

Welcome to the Autumn edition of Harrison Clark Rickerbys' new look Spot On for Agriculture and Rural Affairs newsletter. Look inside for our valuable FREE OFFER!

From the field:



The badger – definitely not a black or white issue
Q&A – contract issues
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From the paddock:



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What happens to your horses when you die?

From The Field



The Badger – definitely not a black or white issue

Why is the Badger causing the latest controversy in the countryside?

The Badger is a distinguished character in the countryside and because of this and in light of badger baiting, Badgers and their setts became a protected species under the 1992 Protection of Badgers Act (the "Act").

The Act made it illegal to "kill, injure or take badgers or to interfere with a badger sett". A 'badger sett' is generally understood to mean the system of tunnels and chambers in which badgers live, their entrances and immediate surrounds. The 1992 Act specifically defines a sett as "any structure or place which displays signs indicating current use by a badger".

With the protection of the Act coupled with the fact that Badgers have no natural predators, the number of Badgers has soared and the Badger has now been linked to the increase of Bovine TB ("BTB") and the devastation of other wildlife.

The Badger Cull

After much debate Natural England has now permitted the control of badgers in West Gloucestershire for the purpose of preventing the spread of BTB. The licence has a four year term and authorises controlled operations

to be conducted within West Gloucestershire over a continuous six week period each year over the next four years. No control operations can be carried out during specified close seasons. Under the terms of the licence and in accordance with the criteria specified in the BTB control policy, licensees will be authorised to reduce badger populations in the pilot area by at least 70% but maximum numbers will be specified to prevent the risk of local extinction.

The licence

The licence was granted under section 10(2)(a) of the Protection of Badgers Act which states that a licence may be granted to a person authorising him (subject to complying with any conditions in the licence) "to kill or take badgers for scientific or education purposes".

What is the penalty for killing a Badger without a licence?

A person guilty of killing a badger without a licence is liable to a term of imprisonment not exceeding six months and/or a fine up to £5,000.

For more information on this please contact

**Mary Wathen, Associate Solicitor, on
+44 (0)1989 561421 or email mwathen@hcrlaw.com.**



Nigel Gowling, In House Counsel at Harrison Clark Rickerbys, talks to a grower who is struggling to fulfil his supply contract and asks...

Can the terms of my supply contract be changed?

Yes, but only by agreement between the parties.

What causes the most common problems in my contract?

The most common disputes arise from just a few areas: force majeure, quantity, quality and delivery.

Force majeure

This is probably the most commonly misunderstood contract term. Force majeure does not cover you for the failure of a crop to yield either the contract tonnage or quality. It is designed to provide cover when an unexpected event such as a breakdown of plant or machinery, power failure, fire or flood prevents either party from performing the contract as or when anticipated.

Quantity

If you simply fail to supply the full contract tonnage, then you are likely to be in default, allowing damages to be claimed by the buyer.

Damages arising from a shortfall may be deducted from the value of the commodity already delivered on the same contract. Where no deliveries have been made, the usual practice is that the buyer will invoice the damages to you (the cost of buying in the replacement tonnage) and require payment to be made within a specified period.

If you know that you are going to be short of tonnage you should tell the buyer before the time of delivery to allow the buyer, with your agreement, to replace the likely shortfall. Where this happens, the buyer must minimise your losses.

Quality

You should try to establish any allowance or deduction for failure to meet contract quality before a load is tipped. Ideally, buyers should set out discounts or scales of allowances in contracts as they are issued.

If quality is at question at delivery, you or your representative may attend a second sampling and analysis. That second test result, or an average of the two tests, could make the load suitable for acceptance at the contract price.

Delivery

From time to time, for practical reasons either you or your buyer may request an extension to or a pull forward of delivery dates. If this takes deliveries outside the contract period, then the party being asked to change is entitled to refuse, although where it is practical to do so, would probably wish to accommodate the request to maintain goodwill.

Depending on the relationship between the parties and the nature of the change to the contract, payment may be negotiated to recognise the cost or risk of extra storage.

**For further information contact
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Health and Safety Update

Since 1 October 2012 the Health and Safety Executive ("HSE") has operated a Fee for Intervention cost recovery scheme. This means that those who breach health and safety laws are now liable for the recovery of HSE's costs including inspection, investigation and certain enforcement action.

