

Agricultural Brief

Our legal update for farmers, landowners and estate managers

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Welcome

We hope you enjoy this latest edition of *Agricultural Brief* – please get in touch if you have any questions about the contents of these articles.

The start of 2022 has been disruptive with the terrible conflict in Ukraine and the spiralling costs of fertiliser and fuel.

The full impact of both of these will not be seen for some time to come but it looks like the effect on cost of production will be significant in 2023.

Further details emerged earlier this year about the lump sum exit scheme designed to make it easier for farmers to retire and to free up land for new entrants or farmers wishing to expand.

It remains to be seen how popular this will be and we definitely recommend getting proper advice if you are considering this.

As always the agricultural industry adapts to changing times and with challenges often come opportunities and Birketts' Agriculture and Estates Team are here to help you.

In this issue, Elle Outram has 10 top tips on ensuring your farm sale runs smoothly, with preparation before going to market being the key to piece of mind for land owners.

Next, we hear from Charlotte Strutt on the importance of registering your land with HMLR, and the surprising statistic that 15% of land in England and Wales remains unregistered more than 30 years after compulsory first registration of land was introduced.

We also have a guest article this issue from rural mental health charity You Are Not Alone (YANA) on the importance of reaching out to those in farming and agriculture, and we invite our Solicitor Jane Haviland into the spotlight to tell us about her career and how she and her environment law colleagues help our clients in a myriad of ways.

Thank you for reading and we look forward to working with you soon.



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Ducks in a row: preparing for a successful farm sale

Successful preparation is preparation for success. This certainly rings true when it comes to preparing a farm for sale. This article considers the merits of getting one's ducks firmly in a row in advance of marketing land in order to save time, money and stress throughout the legal process.

Title deeds

First things first: what are you selling? If the land is registered, you should review the title plans to the property and ensure that they accurately reflect the area which you believe you own. If the boundaries of the registered title are not as you expect, consult a solicitor as soon as possible. Rectifying the issue could involve anything from a simple exchange with the Land Registry regarding amending the title plan, to the much more time-consuming process of making an application for first registration.

If any part of the land is unregistered, you will need to be able to prove that you have good title to it. Ideally you will be able to lay your hands on the title deeds to the property, but if for any reason they have been lost or destroyed then you will need to explain how you have established your ownership of the area for at least the past ten years.

If you intend to sell part of your registered title or if the land is unregistered and the deeds do not adequately identify the extent of it, you will need to arrange for an agent to draw up a Land Registry-compliant plan for you.

Rights and restrictions

Part of the title review process should also involve considering whether or not the title accurately reflects what rights and restrictions you believe benefit and burden the land. You will need to be able to answer detailed questions on the source of such rights and how they are documented, if at all.

Gather together copies of any and all agreements you have with third parties in relation to rights exercisable over your land and theirs. Leases, contract and/or share farming agreements, licences (shooting, grazing, fishing et cetera) and other documents of a similar nature will all be relevant here. If such arrangements were agreed "on a handshake", note down their key terms and the contact details of the relevant parties so that this information can be passed onto the buyer. Beware: seek legal advice before approaching anyone in relation to evidencing the arrangement as you might inadvertently scupper any chances of your buyer obtaining indemnity insurance to cover the risk of a lack of a formal right.



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“Review the title plans to the property and ensure that they accurately reflect the area which you believe you own.”

Accesses

You should be able to show where each of the accesses into and across the land are located, so mark these on a plan. You will be asked whether or not these abut an adopted highway and, if there are any gaps between the property and the highway, the buyer may require you to swear a statutory declaration confirming how you have accessed the land over them during your ownership.

Water supplies

What are the routes of any water pipes which cross the land and are they publicly or privately owned? You should mark these on the plan, along with the locations of any water meters and stopcocks. You should also be able to show any abstraction points and be able to provide a copy of the abstraction licence, along with details of the volume of water taken from them.

Other utilities

You should also be able to show the routes of any other service media in, on and over the land. You will be asked for copies of any wayleave agreements or deeds of easement which may exist in relation to utilities which cross the land, so dig these out in advance. Be certain as to whether or not any payments under these agreements have been capitalised or are still paid at regular intervals – if the latter, locate evidence of receipt of payment from any service providers.

