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Issue 76 – Spring 2014

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The *ALA Bulletin* welcomes readers' letters or comments and enquiries from anyone wishing to contribute material. Photographic contributions will be gratefully received and credited accordingly. The *ALA Bulletin* does not accept advertisements but is happy to insert flyers.

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In past issues

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Mediation in the settlement of agricultural rent disputes – Paul Pridmore (*Autumn 2013*)

CPO compensation: The changing costs horizon – Matthew Knight (*Autumn 2013*)

Paying for the environment – Julie Robinson (*Summer 2103*)

Changes in forum and procedure – Christopher McNall (*Summer 2013*)

Residential developments and affordable housing – Tristan Ward (*Spring 2013*)

Back issues of the *ALA Bulletin* from Autumn 2002 onwards are available under the *Materials* tab on the ALA website.

Chairman's Notes

Philip Day, Wilkin Chapman LLP, Louth

The AGM and Dinner of the Association were held on the 28th February 2014. At the AGM Marianne Barrett Rogers was elected as the Financial Director to replace Graham Smith who was not eligible for re-election under our rules. I welcome Marianne to the post and thank Graham for his work as Financial Director over many years.

Eleanor Pinfold was elected as Education Officer, the post which was created after last year's change in the rules. With her experience and her contribution over the years there can be no better person to be the first to take this position.

There was an election for Council Members and Helen Gough and Nerys Llewelyn Jones were re-elected and Steven McLaughlin was elected for his first stint on Council. I congratulate all three and look forward to their contribution to Council. I commiserate with those who were not elected and trust that they will not be disheartened and may try again. I believe that it is a sign of a healthy organisation that each year there are more candidates for election to the Council than there are posts.

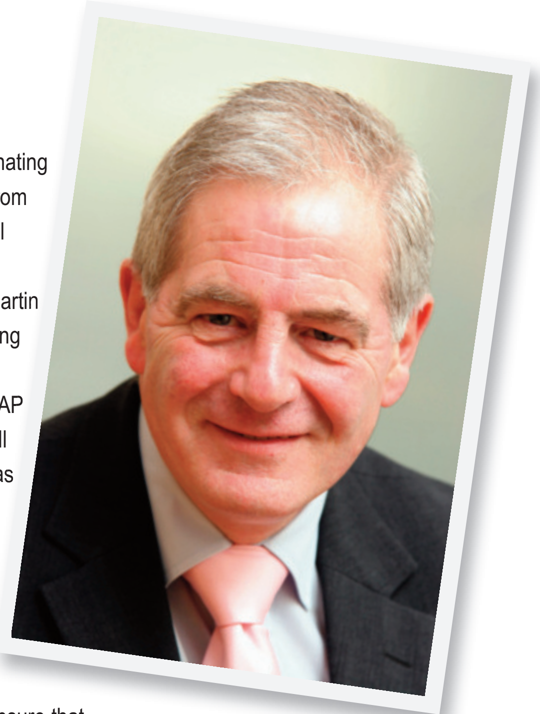
Following the AGM a successful Dinner was held. Martin Rodger QC gave an illuminating and amusing account of his "escape" from Falcon Chambers to the Upper Tribunal (Lands Chamber) where he is now the Deputy President. We are grateful to Martin for giving up his time on a Friday evening to come and speak to us.

The series of conferences on the CAP have been well received and as you will have seen from Geoff's emails there has been excellent feedback on both the content and the speakers.

Your Council was a little disappointed that the turnout was not higher. Whilst as an Association we do not set out to make a large profit from our conferences we do strive to ensure that we do not make a loss. On this occasion there will unfortunately be a loss but the Association does have sufficient reserves to cover such loss.

One of the primary objects of the Association is to provide for members continuing education on topics of relevance which will assist in their day to day work in advising clients. If as a result we have to draw on our reserves to make such provision then so be it.

We are still waiting the implementing and delegated Regulations from Europe and then the Statutory Instruments for England, Scotland, Wales and Northern Ireland. It is the intention to run further conferences later in the year when these have been published but whether there will be the same number of conferences at the same venues is a matter which your Council will have to consider in the coming months.