The measure is intended to have a deterrent effect and is based on the theory that it is appropriate for those who breach health and safety duties to bear the costs of regulation rather than the tax payer.

We are now beginning to see the use of the new regime, which applies to public and limited companies; general, limited and limited liability partnerships; and crown and public bodies across Great Britain, following its implementation in October 2012.

What should you do if you receive a notification of contravention/ improvement notice or prohibition notice?

If you become aware that HSE is seeking to recover the costs of carrying out its regulatory functions in relation to alleged breaches of health and safety laws by your organisation, you should take the following steps as swiftly as possible:

1. Obtain a copy of the notification of contravention, improvement notice or prohibition notice that has been served by the HSE.
2. Arrange for the issues to be thoroughly investigated internally, on a legally privileged basis, to enable you to advise your organisation on the nature of the alleged breaches and any potential liability under health and safety legislation.
3. If Statutory Notices have been served, consider whether your organisation has any grounds to appeal the Notices.
4. Consider whether to dispute the fees claimed for the intervention. For example: whether the HSE has appropriately notified you of the alleged material breach; whether you dispute that a material breach existed at all; that the Enforcement Policy Statement /Enforcement Policy Model has not been followed by HSE.
5. If you chose to dispute all or some of the Fees for Intervention you should send correspondence to HSE's Fee for Intervention Team as soon as possible and within 21 days of receipt of HSE's invoice.

For more information contact James Lowe, Senior Associate, on +44 (0)1905 746485 or email jlowe@hcrlaw.com.



From The Paddock



Loan Agreements

Loaning out your horse or having a horse on a loan may seem like the perfect solution when funds are tight, however, in reality loaning out a horse has many potential pitfalls and loans of horses are often the subject of bitter legal disputes. It is therefore important to have a bespoke loan agreement in place before the loan commences. These agreements define who is responsible for what and protects both parties.

Loaning a horse carries with it risks to both parties. The owner of the horse entrusts their animal to the care of someone else who could be a stranger to them, and on the other side the borrower takes on the huge responsibility of the care and wellbeing of another person's horse.

Without a detailed and bespoke loan agreement being put in place before the loan commences, disputes can arise on many issues

such as; insurance for the horse, how the day to day care of the horse should be carried out, which farrier or veterinary surgeon should be called to the horse and what it should be fed, to name but a few areas of potential dispute.

As well as dealing with the matter by drawing up a specific loan agreement there are a number of practical steps that can be taken to minimise the potential for dispute at a later stage. For instance, if you are looking to loan out your horse I always recommend taking a detailed set of photographs of the horse beforehand and to take a video of the horse in work where possible. References for potential borrowers should also be requested to ensure the credentials of where your horse is going to.

For more information contact Alison Goodwin on +44 (0)1432 349675 or email agoodwin@hcrlaw.com.

Horse Passports

The horse passport regime has been under intense scrutiny in recent months following the discovery of horse meat which had entered the human food chain unlawfully. As a result there is likely to be continued focus on the legislation governing this area, the Horse Passports Regulations 2009 ("Regulations"), by enforcing authorities long after the media focus on the subject has ended.

All horses, ponies and donkeys are required to have a passport by virtue of the Regulations. All owners of these animals must have a passport for them which must be obtained on or before 31 December in the year of its birth or 6 months after its birth, whichever is later.

The animals cannot be sold without a passport and it is important to note that these documents are entirely separate to veterinary and breed certificates. If a horse is sold, the seller must give the passport to the buyer at the time of sale. The buyer must register the change in ownership within 30 days.

If a horse dies the keeper must return the passport to the passport issuing organisation within 30 days of the death of the horse. If a horse is slaughtered or killed for disease control purposes, the official veterinary surgeon must return the passport to the passport issuing organisation.

Local authorities are responsible for enforcing the Regulations and have wide powers to enter premises and inspect horse passports and other documentation at any reasonable hour. A breach of the Regulations can lead to prosecution and conviction in the Magistrates' Court can lead to fines up to £5,000. Fines for convictions in the Crown Court are not limited by statute and can be substantial.

For more information contact James Lowe, Senior Associate, on +44 (0)1905 746485 or email jlowe@hcrlaw.com.





