MOORE BLATCH

RURAL NEWS

Edition six

RECRUITING SEASONAL WORKERS AFTER BREXIT

POSSIBLE SOLUTIONS

FARMING DISPUTES FOLLOWING A BEREAVEMENT

PRIVATE CLIENT PERSPECTIVE

ENFRANCHISE AND BUY

THE LOOPHOLE TO BE AWARE OF

WELCOME TO THE LATEST EDITION OF RURAL NEWS

I am delighted to announce that Sarah Jordan, associate for Moore Blatch rural property team, has been awarded fellowship status by the Agricultural Law Association.

Sarah joins Philip Whitcomb and I in receiving the highest accreditation in agricultural law. The accreditation requires desmonstration of expertise across all legal and other issues which affect farmers and landed estate owners and we include more details on what the ALA fellowship entails later in the newsletter.

In this edition of rural news, we feature an article on the possible solutions of recruiting seasonal workers after Brexit, details on a farming dispute following a family bereavement and we look into the loophole giving an Estate's residential tenants the right to enfranchise and buy. We also feature a piece on GDPR, which comes into force on 25th May and introduce Commoner's Corner, a feature where Kerry Dovey will be providing guidance and updates on New Forest issues. To keep up-to-date with our news follow us Twitter @MBruralservices or visit our Moore Blatch rural services showcase page from the Moore Blatch LinkedIn page.

I welcome any comments on this newsletter or any queries which you may have on it.

Ed Whittington
Managing partner and head of rural services
023 8071 8026
ed.whittington@mooreblatch.com

RECRUITING SEASONAL WORKERS AFTER BREXIT

POSSIBLE SOLUTIONS?

The issue of immigration has featured prominently in the Brexit debate. Following the decision to leave in June 2016, the UK Government announced it would establish new arrangements for controlling immigration. However, 18 months on and still no concrete plans have been announced.

British farming provides 60% of the nation's food. The UK farming industry is heavily dependant on seasonal workers from Eastern Europe. Low unemployment rates in the geographical areas where farms are located, plus the seasonal nature of farm work, makes it difficult to attract domestic workers.

Problems recruiting workers has meant that, across the country, tons of fruit has been left to rot. Fearful that supermarkets will think they are not running their businesses effectively, farmers are reluctant to speak out.

Why not employ domestic workers?

Despite the recruitment efforts of many farmers, the response from the local population is often poor. Response to adverts is low, and when domestic workers do secure work, they frequently fail to stay on. Generally speaking this is because British nationals are not attracted by many aspects of agricultural work.

It is sometimes unfairly seen as poorly paid, low skilled and lacking career prospects. This, combined with long hours in remote locations and the physical nature of the work, means that potential workers often choose to look for work elsewhere. This is particularly true for seasonal work and permanent jobs in some sectors such as the pig industry.

Efforts to attract UK workers may be enhanced by the introduction of the Universal Credit, due to be fully rolled out in 2022. The Department for Work and Pension estimates that it will incentivise a further 170,000 people into work. However, there is no sectoral analysis to suggest how many of these workers may end up in agricultural work, nor is there any analysis of where the majority of these workers live in relation to the rural businesses that need their labour.

How many non-UK nationals work in the farming industry?

It is difficult to accurately measure the number of non-UK nationals working in the farming industry. Estimates from a number of different sources vary. For example, data from the Office for National Statistics (ONS) has limitations as it does not include seasonal workers or those workers living in communal accommodation.

According to figures from Department for Environment, Food & Rural Affairs (DEFRA), in 2005 there were 476,000 people employed on agriculture holdings across the UK of which 67,000 were estimated to be seasonal workers. However, the National Farmers Union (NFU) believes the actual number of seasonal workers is significantly higher.

Industry research shows that the horticulture sector alone needs 80,000 seasonal workers a year to plant, pick, grade and pack over nine million tonnes and 300 types of fruit, vegetable and flower crops in Britain. Approximately 75% of the UK's seasonal horticultural workforce workers are recruited from Romania and Bulgaria with the remainder largely from Poland and other Eastern European countries who joined the EU in 2004.

