

Business Clinic

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

What should we do about compulsory purchase?

Q I have just been informed that part of my farm will be affected by compulsory purchase for a new road. What are my rights and what should I do?



Mark Warnett
Partner
Carter Jonas

A The government is rolling out a £27bn strategic road investment programme, promoted by Highways England. There are also county council road schemes, new railways, electricity lines, power stations and so on, so more and more farmers will have to deal with compulsory purchase.

Having had a road built through our family farm in Kent and acting for similarly affected clients every day, I can attest to the practical, emotional and financial challenges (and occasionally opportunities) involved.

Compulsory purchase is a labyrinth of law and procedure, but there are some practical steps farmers and rural landowners can take.

Set pragmatic objectives

Every case is different, but generally it is far better to come to an agreement with an acquiring authority to avoid a loss, rather than suffering a loss and later seeking compensation. For example, I have negotiated environmental management agreements, enabling farmers to retain land which would otherwise have been compulsorily purchased for environmental mitigation.

Land swaps have also been agreed with acquiring authorities in lieu of compensation. Accommodation works can include acoustic fences, new tracks, drainage, rabbit fencing and many other practical solutions to lessen the impact of a new road or railway.

Set pragmatic and achievable objectives and engage with the authority early – burying your head in the sand will just limit your options.

It's a marathon, not a sprint

The government often talks about speeding up infrastructure delivery but, in reality, these are complicated projects with demanding front-ended consultation rules, and the planning and consenting process alone takes years. Acquiring authorities have exacting governance procedures and negotiations can



Certain losses can be avoided by early engagement with an authority exercising compulsory purchase powers

TIM SCRIVENER

be protracted. Patience, determination and persistence are key.

Keep thorough information file

This should document, among other things, your time spent dealing with the issue, including date, time spent, and activity undertaken.

It should also include photographs showing the condition of your property prior to any access by the acquiring authority and throughout the construction works.

There are many things that you can be compensated for aside from the loss of property – for example, your reasonably incurred time, crop damage and other costs consequential to the scheme, including those for professional advice.

However, without evidence that a loss or a cost was incurred, you won't be able to substantiate a claim. Get three quotes for any costs you incur due to the scheme, and keep quotes and invoices along with your own notes. You and your adviser will be glad of them when submitting claim evidence months or even years down the line.

Know your rights

Questions you will need answers to may include:

- When does the acquiring authority have rights to access your property for surveys, and when do they need your agreement?
- When can you require the authority to acquire your entire property?
- When can you make representations about a scheme and on what basis?
- What happens if you can't agree compensation and what procedure should you follow?

Knowledge of the complex rules surrounding compulsory purchase and practical experience are key. There are many finely balanced decisions where judgement is important. So, I'm bound to say: instruct an experienced compulsory purchase specialist who can tell you your rights and advise you how to apply them.

In addition, other than in exceptional cases, acquiring authorities will need to go through a consenting process and demonstrate a compelling case in the public interest, as well as satisfying environmental, planning and many other elements of law, before they are granted compulsory purchase powers.

The golden rule is to engage constructively in the consenting process (usually a Development Consent Order for roads), making representations and exercising your democratic rights.

Damage by utility contractor remains unrepaired years later

Q I have a dispute over damage caused by a contractor working for a utility company in 2014, which then resulted in a theft.

The contractors agreed early in the year to delay the work until after harvest, but they turned up in April. Luckily the ground conditions were OK, but there would be crop damage.

They broke six fence posts and gave us six posts for us to replace those broken, but did not repair the damaged fencing wire. They also offered other stronger posts but never delivered these. After the work began, the foreman asked me if they could carry out some preparatory work in our yard.

The damage to our main implement shed happened at this time, witnessed by my parents. A crane lifting equipment off the lorry hit the shed doorframe with quite a bang, rendering the sliding door unusable.

After several phone calls, managers and others from the contractor's depot inspected the damage and assured us they would repair it after ordering the parts.

The damage meant we were unable to lock the shed doors at all. This was our only lockable machinery shed and in late 2015 our Suzuki KingQuad was taken from it, along with accessories worth more than £6,700.

The utility company claims to have no record of the work on our farm. They have asked for a map of the field and identification of their equipment, which I have sent but have received no reply.



Russell Reeves
Partner
Thrings

A In the process of conducting the work for the utility company, there has been damage to your crop, fencing and implement shed. The damage to the shed may also have resulted in the theft of your Suzuki KingQuad and its accessories. You may want to consider pursuing a claim under negligence, which provides compensation for harm caused by carelessness.

However, it is important to note that any claim must be brought within six years of suffering the loss. In this case the damage occurred in April 2014, and it is therefore likely a complete defence exists which the



Any damage by third parties should be noted and photographed where appropriate

ADOBE STOCK/AEROGONDO

utility company would be likely to use and which would result in the failure of this part of your claim.

For a claim in negligence to succeed, you will need to establish that a duty of care was owed to you by the contractors, that this duty was breached by their actions, and that this breach caused the loss.

As a contractor working on your property, it is highly likely that a duty of care existed. When deciding whether this duty has been breached, the court will consider whether their actions fell below the standard of a reasonably skilled contractor. While this is fact-specific, it is likely that in causing the damage, the contractors fell below this standard.

If the above is found, it will need to be considered whether the loss to you was caused by this breach. This is where things may get a little more complicated for parts of your claim.

On the facts given, it is likely to be considered that the damage to the crop, fencing and shed were all caused by the careless actions of the contractors. If so, negligence would be established.

However, in relation to the theft of the Suzuki KingQuad and accessories, there are a number of potential issues.

The theft may be considered a new and independent cause of loss and therefore not

directly caused by the contractors and, if so, the claim for this loss would fail. The loss must also be reasonably foreseeable. It is likely to be argued that although damage to the shed was reasonably foreseeable as a result of the contractors' negligent actions, the theft was not and if so, this loss would not be recoverable.

Mitigation requirement

To be successful, you must also have taken reasonable steps to mitigate your losses. Although the court would take into account assurances made by contractors that they would repair the shed, by failing to either repair the shed door or store your possessions elsewhere for a year and a half, it may be found that you have not mitigated your losses and this would result in the failure of this part of your claim.

On the above facts, unfortunately there are a number of issues which may result in your claim being unsuccessful. However, these are complex legal issues and the response to your question has been simplified to the extent that it cannot be relied on. It would be advisable to obtain independent legal advice.

An alternative would be to pursue your claim against the utility company or contractor via their complaints procedure. Despite the time factor, they may wish to settle quietly for reputational reasons.

DO YOU HAVE A QUESTION FOR THE PANEL?

Outline the issue and *Farmers Weekly* will put your question to a member of the panel.

Send your enquiry to Business Clinic, *Farmers Weekly*, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS, and include a telephone number. You can also email fw-businessclinic@markallengroup.com

Our expert partners



THRINGS Carter Jonas

