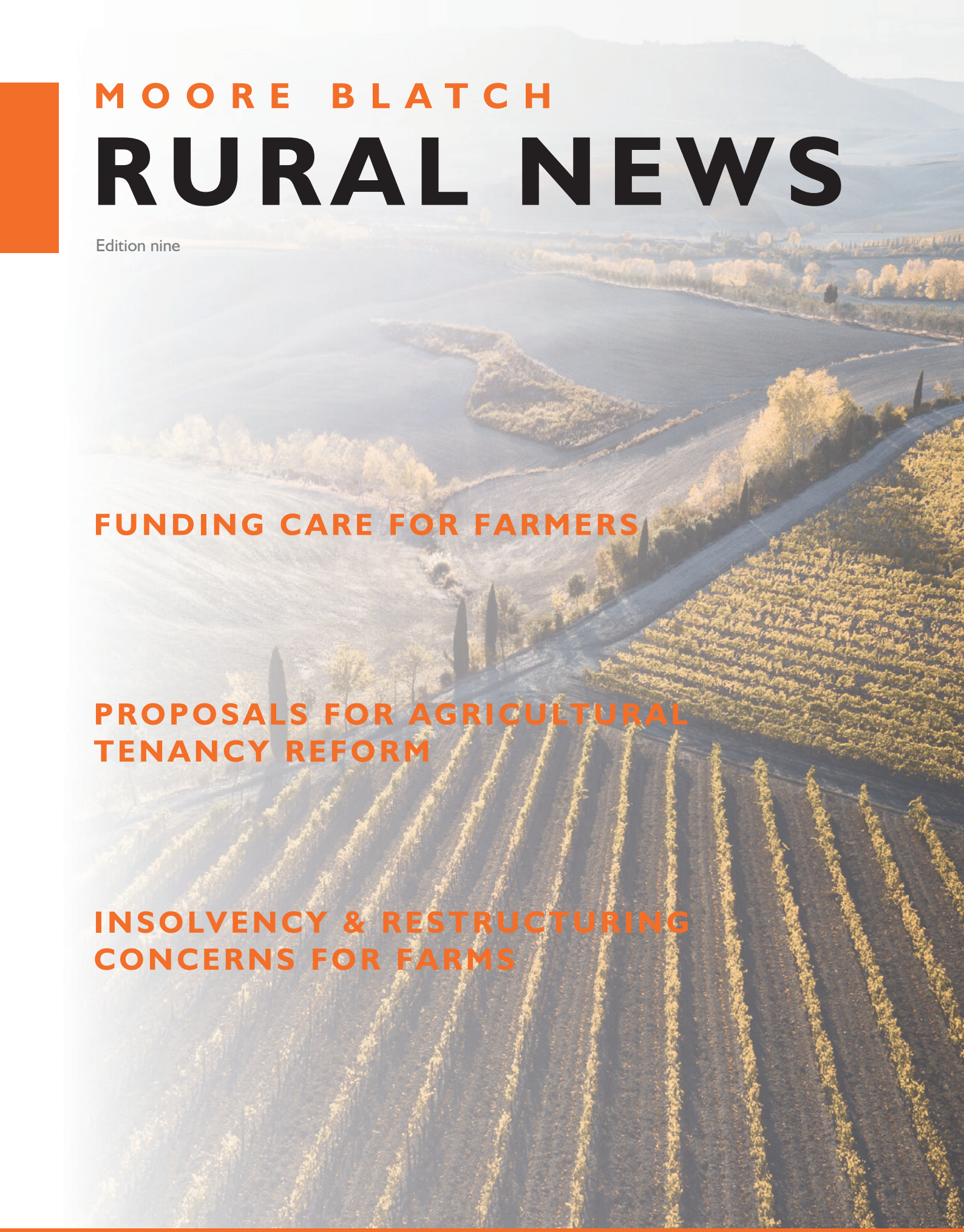
MOORE BLATCH

RURAL NEWS

Edition nine



FUNDING CARE FOR FARMERS

PROPOSALS FOR AGRICULTURAL TENANCY REFORM

INSOLVENCY & RESTRUCTURING CONCERNS FOR FARMS

WELCOME TO THE LATEST EDITION OF RURAL NEWS

Our Rural Services team continues to grow: five years ago our focus was on our property and private-wealth practice areas, whereas now all areas of law are covered for our clients.

This edition features articles from other teams across the firm involved in our rural sector work. Most notably, we've had the first trickle of Brexit-fear, farm-related insolvency enquiries through. Our dedicated Insolvency and Restructuring team is headed by Partner Heather Dobson, who will guide clients through this difficult time and has contributed a topical read to this edition.

Partner Katherine Maxwell, head of the employment team, continues to guide our landed estates, large commercial farms and equestrian businesses through the myriad of employment legislation to understand.

Have you thought about funding care for elderly farmers? This should be in the back of everyone's minds when planning for old age. Our community care solicitor, Mea North, provides useful information on funding for old age.

Divorce in a farming family is inevitably complex, and our Partner Debra Emery, who heads the family team and specialises in farming divorce cases, provides useful pointers.

Our rural services consultant, Anita Symington, has plunged headfirst into negotiations at Central Government level over the proposed Agricultural Bill and reforms to agricultural tenancy legislation, whereby Moore Blatch submitted its own response direct to Defra, thanks to Anita's efforts. She has also been closely involved in leading, and working with, a consortium of lawyers, agents and the CLA over Esso's proposed drafting of the legal paperwork required for the Southampton-to-London oil pipeline.

