Business clinic

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

What can legally be done about faulty milking robots?

Q I run a 121ha (300-acre) and 180-cow dairy farm. With a view to expanding and increasing profits, I bought four milking robots in 2013 to replace my herringbone parlour.

I've had nothing but problems with them. They constantly break down, are wholly unreliable and profits have fallen. I cannot contemplate expanding the herd until the problems are resolved. Plus, I've had to maintain my herringbone parlour as backup when the plan was to sell this and recoup some money. The whole episode has caused great distress to both myself and my family. What can I do about it legally?

TIM SCRIVENER

Failure of the robots meant that the traditional parlour had to be kept on, adding cost as well as missing out on income from its sale

Robert James
Associate
Thrings

A The good news is it looks like you have a claim for breach of contract. If you bought the robots from the manufacturer or an agent, I would expect they would have contracted on their set of standard terms and conditions which would set out some express terms. It is these that would need to be examined in the first place.

Regardless of these terms, the law implies certain terms into contracts such as these, primarily that the robots should be (a) of satisfactory quality and (b) fit for purpose. This would be governed by the Sale of Goods Act 1979, as you purchased the robots back in 2013. It has since been replaced by the Consumer Rights Act 2015 which applies to all contracts after 1 October 2015.

In any standard terms and conditions, I would expect to see certain exclusion or limitation of liability clauses. This is an attempt by the seller to restrict the category of claims that may be brought against it, or try to set up a financial cap on its liability for any claim.

If the standard terms and conditions are simply imposed on you, and these exclusions or limitation clauses were not adequately explained and highlighted to you, then there may be an argument they are not valid. Under the Unfair Contract Terms Act 1977, it would be up to the seller to persuade the court the clauses are reasonable in the circumstances. On the facts of your case, this is not an easy task.

If it can be shown that the breakdowns are caused by inherent defects with the robots, and not by husbandry or other external factors, then on the face of it, you would have good prospects to show they are not fit for purpose and are not of satisfactory quality.

To support any potential claim, it is important to keep a detailed record of the frequency of the breakdowns and any known cause. A positive expert report from a suitably qualified engineer would strengthen your position.

If you can successfully show the robots are defective, relief will come by way of damages. From what you have described, there are three broad heads of loss.

First, you need to be put in a situation where you have working robots. Usually, this involves the cost of repair, but if all repairing efforts to date have been to no avail you could certainly argue you should be awarded damages to enable you to go out and buy new robots.

Second is the question of any loss of profit from the drop in production. You will need to show these losses were foreseeable, for example that they could reasonably be a contemplated result from having defective robots. Your accountant may be able to help you demonstrate and provide evidence of these losses.

Last, you mention distress. The law only allows damages for distress in contract claims in very limited circumstances, where the purpose of the contract was to provide peace of mind or relaxation. The current claim is unlikely to fall within that category.

A note of caution. Any court claim for a breach of contract should be started and issued with the court within six years from the breach, which could run from the date of purchase back in 2013 and may therefore mean that you do not have much time left to pursue the claim.

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 to Business Clinic, *Farmers Weekly*, RBI, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS and include a telephone number.

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

Our expert partners

Is rollover relief repaid on death or inheritance?

Q What happens when land bought with rollover relief from Capital Gains Tax (CGT) is passed to someone after the original owner dies? Does the tax have to be repaid from the estate or can the relief be continued until the recipient sells?

Peter Griffiths
Tax director
Hazlewoods

A On an individual's death, all assets are uplifted to market value and no CGT is payable. Therefore, gains that have been rolled over into assets held at death do not become chargeable to tax, and the whole gain is "washed out".

Assets owned by the deceased may suffer inheritance tax (IHT), although if the relevant assets wholly qualify for an IHT relief such as agricultural properly relief or business property relief, the assets can be passed to the inheriting individual with no tax liability arising.

Rollover relief from CGT is available for an individual when qualifying assets used in their trading business are sold, there is a capital gain and the proceeds are reinvested in other qualifying assets to be used by the individual in their trading business. This does not have to be the same business or even the same trade.