Creating an immigration system that recognises and meets the specific requirements of agricultural industries will be critical if this sector is to continue to deliver the current level of services it provides to the British public. But this has not been helped by frequent statements from Government ministers telling us about the target for net migration falling to the 'tens of thousands'.

What is the impact of the referendum to attract workers?

The recent Immigration Bill has provided some clarity for EU workers in relation to the new 'Settled Status'. However, given that the NFU has stated that the horticultural industry had a 29% shortfall of seasonal workers in September 2017 (up from 17% in May of the same year) safeguarding the rights of EEA workers in the UK is only the beginning - the UK must be able to continue to attract these workers.

The Government has asked the Migration Advisory Committee (MAC) to assess the economic and social impact of EU citizens in the UK and consider options for a future immigration system. The MAC report is not due until September 2018. As such this will leave very little time to implement the findings into an effective and manageable system by the Brexit date of March 2019.

Will we be able to access a competent and reliable workforce?

It is vital that the Government addresses labour shortage concerns as a matter of priority. Most countries operate arrangements for recruiting seasonal workers that extend well beyond the EU to countries such as Thailand and Morocco.

The supply of seasonal workers in the UK for 2018 and 2019 seasons is now in jeopardy. A system that will not only continue to allow sufficient overseas workers to take up seasonal jobs in the UK, but also to give security to those workers to come to the UK for a few years and then return home must be urgently established if we are to avert a crisis.

Is automation the answer?

Policy makers often cite automation as the 'solution' to farming's labour needs. Whilst there have been substantial improvements such as table top strawberry growing and poly-tunnels which make conditions easier for workers and allow them to work at a faster rate – many crops such as berries, apples and pears require skilled hand-picking to avoid damaging the fruit. Technology has not yet been developed to replace manual workers at an economically viable scale.

Current industry predictions suggest that automation remains at least a decade away. Even then, the scope for automation to replace manual labour is limited. For example, in the livestock sectors technology will never be able to fully replace good stockmanship, which is essential for animal welfare. This means the industry in general will remain dependent upon manual labour for the foreseeable future.

What are the possible solutions to labour shortages?

A solution to the farming sector's permanent and seasonal labour is now urgent to avoid losing a critical mass of workers. We have examined some schemes previously adopted in the UK that may provide a solution to this problem:

The Seasonal Agricultural Workers Scheme (SAWS)

The SAWS was a quota-based scheme that enabled UK farmers to recruit temporary overseas workers to carry out planting and harvesting of crops, as well as processing and packing. It was controlled by the Home Office and managed by contracted operators. Workers arriving under SAWS were issued with a work card which gave them permission to work for one employer for a fixed period from five weeks to six months. They had to be paid at least minimum wage and be provided with accommodation by their employer. The scheme closed at the end of 2013.

Although it has been suggested by Minette Batters, President of the NFU, that the UK urgently needs to re-introduce a SAWS similar to the one that existed between 1945 and 2013, it is unlikely that a replica scheme would work in the current environment. SAWS operated alongside freedom of movement within the EU, which is unlikely to apply in future; it only ever provided 18-21,000 of the 80,000 workers needed; and the six-month limit under which the scheme operated would be too restrictive now, as the extension of the growing season means workers are now required for up to nine months.

Points Based Immigration System (PBS)

The PBS was phased in to the UK between 2008 and 2010. Non-EU nationals are scored against certain attributes, such as qualifications, occupation and language skills. If they accrue a sufficient number of points they can enter and remain in the UK under various visa categories. The PBS operates under five tiers:

Tier	Who is it for?
1	Investors, Entrepreneurs, and people considered to have Exceptional Talent.
2	Skilled workers that cannot be fulfilled by UK or EEA nationals, including Sports people, Ministers of Religion and Intra Company Transfers.
3	This was a pathway to entry for unskilled migrants to fill temporary labour shortages. It was never used and is currently suspended. This is because the supply of unskilled workers was met from the EEA.
4	Students who have already been offered a position at an educational institution.
5	This tier consists of two categories: • Youth Mobility - allowing young people to enter the UK on working holidays; and • Temporary workers in creative arts, sports, charity, religion and government authorised exchange programmes.

