



“Welcome to the latest edition of our newsletter. We live in ‘interesting times’, and our job as lawyers is to guide you through them and to help you avoid the pitfalls along the way.

Please excuse me for giving a huge congratulations to our whole team, including the unsung support staff, on having their skills and service recognised nationally – more on that below. I hope you will find that our knowledge and our service matches the reviews we get.”



Jonathan Carroll
Director & Head of Agriculture

“Some decisions stay the same but our advice moves with the times”

Contact our dedicated and specialist agricultural team for expert advice on all aspects of agricultural law

01228 514077

Carlisle • Penrith • Haltwhistle • Brampton • West Cumbria





Our agriculture team has been officially ranked one of the very best in the North of England in a worldwide legal listing, with international firm Womble Bond Dickinson as the only other firm in the top tier.

The annual Legal 500 review provides in-depth analysis of the region's law firms, and it's fantastic to have our expertise and the strength of our team recognised. Clients called us 'friendly, approachable and understanding', and mentioned our expertise from buying and selling property to disputes, tenancy work and forestry.

Directors Jonathan Carroll and Mark Jackson were named as leading individuals (the only firm with more than one person) while senior solicitor Katherine Pretswell-Walker was highlighted as a rising star for 2020. Having their names in lights is nice, but the truth is that the team is bigger than that, with Rebecca Toppin and Bethan Griffiths adding their considerable legal skills.

We draw upon a great depth of experience to work with farming families on what can often be very complex matters. That specialist knowledge ensures we get things right for our clients because doing so has the power to protect them for generations to come.

It's great to get a pat on the back now and again. It's also often hard for clients to tell a good lawyer from a bad one – we aim to prove the Legal 500 right: that Cartmell Shepherd is second to none.



Partnership Agreements – why bother?

So your accountant and your bank keep telling you that you ought to get a written partnership agreement.

Just money for lawyers, right?

Well, some, but the potential costs to you are huge if you don't. The law governing unwritten partnerships is from 1890, and pretty harsh:

- Any partner can terminate the business, practically overnight, and require every asset to be sold – a partnership agreement prevents that
- Death of any partner automatically ends the partnership – many banks will simply freeze your accounts, which may cause the business to collapse there and then, or at least force you to renegotiate your loans quickly
- There can be arguments over what is partnership property, such as the farm itself – a divorcing partner may find their spouse making a claim on the farm, for example, just because it appears on the partnership accounts
- Profits are divided equally, as are losses – that often isn't the way the family wants it
- Partners can sign huge contracts that bind all of the others, without asking them – a good agreement will limit that risk
- Retiring partners should usually be paid out over a period, to allow the business to continue – without an agreement, that simply won't happen. They can retire and demand their share immediately

- Partners can become mentally or physically incapable, especially as they age – you need mechanisms to deal with that, or the business might end up stuck in limbo or having to go to court to approve sensible changes
- Partners who misbehave are hard to remove – you need to make clear their duties and the ability to remove them, just in case
- The legal costs of a dispute between partners down the line can be enormous – tens of thousands of pounds. A few hundred pounds spent on accountancy and legal advice now can be the difference between a small bill later and catastrophe. As much as anything, it's insurance against the day that dispute occurs

So long as everyone is alive, well and getting on, a Partnership Agreement isn't the end of the world. The day that changes, the absence of an Agreement can be the end of your business and the start of huge family litigation.

But no-one you know has divorced, died, become seriously ill or fallen out with their relatives, have they?

If you think it might be a good idea to sort it out now, while you are all still on good terms and breathing, contact us now to discuss it.



Jonathan Carroll
Director & Head of Agriculture

No-deal Brexit will cost UK farmers £850 million

Total income from UK farming will fall by 18% if the UK leaves the EU without a deal, according to a forecast published by the Andersons Centre's Farm Business Consultancy. This amounts to a loss of almost £850 million, and is likely to put many UK farmers out of business.

In contrast, the research suggests that agreeing a Brexit deal will reduce the likely cost faced by farmers to just 3% or £200 million.

As well as looking at the effects of Brexit on total income from farming across all sectors, Andersons also examined its likely effects on different types of farming businesses. They found that income in the sheepmeat sector is likely to fall by 31% in the event of a no-deal Brexit, making this among the worst affected farming sectors, while profitability for dairy farmers in England is likely to fall from 3.4 pence per litre to just 0.9 pence. Dairy farmers in Northern Ireland would be more adversely affected because of their dependence on milk processors in the Republic of Ireland.