Planning

Collate all documentation you have relating to the planning history of the Property. This should include copies of current planning applications and past planning decision notices (along with related drawings), building regulations certificates, any agricultural occupancy restrictions, tree preservation orders, details of any planning designations and information relating to any notices received or enforcement action taken. If work has been carried out at the property but you either know or suspect that planning permission and/or building regulations consent was not obtained when it should have been, do not make enquiries of the local authority as you may prevent potential issues being insured in the absence of statutory compliance.

Environmental

Unearth copies of any environmental reports which have been produced in relation to the property, along with any permits, licences or other certificates which have been obtained. In addition, the buyer will want full disclosure in relation to all matters concerning possible pollution or contamination, such as dead or burn pits, asbestos, fly tipping and other contaminants which may be present on the land. Be prepared to provide information on fuel tanks, waste disposal, silage and slurry storage.

Entitlements

Until 2024, when the Basic Payment Scheme is due to be replaced, you should be able to confirm to a buyer the number of entitlements which you hold and which will be transferred to them on completion. You should also be able to provide copies of the current and past two years' worth of claims, along with details of the payments which you have received.

Schemes

Collate details of any schemes into which the land has been entered, whether these are land management, or capital grant – think stewardship, woodland grant, energy crop grant, amongst others. A buyer will want to see copies of any existing agreements, plans, records kept, details of payments received and those which are due. They will also want information concerning any problems which have arisen or works which are yet to be carried out.

Take professional advice early

Consult an agent, a solicitor and an accountant as early as possible. They will assist with preparing the necessary information, dealing with any issues which might cause delays in the sale process, structuring the sale tax efficiently and producing a set of carefully-considered heads of terms which will serve as a strong basis for negotiation.

This piece is by no means exhaustive; there will undoubtedly be a wealth of enquiries raised throughout the legal process which will be tailored to the unique identity of the land and you will need to deal with those as they arise. However, the hope is that this article assists in focussing the mind on some of the most important information you will need to provide if you sell your property and, even if that is not currently on the agenda, in encouraging the keeping of meticulous records in the meantime.

Dust off your deeds: why should I register my land?

Although compulsory first registration of land at HM Land Registry (HMLR) was brought in back in 1990, 15% of land in England and Wales remained unregistered.

Rural landowners are particularly guilty of stowing their deeds in a box and forgetting about them until they are needed in the future.

Agricultural property does not change hands as often as other types of property and so the compulsory registration may not have been triggered. The issue with this is there are consequences to original title deeds becoming lost or damaged and a myriad of benefits to voluntarily registering the land before it becomes a necessity.

What is first registration?

First registration of a property is when the ownership details are recorded at HMLR. A Title Register is produced which records details about the property, including its full address; name and address of the owner for service of notices; rights benefiting and burdening the property; and details of secured financing. A Title Plan is prepared using up to date Ordnance Survey data which is beneficial when the original deeds contain plans which are of questionable quality or of no defined scale.

What do you mean by compulsory vs. voluntary applications?

The principle of compulsory first registration is that if unregistered land is subject to a specific event such as a transfer (including both a sale and a gift), the obligation to register it is triggered. A voluntary application is exactly what it says on the tin. You voluntarily present your title deeds to HMLR and pay reduced a registration fee to have the registered title created.

Why should I do it now?

Any property lawyer will tell you that HMLR have significant delays in processing first registration applications so this is a factor which might spur you on to dust off your deeds and get it done. I used to estimate that we would not hear back from HMLR after submitting a first registration application for around six months. I now tell my clients that we do not expect to hear anything from them for a whole year. Although the overall length of time is the same, a year when you have zero external pressures can feel significantly shorter than a year when you are attempting to initiate other dealings with your land. Applying as part of preparing for a sale is a great time to register.



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Keeping informed

Having an address for service of notices is also something that is key. For example, if someone wanted to try and register a right of way over your property and they applied to HMLR, you would receive notice of the application. If your land is unregistered you are less likely to become aware of anything adverse and so the application could succeed without you having any opportunity to object. Even if your property is registered, it is vitally important to ensure that this address is kept up to date.

Are there any other positives?

HMLR's fee for a first registration is based on the value of the land, with a maximum fee of £1,105. If you apply for a voluntary first registration the registration fees are discounted by 25%. A registered title can also prevent fraud.

What if my deeds are lost?