Shortage occupations

The Government currently manages the demand for non-EEA skilled employees by maintaining a shortage occupation list, overseen by the MAC. This could provide a model for skilled workers in agriculture, - for instance the dairy sector, - and could also be extended to accommodate low skilled occupations.

What does the future hold?

We await details of the Government's proposed future immigration regime, particularly in reference to this sector.

A scheme to protect the future status of EU workers has recently been announced by the Government. Therefore, if you or your clients are currently employing EU nationals we strongly advise that they apply to the Home Office for confirmation of their status as soon as possible. Permanent labour requirements must be adequately catered for through a long -term immigration system that recognises different sectors' needs for both high-skilled and low skilled labour, much of which currently comes from the EU. This must include realistic assessments of the ability of the domestic workforce to fill such roles in the short to medium term.

We hope some solutions are provided in the MAC report, due to be published in September this year.

Mandie Sewa
Immigration solicitor
020 3818 5433
mandie.sewa@mooreblatch.com

STRICT LIABILITY CONTINUES
CASE LAW UPDATE

Following the case of Mirvahedy v Henley in 2003, it is well known that if an animal causes damage to a property, the animal's owner may be strictly liable for damages under the Animals Act 1971.

What is more striking, however, is the unpredictability of how a court may interpret that Act, as the two cases below highlight.

In 2008 *McKenny v Foster – t/a the Foster Partnership* the court found that no liability rested with the owner of a cow that had leapt over a six-bar gate and cattle grid before colliding with a car.

Yet last year in *Williams v Hawkes 2007* the court found that the owner of a cow that had leapt over several fences and charged through many hedges before causing a collision on a road was strictly liable for the damage caused.

These cases highlight just how important it is for farmers to ensure that they maintain a good public liability insurance policy that covers them for any damage and injuries caused by the escape of their animals and livestock.

If you would like to discuss these cases or would like a copy of any of the above judgments, please do not hesitate to get in touch.

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

ALA FELLOWSHIP

The fellowship is advanced training in the law of agriculture and the countryside spread over a series of residential courses. The study is based around a mock Landed Estate that has every possible issue you might encounter on a Landed Estate in this day and age. Areas of study include agricultural tenancies, farm business tenancies, mines and minerals, overage, restrictive covenants, nature conservation, water, pollution, partnership dissolution, animal welfare, rights of access, town and country planning, compulsory purchase, easements, trusts, settled land, tax and succession planning, proprietary estoppel and CAP.

The fellowship is highly recommended to anyone on a rural professional basis and is open to land agents, rural accountants and bankers as well as lawyers practising in this sector.

EVENTS

This year, our event sponsorships include:

- The Hampshire Farmers Club annual walk and dinner
- The CLA New Forest Awards
- Harry Whittington Racing Owners Day
- ALA South Central Events
- Hursley Hambledon Hunt Point to Point
- Larkhill NFH Point to Point
- Hampshire Federation of Young Farmer's Clubs

We are also pleased to be hosting the ALA's Future of Food, Farming and the Environment Consultation member workshop on the 17th April. For more information please contact sarah.jordan@mooreblatch.com

GDPR

HOW MUCH CAN WE ASSIST YOUR BUSINESS?

It is now 6 months until the law on Data Protection in the UK undergoes significant changes as a result of the EU General Data Protection Regulation coming into force.

As you probably know, important changes include:

- an obligation on organisations controlling personal data to be able to demonstrate compliance with the rules – this will mean having stronger internal procedures/documentation in place; and

- severe sanctions for breaching data protection rules – fines can be imposed of up to 20 million euros or 4% of an undertaking's worldwide annual turnover; this is in addition to affected individuals having the right to claim damages and the risk of serious reputational damage.

