

Comments by **Simon Blackburn, Partner and Head of Landed Estates and Agricultural Team at Payne Hicks Beach**, first published online in The Law Society Gazette on 13 May 2019 and reproduced with kind permission
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FEATURES

Country pursuits

By Ben Rigby 13 May 2019

*Solicitors serving the rural economy must be versatile enough to cope with the 'jigsaw of life', hears **Ben Rigby***

THE LOW DOWN

Solicitors who serve rural communities and the farming, commercial, environmental and private client matters that come with the patch may well have the profession's most varied in-tray. These instructions often come with the added benefit of long-term client-lawyer relationships – small wonder that legal story lines are such a staple of *The Archers*. But the combination of legal problems clients present requires a unique skill set, and lawyers must have a keen sense of where the boundary of their legal competence sits. It is all too easy to get drawn in to problems that require different eyes – land law is much more than 'property'. Then there is Brexit, which is already hitting farming and the rural economy, with fears of worse to come.

Even the most bucolic landscape conceals a complex set of problems, and the solicitors who serve its legal needs must work to a model that clients view as 'full service' while ensuring that the client base is diversified. A failure to strike that delicate balance will not end well for client or law firm.

But get the balance right, Victoria Lee, private client solicitor with Bird Belderbos & Mee reflects, and the result is a strong and rewarding bond with those clients. 'Clients based outside urban areas are more interested in generating long-term relationships with their legal advisers,' Lee says, 'and do not want to have to consult three different law firms to seek the right advice.'

Top of mind

Right now, set against the rhythm of a life linked to the land, those long-term relationships and the ever-present question of succession, is Brexit. 'Whether you are tired of hearing about it or not, its various permutations are inescapable,' Thomas Lee, a trainee at Birkett Long, notes. 'As the country's farmers have recently been explaining, it is no longer a matter of speculating about the effects of Brexit – the effects are being felt now and there is a fear that the worst is yet to come.'

The National Farmers' Union's annual survey of British farmers showed confidence at its lowest level since the survey began. Peter Taylor, managing partner of Hampshire-headquartered Paris Smith, says that until recently, there was very much a wait-and-see attitude among agricultural clients, who delayed plans in anticipation of the UK leaving the EU. Not so now. Many, he says, have 'become increasingly frustrated by the lack of progress, and have decided to take the bull by the horns and implement their plans – whether placing farms on the market, taking a new tenancy or expanding their enterprises'.

Commercially, Taylor says, there is evidence of de-risking, lack of long-term investment and stockpiling to secure supply chains. The unspoken advice, notes BDB Pitmans partner Tristan Ward, 'crudely put, is get fit [for farming] or get out [of farming]'. As he notes, 'there is no business that is not affected by Brexit, whether it knows it or not'.

Taylor warns: 'Significant markets will be effectively closed to UK farmers because of tariffs and supply chain difficulties.'

I don't honestly think a practitioner should act for agricultural clients unless they are a land law specialist. Eventually, they will get caught out

Denise Wilkinson, Hewitsons

As a rule of thumb, warns Ward, the profit of UK agriculture is roughly equal to the grant available from public funds – much of which originates from the EU. This means, he observes: 'If the farming industry thinks the UK government will make up the whole amount after Brexit (if it happens) it is deluded, in my view.' He notes farming will be competing with demands from other sectors, and not least the NHS.

While subsidies will continue to be available from the Department for Environment, Food & Rural Affairs, at least until 2020, they will be gradually withdrawn by 2028. Unspecified further funding will be available, although its nature, source and qualifying criteria remain unstated. As Ward says: 'Far-sighted clients are looking for yet more diversification, efficiency savings, and rationalisation, sometimes in cooperation with neighbours.'

Simon Blackburn, a partner at Payne Hicks Beach in London, says farmers ought 'to be gearing their businesses up to cope with a post-subsidy environment, or otherwise looking to turn their assets into capital that can be deployed elsewhere, so as to generate income'.



Simon Blackburn
Partner Landed Estates and Agriculture

Tourism is part of many diversification plans. Caroline Dowding, partner and head of agriculture and estates at Birkett Long, says her firm is increasingly advising land agents on the structuring of opportunities like holiday lets, letting of units to various businesses including health retreats, fishing holidays, gyms and even 'boot camps'.