It is possible to reconstruct a missing or partial title to a property, but it is produces a less satisfactory result than voluntarily registering your property in the first place. Property is registered with different classes of title, with absolute title being the best class of title available. This generally means that HMLR have had sight of the original deeds to the property and there is no doubt that you are the owner. Reconstructing a title involves piecing together any documents that are available and preparing and submitting statements of truth evidencing the use and occupation of the property. These statements are time consuming to produce and it can be problematic if large chunks of time are unaccounted for because the person with the relevant knowledge is no longer with us or does not have the required mental capacity to make the statement.

If you are successful in reconstructing the title in this way you are likely to be registered with a possessory title, which effectively confirms that you do possess the land. However, if someone were to submit title documents to HMLR within the following 12 years which evidence that they are in fact the rightful owner, your title can be defeated. Conversely, after 12 years have passed following possessory title being granted, you can apply to have the title upgraded to title absolute. Having a possessory title can make future sales or borrowing more challenging as additional enquiries around the title will likely be raised, and the added expense of title insurance may be required.

In conclusion

To summarise, there are numerous advantages to making sure that you get your property registered while you know where your deeds are. If you would like assistance with getting this process underway please contact a member of our Agriculture and Estates Team who would be pleased to help.

Help your clients by using YANA's advice on encouraging mental health conversations

Like many professional service-providers YANA works with, as a fellow farmer, landowner or rural advisor you are well-placed to spot signs of mental crisis and start an important conversation.

YANA is rooted in East Anglia, helping to sustain the mental health of those working in the countryside.

Here's where you come in: we can all do much better at looking after ourselves or those we care about when it comes to good mental health.

Too often those living and working in rural areas suffer with depression or other symptoms of poor mental health. The financial, physical, and mental pressures in businesses that supply and service agriculture can overwhelm.

Need to overcome reluctance to talk

Many involved in agricultural and rural businesses are reluctant to seek help for depression, anxiety, or if they are struggling to cope. Talking about problems, seeking help, and finding ways to contribute to problem-solving can make it so much easier to cope and make a real improvement to quality of life.

That's why YANA is raising awareness of how to notice when others might be struggling to cope and help them to access support.

There are ways that you can help.

Notice the signs that someone is not coping well

- Distant and distracted
- Lack of interest or motivation
- Change in appearance or personality
- Making arrangements for financial matters and possessions
- Negative talk or outlook on life
- Being over-the-top to compensate for negative feelings and thoughts

We do not always know people well enough to notice signs of anxiety or depression, and at times people hide their true feelings. This is why asking people how they are is important. Not just asking but also being ready to listen carefully. Don't be afraid to ask twice and make eye contact if it feels OK to do so.



Many involved in agricultural and rural businesses are reluctant to seek help for depression, anxiety, or if they are struggling to cope.”



Encourage conversations

- Always check that the space you are in is right for you and for them to talk. Is being outdoors more appropriate?
- Doing something, or going for a walk, can be a good way to talk.
- Practice active listening to hear rather than to respond. Repeat back what you have heard to clarify what they have told you. This helps them as much as you.
- Ask questions to get a better understanding of how they are right now. Using open questions avoids one-word answers.
- Don't be judgemental. Try not to criticise, instead use positive and acknowledging language. Offer reassurance and hope such as 'It may be difficult right now, but it won't always be this way.'

If you are concerned about someone feeling suicidal, be direct, ask them if they have had thoughts about suicide, self harm or ending their life. If they have, a conversation with you can bring relief. If they have not, it will not put the idea in their head.

If they disclose to you that they have had suicidal thoughts, stay calm and seek help by calling an organisation like the Samaritans.

What to do when someone has opened up

- Encourage professional help: seeing a GP, contacting YANA or other support organisations.
- Explore who else can offer support such as family and friends. Who do they trust and feel safe with? Who do they think will listen when they need to talk?

- Try to agree a plan by clarifying what they are going to do and if they need help doing it. Are they going to make an appointment? Talk to a family member? Make time to do something they enjoy that they have stopped doing.
- If appropriate, tell them you will check in with them and when you will do this, so they know they have not been left on their own.

Remember yourself!

- Be aware of your own stress levels and mental health.
- Create time to reflect and notice how you are feeling.
- Identify who is in your support network.
- Take time for yourself to do things that you enjoy.

Contact us

YANA's funded Mental Health First Aid training provides knowledge and practical skills to spot the signs and help someone to get the right help. Find out more at www.yanahelp.org. A call to our helpline 0300 323 0400 will reach someone who can give practical help and arrange sessions with one of our counsellors who know the reality of rural life and work.

