



Common land is a complex but important area of rural law

## Understanding common land

The system underpinning common land and rights of common is complex and affects many landowners across the country.

Common land is generally privately owned with other parties having the benefit of rights over the land such as for the grazing of animals, but also including the taking of peat, wood and fish.

The Commons Registration Act 1965 established the register of common land and rights. This act has partly been superseded by the Commons Act 2006, although this is yet to come fully into force and is only being piloted in seven areas—Lancashire County Council (excluding Blackpool) and Blackburn with Darwen Borough Council are included.

Rights of common can be attached to land or held in gross (i.e. held in their own right separate from the land) but from June 28, 2005 can no longer be severed from the land. On a sale of land, any rights attached to that land must now be apportioned pro rata according to the acreage sold.

The 1965 act does not provide powers to rectify mistakes and deregister 'wrongly registered land,' therefore at present the non-pilot authorities must keep details on file until such time as the relevant legislation comes into force across the country.

Common land has recently been the centre of attention in relation to Single Farm Payments. These payments can be claimed over common land by the person holding the rights of common or the owner of the common.

However, they must be claimed using the proper application form and many people have been incorrectly completing the forms and having to repay the entitlements received.

There are a number of different ways common land and rights of common can become involved in

land transactions, for example in relation to Single Farm Payment claims or gifts / sales of land.

If you require any assistance please do not hesitate to contact us.

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**For more information, the team can be contacted on:**

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# Welcome



Andrew Holden

As many of you know, I have now taken over from Geoff Tomlinson as head of Rural.

I would like to thank Geoff for his assistance and support over the past six years. I hope to build on the success of the department and have plenty of ideas.

It has been a busy time for the team, and I am delighted to confirm our re-appointment onto the NFU Legal Panel. We will continue to serve their members in both Lancashire and Cumbria.

We have also been asked by Myerscough College to undertake training on succession to farmers, covered later in this newsletter.

As I write it is a difficult time for farmers with the recent milk price drops and predicted poor harvests due to the bad weather.

Hopefully the dairy code and recent steps by the supermarkets to increase the price paid for milk are the start of improving prices, but more is needed to ensure farming is a business with a future.

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## Renewable energy update

During the 'Renewables' breakout session at the recent NFU conference, delegates were advised that by the end of summer 2012, one in six farms will have some form of solar power.

By the end of 2012, it is estimated that one in five NFU members will be producing clean energy from the sun and wind.

This trend seems likely to continue, especially following the recent amendment to the permitted development rights by the Government, which will now include small-scale renewable projects on farming or non-domestic land.

There was good news for those 30,000 or so people who had recently installed solar panels on their property. In March this year, the Supreme Court ruled that the Government could not back-date the feed in tariff reduction, meaning those people who installed solar panels between December 12, 2011 and March 3, 2012 still

benefit from the higher tariff of 43p as opposed to 21p per kWh.

We have certainly seen an increase in renewable projects relating to wind turbines.

The majority of these new instructions seem to be from renewable suppliers approaching clients and offering to take a legal option from them for a set period of time during which they will attempt to obtain planning permission for the scheme.

If planning permission is granted the farmer or landowner will grant the company a long term lease.

Whilst we are being asked to review these deeds, many of our clients have not checked the papers first with their local land

agent to ensure they are getting the best possible deal.

Our advice is therefore not only to ensure that you get the correct legal advice, but also to ensure that you are getting the best deal available to you. This applies not only to wind projects but any renewable scheme you are considering.

One note of warning, however, is to proceed with all your checks and the transaction as quickly as possible to ensure that your offer is not withdrawn. These deals are often time sensitive and the renewable suppliers will not wait around, as they usually have other irons in the fire.

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## Agricultural Shows

This summer has seen a range of successful agricultural shows across the county and beyond.

Recently, Napthens sponsored the Garstang Show on August 4, and before the summer is through, we will also be attending:

**Hodder Show** (September 8) – we have a pitch in the trade tent all day.

**Westmorland Show** (September 13) – we will be on the site and available to meet in the NFU tent all day.

On the day, please call Andrew Holden - 07854 378739 or Geoff Tomlinson 07887 594646, or visit the NFU tent.

# Planning for the future of your farm

**Ask a farmer what they would like to happen to their business when they are no longer around and the likely answer is that a member of his family would be operating it.**

The vast majority of farms in this country are of course owned and/or run by families, but far too few owners have done anything about succession planning. Many don't even have up-to-date Wills, let alone a partnership agreement.

There are probably many different definitions of farm succession but, at its simplest, it is the process by which the farmer makes it possible for the next generation to continue the business (whether the farm is owner-occupied or tenanted) whilst at the same time:-

- Making adequate provision for his own retirement
- Making provision for any non-farming children to receive a fair inheritance
- Avoiding any unnecessary liability to tax.

All farms are different, as are the families which run them, and there is no 'one size fits all' solution, so specialist advice is essential.

