



Rural Report **2018**

# Welcome

## to Irwin Mitchell's Rural Report

Rural businesses face a period of great uncertainty, but also great opportunity.

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### Brexit

The UK's departure from the EU will be the single biggest event to affect rural businesses in decades and has the potential to transform British farming in particular. Landowners are rightly concerned about a range of issues, from the basis of subsidy to trading relationships.

### Property and connectivity

Other common concerns include the ability to develop land for diversification purposes or for housing. As landowners look to diversify and to maximise commercial and residential rents, digital connectivity is a real issue. Access to fibre optic broadband or 4G mobile signal is crucial, whether it is for taking card payments in a farm shop or attracting cottage tenants.

### Succession planning, estate disputes and family law

A 2017 survey by the Country Land and Business Association, asking farmers about barriers to investment, revealed that a quarter had no one to pass their farm onto. This highlights the clear need to get more young people engaged in land-based rural businesses. Succession planning in each case will be key to making this work – and to avoid disputes between family members in the longer-term.

In this report we are examining these issues in turn and provide an action plan highlighting steps that you can consider in relation to each. Our aim is to provide food for thought – and, where there is need or opportunity, to encourage you to take steps to secure and grow your business.

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# Foreword: **Sir Gary Verity DL** Chief Executive of Welcome to Yorkshire

Being a farmer as well as the Chief Executive of Welcome to Yorkshire for over a decade, has provided me with a unique insight into the importance of future-proofing farming. I feel there are three key issues currently facing the rural industry.



Firstly, whatever the pros and cons may be for our exiting the EU, we have to consider, and be prepared for the impact this may have on our farmers, many of whom rely heavily on European subsidies. It's encouraging to hear plans are now being put in place by the government to fill any gaps in funding which may emerge when we leave. I'm also pleased that there is now acknowledgment from ministers of the vital job our farmers do in maintaining our countryside.

The tourism industry is worth billions to the UK economy, £8 billion per annum in Yorkshire alone, and there is the potential for this to be negatively impacted upon if our picturesque countryside changes for the worse. Stunning rural landscapes, that make counties like Yorkshire so attractive to visit, could be under threat if farms go under or farmers simply don't have the cash to ensure their upkeep. As we prepare for life outside the EU, our tourism offer will be more important than ever to the wider economy and it would be a wise investment to support our farmers in this essential work.

Another issue for our rural areas and for Britain as a whole, is transport and connectivity. For far too long now there has been significant under investment and any future government would do well to consider correcting this imbalance. With improvements to our rural roads would come so much more potential for economic growth and many other wider benefits. Discussions on plans to improve the A64 in Yorkshire have been ongoing for many years and it's good to hear a number of options are now being considered. It's important we don't now lose this momentum.



The media, in recent months, has also been shining a light on the many issues facing Britain's railways: price increases, outdated and over-crowded carriages, persistent delays. More investment is on the way and will be needed if we are to catch up with the quality and efficiency seen on rail networks in other parts of the world. There are also serious questions about the progress of High Speed 2, when the line is eventually be completed.

My third concern is succession, who will run our farms in the future? The rapid expansion of Higher Education in the late 1990s and early 2000s, when every 18-year-old was encouraged to go to university, had noble intentions but has subsequently had difficult consequences for many farmers and their families. The shift towards urban living has left too few people to work on farms, a situation that could now be exacerbated further post Brexit. Many farmers now face having no-one to pass their land or businesses on to, as a generation of potential rural talent has relocated to the cities.

I am heartened, however, by a renewed interest in the provenance of our food. We have such amazing local produce in Yorkshire and there is a reignited passion for knowledge of its the journey from field to fork. This makes me hopeful for a new generation of farmers to work alongside those with centuries of knowledge and experience.

By necessity, farmers are a resilient and resourceful breed and they will need these skills more than ever over the coming years. But if they are valued and supported together we can make sure UK farming is fit for the 21st century and beyond. encouraged to stay in the business or on the land.



# Brexit

Deal or no deal, the potential implications of Brexit are looming very large for the rural sector.

While many relate to concerns such as tax and succession planning, a Yorkshire Post survey found that many farmers believe uncertainty and volatility in the market will be among the biggest problems they face in the future.

The Government has now started to show its hand on its plans to support farming. The Agriculture Bill was published in September, including subsidy proposals which will see direct payments continue until 2021 and then taper to zero in 2027. A new Environmental Land Management Scheme (ELMS), based on public money for public goods, will be open for applications in 2021. Agricultural subsidy post-Brexit is a hot topic of debate, but what other topics should be at the top of the agenda for rural businesses?