The rural property team (myself, Richard Hughes, Kerry Dovey, Rebecca Langmead and Jack Keats) remains extremely busy with non-contentious property matters including land, farm and equestrian property transactions; agricultural tenancy work; business leases for our estate and farming clients; unregistered land queries and registrations, and bespoke drafting required for land deals. July and August are generally quiet for us here due to harvest and holidays, but the past two years our workload has not slowed during these periods. It will be interesting to see what 2020 brings in the post-'deal-or-no-deal' saga the country, and our sector, is facing. As ever, for any enquiries relating to Rural Services legal work please contact me or my co-head of the team, Philip Whitcomb, and we will be happy to discuss your matter. Enjoy this jam-packed edition of Rural News!

Sarah Jordan
Partner and head of rural property
023 8071 8082
sarah.jordan@mooreblatch.com

MOORE BLATCH STRATEGIC DIRECTION

From extensive reading and learning about business, I have come to the conclusion that the key is to keep it simple and focus on doing a few things to the highest possible standards, rather than trying to be all things to all men.

We have chosen to focus our firm on supporting families and people-led businesses, providing them protection for the long term through both good and bad times. We aim to unburden people from legal complexity, freeing them up to do what they enjoy and do best feeling secure. In order to do this as well as possible, we recognise that our people need to understand their clients' world preferably through being part of it themselves. This is more difficult for lawyers working unsustainable hours in central London, so we are finding our regional offices to be a huge asset in attracting the best young talent, no longer wanting to be stuck in skyscrapers far from green fields acting for faceless global corporates, but instead looking for a long, rewarding career helping families and people-led businesses shape their future.

Our rural lawyers are no exception. With autumnal weekends upon us, several of us are out enjoying the countryside, shooting, picking up and hunting, not least me! We are growing rapidly - we have 52 partners, 320 staff and turn over £28 million - with busy offices in London, Richmond and Hampshire. While being Managing Partner of the firm keeps me busy (and out of trouble), it also continues to be both challenging and exciting in equal measure.

Ed Whittington
Managing Partner
023 8071 8037
edward.whittington@mooreblatch.com

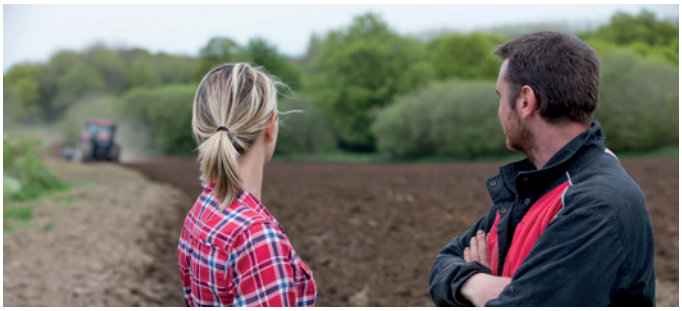
FARMING, FAMILY AND DIVORCE

Dealing with a divorce is stressful enough, but when farmers divorce there are usually additional considerations.

It is not uncommon for both spouses to work on the farm, for their matrimonial home to be on the farm, for wider family members to work or live on the farm, and for long working hours to be necessary, particularly at harvest time.

The family court always has to deal with distributing assets, but this is often more complex with a family farm. The court will take into account inherited and generational wealth, with arguments being made about "non-matrimonial property". The interests of wider family members may also need to be considered. The court looks to achieve fairness, through meeting needs, with first consideration given to the welfare of children.

A formal valuation of the farming business and assets may be needed, looking at issues such as liquidity, to see if any monies can be raised to buy out the other spouse. If not, the court may have to consider an order for sale of part of the farm, or consider whether one spouse and any children should have continued use, while the children grow up, of a property used as the family home within the marriage.



Given such complex and sensitive issues, it is important that your legal advice team has expertise in farming divorces. At Moore Blatch our family team works alongside members of our rural, property and commercial teams to ensure you receive the expert advice you need.

Debra Emery
Partner and head of family
023 8071 8057
debra.emery@mooreblatch.com

CASUAL SEASONAL WORKERS AND HOLIDAY PAY

A casual worker is entitled to paid holiday, and their entitlement pay is calculated pro rata by reference to the hours they work.

The law on this calculation has recently developed and become more complex. If a casual worker believes they have not been paid correctly for their holiday entitlement, they may bring a claim in the employment tribunal for money they argue is owed to them.

It is highly likely a seasonal worker will work for a period of time without taking any holiday, and their accrued holiday entitlement will need working out at the end of the work period, then the holiday pay calculated. The amount is based on their average weekly pay in the 12 weeks before the date of their holiday, or the number of weeks they have been employed if less than 12 weeks (the reference period). The calculation of holiday pay for casual workers is complex, but in simple terms, their average pay over that reference period prior to the end of the contract is calculated, and this average pay will include elements of basic pay, over time, bonus, etc.

For further advice on this evolving area of law and for our regular updates on employment law, please contact us.

Katherine Maxwell
Partner and head of employment
023 8071 8094
katherine.maxwell@mooreblatch.com

HAMPSHIRE FARMERS LADIES' CLUB

Bringing together ladies who are members of the Hampshire Farmers Club and giving them the opportunity to socialise and share ideas with like-minded women.