We are actively advising a growing number of clients in order to help them become GDPR compliant and, as we realise that different organisations will have different needs on GDPR, we can help in a number of ways including:

- legal training: typically a 2-3 hour session explaining the changes introduced by GDPR with interactive case studies/examples to show how the rules operate in a real-life scenario;

- initial GDPR readiness assessment: a high-level review of your organisation's GDPR requirements based on replies to a questionnaire and a follow up meeting;

- full GDPR compliance assessment: a more in-depth review of your organisation's needs based on a questionnaire and possibly 1:1 meetings with key personnel, followed up by a report indicating gaps and proposed action plan to rectify these;
  review of documentation: this could include some/all of your privacy policy, website terms/consent wording on obtaining/use of personal data, privacy impact assessments, data processing agreements – we would review/amend these documents so as to be GDPR compliant;

- GDPR/Data Protection retainer service: we offer 2 hours GDPR/data protection advice each month at a fixed price of £400+VAT per month for a minimum period of 12 months. Any additional time spent on a matter will be charged at our standard hourly rates. If you do not use the full 2 hours support in a month, you may carry any unused time over to the following month (but not to subsequent months). Our retainer service is adaptable to your individual business and can be used for any legal advice on data protection/GDPR including:

  - GDPR training
  - review of documents/agreements
  - Ad hoc email and telephone enquiries about GDPR/data protection

If you require a more bespoke arrangement for GDPR, we would be happy to discuss this with you to come up with a package of work that is tailored to your specific requirements.

John Warchus
Partner, commercial
020 8332 8631
john.warchus@mooreblatch.com

THE DIGITAL ECONOMY ACT
INTRODUCING THE "NEW CODE"

The 27th April 2017 brought the Digital Economy Act, a refreshed version of the previous Digital Economy Act of 2010. As well as updating sentencing for criminal copyright infringement, the most interesting aspect is the so called "New Code", which replaces the existing electronic communications code found in both the Telecommunications Act 1984 and the Communications Act 2003.

The Electronic Communications Code (ECC) has not been brought up to date since its founding in 1984, with only minor alterations being made between then and now. However, the new act brings about necessary changes. In short, the new ECC makes the process of erecting mobile masts infinitely easier.

The "New Code" is as follows:

1. Landowners no longer need to seek to exclude telecoms leases from the security of tenure provisions of the Landlord and Tenant Act 1954

2. New leases for telecoms cannot limit rights of the operators to assign the lease in future or enforce any circumstances for such assignment to a different telecoms operator

3. Telecoms operators can now share the occupation of land with other telecoms operators at the same time – this could reduce landowner's income from the leases in the future

4. Operators can now upgrade the relevant equipment providing it does not have "more than a minimal adverse impact" on the aesthetics of the equipment and the changes must also place no extra burden on the landowner

5. New telecoms leases will count as overriding interests, thus capable of binding successors in title, even where they are not registered

6. Where the landowner and operator cannot agree terms, the court now has the power to enact the new code onto the landowner. This occurs under two conditions; firstly, if the financial compensation is adequate to overcome any prejudice caused to the said landowner, and secondly where the public benefit to the new code would outweigh the prejudice to the landowner

7. When it comes to ending a lease granted with the new code the landowner must provide a minimum of 18 months notice to the operator. Additionally, the landowner must have fulfilled one of the following:

    - Breaches in obligations
    - Delays in rent payments
    - Redevelopment of the land

If any of the above are satisfied then termination under the new code is possible.

Ed Whittington
Managing partner and head of rural services
023 8071 8026
ed.whittington@mooreblatch.com

Elinor Davis
Associate, rural property
023 8071 8052
elinor.davis@mooreblatch.com

A LOOPHOLE GIVING RESIDENTIAL TENANTS THE RIGHT TO ENFRANCHISE AND BUY

Many common law tenancies contain a little known or understood loophole that can cause a huge headache for Estate and landowning clients. Having personally come across this issue twice in the last year alone, below I have outlined what you need to know.

Estates and landowners regularly grant written common law tenancies 'for life' to tenants when they retire from a job on an Estate under a service contract. However, there appears to be a loophole that landowners should be aware of, especially now life expectancy is on the up.