Throughout the UK, arable farmers face a likely fall in profits from £297 to £203 per hectare if the UK leaves the EU without a deal. In contrast, some farming sectors (horticulture and intensive pig and poultry production) are likely to increase their profitability.

However, this prediction is conditional on there being enough farming labour available for their operations.

Some farming costs will fall after a no-deal Brexit, according to the research, for example feed, fertiliser and plant protection products. However, veterinary services are among the costs that are expected to rise. This is because the border inspection operations that would result from a no-deal Brexit would significantly increase demand for vets.

To carry out their analysis, Andersons looked at 'Total Income From Farming' (TIFF) over a period of 9 to 12 months following Brexit. To allow for yearly variations on farming returns (caused by factors such as weather conditions and fluctuating exchange rates) a three year average (2016-18) was used as the basis for comparison. The analysis takes into account the potential impact of tariffs, non-tariff barriers and tariff rate quotas.

All of Andersons' projected figures are based on an assumption that the UK Government will honour its commitment to maintain the current level of financial support for farmers until the end of the current parliament (officially scheduled to be 2022).



Katherine Pretswell-Walker
Associate Solicitor

Stricter health and welfare requirements for Red Tractor dairy farmers

Farmers who are members of the Red Tractor Assurance Scheme for Dairy will have to meet stricter health and welfare requirements from 1 October 2019, when an updated version of the Dairy Standards will come into force.

The updates will affect standards covering animal health and welfare, animal medicine and husbandry, staff and labour providers, and documents and procedures. The updated Dairy Standards also feature stricter documentation and staff competence standards. For example, farms' emergency contingency plans must be displayed in a place that is accessible to all staff, contractors and labourers working on the farm, rather than just key staff, and all farmers must ensure that at least one farm worker belongs to a skills development scheme. Previously, this standard only applied to farmers who had employees.

The updated standards also require farmers writing a new farm health plan or reviewing an existing one to do so in conjunction with a vet. In practice, this means the farm's registered veterinary surgeon must sign and date the plan to confirm that they have discussed it with the farmer and that it covers mandatory elements relevant to the farm. Farm health plans must be reviewed annually.

According to Assured Food Standards, the organisation that owns Red Tractor Assurance Schemes, updating the Dairy Standards is necessary to ensure that farmers are complying with up to date advice from the veterinary profession and meeting consumer expectations on how food is farmed.



Mark Jackson
Director

Strong demand for land in Scotland and northern England

Despite political uncertainty in the UK, there is continuing strong demand from buyers for farmland and farms in Northern England and Scotland, according to land agent Galbraith. In the year to August 2019, Galbraith placed 25,000 acres of farmland across Scotland and Northern England on the market for sale, while 4,328 acres of farmland and farms in Scotland, valued at more than £22.5 million, were brought to the market in the two months prior to August 2019.

Demand and land values have both been maintained due to a fall in the number of farm units coming onto the market. However, historically low interest rates and the willingness of banks to provide loan finance have encouraged some farmers to invest in neighbouring land, often locking in low interest rates over an extended period of time.

Land prices have remained generally stable but significant gaps still exist (and show no signs of closing) between the price of premium and more moderate arable land. Productive units of bare agricultural land and larger, fully equipped farming units in sought after areas are selling particularly well.

Marginal pasture and upland grazing land where woodland can be planted is also becoming attractive to environmental and amenity purchasers who can take advantage of forestry grants and tax incentives.

According to Galbraith, the smallholding and amenity land market is one of the most buoyant sectors and this has resulted in farms and farmland being split into small lots to meet demand.

This may be the only option for some smaller dairy and livestock farms in central Scotland, and although the types of buyers vary, many are from urban areas and are typically seeking a more rural lifestyle with a larger house and a few acres of land, while others are looking for smaller units to use as business premises.



Rebecca Toppin
Solicitor

TRIG Reform

Significant, and controversial, changes are being proposed to agricultural tenancy legislation in England. A consultation has recently closed on changes proposed by Defra, which aim to improve UK farming productivity and allow structural change in the sector. We now await their response.

UK farming has grown by only 0.9% pa since 1964; the Netherlands, for example, has grown at 3.2% pa. Defra believes that can, at least in part, be improved by bringing new skills and innovation into agriculture, which means breaking down some of the current barriers to entry. The Tenancy Reform Industry Group (TRIG), which includes NFU, CLA and TFA, identified a number of potential problems:

Agricultural Shows 2019

Team Cartmells have had huge success at this year's local agricultural shows. We went to five shows in total, pitching our lovely new tent at Penrith, Gilsland and a waterlogged Dalston. Members of our team also did the rounds at Carlisle and Cockermouth.