Philip Day

ALA Council 2014/15

At the Annual General Meeting at the end of February, Graham Smith stepped down after two terms as Financial Director and **Marianne Barrett Rogers** was nominated to succeed him. **Eleanor Pinfold** was nominated to the position of Education Director. Both were accepted without demur. Elections were held for vacancies to be filled on Council. There were six candidates for three positions. **Nerys Llewelyn Jones** was re-elected to serve for a further term of three years and **Helen Gough** and **Steven McLaughlin** were elected for their first three year terms. As a result, the composition of ALA's Officers and Council for the coming year is as follows:

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Employee Accommodation exemptions: cause for concern?

Catherine Desmond, Saffery Champness, Manchester

Readers may be aware that the Office of Tax Simplification (OTS) has been reviewing various taxes and reliefs in recent years. It published an interim report last year including views on employee benefits and suggested that changes should be made to the tax exemptions available where accommodation is provided to certain employees. No immediate changes were announced in the Budget, however, this is not unexpected given the complexity of the legislation being considered.

The report highlighted that the current system is complicated; it is a mixture of legislation, HM Revenue & Customs guidance and historical practice and can be very difficult for employers to follow.

Any changes made may well have an impact on rural businesses, where certain jobs have traditionally come with accommodation provided – for example, farm managers (and other farm workers), gardeners and gamekeepers.

Current Rules

As a reminder, at present, where accommodation is provided to employees, it is generally subject to tax as a benefit in kind. However, there is no tax charge if either the provision of *that specific accommodation is necessary for the proper performance* of the employee's duties or where it is *customary* in that kind of employment for accommodation to be provided and it is required for the better performance of duties.

There are two other instances where accommodation can be exempted from charge, but these are not within the scope of this article.

It is a common misconception that most rural workers would qualify under the "customary test". In fact this is not the case. At present, the list of HMRC's accepted *customary* employments is very small and does not include any that would normally relate to agricultural estate workers.

'Customary' is not actually defined in the legislation and therefore its ordinary everyday meaning is used. A practice is customary if it is recognisable as the norm and if failure to observe would be exceptional. It is not sufficient to show that a custom exists in a particular employment with a particular employer. Therefore, without specific statistical evidence across a sector, this test can be very hard to prove.

On the ground

Fortunately, on a practical level HMRC will often accept the accommodation as being exempt under the "necessary" test i.e. that living in that particular property is *necessary* for the proper performance of the individual employee's duties.

HMRC manuals state that:

"The following types of employee may be accepted as being within the exemption:

- agricultural workers who live on farms or agricultural estates."

Whilst this gives considerable comfort, the word '**may**' in the guidance should be noted. It should not automatically be assumed that a particular employee will qualify. It is still important to be able to evidence why the employee has to be in that particular cottage in order to perform his or her duties properly.

On the ground we have seen HMRC looking more closely at individual employees in recent years, particularly on rural estates, and scrutinising whether the duties of their employment warrant the provision of the accommodation.

OTS comments

On the subject of the "customary test" the OTS interim report commented:

"Employers may be choosing to stop providing living accommodation, but also due to social trends more employees may be choosing to source their own accommodation. We were told that increasingly employees of large estates who traditionally were provided with living accommodation are choosing to find their own accommodation. For instance they may have a working spouse and decide that that they would prefer to buy a property rather than depend on a 'tied cottage' or indeed simply want to buy their own property anyway. With increasing mobility and longevity it is nowadays much rarer for employees on estates to be tied to living accommodation when they retire. Instead, many prefer a compensation package that includes increased pension provision, rather than the provision of accommodation, as that will enable them to move to nearer to their children and grandchildren (less likely to work on the estate than, say, 50 years ago) when they retire. The consequence of these changes is that it is becoming more difficult to demonstrate that it is normal practice to provide living accommodation for a class of employee."

The report goes on to comment that:

"The rural sector has had its fair share of debates with HMRC as to what roles the exemption can apply. Some of these debates have been about categorisation – can someone be called an estate worker or do they have to be given a specific role such as forester? This has then been followed with debate on whether it is customary for that role to be provided with accommodation. Roles that have been the sources of debate include: ghillies and game keepers, workers on fish farms, nursery foremen and possibly more marginal roles such as curators of major houses or clerks of works."