## Finance

Long-term mortgage finance remains relatively inexpensive and there is a window to secure such support at low rates before Brexit brings upheaval. In addition, as the proposed changes to subsidies may still leave some land-based businesses struggling to pay the mortgage, now may also be the time to consider opportunities for refinancing, restructuring, tax planning or even diversification with the ELMS system of 'public money for public goods' in mind.

## Farm sales

If the anticipated changes to subsidies ultimately do cause some businesses to fail, much more rural land may come on to the market over the next few years. That may well have an impact on prices, but it may also create opportunities to expand existing holdings or purchase land with an eye to diversification and development.

## Free movement

Both the Chequers' Statement in July and the subsequent White Paper had a focus on free movement on goods, but what about labour? A pilot scheme was announced in September which would allow fruit and vegetable farmers to employ 2,500 non-EU migrant workers for up to six months per year. While the scheme is designed to address peak production periods, it is unlikely to solve existing problems in seasonal workforce recruitment.

## Farming's future

The most common structures for rural businesses tend to be fairly conservative, but we believe Brexit should lead to greater collaboration between neighbouring landowners and a focus on the sharing of labour, plant and capital. We are looking forward to helping such new businesses to hit the ground running in a tax efficient manner.



## Action Points:

Reviewing your business plan

- Are there investment opportunities or issues you can address while finance remains inexpensive?
- How dependent is your business and any debt-finance on current EU subsidies?
- Identify and anticipate new opportunities in line as the detail of the ELMS system (public benefits for public goods) is unveiled?
- Could a mutually beneficial collaboration with a neighbouring landowner offer a new route to business success?

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# Property & Infrastructure

The property market is undoubtedly a volatile place at present. As well as the uncertainty caused by Brexit, there are other major issues affecting the industry including affordability. Ultimately while developers need to be able to make a profit, people need to be able to afford homes.

Government incentives have become very important as a result of this, but the effectiveness of help-to-buy has been challenged as an authentic fix, propping up house prices and leaving buyers with future affordability challenges. This is also the issue of the decreasing availability of housing stock. Around 217,000 homes were built last year and while the 2018 target is 300,000, it is hard to see how this will be reached with current planning rules and the aforementioned affordability issues. Thankfully, new planning regulations are under consultation and should provide some support, although admittedly the process could be boosted further by landowners and developers learning to trust each other more.

In addition, the likes of Help to Buy will continue and s106 Planning Agreement funds should also be used to rebuild a social housing stock depleted through Help to Buy and the austerity measures faced by the UK across the last decade. However, the money that is available must also be used with ingenuity by Housing Associations as they look to build new accommodation. Modern building methods such as modular construction perhaps being part of the answer towards cutting the cost of development.

In terms of infrastructure, the key area of focus continues to be improving access to both fibre optic broadband and 4G mobile signal in rural areas. Improving this connectivity should go a long way towards assisting with business efficiency and development in a number of ways. For example, it is often cheaper to buy a range of products online, so access to such technology is vital for farm shops looking to take card payments or promote services through websites. While farms are affected by a host of issues at this present time, getting a handle on both property and connectivity could be the answer to helping many of them diversify and generate crucial extra income at what is a difficult time.

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## Action Points:

Reviewing your business plan

- The building of more affordable housing stock, possibly through joint ventures between local landowners and the local authority.
- A clear strategy for developing new affordable housing stock at local plan level.
- The use of innovative construction techniques such as modular buildings to reduce the cost of development.
- Further action to tackle connectivity issues related to both fibre optic broadband and mobile signal, including the creation of alliances between internet providers and local community groups.



“Getting a handle on both property and connectivity could be the answer to helping many farms diversify and generate crucial extra income at what is a difficult time.”



## Comment: Dorothy Fairburn

County Land and Business Association

CLA Director North Dorothy Fairburn highlights the importance of digital connectivity in rural areas, and how this contributes to vibrant economic growth and sustainability in the countryside.

In August, the Department for Digital, Culture, Media and Sport issued a statement on new research highlighting superfast broadband and its positive economic impact. According to this research, local businesses in areas covered by the Government rollout of superfast broadband have seen a combined increase of £9 billion in turnover since the introduction of faster broadband speeds.

At the time of its release, the CLA welcomed this research as it merely illustrated what we already know – that digital connectivity, whether it be faster broadband or improved mobile connectivity, greatly enhances the added value this brings to the economy.

In tandem with this, a Rural England report published in March calculated that unlocking the digital potential of rural areas across the UK could add between £12 billion and £26 billion [GVA] annually to the UK economy.

There is still a shocking rural-urban digital divide. Ofcom’s Connected Nations report in December 2017 revealed that while people inside 90 % of UK premises can now make telephone calls on all four mobile networks, this falls to 57 % in rural areas.