It was lovely to see so many of our clients popping into the tent for a burger and a drink whilst chatting to our amazing members of staff.

A huge thank you must go to the team of show volunteers and our amazing clients who braved the weather to come to Dalston Show in August. The rain may have been heavy but the atmosphere in the tent was brilliant. The early risers were ready and raring to go handing out bacon rolls, tea and coffee and a Cartmells poncho or two for when the rain just got a bit overwhelming. It's safe to say that the show field was orange by the time we were finished!



As always we have loved coming out to this year's shows and cannot wait to do it all again next year during the 2020 show season.



Emma Blamire
Trainee Solicitor

- Agricultural Holdings Act (AHA) tenants with no succession or assignment rights, forcing older tenants to 'bed block'.
- Limited effective remedies for landlords in FBTs for breaches of the tenancy.
- Lack of landlord investment in AHA farms because of poor rent review provisions.
- Restrictive clauses in AHA tenancies preventing the uptake of new schemes.

Among the more controversial provisions is allowing AHA tenants to assign their tenancies, and to be bought out, turning the tenancy into a 25-year fixed term at an open market rent. It is also proposed that those with succession rights might be allowed to retire, and hand down the tenancy, at a younger age.

Currently applicants under the AHA for succession must not already have a commercial unit of their own. Defra proposes to remove that bar, so that good farmers can succeed even if they have large holdings, and allowing a wider range of family members (such as grandchildren) to become successors.

Tenants may be freed from some of their restrictive covenants by providing a dispute mechanism, rather than allowing landlords to simply say no. Landlords, on the other hand, might be allowed to give shorter notice on problem FBTs and given more incentive in rent to invest in equipment on AHA holdings.

It is easy to see which changes might benefit which party, and there has clearly been some attempt at a compromise package. For others, such as the TFA, it does not go far enough in encouraging long-term tenancies.

Defra's consultation closed on 2 July 2019, and a response to it is likely within 12 weeks of that date (if Brexit preparations don't get in the way). For landlords and tenants alike, there is a degree of uncertainty to add to that coming from our relationship with the EU, but hopefully not for too long.

If you would like advice on a tenancy governed by the Agricultural Holdings Act or on a FBT, please contact Jonathan Carroll or Mark Jackson on 01228 514077.



Jonathan Carroll
Director & Head of Agriculture

Importance of writing a Will

Writing a will may be emotionally challenging, but the advantages far outweigh the temporary discomfort. Not only can a Will provide for your loved ones after your day, it spells out exactly how you would like your assets to be distributed and can help to minimise the tax bill.



Control of your estate

If you pass away without a Will (known as dying “intestate”) your assets are distributed in accordance with the intestacy rules. Those set out a rigid order, with no regard to what your true wishes may have been. For example, a share in the farm could go to a distant relative who has no involvement in the farm whatsoever.

Successful succession planning can preserve the farm for the next generation and ensure its ability to continue to trade. A Will is a vital component in that.

Avoiding legal dispute

Failing to accurately record what has been promised to family members has the potential to cause disputes after death. Disappointed beneficiaries may challenge a Will, and farming families are especially prone to it.

This has been reflected in a huge rise in inheritance claims. The High Court has heard 368 inheritance claims in 2019 so far, a 50% increase from 227 for the whole of 2018.

A clearly-drafted Will is strong evidence of your wishes; it is also sensible that the family are made aware of your plan, in order to minimise the chance of future disagreements.

Inheritance Tax

Your Will provides an opportunity to limit the amount of Inheritance Tax which may be payable. Some assets can get 100% relief from Inheritance Tax, either through the use of Business Property Relief or Agricultural Property Relief, but the eligibility criteria are strict. Farmers need specialist advice, and planning ahead is essential.

There are also other ways in which a good solicitor can help limit your tax liability. The cost of making a Will can be excellent value compared to the potential tax bills.

Conclusion

Writing a Will provides you with an opportunity to make a choice about what happens to your assets when you pass away. A well-drafted Will can save a lot of unwanted family angst and provide you with piece of mind by making sure the farm continues trading after your day. It can also save your estate from a hefty and sometimes crippling tax bill.

If you would like more information on making a Will or require any advice please contact our Wills, Probate & Inheritance Team on 01228 514077

Coming up ...

Lake District Livestock



We are very pleased to be working in conjunction with Penrith & District Farmers Mart this year on the annual Livestock Judging evening.

The popular event will be held on the evening of Thursday 14th November.



If you wish to receive our quarterly newsletter direct to your inbox please send an email to csnews@cartmells.co.uk and we will add you to our mailing list