Nicola Smith, a senior associate at Ladders, which spans Warwickshire, the West Midlands and the Cotswolds, confirms: 'Agri-tourism is a growth area,' encompassing 'farm stays or farm visits, country hotels, yoga retreats, clay and game-related shooting ventures, glamping, cider farms, equestrian liveries, farm parks... petting zoos and community projects, to name but a few.'

Such projects, she says, 'have their own unique challenges', spanning property, planning, private client, tax and finance. Blackburn says clients have found 'it is not possible to make money out of rural enterprise solely from agriculture'.

Clients are also willing to consider options on their land such as fracking, solar energy and windfarms. Some projects are linked to renewable energy. Blackburn notes a rapidly growing type of rural letting comprises a generator and battery storage space to support numerous solar and wind installations across the countryside.

'GEOGRAPHY DOESN'T MATTER'

Rural areas can be ideal places for lawyers to set up niche practices. Paul Bennett (pictured) of Bennet Briegal is Law Society Council member for the Law Management Section. He explains: 'My own practice experience is unusual – I am based rurally, in Shropshire, as that's where I choose to live, but actually I split my time between London and national clients.'

He adds: 'Geography perhaps does not matter as much as people think – the legal work tends to be the same but the scale varies. As an employment and professional regulation lawyer who has worked in Shropshire, North Wales, Cheshire and London, my work was pretty much identical to lawyers in London and the City – but the salaries, compensation levels and publicity factors all impact.'

'Geography does not matter if you have good broadband. And as chair of the Shropshire Professionals Partnership, we are seeing our firms, both in terms of law firms and other professionals, compete nationally for work.'

Another lawyer of the same breed is Stuart Armstrong, of SV Armstrong, in Yorkshire. A sole practitioner, he is a specialist in health and safety. He notes that current farm safety issues concern the high level of fatalities at work in the industry, mostly caused by cattle, moving vehicles and machinery.

Armstrong tells the *Gazette*: 'I have developed local links for specialist services so that I can offer clients advice on topics from trusted suppliers in other firms and partnerships who will then not try to poach my clients.'

Here again, though, the rural law rule of diversification applies, as advice linked to energy projects is an unstable source of work. Instructions, Blackburn notes, 'come in fits and starts – wind is far less popular than it was, say, 10 years ago, with solar seemingly suffering a similar decline at the moment'.

However, both Smith and Taylor note that the viability of renewable projects tends to be circumscribed by the nature of the land and proximity to the National Grid, as well as landscape planning issues. For example, the New Forest and the South Downs national parks, both close to Paris Smith's offices, strictly control development.

Full service

Diversification of the rural economy needs to be achieved in a legal landscape that is already highly complex. Ward details the breadth of the advice required from a rural practice. It ranges from real estate – including residential, commercial and agricultural tenancies – through complementary areas, like trusts law and planning, and environmental law. And, of course, there are more business-focused disciplines, including company law, partnership and employment law, and private client and tax law.

'Agriculture is good old *Megarry & Wade*-style land law,' says Denise Wilkinson, partner at Hewitsons in Cambridge, referring to a landmark textbook. A council member of the Agricultural Law Association, she stresses the importance of grounding in every kind of property law: 'I don't honestly think a practitioner should act for agricultural clients unless they are a land law specialist. Eventually, they will get caught out.'

Practices serving that rural economy still need to maintain a full-service offering, Blackburn stresses: 'I cannot overstate the importance of being fully multi-skilled from a technical perspective. The problems solved on the smallest of farming matters can often give insight into a much larger transaction, that a purely transactional lawyer would not naturally have.'

We cover the whole ambit of the rural economy... It is interrelated and must be looked at as a whole and not in isolation

Peter Taylor, Paris Smith

Solicitors must also keep an eye on the stability and sustainability of their own business, and that means aiming for a relatively diverse client base. 'For every multi-million-pound transaction,' Blackburn adds, 'there will be perhaps 150 files of everything, ranging from telecommunications wayleaves through succession tenancies to farming partnerships and cottage sales.'

'The old warning,' Taylor adds, 'not to keep all your eggs in one basket is very true in rural practice.'

'We cover the whole ambit of the rural economy, whether acting for traditional landowners, lifestyle farmers, tenant farmers and developers. The whole rural economy is interrelated and must be looked at as a whole and not in isolation.'

Handing on

For many farming clients, the full range of expertise needed comes together in resolving issues of succession. While farming operates in an economic environment that can be troubled, farm land can be highly valuable, even where its returns are currently low.