The CLA’s long-running campaign to end this digital discrimination against rural homes and businesses was won after a law enacting a legal obligation to deliver universal broadband of at least 10 megabits per second (Mbps) by the end of 2020 was laid in Parliament in March 2018.

Together with broadband, 4G mobile coverage is essential for services in 21st century Britain, but rural areas are not able to participate in the digital revolution as fully as in urban areas. We want mobile phone operators held to account to deliver universal rural 4G digital infrastructure which is vital in making rural villages, farms and businesses sustainable by acting as a catalyst for economic growth and job creation.

Mobile operators have secured legal powers on the basis that they are the same as ‘utility’ services. If that is the case, we feel that they should also be forced to deliver the universal service that a utility operator provides. In August, the CLA, along with RICS, Mobile UK and the Department for Digital, Culture, Media and Sport issued a joint statement on negotiations linked to the new Electronics Communications Code pledging to work together to improve mobile phone coverage across the countryside. In it, we argue that Ofcom’s code of practice should be the blueprint for future negotiations around rental agreements for masts as the best way to achieve agreements which deliver both a fair payment to landowners and improved rural mobile coverage. From improving our existing networks to using the next generation of technology, collaboration is vital when it comes to building our digital infrastructure.

We will continue to urge the Government and the regulator to intensify efforts to bring broadband and mobile connectivity in rural areas on a par with more urban areas. It would also help if an holistic approach is taken when considering digital connectivity. We forge ahead positively.



# Succession Planning

Family is often fundamental to farms and estates and the need to keep young people engaged so they can take over the reins in the future is often a vital part of the rural businesses. A key issue is succession planning.

By using tools such as wills and Lasting Powers of Attorney, business owners can put provisions in place which ensure younger generations understand their place in the structure of the farm and the vital role they will play in its future. Furthermore, such legal protections can also ensure that costly disputes are avoided, as we see many cases where families face stressful battles caused by a lack of succession planning.

Undoubtedly the most common question we are asked is what steps should be taken to ensure a farm or estate and its assets are passed to the right people in a tax efficient manner. Indeed, the rise in land and property values has made rural property a target for the Government in terms of tax revenue, but measures like the nil rate band for the main residential property do provide some support. Under these rules the house must be passed to a descendant, something which may prove attractive if you are convincing children to stay in the family business.

Tax relief is another important issue and many businesses face a dilemma whether they should opt for agricultural property relief (APR) or business property relief (BPR). APR has always had a vital role in the rural sector as it enables the transfer of farms to the next generation without a large tax bill and claims tend to be allowed with few challenges by HMRC. In contrast, while APR is restricted to the agricultural value of an asset, BPR claims are arguably placed under more scrutiny as they are at present unlimited.

Planning for the future can be a difficult and complicated process, but getting advice on wills, tax and estate issues and much more should help you keep younger generations engaged in the business and ensure that assets will pass to them in a manner which best suits all parties.

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## Action Points:

Reviewing your business plan

- Review your will to ensure that assets such as landholdings and farm buildings are clearly defined and up-to-date. Get advice on restructuring the will to make it more tax efficient
- Review property ownership and tenancy arrangements and consider changes which may be vital to the terms of your will or boost tax efficiency
- Put a succession plan in place for passing business interests to young relatives, creating lifetime trusts for wealth protection and involving the next generation in the business at an early age
- Consider pre and post nuptial agreements to protect assets passed down to the next generation in the event of divorce
- Make Lasting Powers of Attorney which will designate individuals to handle business and personal matters in the event you become incapacitated



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# Keeping it in the Family

Through our work advising rural business owners on matters such as wealth protection and relationship breakdown, we see how they are often straight-talking and forthright in all of their dealings with one crucial exception – family matters.

In many ways, our family life is the same as business. While the road can be bumpy, you have the opportunity to reap the rewards of your hard work and effort. Similarly, as with a company, you should not overlook the importance of planning for the future.

Family law is about more than divorce and separation. It is about ensuring that those close to us are protected as our lives get more complicated. Having the right plans in place – whether it is a pre-nuptial agreement ahead of a marriage or a cohabitation agreement for those living together – could save a huge amount of time and money in the event of issues arising further down the road. Such agreements set out the ground rules for what will happen in the event of a relationship breakdown, guarding against future claims against wealth, businesses or property.

We see the same scenarios play out time and time again in relation to farms and estates, with individuals facing significant issues as a result of a lack of proper legal protection. In addition, there are problems which can emerge in a relationship breakdown when a family member affected is running an offshoot venture within the business such as a farm shop or garden centre.