A tenant under the Leasehold Reform Act 1967 of a house will qualify for the right to buy the freehold in the following circumstances:

1. the lease must be of a house

2. the lease must be a long lease, which is a lease granted for a term of more than 21 years (or a lease that terminates on death or on an 'unknown date' i.e. a tenancy for life).
   However, if the tenancy fulfils certain requirements it is not considered a long tenancy. These requirements include:

   - termination notice is capable of being given at any time after the death/marriage/civil partnership of the tenant;
   - the length of the notice is no more than three months; and
   - the length of tenancy precludes assignment and subletting of the whole of the demised premises.

   (The terms and conditions for the termination and notice provisions of common law tenancies already in place would need to be properly and professionally scrutinised to check these points)

3. the tenant must have been the legal owner of the lease of the house for at least the two years immediately preceding the service of the notice requesting the right to buy and

4. the tenancy was granted after 18 April 1980 (before this date only enfranchisement applies).

Common law tenancies drafted 'for life' tend to satisfy the right to buy test if a tenant is still in occupation after 21 years and the tenant obtains some decent legal advice on his or her rights.

Given that Estates and landowners regularly grant written common law tenancies 'for life' to tenants when they retire from their work on an Estate under a service contract, this is the loophole that Estates and landowners should be aware of.

In practice, this loophole is little-known. However, some tenants have taken advantage of it after receiving sound legal advice.

I am very pleased to introduce our enfranchisement specialist, Sarah Osborne, to Moore Blatch who will be a great help for those seeking specialist enfranchisement advice.

Sarah Osborne
Associate, leasehold enfranchisement
020 8940 0017
sarah.osborne@mooreblatch.com

Sarah Jordan
Associate, rural property
023 8071 8082
sarah.jordan@mooreblatch.com

FARMING DISPUTE FOLLOWING A BEREAVEMENT

PRIVATE CLIENT PERSPECTIVE

The case of *Sargeant v Sargeant 2018 EWHC 8 Ch* focuses on the case of a farmer's widow, Jane Sargeant, who tried to make a time-barred claim for reasonable provision from her late husband's estate over a decade late.

This case highlights the importance of sound financial and business planning whilst someone is still alive and highlights the problems that can arise when individuals rely on verbal communications alone.

Joe Sargeant died in May 2005 and at the time of his death there was no dispute over his will or the distribution of his estate. Almost the entirety of his estate was left to a discretionary trust, the beneficiaries of which included his widow Mary and their daughter Jane. The estate consisted mostly of farmland that was originally farmed by Joe and several family members in partnership. Prior to his death, however, the farm had been farmed by Joe only.

At the time of Joe's death, the farmland was valued at approximately £3m. But due to a planning permission application for residential development, the value of the farmland subsequently increased dramatically to around £8m. As you can imagine, this change in value caused problems.

Following a dispute with her daughter, Jane, Mary Sargeant made a claim under the Inheritance (Provision for Family and Dependents) Act 1975. This Act states that a claim can be made against the estate of the deceased person if they believe that no reasonable provision was made for them in the Will.

The time limit for such a claim is six months after the date that Probate was granted, but with the provision that in exceptional circumstances a person can apply for the time limit to be extended. (Mary required permission to bring proceedings under s. 2 of the Act, which states that no application can be made after the six-month period unless permission is obtained.)

The dispute between Mary and her daughter concerned ownership of the farmland. Mary believed the land was part of Joe's personal estate. Conversely, Jane took the position that the farmland was owned by the farming partnership, which had passed to her by succession and as such was outside the estate.

Mary, who was facing financial difficulty at the time of her claim, disputed Jane's original partnership agreement with Joe. In addition, she wished to remove Jane as her father's executor. However, Mary said that if her reasonable provision was allowed, she would drop these claims.

The problem with Mary's case is that the Inheritance (Provision for Family and Dependents) Act 1975 imposes a deadline of six months after probate. In Joe's case, probate was on his will in 2006, meaning Mary was making her claim a full ten years after this deadline. Because of this, Mary had to obtain permission to bring the action several years late. Mary's argument was that she had not understood her position as a discretionary beneficiary which was, admittedly, a difficult contention to make.

