

- There was an unnecessary falling out of family members, potentially with a long lasting effect
- The farming business had, potentially, been destroyed

David Wybar

Retirement

David Wybar will retire from the firm at the end of May. Some of you will be aware that he gives all of his spare time to golf - refereeing at major championships since 2006 and serving on and chairing committees responsible for the governance of the game worldwide - and he will cease practising as a lawyer when retiring from Birkett Long, to take up an appointment in golf later in 2017. We are working towards a smooth transition of files to colleagues, meaning from the New Year David will not be in the office regularly.

David joined Birkett Long as a Partner in 2003 and helped to develop our Rural Team, which has now expanded, under his leadership, into our Agriculture and Estates Team. David is

recognised in the Legal 500 and Chambers legal directories as a leading regional practitioner and his wise stewardship has led our team to be recognised as a regional heavyweight. His knowledge of the sector has been reflected in his wide involvement as, amongst other posts, a member of the Executive Trustee Board of the Suffolk Agricultural Association and a member of the Agricultural Law Association.

We thank him for his contribution to the growth of the firm and wish him well for the future.

Adrian Livesley, Managing Partner
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In addition, this case shows that:

- All advisers must be careful about partnership property assumptions and show clarity in any legal documents
- Advisers and families must consider the possibility of conflicts of interest between their family members

No one wants their families to be at war after a bereavement or another critical life event, and whilst disputes cannot always be prevented, the key to keeping family harmony is often communication.

Sitting alongside these open lines of communication are regular reviews of wills, succession planning, partnership agreements and partnership assets with the accountants, lawyers and land agents involved. When everyone works together it is often possible to ensure continuity and success of the farming legacy.



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Meet the team

Miles Coates

Miles qualified as a solicitor in March 2015 and has recently joined our agriculture and estates team in Colchester.

Miles will add to the team's wealth of experience. He will focus particularly on advising rural clients on all aspects of property law relating to their homes, land and businesses.

Having lived for many years in Suffolk and Essex, Miles knows the area well and looks forward to developing strong relationships with clients in this sector, as he works with them to resolve their legal issues.

Miles says: "I am very much looking forward to the new challenge at Birkett Long, and to working with Caroline's excellent team as I develop my agricultural practice".



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meet the team



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