This year I joined a group of ladies in setting up the Hampshire Farmers Ladies' Club. Its aim is to organise up to three events a year, and have already had a successful trip to the Mildmay Farm and Stud, followed by an excellent pub lunch at the Carnarvon Arms in Newbury and a visit to the Hambledon Vineyard for a tour and sparkling-wine sampling. With increasing numbers of women becoming involved in the food and farming industry, we have had a huge variety of suggestions for future events, and I am hoping this club will continue to grow. If you have any queries, please do get in touch.

Rebecca Langmead
Solicitor, rural property
023 8071 8191
rebecca.langmead@mooreblatch.com

FUNDING CARE FOR FARMERS

For anyone requiring long-term care the impact on family can be devastating, but for farmers it can affect their business as well as their home life – and often the two are intertwined.

The financial implications of a farmer unable to work the land, or a family carer having to run the farming business at the same time, are often at the forefront of the family's mind. Appropriate funding for care and support can help to alleviate such pressures, and the type of funding will depend primarily on the overall level of care and support required to meet all of the farmer's needs.

The NHS was created to ensure that everyone, regardless of their wealth, has access to free healthcare. Non-healthcare needs can be met by the local authority, but this is means-tested, and for individuals with savings over the threshold (currently £23,250) any support will need to be self-funded.

A community nurse can meet basic healthcare requirements but if a farmer has particularly high needs, a more substantial care package is required, which could be funded by NHS Continuing Healthcare.

What is NHS Continuing Healthcare?

The National Framework for NHS Continuing Healthcare and Funded Nursing Care 2018 (the National Framework) states that "NHS Continuing Healthcare means a package of ongoing care that is arranged and funded solely by the NHS where the individual has been assessed and found to have a 'primary health need'." These needs may have arisen as a result of accident, illness or disability, and care can be provided either in a residential setting (i.e. a nursing home) or in the individual's home.

Determining a "primary health need" involves an assessment process, set out in the National Framework.

How do I know if I'm eligible?

There is a two-stage assessment process for NHS Continuing Healthcare eligibility. The first is the Checklist screening tool. The threshold for this relatively quick assessment is deliberately low, identifying those who require a full assessment to ensure they are given the opportunity to be considered for full funding.

Where a Checklist indicates someone should be referred for a full assessment, a multi-disciplinary team of at least two professionals from different disciplines will consider, using a Decision Support Tool (DST), whether the individual has a primary health need.

There is no definition of a primary health need, but there have been a number of significant cases (notably Pamela Coughlan and Maureen Grogan) that have helped define its meaning. The National Framework incorporates these decisions and sets out the primary health need test during assessment:

"a decision of ineligibility for NHS Continuing Healthcare is only possible where, taken as a whole, the nursing or other health services required by the individual:

a) are no more than incidental or ancillary to the provision of accommodation which local authority social services are, or would be but for a person's means, under a duty to provide; and

b) are not of a nature beyond which a local authority whose primary responsibility it is to provide social services could be expected to provide."

The team uses the DST to record a person's care needs across 12 different areas, including mental and physical, as well as characteristics of their needs, such as their nature, intensity, complexity and unpredictability. This helps to decide whether the quality or quantity of a person's care goes beyond the limit of a Local Authority's responsibilities, as outlined in the primary health need test.

In cases of a poor prognosis and a person's health deteriorating quickly, a Fast Track pathway bypassing the lengthy assessment process ensures care is put in place as soon as possible.

What might increase the complexity of care for farmers?

Eligibility for NHS Continuing Healthcare is not based on a person's diagnosis, but on the level of care they require as a result of their condition.

Farms are dangerous places to work, and farmers are susceptible to injuries from machinery, animals and vehicles, as well as falls from a height. The fatality rate for workers in agriculture was above the five-year average in 2017-18, despite a focus on health, safety and wellbeing, and the number of serious accidents within the farming community remains high. Often these result in life-changing injuries and long-term care needs.

Farmers with conditions such as dementia may also require extra day-to-day help, in some cases experiencing personality changes and being resistant to care interventions. This may increase the need for specialist intervention. A farmer with dementia is likely to have needs in areas such as mobility, toileting, nutrition and maintaining skin integrity. A sufferer may have a primary-health need due to the complexity in just one area, or because of the totality of their needs.

A serious injury or the diagnosis of a long-term condition may result in complex mental-health needs as well as physical, particularly where the diagnosis has had life-altering consequences. Psychological and emotional needs are also considered as part of the assessment process for NHS Continuing Healthcare, and should not be overlooked.

How to ask for an assessment

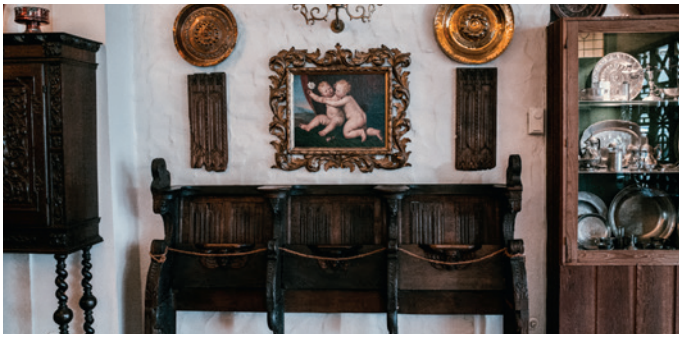
Responsibility for establishing eligibility for NHS Continuing Healthcare rests with the Clinical Commissioning Group that holds the contract with your GP practice at the time of your assessment. In the first instance, a farmer can ask for a social worker or district nurse to complete the Checklist.