The OTS believe that times have changed and suggest that it would simplify matters if the list of roles accepted as customary were updated and expanded and the other tests were updated to reflect modern working practices.

Action?

It is to be hoped that any changes proposed would be subject to a period of consultation. This is a complex area of the tax system and there could be considerable backlash from some sectors if changes were rushed through without the opportunity for those concerned to comment.

The OTS report does seem to seek change that would provide greater clarity for employers and in my view that would be a good objective. It remains to be seen whether these changes can be made in a manner that does not cause upset to the sectors that genuinely do rely upon the exemptions to operate effectively.

At this stage I would simply suggest to clients that accommodation arrangements should be regularly reviewed to ensure that the practical reasons for an employee occupying their cottages are reflected in their employment contracts and evidenced in practice. This might help to identify any employees who might be affected if the rules are tightened up in future.

> "Accommodation arrangements should be regularly reviewed"

Rectification of TVG registers ...

The Supreme Court has expressed its view on the considerations to be taken into account on applications to rectify errors in the register of town or village greens (TVGs) when there has been a lapse of time between defective registration and the rectification application.

In the combined cases of *Adamson and ors v Paddico 267 Ltd.* and *Taylor v Betterment Properties (Weymouth) Ltd.* ([2014] UKSC 7), Lady Hale analysed the question by reference to three analogies: public law claims; private law claims where there is a statutory limitation period; and private law claims subject to the doctrine of laches.

Public law requires the court to take into account the interests of "good public administration" and allows courts to refuse applications if harm would be caused, but does not define that position further. Normally time would be taken to run from the point at which the applicant knew or ought to have known of the illegality of which he complains.

In the context of TVGs, questions of limitation, she found, are essentially those of vindicating private rights, with a statutory period within which a claim must be brought. Knowledge or ignorance of the facts is irrelevant except in cases of fraud or concealment.

Laches, on the other hand, has no limitation of time, the salient issue being whether prejudice might arise from delay in seeking a remedy or the acquiescence of a landowner in a state of affairs.

From a landowner's point of view, her Ladyship suggested that his rights will have been curtailed by the incorrect registration. On the other hand, the local inhabitants will have had rights which they should not have had.

Lapse of time is relevant and the better analogy was with the doctrine of laches which requires (a) knowledge of the facts, (b) acquiescence or (c) detriment or prejudice.

Lack of knowledge would in most cases not be a problem: landowners would know of registration applications and have the chance to respond. Acquiescence may feature, particularly where rectification is sought by someone other than the landowner.

The crux, thought, according to Lady Hale, is the question of detriment. Detriment may fall differently according to circumstance and a fair hearing might be prejudiced by the absence of witnesses who might have died or moved away in the interim.

In her view, there should be "material before the court to show that other public or private decisions are likely to have been taken on the basis of the existing register which have operated to the significant prejudice of the respondents or other relevant interests" (*per* Patten LJ in the Court of Appeal in *Betterment*).

In the two cases concerned, a period of four years in *Betterment* was held not to prejudice rectification; in *Paddico* the effect of a 13 year lapse of time was held not to be unacceptable.

...and more TVG suspension triggers

Following last year's introduction of changes to the terms of application for TVGs introduced by the Growth and Infrastructure Act 2013 (GIA) comes a new order which expands the operation of trigger and terminating events which will suspend and revive the right to apply.

The Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014 varies sch.1A to the Commons Act 2006, which itself was added by the GIA.

The publication for consultation of a draft local development order which would grant permission for operational development will block application until either (a) the draft is withdrawn; (b) the order is adopted; or (c) two years passes from the publication of the draft.

The adoption of a local development order for the same purpose has a similar effect until (a) where the order states a date for the cessation of the relevant permission, that date passes; (b) the order is revoked; (c) the order is revised so as to remove the development permission; or (d) a direction is made under the Town and Country Planning Act 1990 disapplying that permission.

Neighbourhood development orders are treated in the same way. Publication of a draft order for consultation suspends the right to apply for registration until that draft is withdrawn or treated as withdrawn, the order is made or revoked, or two years goes by.

If the order is made, the suspension ends if it prescribes a date on which the permission will end and that date passes or if it prescribes a date by which development must commence and that date passes without commencement.