What will happen to your horses when you die?

Statistics show that the majority of people in this country have not made a will. This is even more common in those under the age of 60. Aside from ensuring what happens to your assets and appointing guardians for your children, another important consideration for all animal lovers should be what will happen to your pets should you die.

In your will you can make provision for your pet's future care by stating where you would like them to go and making financial provision for them. As animals do not have the ability to accept or manage a legacy they cannot be left money directly, however, solicitors can advise you on the best way for you to make financial provision for them. This can be by way of a legacy to a new owner for taking over responsibility of caring for them, or by setting up a trust fund to pay for their ongoing care.

You can also write a 'letter of wishes' to your Executors setting out what you would like them to consider should anything happen to you. The benefit of this is that the letter of wishes can be updated as often as you like without the expense of updating your will.

If you have not made a will or have not considered your horses or other pets in your will, then it will be

up to your Administrators/Executors to decide what happens to them. Would you be happy with this?

Most of us would not be without our horses but no matter what you do with yours we all have to accept that they are unpredictable animals. Fatal accidents happen and it is up to each of us to have made provision for those we leave behind, both family and animals.

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Did you know?

**There are 20 million
hectares of farmland
in the UK - that's the
equivalent of 30 million
football pitches.**



Hot off the press

**British Dressage confirms
Harrison Clark Rickerbys as its
official legal services partner**

Visit www.hcrlaw.com for the full story.

Left to right: Anna Roby-Welford (Marketing Director, Harrison Clark Rickerbys), Amanda Bond (Chief Executive Officer of British Dressage), Richard Morgan (Partner, Harrison Clark Rickerbys), Double Paralympic Gold Medallist, Natasha Baker, riding Cabral, Penny Pollard (Chairman of British Dressage), Alison Goodwin (Associate Solicitor, Harrison Clark Rickerbys), Lottie Goldstone (Trainee Solicitor, Harrison Clark Rickerbys).

An offer for all readers

You are entitled to a free consultation on any Agricultural or Rural matter with a copy of this newsletter. To book, please call any of our offices and ask to speak to a member of the Rural team.

Do you know your rights? Competition Time!

For your chance to win a bottle of bubbly, visit our website at www.hcrlaw.com to fill in the answers to our quick quiz.

1. You have a legal right to stop for a picnic on a public right of way?

True OR False

2. Which of the following bulls CAN legally be allowed to graze in a field crossed by a public right of way?

- A. A bull under the age of 8 months
- B. A bull under the age of 10 months
- C. A none dairy breed bull with some cows or heifers
- D. None

3. A Landowner can apply for the diversion of a footpath?

True OR False

4. A footway is another term for

- A. Track
- B. Road
- C. Footpath
- D. Pavement

5. A new right of way over any land which has been used and enjoyed by the public uninterrupted for a full period of how many years can be deemed to be dedicated as a highway unless the landowner has clearly demonstrated to the contrary?

- A. 12 years
- B. 20 years
- C. 21 years
- D. 50 years

6. Who looks after public rights of way?

- A. Landowner
- B. Highways
- C. Both the landlord and the highways

7. What distance must be kept if you plough alongside a bridleway?

- A. 1 metre
- B. 2 metres
- C. 5 metres

8. Who gives permission for a "permissive path" over land?

- A. The Landowner
- B. It is a legal right over the land
- C. The local Authority

9. If a private right of way exists across land, does that mean that a public right of way cannot exist along on the same line?

- A. Yes
- B. No but a public right of way will prevail and the private right of way will cease to exist
- C. No, both can exist along the same line

10. In what year was the Countryside and Rights of Way introduced?

- A. 1998
- B. 1999
- C. 2000
- D. 2002

Visit www.hcrlaw.com/sectors/agriculture-and-rural-affairs/ to enter the competition and for your chance to win a bottle of bubbly!



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If you have any questions or wish to know about any article in this issue of Spot On for Agriculture and Rural Affairs, please contact this edition's contributors. To meet the whole Agricultural and Rural team, please visit our website at www.hcrlaw.com

Like to receive more frequent updates?

If you would like to receive more frequent updates about the issues our teams handle, then follow us on twitter [@HCRlaw](https://twitter.com/HCRlaw)

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