Moore Blatch provides expert advice and assistance at all stages of the assessment process, and offers a free initial assessment to those who think they might be eligible for funding.

Mea North
Associate solicitor & community care lead
023 8071 8108
mea.north@mooreblatch.com

COLLECTING ANTIQUES & WORKS OF ART

As a child, I was always encouraged to collect be it stamps, postcards or old books and as an adult that passion for collecting antiques and works of art has continued.



There is nothing like the thrill of hunting down that one rare piece at an auction or antiques fair to add to your collection. Today, my interests include English Delft (a particular type of English pottery dating from the late 17th and 18th centuries) and rare typographical books on the West Country. As well as the simple pleasure of collecting, are there any tax advantages and what options are there for my collections following my death?

It may seem surprising but the tax treatment of investing in antiques or works of art is different to that of more conventional investments such as stocks and shares. If you sale a chattel (moveable items like paintings, antiques or jewellery) then the first £6,000 of any sale proceeds is tax free and if you own the items jointly with your spouse then that sum increases to £12,000. Where the proceeds fall between £6,000 and £15,000 marginal relief limits your maximum taxable gain to five thirds of the excess over £6,000. It is only when your antique or work of art sells for more then £15,000 that the normal capital gains tax rules apply. For large gains you have your normal annual exemption of £12,000 unless it has been exhausted on the sale of something else in the same tax year.

For chattels which are deemed to be "wasting assets" there is no capital gains tax to pay regardless of what they sale for. These are mechanical devices which HMRC deem to have a lifespan of 50 years or less and surprisingly include collectors' cars, antique clocks and guns. So, if you are fortunate enough to own a brace of Purdey shotguns there would be no need to worry about CGT if you decide to sell them.

To prevent collectors exploiting the £6,000 limit by selling items individually when they are part of a set there are special rules around sets of chattels. These are chattels which are similar and which taken together are more valuable then the sum of their parts. A good example would be dining room chairs. Individually they may be worth £1,000 each but a set of eight could be worth £10,000 in which case it is the cumulative value which is used to calculate the CGT.

For very valuable pre-eminent works of art or antiques it is worth taking some specialist advice, particularly on death, as otherwise they are simply added to the rest of the Estate and will contribute to a higher inheritance tax bill. This includes the Acceptance in Lieu scheme whereby the beneficiaries of an estate agree to donate a work of art to a museum rather then pay inheritance tax or claiming conditional exemption on the chattel provided that the they are properly preserved, remain in the UK and accessible to the public for a number of limited days. There are also other inheritance tax planning opportunities including gift and leaseback which allows the item to be continued to be enjoyed by you but for it to be outside your estate for inheritance tax.

Being the custodian of a collection or work of art brings pleasure, individuality and often comes with a fascinating story, but it is worth considering the tax and legal implications of disposal and succession planning.

Philip Whitcomb
Partner and head of rural private wealth
01590 625808
philip.whitcomb@mooreblatch.com

PRIVATE WEALTH TEAM: GOOD NEWS

The first piece of good news relates to a rather complex Court of Protection application over a £10 million farming estate, involving an employment issue, conflicts of interest, a deputyship and an attorneyship, a land transfer and balancing the interests of families both in the UK and the US.

Input was sought from various teams across Moore Blatch. The Court agreed to all our requests, with our fees being in excess of £40,000. A third-party accountant was also involved, and the team has been described as "brilliant" and having "amazing expertise".

More good news relates to a near four-year battle with HMRC over a probate matter for a farm owner, where we were claiming inheritance tax relief. Again, experts from different areas of the business were involved and the case even involved alpacas and livery yards! They had been poorly advised by one of our competitors and the necessary evidence was somewhat lacking. However, HMRC caved in on every bit of the claim, saving the family a six-figure sum in tax and allowing the family to remain in the property for at least another generation.

Philip Whitcomb
Partner and head of rural private wealth
01590 625808
philip.whitcomb@mooreblatch.com

STAMP DUTY LAND TAX – MIXED USE UPDATE

On 25 June 2019 HMRC issued updated guidance on the meaning of 'garden and grounds' for the purposes of Stamp Duty Land Tax (SDLT).

In considering whether or not a mixed-use rate of SDLT can apply to the purchase of a country house, questions are commonly raised by HMRC on the extent of land at the property, and whether or not it is to be considered as 'garden' or 'grounds' reasonably necessary for the enjoyment of the house being purchased. HMRC's update comments that 'garden and grounds' should be given its natural meaning and that there is no statutory size limit on what 'garden and grounds' means, though claims for Basic Payment Scheme payments will be considered pertinent when considering whether the land actually is 'garden or grounds' or whether it has a genuine commercial use. By extension, the minimum area of land that must be actively farmed to claim Basic Payment Scheme payments is 5 hectares, which comes to just over 12.35 acres, so it would appear this could be used as a benchmark for minimum acreage for mixed use claims.