Relief is available to sole traders and partners in a partnership. Relief is also available to limited companies or where individuals own an asset personally that is used by a company they own.

Acquisition of the replacement asset must be within one year before and three years after the disposal.

HM Revenue and Customs may agree to extend the period, to allow relief on purchases up to two years before and six years after a disposal in certain situations. A claim has to be made for the relief, and for full relief, all proceeds must be reinvested.

Also, if the asset being sold has not always been used in a trading business, then relief is restricted on a pro-rata basis to the trading period.

No rollover relief will be available until proceeds at least equal to the cost of the asset being sold are reinvested.

So, if an asset bought for £400,000 is sold for £1m, no rollover relief will be available on the £600,000 capital gain until replacement qualifying assets costing at least £400,000 have been acquired.

For farming businesses, relevant qualifying assets include land and buildings but not normally farmhouses occupied by anyone other than an employee.

Fixed plant and machinery, for example an anaerobic digester or grain dryer, is also a qualifying asset, but only for a maximum of 10 years, when the gain becomes chargeable, if other qualifying assets have not been acquired in that period.

It is important to note that to extend the rollover relief period beyond 10 years, the replacement qualifying assets must be purchased before the 10 years have elapsed.

Provided the replacement asset is used in the trade immediately, even if the asset stops being used in the trade in future, there is no clawback of the rollover relief on purchase.

Many farming businesses are now structured to include a company alongside a partnership. Gains made by an individual on qualifying assets can be rolled into qualifying assets used in a different trading business they own.

However, gains on assets used in a sole trade or partnership will not qualify for the relief where the proceeds are used to acquire qualifying assets to be used by a limited company which the individual owns.

Where relief is claimed on gains on assets owned personally by an individual and used by a company, it is only available if the proceeds are reinvested in other assets used by the same company.

Borrowing to buy land - what to consider

Q I am thinking of borrowing to buy some neighbouring land. I want to fully understand the impact on my business. What should I consider?

Charles Skelton
Food and farming consultant
Savills

A See your business in the same way your bank manager would. How at risk is your present financial situation and what might it look like if you make the purchase?

Acquisition of major assets such as land and property that involve bank borrowing may put pressure on the balance sheet in terms of gearing ratios.

These compare medium and long-term liabilities with your net worth and are typically presented as a percentage. Gearing ratios will be one of several considerations by a bank before lending.

The target ratio would be under 50%, however it is accepted this figure will be distorted by the purchase of a significant asset with 100% borrowing but the bank will need to understand how the ratio will be brought back into a "normal" range.

Remember also that net worth calculations rely on asset values which may not be current or accurate.

Banks will also want to see a strong business case for the potential purchase and your plans make sense from a cashflow perspective.

It is important to include all expenditure during your proposed payback period, such as any other capital purchases. There is no point in replacing a bank loan with an increased unforeseen overdraft facility and no immediate plan to repay.

Appraise how your business would look without Rural Payment Agency income. Prepare a sound plan for repayments and understand the full demands of cash in the business (including private drawings and tax).

Identify and declare private drawings and income tax. Understand what depreciation means to the profit and loss account and how this translates to cashflow forecasting.

It is essential all cash income and expenditure is considered when appraising a large long-term capital purchase. Repayments due on asset finance and long-term bank loans and mortgages are calculated over a period of time.

Meanwhile your profit and loss account is affected by plant and machinery depreciation the moment the item arrives on the farm.

Depreciation is not a cash item but it is important to understand how your accountant calculates it.

Be realistic and include sensitivity analysis in your future gross margin calculations; for example, what would a 30% increase or decrease in the price of your sales or cost of your inputs do to your cashflow?

Consider also the ownership of the land – whose name will be on the title deeds? In general, it is best to avoid joint ownership but consider succession planning opportunities down the line.

Take advice to ensure you get things right first time and avoid expensive remedial action.