



Welfare of animals being transported is vital

Trading Standards stepping up animal welfare checks

Farmers transporting animals to auction could face fines or imprisonment if they are not caring for their livestock properly, an expert is warning.

Warwick Alabaster, agricultural specialist in the Litigation & Dispute Resolution team at Napthens, warns farmers to focus on the welfare of their livestock following an increase in Trading Standards investigations.

Warwick reports that he has seen an increase in Trading Standards activity at auctions in particular.

Officers are apparently stepping up investigations into farmers mistreating the animals they are bringing for sale, meaning the farmers are liable for prosecution resulting in fines or even imprisonment.

Under welfare rules, farmers have a legal responsibility to ensure their animals are fit to be transported for the journey in mind. Any ambiguity

would need a visit by a vet to inspect before the journey takes place.

EU regulation also governs the welfare of animals during transport, and includes those involved in sectors including farming and livestock hauling, and animals such as poultry, pigs, sheep, cows and goats.

The Government recommends a number of simple steps to take including planning journeys thoroughly, checking animals regularly and ensuring those handling animals are competent.

Warwick said: "Farmers must be aware that they have a responsibility under the Animal Welfare Act and EU transport regulations.

"If they notice one of their animals is lame, for instance, and this is spotted when they arrive at auction, they are leaving themselves open to prosecution.

The penalty for transporting an animal which is not fit to travel is potentially a £5,000 fine or six months imprisonment.

"Farmers should always make sure they have checked their stock thoroughly and that they are aware of the health of the herd.

"It is illegal to transport an animal considered unfit for travel, which could include very young calves, heavily pregnant females and sick or injured animals. The rules are also different depending on the distance the animals are being transported.

"These rules are only right and fair, as most farmers abide fully by the law and ensure their animals are in peak health.

"However, those that don't should be aware of the issues and the potential cost for a farming business."



Warwick Alabaster

Contact:
Warwick.Alabaster@napthens.co.uk
01253 832382

Welcome



Andrew Holden

The Brexit result has been announced, and the UK has a new Prime Minister, Cabinet, and hopefully a fresh outlook on sailing these uncharted waters.

In the meantime, it's business as usual, and we hope you enjoy this latest edition of Rural Law which focuses on a few topics of interest which should get you thinking.

We look at how animal welfare is being taken very seriously with increased inspections taking place at auction marts.

We have a special in-depth look at partnership agreements: how they work and how they could help your business both now and in the future and how they really are a necessity not an option.

We also take this opportunity to introduce you to another member of the Rural team. This time it's the turn of Ann Hallmark, one of our Family lawyers. Ann also takes a look at pre-nuptial agreements and how they can be useful.

Finally we let you know how you can meet us at some of the area's agricultural shows and at special Napthens-organised events.

If you have any issues to discuss, don't hesitate to get in touch with me or one of the team.

Contact:

Andrew.Holden@napthens.co.uk
01254 686216

Working in partnership

Rural businesses can benefit significantly from a written partnership agreement.

A partnership can exist where two or more people agree to be in business together with a view to making a profit. The terms of a partnership do not have to be in writing, but there are significant benefits to having a written partnership agreement.

Partnerships are governed by the Partnership Act 1890, to the extent that those provisions are not varied by the terms of any written partnership agreement.

One provision of the Partnership Act 1890 (if not varied by a written

agreement) which can cause practical issues for farming partnerships, is that a partnership will automatically dissolve on the death of any of the partners.



Partnership agreements can help a farming business run effectively

Case study: A family unit

Father, mother and son farm in partnership. They have no written partnership agreement and so the partnership will automatically dissolve on the death of any one of them. Father passes away.

Whilst mother and son may agree to continue farming and trading in the manner prior to the death of father, and whilst his interest in the partnership may have passed to mother and/or son, strictly speaking the partnership of the three of them (Partnership A) dissolves on the death of father.

If mother and son then continue to farm and trade, this will be under an entirely new partnership between the two of them (Partnership B).

Whilst their farming practices may not change, the fact that Partnership A has dissolved means that strictly speaking they have a duty to wind up that partnership and as such to realise all assets, settle all debts and distribute the residue between the partners.

If Partnership A had borrowings with a bank (a contractual relationship), these borrowings would have to be repaid in full. In reality, Partnership B could enter into new contractual agreements with the bank to take on those borrowings and essentially release Partnership A from the duty to repay those borrowings.

This means additional agreements and legal documentation – all of which can be time consuming and incur additional costs.

How would a partnership agreement help?

If Partnership A had a written agreement in place which detailed that the partnership is not to automatically dissolve on the death of a partner, then the contractual agreements between the Bank and Partnership A could simply continue after father's death, as

Partnership A would continue albeit with two rather than three partners.

A similar situation can occur in relation to other contractual arrangements, such as milk contracts, hire purchase agreements, tenancy agreements, basic payment scheme arrangements and other schemes. Therefore the importance of having a written partnership agreement in place for this point alone should not be underestimated.