Jack Keats
Solicitor, rural property
023 8071 8881
jack.keats@mooreblatch.com

PUTTING UNUSED BUILDINGS TO GOOD USE

There are many ways of putting redundant agricultural buildings back into use. Diversification can help stabilise the farm across the calendar year and boost income.

At Moore Blatch we regularly advise clients on diversification, which can range from barn-to-office conversions for activity farms, to more ambitious schemes such as holiday parks.

Here are a few pointers for anyone considering such a project to consider:

The existing farming business

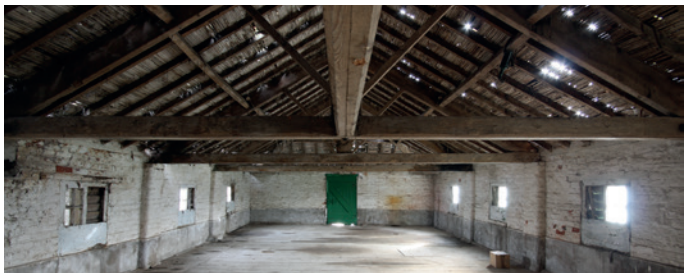
Have you sufficient staff and appetite to embark on large-scale building work and the resources required to manage a diversified use? A farm shop, for example, will require full or part-time staff; a wedding business will typically require peak input during the summer months. Also consider the future needs of the farm and whether the land or buildings may be needed again in the future for agricultural use.

Finance

If you're planning on renovating a barn, office tenants of a converted barn are likely to require mains utility services and facilities such as good data connections. Unless these are costed at the outset, the project could run way beyond the anticipated budget.

Third-party consents

Take advice at the earliest opportunity on planning, building regulations and other consents that may be required. There are, for example, detailed requirements if you let residential property. If you are a tenant farmer, consider permissions you need from your landlord and the grounds on which consent can be given or withheld. Also consider ongoing health-and-safety, insurance and other statutory requirements.



Proper documentation

If you let or license parts of your farm, document the arrangements properly and ensure no third-party occupier obtains protected business tenants' rights under the Landlord and Tenant Act 1954. Farm buildings let for non-agricultural 'business' use can fall into this trap. If the statutory protection applies, a farm owner can be left tied to arrangements well beyond the original agreement. In some cases compensation has to be paid if the owner wants to take back use of the buildings.

Grants and other resources

Take advice on available grants and subsidies, such as the Rural Enterprise Scheme (RES), and grants for sustainable energy, such as wind farms or solar farms.

The rural property team at Moore Blatch would be delighted to discuss with you any plans you may have.

Richard Hughes
Partner, rural property
020 3962 5855
richard.hughes@mooreblatch.com

PROPOSED ABOLITION OF SECTION 21 OF THE HOUSING ACT 1988

The Government has issued a Consultation Paper entitled "A New Deal for Renting", seeking views on how to implement its decision to abolish Section 21 of the Housing Act 1988 and to improve the implementation of Section 8, grounds for repossession.

It concentrates specifically on the circumstances in which landlords should be able to regain possession of residential properties once Section 21 has been abolished and the assured shorthold regime has ended.

Since assured shorthold tenancies became the default position under the Housing Act 1988, most private-sector residential tenancies became Assured Shorthold Tenancies (ASTs). The ability for landlords to serve a section 21 notice outside of an original fixed term left tenants with limited options to challenge the notice to leave, and gave landlords, both urban and rural, great flexibility in regaining possession of a property, even in the absence of fault on the part of a tenant. Under the proposed new regime, the ability to serve a Section 21 notice would be abolished and new discretionary grounds would be added to the current list of grounds in Schedule 2 of the Housing Act 1988. These would include the need for a member of the landlord's family to live in the property and for the landlord to sell the property. These rights would only be available after two years of a fixed term, however, and there would be no ground permitting a landlord to gain possession if they wanted to develop the properties. Other grounds for possession might also cover rent arrears, antisocial behaviour and domestic abuse.

The reforms are not proposed to be retrospective so there would be a transitional period where Section 21 could be used to end existing ASTs.

In the context of agricultural tenancies, there could be issues where tenant farmers have sublet farm cottages (often surplus to requirements and with the consent of the head landlord) particularly where there is a possibility of the head agricultural tenancy coming to an end in the future, either by notice to quit from the landlord or by the tenant surrendering his or her holding. The Report considers the latter by asking if there should be a mandatory ground for possession where the tenant surrenders the head tenancy but does not cover the situation where the landlord serves a notice to quit on the head tenant. In this situation the AST could become a head tenancy. Landlords will therefore need to consider very carefully, in future, provisions in Farm Business Tenancies and succession tenancies under the Agricultural Holdings Act 1986 permitting tenants to sublet surplus cottages.

Moore Blatch has responded fully to the Consultation paper to Government.

Anita Symington
Consultant solicitor, rural property
020 3910 1327
anita.symington@mooreblatch.com

BREXIT AND FARMING SUBSIDIES, INSOLVENCY & RESTRUCTURING CONCERNS

Our specialist insolvency & restructuring team, sitting within our rural sector team, allows us to warn farmers and encourage them to seek advice on potential cash-flow issues relating to the change in their grants and subsidies before restructuring or changing their businesses.

Launched in 1962, the EU's Common Agricultural Policy (CAP) is a partnership between agriculture and society, and between Europe and its farmers.