A notice under s.6 Transport and Works Act, relating to an application for deemed permission for public transport works, will also suspend the right until (a) that application is withdrawn; (b) all methods of challenging the refusal of an order are exhausted; or (c) the order is revoked.

GPDO extended

Another Order will broaden permitted development rights for the use of redundant agricultural buildings. Class M was introduced last year into the Town and Country Planning (General Permitted Development) Order 1995 to allow buildings to be used for various commercial purposes without a specific planning application.

Now the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014 extends that, subject to conditions, to include changes to use as a state-funded school (Class MA) or to residential use for a maximum of three dwellings (Class MB).

As with last year's changes, permission is not available if the site was not used solely for agricultural purposes as part of an established unit at 20th March 2013 or, if not in use at that date, at the date when it was last used or, if it was brought into use later, for 10 years before development commences. That is intended to prevent short-term adoption of agricultural use simply to take advantage of this new freedom.

There are limitations also on the areas concerned. For Class MA, the buildings and land combined must not exceed 500m^2; for Class MB the buildings alone must not exceed 450m^2.

In the case of tenanted land, in neither case is the development permitted unless both landlord and tenant consent. That applies both while the tenancy is current and where it has been terminated in the 12 months prior to the commencement of development in cases where the termination was for the purposes of carrying out the development.

As with the extended general permissions introduced last year, application has to be made to the local authority for a determination as to whether approval is needed of transport, highways, noise, contamination and flooding issues.

Letting land for horses

Helen Gough, Lodders Solicitors LLP, Stratford upon Avon

The question as to the extent to which the role of horses within rural business causes complications has arisen and it is clear that this is an issue that legal, tax and planning advisers come across on a very regular basis. The aim of this article is firstly to clarify the different roles that horses have; secondly, to identify how the horse's use needs to be taken into consideration when looking at letting or licence agreements in order to prevent inadvertently giving security of tenure; and thirdly, to identify what other considerations must be borne in mind by landowners either keeping horses themselves or desirous of allowing a third party to use some or all of their property for others to keep horses there.

The horse's different roles

The Encyclopedia of Planning Law and Practice (the Encyclopedia) states that planning law has no regard to the nature of the creature but only to its function. Because of this, with regard to horses, there are six different planning classifications that the horse can come under and the classification is determined by what the horse is being used for:

(1) **The working horse**: where horses are kept and bred for the purpose of its use in the farming of land;

(2) **The racehorse**: where the horses are kept and bred not as livestock for agricultural purposes but for sport (this often causes complications due to the grazing element);

(3) **The recreational horse**: again the horse is not kept and used for an agricultural activity but for the enjoyment of the owner or keeper;

(4) **The grazing horse**: grazing is an agricultural activity no matter what animal is doing it and therefore, technically, if the horse is just grazing on the land then the activity is agricultural. This use classification however causes the most problems and it is important to consider any additional elements that may be relevant such as; is there any stabling on the land? or any gymkhana equipment kept there? If so, the use can easily change to being recreational or attract security of tenure for the occupant if a business element is also present (e.g. with a livery);

(5) **The residentially incidental horse**: the keeping of a horse within the curtilage of a dwelling-house may, though not an agricultural use, be incidental to the enjoyment of a dwelling-house;

(6) **Horsemeat**: horses bred for human consumption. This is common in other European countries and clearly constitutes an agricultural use.

Although these uses relate to planning permission requirements, the definitions that the Encyclopedia gives are of great help to lawyers in determining the relevant factors that need to be taken into consideration when looking at what type of tenancy/occupation agreement would be most suitable.

Identifying the correct use classification

In addition to the decision as to which tenancy to use, advisers must also consider whether planning permission for change of use could be required in order to prevent a breach of planning regulations and also what tax consequences there could be, any rating implications, and the insurance needs that will have to be met.

Which type of agreement?

Getting the correct type of agreement in place regarding another's keeping horses on your land is vital. Which agreement you choose can be fraught with unnecessary complications for the ill-informed. It is important that the landowner is given all of the information from the incoming occupier as to:

1. Will the occupier have exclusive use of the property?
2. What reason is the horse being kept for? As previously stated, looking at the six different planning classifications helps to determine the answer to this.
3. