

Business Clinic

Whether it's a legal, tax, insurance, management or land issue, *Farmers Weekly's* experts can help

Undocumented grass lets – have we created a problem?

Q My father has let three fields to a neighbour for grass keep from April to September each year for a small charge. This has been an arrangement for the past 17 years.

The neighbour puts cattle in the fields each year, although sometimes she might only use two of the fields. Occasionally she makes hay from the grass in one field.

This has all been done on a casual basis with nothing written down. My father does all the maintenance, the fencing and hedgecutting. He also pays for the drainage. He is wondering if she could have any claim to these fields in the future.



Duncan Sigournay
Partner, head of agriculture, **Thrings**



Informal grazing agreements can lead to problems – always put the deal on paper

A You are wise to be wary about such agreements leading to problems further down the line. We have seen many instances where an oral agreement has had many unintended consequences for a landlord.

The good news, however, is that given this arrangement started on or after 1 September 1995, your neighbour will, at best, have a farm business tenancy (FBT) protected by the Agricultural Tenancies Act 1995 and not a fully protected tenancy under the Agricultural Holdings Act 1986.

There are some exceptions to that general rule based on the commencement date, but it is unlikely that any of them would apply here. If your neighbour could claim their occupation was governed by the 1986 act, she would have had significant protection, possibly also extending to succession rights for the tenancy.

Having established that your neighbour probably has an FBT, one then has to ascertain what rights she may have and when the agreement will end. I would stress that the fact that there is no written agreement does not undermine its FBT status.

Even so, there can be evidential issues with oral agreements since, by their very nature, it can be difficult to prove their precise terms as the parties may have different recollections of what was agreed at the outset.

From the information provided it would appear the agreement is renewed every year.

FBTs of two years or less automatically end on their contractual term date. No notice would need to be served by either party to bring it to an end. In your case that would be some date in September.

As such you would struggle to get your neighbour to vacate before September but, importantly, they would not have any right to remain after that date. Indeed, you would be free to decide whether or not to renew the agreement again in April.

If you do decide to re-let the land, I would strongly recommend you ensure there is a written agreement in place. Given that this arrangement has been going on for some time, it may well be diplomatic to let your neighbour know that either it is likely to be renewed next year - in which case you would like a written agreement in place - or that it is unlikely to be renewed. That way she will be able to plan accordingly and hopefully things will remain amicable.

The only other point to mention is that in some circumstances, rather than an FBT being granted, use can be made of a "profit of pasturage", which is essentially a specific type of agreement that only permits the taking of the grass crop through grazing.

The latter can be used where the landowner is prepared to undertake sufficient work to prove that they are in occupation such as controlling weeds on the land, keeping the

land fertilised and reseeding and cropping the grass, as well as repairing fences and the like.

Under this type of agreement, the landowner remains in occupation of the land. Such agreements can be more tax-efficient than FBTs if used appropriately and are not merely a sham. They will not be appropriate for everyone, but nonetheless it may be worth considering with your advisers.

DO YOU HAVE A QUESTION FOR FW'S EXPERTS?

Outline the issue in no more than 350 words. Please give as much information as possible.

Send your enquiry in to Business Clinic, *Farmers Weekly*, RBI, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS and make sure you include a telephone number.

You can also send in your question by email to fwbusinessclinic@rbi.co.uk

Our expert partners



What are the tax implications of land sale and holiday barn conversion?

Q I farm in partnership with my wife and we have recently sold some farmland. We are looking to convert one of the barns in our farmyard into a holiday let with the proceeds from the sale. What are the tax implications of this?



Clare Hulme
Associate director
Duncan & Toplis

A There are various taxes that should be considered in this scenario. If we start with your initial capital trans-

action, the sale of the farmland, may have resulted in a capital gain, on which capital gains tax (CGT) will be chargeable at 10% or 20%, dependent on whether you are a basic-rate or higher-rate taxpayer, or a reduced rate of 10% if entrepreneurs relief (ER) is available.

You can, however, roll over the gain from the sale of the land into the conversion of the barn to a furnished holiday let (FHL), provided the barn is a qualifying business asset and is converted within the qualifying time period, which is one year before or three years after the disposal of the land.

VAT must be charged on the income earned from FHLs.

If the FHL is to remain as an asset of the farming partnership and the farm is registered for VAT, the VAT on the barn conversion costs can be reclaimed. However, you will need to charge VAT on the lets, once the FHL is up and running.

In order for the property to qualify as an FHL, it must be commercially let with the

intent to make a profit, and will only qualify as an FHL if it passes all three occupancy conditions shown below:

1. The property must be available for commercial letting as holiday accommodation for at least 210 days/year
2. It must actually be let as holiday accommodation for at least 105 days a year; and
3. If the total of all lettings that exceed 31 continuous days is more than 155 days during the year, this condition is not met, so your property will not be an FHL for that year.

Recent tribunal cases show it is hard to achieve business property relief on FHLs, but each should be considered on a case-by-case basis. Advice should be sought from a specialist adviser from the outset.

ONLINE

Find out the key ingredients for a successful holiday letting business – read more online at www.fwi.co.uk/successful-holiday-letting

How can I make returning home to the farm work?

Q I have come back from studying and working in Australia and am ready to get stuck in on the family farm. However, I'm worried about how it will work and how we might generate sufficient income.



Michael Mack
Associate, **Savills Food and Farming**

A Trying to forge a place for yourself will be a real challenge, but remember it will also be hard for your parents and everyone else involved in the farm.

The prospect of a young upstart joining the business, who could upset the status quo and start making rash decisions, is unsettling for those on the receiving end.

One of the first steps that needs to be implemented is to set up a regular business meeting. The meeting should be held at least monthly and include all the key people on the farm.

This will enable you to gain a strong understanding of the business and identify areas where you feel you can add value.

A common issue is that a son or daughter joining the business may have a completely different work ethic, lifestyle and even dress code compared with the older generation. As the new entrant to the farm, you need to think about how others view your behaviour and actions.

The biggest benefits you will bring to the farm are energy and ideas. You don't want

to lose these. Before rushing into changing farming systems, diversifying the business or adding enterprises, it is important to bring the rest of the team along with you.

Spend time researching your ideas and really getting to grips with the topic before jumping in head first. Above all, communicate with your family and the other people involved. Nobody likes to be kept in the dark.

In a family farming situation, one solution may be to create a new enterprise as part of the business or set up a standalone business that is linked to the farm. Standalones provide independence, but you may face difficulties in securing grants and bank lending.

There is no one-size-fits-all answer in relation to structuring an enterprise to enable business development while also limiting the risk and tax burden. It's best to work as a team to cover all options and to agree business objectives, roles and responsibilities.

The type of activity you can develop to increase income could range from adding a new enterprise, such as establishing a B&B pig unit, to opening a tourism business or farm shop. Before committing, think about the pros and cons of each idea and how it will fit with both your interests and the farm.

One young farmer would come and talk to me on a monthly basis and each time his idea had changed, but one topic kept coming back. After a lot of research he realised this was the one for him. Five or so years later and his business has grown and become a huge success.

Carving your niche on the farm will be greatly rewarding, but remember to watch how your ideas and actions are being received. In establishing a new income stream, focus on yourself and the farm's assets and remember it has to work for the rest of the farm and your family's objectives.



Any new enterprise must work for the business as a whole