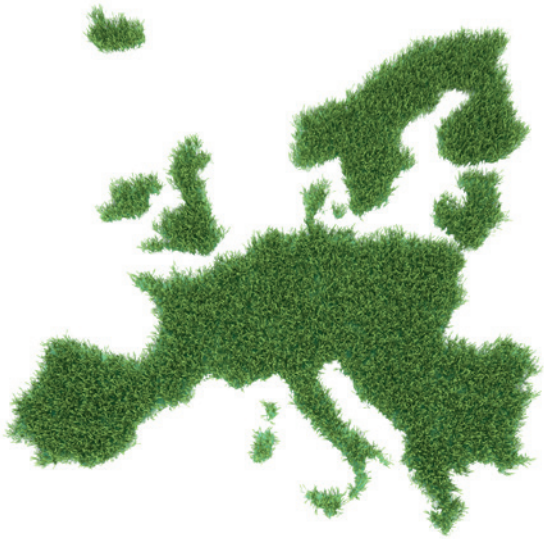
It aims to:

- support farmers and improve agricultural productivity, so that consumers have a stable supply of affordable food;
- ensure that EU farmers can make a reasonable living;
- help tackle climate change and promote the sustainable management of natural resources;
- maintain rural areas and landscapes across the EU; and
- keep the rural economy alive, promoting jobs in farming and associated sectors.

CAP is a common policy across all member states of the EU and is managed and funded by the resources of the EU's budget.

The overall EU budget for 2018 was €160.1 billion (£142.5bn), with €58.8 billion (£52.4bn) of this being used to support farmers. CAP payments are managed at the national level by each EU member state. Approximately €3 billion (£2.67bn) per year of this is paid directly to UK farmers. A further €800 million (£712m) is paid to farmers undertaking environmental projects.

The CAP payments accounted for 61% of the average annual farm profit from 2014 to 2017, according to Defra statistics, although that level varies widely depending on the type of farm. Statistics suggest farms grazing livestock rely on subsidies for more than 90% of profits.



Brexit

At the time of writing this article, we do not know if the UK will leave the EU with an agreement in place or not. Farmers currently receiving support will continue to receive an equivalent level of support from the UK government until the end of 2020.

However, going forward, any new farm policy will be set within the UK budget and will be competing alongside other sectors, such as education, for the same money. It is therefore possible that the level of support will be cut, with some believing support to agriculture may be reduced by 50%.

At the end of 2018, the Government introduced the Agriculture Bill, with new legislation in the form of an Agriculture Act proposed to come into force at some point after the UK leaves the EU. This was put on hold due to the Brexit negotiations but has now been reintroduced in the recent Queen's Speech. The legislation is intended to phase out the area-based payments, and introduce grants and subsidies linked to "public good" – mainly environmental benefits delivered by the farmer, such as reducing ammonia and emissions, planting trees, and maintaining hedgerows as wildlife habitats. The Government's rationale is to reward farmers who protect the environment and leave the country in a greener and cleaner state.

The Bill pledges to match the sums currently being paid via CAP in both 2019 and 2020. However, cuts will be introduced from 2021 and continue until 2027 when the scheme will cease. The reductions will vary, so – by way of example – annual payments of up to £30,000 will be cut by 5% in the first year of the transition, while payments of £150,000 or more will fall by 25%.

Potential impact on the farming sector

The payments under a new Agricultural Act will constitute a radically different system from the CAP system. Farmers are likely to have to adapt their business model in order to continue trading successfully. To become more environmentally friendly and thereby benefit from the new grants will probably require significant capital outlay. Farmers may wish to consider selling surplus land no longer in use, which previously would have gained them increased subsidies, in order to finance these improvements. They will need to weigh up whether the expense of changing their farms to qualify for the new grants will be cost-effective in the long term.

The new system, combined with projected dramatic reductions in farm income, may lead to fewer, larger farms over the next few years, as these currently benefit from the enhanced payments but will suffer in terms of larger initial funding cuts from 2021. However, farms with between 200 and 400 acres appear most at risk, as they may not have the cash to make the changes needed both to qualify for the new grants and weather the loss of income. Although smaller units are likely to be hit hardest, we anticipate that the changes will affect many enterprises to a greater or lesser degree, as few have large sums available, in the required timescale, to fund the environmental changes necessary for grants.

There will also be special considerations for landlords and tenants of tenanted farms. The TFA has predicted that a number of tenanted farms which rely heavily on subsidies will not survive financially. Landlords in such situations will need specialist advice, as their ability to regain possession on insolvency differs between fixed-term and periodic Agricultural Holdings Act tenancies, and also with Farm Business Tenancies. The first will be governed by the Case F notice to quit procedure, and the second and third by the wording of forfeiture clauses in the Agreement.

However, these changes may also bring opportunity. Many have noted that the Bill will ensure British farmers no longer have to contend with the rules of CAP, which some say are too stringent, are unfit for the modern-day challenges of food production, and do nothing to recognise and reward those seeking to protect the environment. There will be new opportunities for progressive farmers and those passionate about the environment who previously may have struggled to incorporate changes in their business and make a profit.

With all this uncertainty, farmers should seek advice before they attempt any business restructure or large investment in environmentally friendly projects, and should involve their bank at an early stage of the discussion.