High-value instructions bring together inheritance tax, succession planning, property work, and business and private client matters.

Lodders' Smith comments: 'Rarely will we look at one point in isolation as a proposed transaction can impact on other areas, for example tax and partnership matters.'

'Private client agricultural advice is a jigsaw of life,' Dowding says. 'As such, the pieces must be placed together to form a full family picture.'

'It is one of the few areas where a "family lawyer" is still considered to be fundamental,' she continues. 'Wills cannot be looked at and considered without in-depth knowledge of the history of the farm, the current structure, as well as the proposed future, family dynamics, relationships and health issues.'

That means picking a way through partnership agreements (or the lack of them), company law, pre-nuptial agreements, and the use of powers of attorney (both personal and business). There are wills, there is care funding advice, as well as utilising estate planning tools such as trusts, lifetime gifts and restructuring. The knowledge required is diverse, complex – and comprehensive.

Target tourism: farmers are expanding their businesses to include activities such as clay and game-related shooting ventures

Wider legal developments have also had an effect on succession, Taylor points out: 'Couples are increasingly entering into pre- and post-nuptial agreements, which provide an ideal opportunity for us to consider... the manner in which farming assets might be held in order to maintain their integrity – and to protect them from division on divorce.'

Especially relevant here, Taylor says, is the use of trusts to help preserve family wealth. Long-term, developments on agricultural land may add substantial value 'which in turn might need "looking after" in the hands of beneficiaries', he adds. 'The classic case would be an asset-rich but cash-poor farmer who encourages a relative to work on the farm for years for little or no reward on the promise that they will inherit the farm, but fails to leave a will to that effect.'

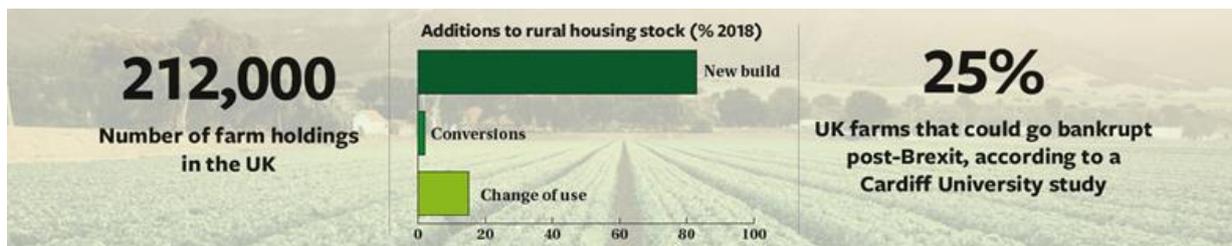
In such a context, Taylor observes: 'The significant value of property in popular rural areas may encourage people to contest wills.' Despite this, he adds: 'Farmer clients are very reluctant to pay fees that ultimately protect themselves and family members against the possibility of consequences of such disputes.'

Seeking relief

Bird Belderbos & Mee's Lee says the evidence of farming and commercial property landlords is also generating tax advice. 'Such assets are notoriously tax inefficient, which inevitably generates more opportunities to provide advice and add value, by saving tax.'

She argues: ‘Much like family businesses, ensuring the assets are passed down to the next generation with the proper reliefs is absolutely essential and is the biggest driver for most clients to seek advice.’ In that context, the interrelationship between agricultural and business property reliefs is critical.

Lee works closely with property colleagues ‘to ensure that any new activity or enterprise doesn’t jeopardise the relief’, but even then there are pitfalls. ‘Unfortunately, it is notoriously difficult to convince a farming client of the importance of “the law”’, she notes, adding it is often the next generation that seeks advice, ‘in an attempt to ensure their hard work is rewarded and not going to waste, or broken up on the patriarch’s death, through poor inheritance tax planning’.



Francesca Sassoli, an associate in the private wealth team at Cripps Pemberton Greenish, comments: ‘Clients may seek solutions as to how to ensure equality between family members involved in the business and those who are not,’ with other advice covering members of the farm business losing mental capacity, or moving into a care home.

In seeking to get clients to act on the need for advice, marketing and business development for these practices inevitably links back to community. That, Jen Skingsley, associate and marketing manager at Birkett Long, means: ‘Supporting local charities and organisations local to the communities in which we work. We also try to support the endeavours of our staff where we can, and several of the charities we work with have come from colleagues’ connections.’ The overriding commitment of a successful practice, she concludes, must be to ‘people and community’.

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