The right legal agreements, along with a valid will, can go a long way towards ensuring that the right people benefit from an estate and a clear structure is in place regarding how a business should be handled if circumstances change.

Such issues are so important in the rural community, particularly as it is often vital to ensure that assets which have been in a family for generations are protected. The sector is facing tough conditions at present, but taking some time to consider these issues may help you avoid further headaches in the future.

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## Action Points:

Reviewing your business plan

- Consider your family relationships and whether you have asset protection to guard against future claims. Agreements like pre-nups provide vital support if circumstances change.
- If you are transferring assets to your children, examine the need for family agreements which ensure wealth is retained by the family.
- Review family agreements regularly.
- Don't just rely on Trusts for wealth protection, as family courts have wide-reaching powers which may also prove useful.
- Early advice is key if a relationship is failing. Not only could it help to protect your business, it may even provide certainty which helps to save the relationship.



“Rural business owners are often straight-talking and forthright in all of their dealings with one fairly vital exception – family matters.”



# Avoiding Disputes

When it comes to a farm or estate, it is easy to focus on the day-to-day running of the business rather than thinking too much about the long-term future.

In fact, with many farms and estates being family-run, it is often the case that those working together every day presume there is no need for formal arrangements about how the business will operate in the years ahead. However, failing to consider such issues can have huge consequences, both in terms of your estate and the future of your family. Long-running disputes over a farm or estate may sound like something from *The Archers*, but they are very common in both our own cases and many others heard at the High Court.

The most common scenarios involve the head of a family passing away without taking steps to clearly outline how the farm or estate should function in the future. Such situations are then further complicated when promises have been made to individuals that the farm or estate will one day pass to them, only for it to subsequently emerge that such assurances have not been backed up by proper legal protection. As an example, one of our current cases involves a long-running dispute which arose following the death of the head of a family who left an inadequate will. The document – which even includes references to land that does not form part of the estate – has caused a range of complications for his family including children from two different marriages and his widow of 50 years.

These issues can cause irreparable damage to families and create disputes that ultimately stretch across generations, yet they can be simply avoided through some proper planning. Take time to consider the ownership of the assets – from land to machinery and buildings – and how they should be handled in the future. In addition, if you have diversified and created several different businesses in the farm like a shop or playbarn, put a clear structure in place regarding their future ownership. It can be very difficult to think about a time when you're not around anymore, but preparing a will or using succession planning will mean your loved ones are totally clear about how affairs should be handled in the future.

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## Action Points:

Reviewing your business plan

- A carefully drafted will is of immeasurable value and can eliminate, or at least reduce, the risk of family disputes after death
- Regularly reviewing a will is also advisable given how family dynamics can change overnight
- Examine the ownership and function of the farm's operations and assets, as well as whether the current business structure is fit for purpose
- Consider the need for other documents like power of attorney, family arrangements or even pre-nuptial agreements. As well as providing peace of mind, such documents can be compiled quickly and go a long way towards preventing costly legal disputes.

“Long-running disputes over a farm may sound like something from *The Archers*, but they are very common in both our own cases and many others heard at the High Court.”

# Conclusion

Across the pages of this report we have looked at what we believe to be the key challenges faced by rural businesses at present.



Brexit evidently casts a shadow across the future and as more detail on the Government's future plans emerges rural businesses will need to be ready and prepared to adapt. Furthermore, the recent availability of cheaper finance could point the way towards new opportunities.

While preparing for Brexit may mean long-term planning is not high on the list of priorities for many farmers, looking to the future may hold the key to engaging young people in the business. Succession planning and reviewing ownership of interests and assets may seem like hard work, but the effort will be worth it when the future of the operation is secure and clear guidance is left for the next generation.

Such steps may also reduce the number of stressful and costly disputes which sadly continue to arise in relation to many rural estates. Preparing and updating wills, as well as considering other arrangements like a Lasting Power of Attorney, provides peace of mind and reduces the risk of family fallouts in the future.

It will be interesting to see what the future holds for the property market and particularly how landowners can work with developers to address the need for more affordable housing stock. Rural businesses may also have to take the lead to engage with internet service providers and finally address the connectivity issues which continue to impact on too many areas. With rural businesses facing so many challenges, access to online services in this day and age should not be one. Ultimately, there is plenty for those involved in farming and agriculture to consider, but taking steps to handle these specific issues may provide some stability and put businesses on the right track at a tough time.

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When the rural property you own forms the core of your business, as well as your home, complex issues can arise on your doorstep.

At Irwin Mitchell we understand that making profitable and sustainable use of your rural property for yourself and for future generations is no easy task. Whether you own a farm, a country house or a landed estate, we have a deep understanding of the risks and rewards that each type of property is likely to face.

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### Farm sales

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PW-0148