Our insolvency & restructuring team offers a specialist and bespoke service to assist anyone working in agriculture who may need to consider changing their business models, or who is looking to exit completely. Such advice should be sought in any restructuring scenario, even when insolvency is not an issue, due to other complexities such as tax and the potential impact on employees of a change in structure. Restructuring may also require estate-planning experts, especially where the business is run through a family trust or partnership.

Heather Dobson
Partner and head of insolvency & restructuring
023 8202 5017
heather.dobson@mooreblatch.com

CASE LAW UPDATE – TENANCY STATUS OF AGRICULTURAL WORKERS' SPOUSES

Hook and another v. Hawkins [2019] UKUT 147 (LC)

The Tribunal held that protected occupier status under the Rent (Agriculture) Act 1976 ("RAA 1976") is personal and cannot be shared with joint tenants and spouses where they are not also working in agriculture and meet the requirements of the RAA 1976. On the facts of this case the Upper Tribunal determined that the tenant in question was an assured periodic tenant. As a consequence, the landlord was entitled to serve notice and seek a market rent, and the tenant would not be able to enjoy the benefits of having a tenancy protected by the provisions of the RAA 1976.

For a full case law report please contact our property litigator, Simon Beetham.

Simon Beetham
Solicitor, real estate disputes
023 8071 6036
simon.beetham@mooreblatch.com

PROPOSALS FOR AGRICULTURAL TENANCY REFORM

Moore Blatch has recently responded to the Defra consultation paper on proposed reform of agricultural tenancy legislation, based on our wide experience of tenanted agricultural land, acting both for landlords and tenants.

With Brexit, the UK farming industry is potentially facing its biggest change since 1948. Since the introduction of farm business tenancies by the Agricultural Tenancies Act in 1995, the system whereby new lettings fall under that legislation (other than old-style succession tenancies) has basically worked well. The greater freedom of contract introduced in 1995 has enabled greater diversification without loss of agricultural status. This, coupled with 100% Agricultural Property Relief for tenancies granted post-1995, has encouraged landlords to let more land.

AHA tenancies

When rights of succession were abolished for new tenancies post-July 1984, it was anticipated that these old-style tenancies, governed by the cumbersome procedure of the 1986 Act, would eventually wither on the vine. Indeed, the figures quoted in the consultation paper bear this out. It is surprising, therefore, to find several provisions in the paper which would substantially extend their life. Perhaps the most controversial of these is that tenants who still have a right to further successions, but have no eligible relatives, may be permitted to assign their tenancy to an independent third party at a premium, for a fixed term of 25 years. The rent for this assigned tenancy, it is proposed, would be akin to an FBT rental, but in other respects the tenancy would remain governed by the AHA 1986. As proposed, this assignment would not be a new tenancy granted post-1995, and therefore would not qualify (as a new 25-year FBT would) for 100% APR without substantive reform to the tax regime. Given that proposals for reform of capital taxes are seemingly being addressed completely separately, this is concerning. A landlord faced with such an assignment would have a right to buy out the tenant (the basis of the value is not considered) or to control suitability of the incoming tenant, but that suitability test is not as stringent as currently prevails on a succession application. In addition, many farms and estates have made plans on the assumption that certain tenancies will be coming to an end when the current tenant dies or retires. The practical advice to a landlord at the moment, where a tenant with no successions is nearing retirement, appears, therefore, to be to negotiate termination sooner rather than later, in case this provision is enacted. The paper states that such a measure would facilitate more new entrants into the industry, but arguably the assignees who could afford the level of premium a tenant giving up a farmhouse would likely require are unlikely to be new tenants. There is also a surprising proposal to allow grandchildren as eligible successors; this effectively prolongs the succession tenancy by a third generation and was beyond the concept even of the 1976 Act.

There are proposals to abolish tight restrictions on use of the holding, standard in most 1986 Act tenancies. Care needs to be taken here as, unlike FBTs where greater non-agricultural use can be permitted without loss of agricultural status, it is clauses like these in AHA tenancies which stop the tenancy falling under the Landlord and Tenant Act 1954 and business tenancies. Perhaps a complete rethink is needed with regard to the definition of agriculture suited to modern practices and consistent for tenancy tax, planning and rating legislation.

FBT reform

Some of the procedural reforms suggested in the consultation paper (e.g. enabling agreed successions without an application to the tribunal) are uncontroversial and desirable. There is insufficient space in this article to cover them all, but one further suggested amendment to note is the proposal to abolish restrictions on short-notice provisions in long-term FBTs in certain circumstances. Normally, periodic FBTs over two years cannot be terminated in whole or in part without service of a notice to terminate of more than one year and less than two, ending on the term date of the tenancy. This is often frustrating to landlords intending to develop part of a holding. What is proposed is a relaxation of this provision in new FBTs of ten years or more. Why this cannot be brought in for other FBTs is unclear. It would certainly encourage greater use of tenancies over two years, as would the suggested provisions for short-notice termination on non-payment of rent, death, insolvency and breach of tenancy terms. This would be a great improvement on the current unwieldy remedy of forfeiture.

The results of the consultation exercise will be published later in the year. Although some reform may be desirable, it is hoped the Government might pause for breath and ascertain the effect of any new post-Brexit subsidy regime prior to legislating on tenancies.

Anita Symington
Consultant solicitor, rural property
020 3910 1327
anita.symington@mooreblatch.com

COMMONER'S CORNER

The New Forest National Park has adopted a new 'Local Plan' containing stronger policies to help safeguard the Forest's landscape and natural beauty, yet incorporating policies to meet the needs of local people.

