

Contentious Farm Probate

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Contentious probate refers to a dispute about an estate on death when the deceased is no longer there to explain themselves. This process can be difficult for farming families and lead to many mixed feelings, but understanding when an estate can be contested can help answer many questions and make a troubling time less confusing for everyone.

Contentious probate in the UK refers to a legal dispute that arises when the validity of a Will or the distribution of an estate is called into question. This can happen, for example, when a family member or other interested party feels they have not been fairly treated in the Will, or they suspect that the Will was made under duress or without complying with the proper legal formalities, both reasons that can invalidate the contents.

Invalid Wills

In the case of *Mundil-Williams v Williams* [2021] EWHC 586, the High Court ruled that a Will was invalid because the testator (a Welsh farmer) lacked knowledge and approval of its contents. The case is a timely reminder of the need to ensure that farm Wills are valid.

In this case, rather than find the Will to be invalid, the Court rectified the Will by excluding words from it so that the Will more accurately reflected the deceased's intentions.

The facts were that the testator died in 2017 leaving four sons. His estate (value £983,000) primarily consisted of the family farm (value £700,000). The testator's eldest son had been a partner in the farming business and had taken over the practical running of the farm by the time the testator executed his Will in 2014.

Many UK farms are currently valued at considerable amounts, especially where there is potential development value (see case of *Foster v Revenue and Customs* [2019] UKUT 251 (LC)) and the propensity to challenge a farmer's Will is high.

The need to express clearly and the challenge

Under the terms of his previous 1990 Will, the deceased left the residue of his estate to his four sons equally. He executed a new Will in 2014, at which time his eldest son was in charge of the day-to-day duties on the farm. The deceased gave verbal instructions for the Will in person to a secretary at the family's solicitors. The secretary took a handwritten note which she then typed up and gave to the paralegal responsible for drafting the new Will. However, the Will provisions drafted did not accurately reflect the instructions of the deceased farmer.

In reality, the deceased wished for his eldest son to receive an agricultural tenancy and 62.5% of the residue, yet the Will provided that he would receive the farm outright, leaving the three other brothers with only 12.5% of the residuary estate, which excluded the farm. The deceased approved the draft of the Will and then executed the approved Will.

One of the sons, Timothy Mundil-Williams, challenged the Will following his father's death on the basis that it did not represent his father's wishes and intentions as expressed to the family and the solicitors. No doubt was cast upon the deceased's capacity.

It is important at all levels for farmers to update the Wills with:

- Clear instructions
- Clear understanding
- Clear witnessing

Resolving disputes

As advisers it is important to help resolve any dispute. This may involve advising on the legal options available to the client, such as contesting the Will, negotiating a settlement with other beneficiaries or seeking a court order to protect a client's

interests. However, those involved must be ever mindful of the need to avoid conflicts of interest when advising the parties to a dispute.

Farm tax advisers and accountants must be aware of the propensity for farming families to dispute and make sure everything is protected by legal documents.

Reasons for disputes

Contentious probate disputes can happen for a variety of reasons, including but not limited to:

- Inadequate financial provision – this is common among spouses and children who feel they should have received more from the deceased's Will, especially if they were financially dependent on them under legislation – Inheritance (Provision for Family & Dependents) Act 1975.
- Issues with executors of the Will, such as a disagreement regarding the appointment or actions of one who might also be a beneficiary.
- Lifetime gifts and promises – there have been several cases based on proprietary estoppel in recent years affecting farms.
- Mistakes and disagreements, such as a dispute over the correct ownership of property or the value of an asset or the drafting of the Will.

Considering IHT liabilities and planning

IHT liabilities do have to be considered at the Will drafting stage as shown by a recent decision in the First-tier Tribunal, *N Hall and another (as trustees of Carolina Raboni deceased)* [2023] UKFTT 32, which concerned whether an interest in possession arose in a 'cash poor' estate where a 'companion' occupied the house after the widow left it to her five nieces and nephews.

The case shows the importance of Will drafting. The deceased had granted her friend and companion the right to live in the house rent-free other than insurance and maintenance costs for the rest of his life. The property was not to be sold without his consent. The companion moved into the house in 2003 and Mrs Raboni died in 2004. The nephews and nieces decided to pay the IHT by instalments as otherwise the house would have had to be sold to pay the IHT due on the deceased death. This brought to an end the right to occupy granted by Mrs Raboni to her friend. Had the tribunal decided that the right of occupation under Mrs Raboni's Will until her companion's death there would have been IHT due on the house's then £827,000

value instead of what was paid by the nephews and nieces on Mrs Rabioni's death when the house was only worth £300,000.

The nil rate band and its enhancements staying frozen means that there are more estates paying inheritance tax.

The likely IHT liability and the impact on the distribution must be considered by the Will drafter. One of the problems in practical terms is the marginal nature of potential inheritance tax liabilities. For example, in the *Hall* case, the value of the house was significant. It is key to understand the values of the assets in the estate and to have professional advice as to potential values. If necessary, this should be on regular review of the Will.

Occupation of the farmhouse

In farming, the occupation of the farmhouse can be complicated.

In the *Hall* case, the First-tier Tribunal decided that, contrary to the way in which a beneficiary with a right of occupation had commonly been treated, an occupying beneficiary had not in fact enjoyed an interest in possession in the deceased's property under her Will but rather at the behest of the nephews and nieces who then owned the property. This was notwithstanding the fact that his occupation of the property was until his own death in 2017.

The tribunal was of the view that to decide what right the companion had under the Will, it was necessary to consider what the executors could have done, in the absence of any consent by any of the parties. Had they done nothing, the residuary beneficiaries could have compelled administration of the estate, and HMRC could have compelled the payment of their liability. The only option then would have been to sell the house and, in that case, there would be no interest in possession because the house was sold.

The executors believed the only option was to sell the property subject to the companion's right of occupation – which would impact on the open market value. Faced with this, and considering the wishes and intentions of the deceased, the beneficiaries opted to pay the inheritance tax bill themselves and to wait until the companion died before selling the property.

Gifts

Gifts to friends must be clearly understood in the drafting of Wills. Careful drafting of the Will and the wording in respect of a right to occupy can be used to ensure that an interest in possession is created or, if more beneficial, avoided.

Practical interaction of drafting and tax planning

It is essential that those drafting the farmer's Will take into account a number of documents to be clear on ownership and practical impact.

- The farm accounts to consider partnership property (100% BPR – Business Property Relief) and non-partnership property (50% BPR) and also to look at the impact on the “living business”
- The farm partnership agreement for full understanding of what should happen to partnership property etc, and to be aware of complexities that could arise
- Any IHT planning report together with a succession report that can help tie into the wishes of the testator.



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