Written partnership agreements can also be beneficial for other reasons. For example:

- They can confirm agreed income and capital profit shares and voting rights
- They can confirm what properties are held as assets of the partnership and what are not, which can assist in the partners' general understanding of assets owned or used by the business and can also assist with inheritance tax relief claims on a partner's death
- Should a partner wish to retire, then it can set out the manner and period for service of the retirement notice
- On a retirement or death, it can also provide mechanisms for dealing with a partner's share in the partnership, for example it often includes a right for the surviving partners to have an option to purchase an outgoing partner's share in the partnership. The written agreement can provide the price for this share, for example book value, open market value or otherwise and payment periods. As this is all agreed in the written agreement prior to any death or retirement, all partners know and have agreed the process in advance.
- Because agreed terms are in writing, this can help to reduce the chances of dispute. Even if there is a dispute, the written agreement can provide mechanisms for the process by which this dispute is to be undertaken.

Even with a written partnership agreement, it is always open to the partners to agree other terms should they wish, but the written terms will be the default provisions in the absence of agreement to the contrary.

The importance of having a written partnership agreement in place ... should not be underestimated.



Melissa Taylor

Contact:

Melissa.Taylor@naphthens.co.uk
01254 686226

Pleased to meet you

Members of the Rural team will be out and about in coming months with plenty of opportunities to meet clients and discuss their issues.

The department is planning a schedule of seminars on 'Protecting your Business' in October and November, looking at issues including Wills, partnership agreements, business structures and property audits.

Events are being planned for Ormskirk, Kendal, Penrith, Garstang and Gisburn. For more information, contact the office and speak to Catherine Peake to be added to the mailing list.

Meanwhile, the team is also attending a host of agricultural shows across the region during the second half of 2016. Naphthens' Rural experts will be available to meet at the following events:

Contact:

Catherine.Peake@naphthens.co.uk
01768 807040

- Cartmel, August 3
- Garstang, August 6
- Lunesdale, August 9
- Appleby, August 11
- Royal Lancs, August 13
- Dalston, August 13
- Lowther, August 13
- Chipping, August 27
- Westmorland, September 8
- Hodder Valley, September 10.

Pre-nuptial Agreements

Cases involving celebrity couples and the very wealthy often appear in the news, along with details of their pre-nuptial agreements (or lack of them).



Do not overlook pre-nuptial agreements

Such agreements are not just for the fabulously wealthy or celebrities, however. I advise clients to consider entering into such agreements where, perhaps, they have inherited land or other assets prior to the marriage, or if they anticipate inheriting assets during the marriage and want to control what will happen to those assets should the marriage fail.

They are particularly important when entering into second marriages, where there may be

children of the first marriage, to whom they wish their assets to pass if the worst happens.

Although these agreements are not currently legally binding on the court, provided they are drafted carefully, the court must consider, along with all the other relevant factors, why the agreement should not be upheld.

There are also proposals for changes in the law to make these

agreements binding, provided certain requirements are met.

Those requirements are that each party obtains legal advice, they are made in plenty of time before the wedding, there should be full and frank exchange of financial circumstances and that the needs of the couple and any children are provided for in the agreement.

I would particularly recommend that anyone who has been living with their partner prior to their marriage seeks advice at least three to six months before the marriage.

As the law stands, so called 'seamless co-habitation' (no break between cohabitation and the marriage) counts as part of

the length of a marriage. This is a relevant factor that the court will take into account, as the provision for a spouse in a long marriage will potentially be greater than that in a much shorter marriage.



Ann Hallmark

Contact:

Ann.Hallmark@naphthens.co.uk
01254 686230

Meet the team: Ann Hallmark

Solicitor in the Family team

I live in the beautiful Ribbles Valley, in the heart of the rural community, with my husband and two children and am a country girl at heart.

I specialise in divorce and matrimonial finances but deal with all areas of law relating to the breakdown of relationships. I qualified in 1997 and am a member of the Law

Society's Advanced Family Law Accreditation scheme.

I work closely with Andrew Holden, Head of the Rural team at Napthens and have developed niche expertise in dealing with rural divorces. Such separations often have unique land and tax issues which arise as a result of the division of those rural business

assets and the dissolution of husband and wife farming partnerships following a divorce.

I encourage clients to be as amicable as possible, to help deal with the enormous emotional and financial impact a divorce has on them and their families. I encourage my clients to attend mediation, which is a

pre-requisite to issuing any financial or children application at court.

If mediation breaks down or is unsuitable, it is often more cost effective to begin court proceedings, which often helps both parties to focus on settling and prevents matters drifting on.

Preston:
7 Winckley Square
Preston
PR1 3JD
DX 714572 Preston 14
Tel: 01772 888444

Blackburn:
Greenbank Court
Challenge Way
Greenbank Business Park
Blackburn, Lancashire
BB1 5QB
DX 745450 Blackburn 12
Tel: 01254 667733

Blackpool:
Libra House
Cropper Close
Whitehills Business Park
Blackpool
FY4 5PU
DX 745260 Blackpool 20
Tel: 01253 622305

Penrith:
Ground Floor Offices
Agriculture House, Cromwell
Road
Penrith, Cumbria
CA11 7JW
Tel: 01768 807040

Kendal:
Bridge Mills
Stramongate
Kendal
LA9 4UB
Tel: 01539 760560

Southport:
38 Hoghton Street
Southport
PR9 0PQ
Tel: 01704 333088

www.naphthens.co.uk

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