As the NFU legal panel solicitors for Lancashire and Cumbria, the Napthens team regularly speaks on the subject of farm succession, and every year we host a number of seminars on the subject, jointly with the NFU and others.

A welcome new development is that we have been appointed by Myerscough College to deliver a series of workshops on farm succession under the RDPE Greater Manchester Skills Programme, for which the college has obtained funding.

The series, which will start in September of this year, will consist of a number of self-contained workshops, each lasting two to three hours, and each delegate will also have the option to take part in a separate individual coaching session in light of his/her own situation.

The funding available means that delegates will pay only a nominal fee for attendance at any session, and it is open to farmers in Lancashire.



**Planning for a farm's future is often overlooked**

Full publicity will follow in due course, but in the meantime, further details can be obtained from Robert Burrow at Myerscough College on 01995 642206, or by e-mail at RBurrow2@myerscough.ac.uk

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## Meet the team

### Robert Richards of the Litigation department



**Robert Richards**

As a partner in Napthens' Litigation department, I work closely with the Rural team to resolve disputes on behalf of farming clients. The bulk of my work relates to two main areas of dispute; commercial contracts and land.

With commercial contract disputes, my role might involve acting for a seller or provider of services for the recovery of a debt. Alternatively I often advise farmers who have purchased goods or services and wish to bring a claim against the supplier for breach of contract or negligence.

My work on land disputes includes advice on Agricultural Holdings Act tenancies and farming business tenancies, such as breaches of covenant, recovering possession of leased land, arrears of rent and dilapidations. I also advise farmers on disputes relating to other interests in land (including licences, grazing agreements etc) as well as disputes relating to boundaries, trespass and nuisance.

Litigation can be a daunting prospect but it is important to remember that there are often alternatives such as mediation.

These alternatives may avoid the expense of litigation and achieve a quicker and commercially more advantageous settlement.

Early advice and identification of the issues is more often than not crucial to the achievement of a successful outcome. It is far better to seek advice too early than when it is too late.

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# Lasting Powers of Attorney

It is never too early to organise your affairs in order to protect your family and business interests in the event of your incapacity or death. Unfortunately, many do not realise the implications of failing to prepare properly for the future.



Appoint a trusted attorney to help plan for the future

As the population ages, the trend is moving towards increasingly complex family and financial arrangements. Everyone has their own idea of how they want their affairs to be managed, but sadly it can be very difficult for family members to assist their loved ones should they lose mental capacity.

In the UK no organisation can disclose private and confidential information to a third party. While security measures are necessary, what happens for example, when an elderly relative becomes housebound – who can deal with their banking?

Next of kin have no legal entitlement to deal with the affairs of a family member. Consequently, people can face the distressing situation of looking after a relative who is deteriorating mentally but who are unable to ensure their bills are discharged and their affairs managed properly.

A Lasting Power of Attorney (LPA) is the only solution. A legally appointed attorney can deal with the affairs of another. An LPA names an attorney and what powers they shall have.

Once in place an attorney can deal with the affairs of another person with full legal authority and no intervention from the court. Should mental capacity be lost, the attorney can continue to deal with their affairs.

There are two types of LPA:

**Property and Affairs:** Allows an attorney to deal with financial affairs including closing bank accounts, transferring money, making gifts, discharging debts.

**Personal Welfare:** Should mental capacity be lost, an attorney can make health decisions upon your behalf including where you should live, who you should live with, who should be a doctor, dentist etc. You

can also state whether an attorney is to have power to consent or refuse life sustaining treatment.

The appointed attorney must be someone that you trust absolutely, and who has the appropriate expertise and knowledge of your affairs.

People with complex financial assets and businesses can make separate LPAs for both their personal and business affairs. LPAs are extremely flexible and allow, for example, restrictions to be placed upon an attorney's power, and the naming of a replacement attorney to take over should your attorney be unable or unwilling to act.



Charlotte Cooper

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## Centralised rural litigation

We are pleased to announce that from September, our Rural Litigation team will be based at our Blackpool & Fylde office.

Partner John Woosnam is relocating to our office at Whitehills Business Park to work alongside partner Robert Richards and solicitor Hayley Bamber.

The rural litigation team provides advice to farmers, landowners and rural businesses on issues including tenancy disputes, land and boundary disputes and commercial contract disputes.

The move allows us to bolster our statutory prosecution defence team (Environmental, Health and Safety, Trading Standards, Animal Welfare and Licensing Authority prosecutions) by allowing John, Hayley and Robert to work more closely.

The move also improves our service for rural litigation clients by offering one central point of contact and easy access and parking from our modern offices close to the M55. The team will still see clients at any of our offices or at home/on site and will continue to offer a free initial consultation.

We are planning to run free legal advice clinics from the new location, so look out for details on the website and in e-updates.

The rural litigation team can be contacted on 01253 622305.

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