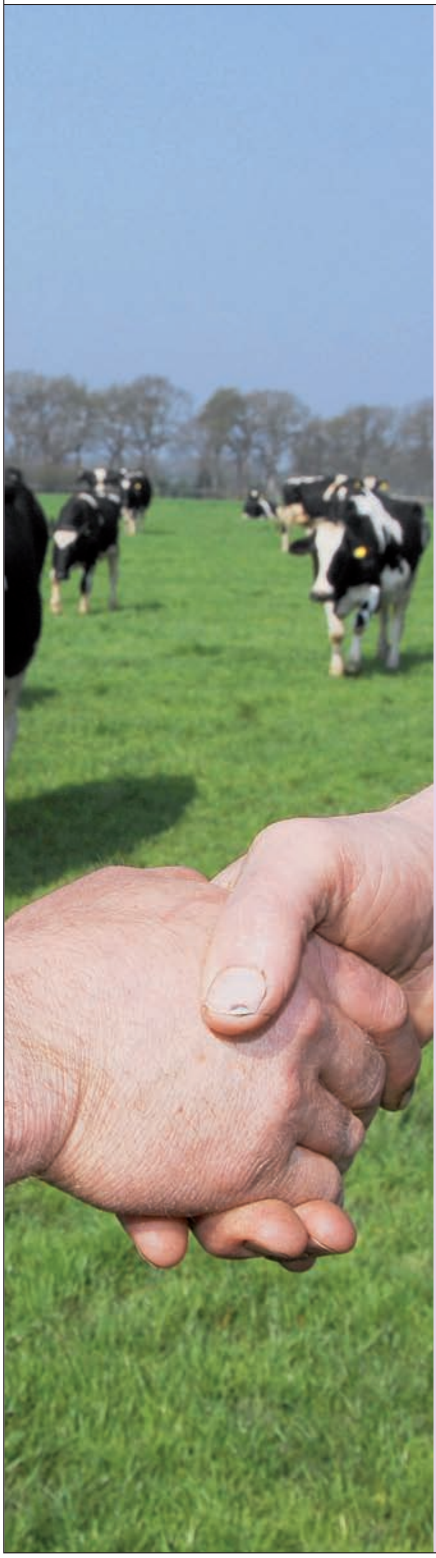
CHARLES HOLT

Charles Holt, an independent consultant with the Farm Consultancy Group, talks about important, but often overlooked, business issues facing dairy producers today. Here he explains why partnerships need to be formalised, how to do it and why agreements should be subject to regular review.

'Agreements should be reviewed every time there's a significant change'

Partnerships without pain



Odds are that your dairy business is run as a partnership. They're the most common business set up, and have been, for many generations. There has been a move towards limited companies, mainly for tax reasons, but partnerships are still extremely popular and suit the family-based approach on many units.

That said, not all partnerships are based on a written agreement – or one that's been subject to regular and timely reviews. And this is where they can run into problems.

The reason many partnerships operate without a formal agreement is because they're family based. But it's important to take an impersonal business view on this and draw one up. You wouldn't go into business partnership with a non-family member without one. So why risk the additional upset of causing family rifts, not to mention any serious financial issues, by not having such a formal agreement with family. It offers greater financial and emotional security for everyone involved.

Legal agreement

Without a written legal partnership agreement, all partnerships are based on an Act that was drawn up in 1890. If there's a dispute or an issue – perhaps someone wants to leave the partnership or someone dies – solicitors will go back to the 1890s Act to determine how assets should be split.

Even if you have a written partnership agreement, it may be that it was drawn up by your grandfather or father, as far back as the 1940s, and it will need reviewing and updating.

All agreements should be reviewed and updated when ever there's a significant change within the business, for example one of the partners marries or some additional land is purchased.

Any solicitor worth their salt will ask difficult questions – what happens if someone dies or if there's a divorce? What if one person simply wants to leave the business? It's vital that all avenues are explored and any tricky issues are 'covered'.

It's also possible to stipulate which assets are included within the agreement. For example, a husband and wife may wish to retain control of the land and set up a partnership, with sons and daughters, that just includes the business – the cows, machinery and equipment.

'Dovetail' documents

It's also important to ensure that partnership agreements and wills 'dovetail'. If they don't – and a partner dies – this can lead to disputes. Any business partnership agreement will take precedence over a will, so it's important that the two documents should mirror each other as far as individual assets go. It avoids a lot of expense, arguing and heartache.

Involving your accountant when drawing up partnership agreements and wills is also vital. They'll be well placed to flag up any taxation issues and to offer advice.

One area to watch is that some accountants don't realise that it's best to have two capital accounts – one for income profit and losses and one for capital profit and losses. So check that your business has both. Again, it will avoid a lot of hassle and upset later on.

So, if you do nothing else this year in terms of planning for the next generation, do sit down with a solicitor who understands the complexity of agriculture and business partnerships between family members – as most in dairying are. Get your accountant on board too and write or review an existing partnership agreement. And review it when there are any major changes to partners' circumstances or the business.