The policy review, which began in 2015, included several rounds of consultation with the public and a wide range of organisations. The Plan includes more support for affordable housing and commoners' dwellings; safeguarding areas of tranquillity; and protecting the Forest's landscape character, trees and historic environment.

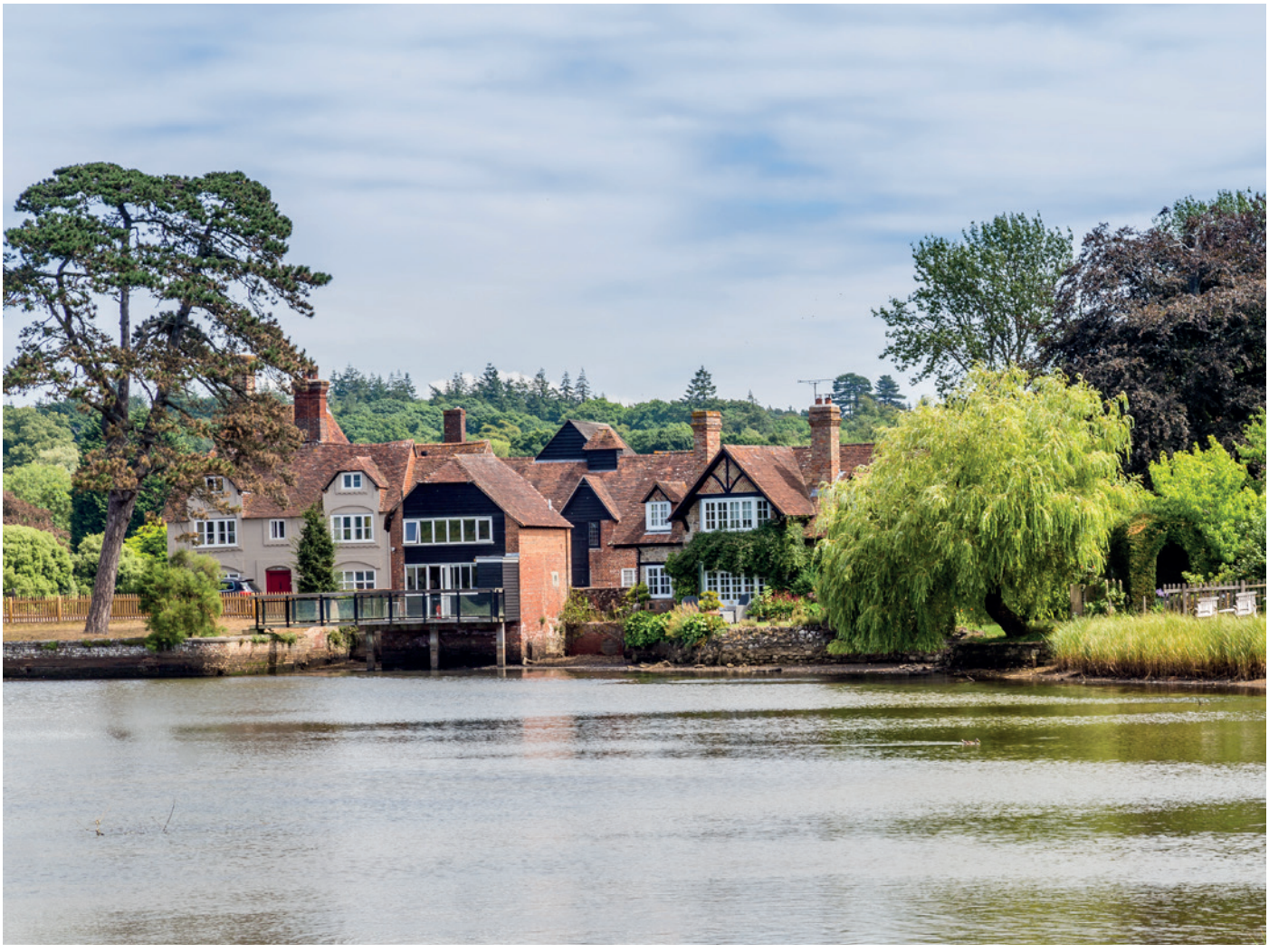
Existing planning policies to protect, maintain and enhance nationally, regionally and locally important sites and features of the natural environment – including habitats and species of biodiversity importance, geological features and the water environment – are retained in the new Plan:

- Restricting the size of new homes to ensure developments address identified local needs for smaller one-to-three bedroomed properties
- A small increase in housing development from the current average of around 25 homes a year to 40 per year
- A lower site size threshold for new developments
- Allocating a few sites for new housing for the first time since the national park was designated in 2005. On these new housing sites we will be seeking a significant proportion of affordable housing to meet local housing needs
- Restricting any developments of care homes
- A new policy on major development

Whilst it is vital to protect the New Forest, I hope the plan does "exactly what it says on the tin" as, after all, the Forest has always been a living, breathing, working forest, and this country is in desperate need of more housing. Local businesses need to grow and prosper and the country needs to house the elderly. Let's hope the plan is not simply lip service and that we see evidence of the support suggested.

The Local Plan can be viewed at: www.newforestnpa.gov.uk/localplan

Kerry Dovey
Associate solicitor, rural property
01590 625828
kerry.dovey@mooreblatch.com



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