Everyone can play a part. Share the good news that there are many ways to improve poor mental health. That's why we want YANA information in every rural business in East Anglia. Can you help with that? In the meantime, use our advice and start those important conversations.

Spotlight on... Jane Haviland

In each issue of Agricultural Brief we speak to one of our legal experts about their specific area of the law – and why it could be important to you. This month, Jane Haviland tells us about her work in environmental law.

How long have you been involved in environmental work?

I have been working in the environmental industry since the 1980s having completed an Environmental Science degree from the University of East Anglia and I went back to university to study law in 2014. I also followed up my first degree with two masters degrees – one in Integrated Pollution Management and the other in Environmental Law. It was this last qualification which drew me to changing career. I have worked in the private, public and voluntary sector during this time with my main focus being to adopt a pragmatic approach to identifying solutions to, often, complex situations for clients.

What interesting matters have you been involved in?

Whilst in my role as an Environmental Consultant and Project Manager I was involved in a variety of different issues. These range from being the Environmental Manager for Legoland Windsor through design to construction and working with the New Millennium Experience Company during the development of the Millennium Dome (now the O2 Arena) as the sustainability manager, through to undertaking an environmental impact assessment for the Lahore Ring Road, Pakistan – a project funded by the World Bank. In addition, I have worked with a number of ports and harbours on environmental impact assessments, and latterly with the offshore wind industry in managing the design and development of an innovative device for measuring wind and other weather criteria in an offshore environment.



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I have been working in the environmental industry since the 1980s having completed an Environmental Science degree from the University of East Anglia...”

More recently, having qualified as a Solicitor, I have been involved in a number of more targeted issues. These include advising landowners on topics such as removal of topsoil to facilitate development, how these activities can link into the Environmental Permitting framework and what landowners need to be aware of. Such situations can arise should land be contemplated for development. I have been involved in developing agreements regarding the translocation of protected species; these can be required when a development is likely to impact a species and translocation is an accepted aspect of the mitigation plan.

How can you help our farmers and landowners?

With the advent of the Environment Act 2021, there will be a growing interest and demand for conservation covenants and a developing understanding how landowners can assist developers in meeting their biodiversity net gain targets and/or carbon offsetting requirements. The Environmental Team at Birketts, working with our colleagues in the Agriculture and Estates Team can assist with exploring solutions to some of these new areas of law and benefit from having a technical as well as legal understanding.

In addition, we are able to advise on the Environmental Permitting regime which applies to flood risk activities as well as waste management arrangements. In addition, if landowners/farmers have been approached by individuals or businesses regarding using your land as a repository for “storing” materials prior to disposal, do contact us for advice with regard to the relevant documentation you should be requesting from them.

How could environmental legislation and regulation affect me?

This is a good question. For example, if you have a water course running through your land you may have riparian rights regarding fishing, or if you have woodland you may benefit from other rights such as for shooting. However, as well as rights there are usually responsibilities. You may need to maintain the river and its banks or you may need to undertake some tree felling from time to time.

Before undertaking any works you may need to obtain certain licences or permits – such a tree felling licence, or environmental permit for flood risk works. In addition, you may be required to undertake protected species surveys (depending on the time of year) and obtain the necessary licence for undertaking works. Checking these points will assist in a smoother journey to trouble free maintenance. Good planning and associated consultation with the respective authority should benefit the shaping and implementation of your proposed works.

How do they contact you?

We in the Environment and Planning Team can be contacted by email, phone or LinkedIn and together with Deborah Sharples who leads the team in Ipswich, we would be delighted to assist.

Key contacts

Birketts’ Agriculture and Estates Team of over 50 advisors are recognised as Band 1 by the Chambers UK directory and Tier 1 by the Legal 500 and operate from the firm’s Cambridge, Chelmsford, Ipswich and Norwich offices, servicing our UK and overseas clients with ease.

The team encompasses public access issues, aggregates extraction and management, renewable energy projects, structuring family successions and taxation, as well as mainstream agricultural and property law advice linked to sales, purchases, tenancies, options and development.



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They’re very professional and very helpful. They are always happy to help, whatever the query, whatever time of the day that might be or a weekend. You don’t tend to get that with many firms.”

Legal 500 [2022] testimonial – Agriculture and Estates Team



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