Her request was, however, refused by the Court. The judge stated that this was not 'a case in which the claim is being made necessary by any supervening event outside Mary's control. I reject also any suggestion that the delay in bringing the claim has been occasioned by Mary placing reliance on generalised statements that she says her husband made to her before his death along the lines of "you will be a wealthy woman after I die."'

The Judge went on to specify that no facts had been concealed from Mary and she had not been misled by any person in relation to Joe's estate, in particular his trustees or, more specifically, Jane.

On the evidence, Mary had an arguable case which, if successful, could have resulted in a transfer of assets to her of substantial value.

What was clear was the importance Mary had placed on general comments her husband had made to her prior to his death as opposed to concrete evidence which is the benchmark set by the Court.

On balance, this situation demonstrates the importance of initial family and business planning whilst a person is alive and capable of taking the necessary steps. Trying to solve issues following a bereavement can cause significant problems, as this case clearly demonstrates.

Matthew Billingsley
Solicitor, wills, tax and trusts
01590 630185
matthew.billingsley@mooreblatch.com

Philip Whitcomb
Associate, wills, tax and trusts
01590 625808
philip.whitcomb@mooreblatch.com

COMMONER'S CORNER

Exploring rural property issues and developments in the New Forest, Kerry's Commoner's Corner, is a new feature for rural news.

Kerry Dovey, an associate in our rural property team, who is based in our Lymington office and advises our New Forest clients on the nuances of farming and rural property within the New Forest perambulations, has been a commoner all her life and runs a herd of New Forest Ponies within the Forest which she manages from her commoner's holding in Beaulieu, so she is well placed to offer advice on the peculiarities of rural land within the Forest.

New Forest #Add3Minutes campaign

In November, my best New Forest brood mare was hit by a car whilst depastured on the forest. Whilst this is a risk that all commoners face when turning their ponies, cattle or donkeys on the Forest, it is still upsetting losing an animal in this way.

This incident occurred only a week before a new campaign to slow drivers down was launched in the Forest (#add3minutes). The campaign's message is that if drivers reduce their speed to 30mph it will only add three minutes to their journey, and New Forest animals will be considerably safer.

Whilst other farmers may run the risk of a cast cow or a sheep stuck in a hedge, unlike New Forest farmers, there is littke risk to their livestock being hit by a car. However, without animals grazing the New Forest, which they have done for centuries, our largest National Park would not look as it does today.

Committed to helping reducing animal deaths on New Forest roads, Moore Blatch LLP has signed up as a corporate member to the Shared Forest project. We have made a pledge to encourage all our employees who use Forest roads to remember that the Forest animals have right of way, and to drive with caution.

For more information on Shared Forest please see www.newforestcommoners.com

Commoner's Holding

After putting the sadness of November behind me, December was a positive month having completed the build of our own Commoner's Holding in Beaulieu.

Commoners Holdings are a scheme supported by the National Park to address the shortage of suitable properties in the New Forest to carry on the tradition of commoning.

The scheme allows the building of a restricted size dwelling on greenbelt land and outbuildings, where ordinarily you would not be permitted to build.

There are restrictions surrounding occupation, similar to an Agricultural Condition (which is secured by a section 106 agreement), and there is a transfer and farm business tenancy leaseback arrangement, thereby ensuring the land can only be used for agricultural purposes.

Filming with BBC Countryfile

In January, I spent a very wet and cold day with BBC Countryfile filming New Forest Ponies demonstrating their ability to maintain their condition in the harshness of January which they do by eating a diverse range of green matter from gorse to holly.

DEFRA visit

With continued Brexit uncertainties the pressures of farming in the New Forest, much alike nationwide agricultural production, continues to be a hot topic.

At the end of January, I had the opportunity to discuss with DEFRA ministers what benefit New Forest Commoners make to sustain the ecology of the Forest and why subsidies are vital to maintain grazing livestock on the forest.

We all wait to see the outcome of the DEFRA visit and whether it was money well spent.

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

MOORE BLATCH

www.mooreblatch.com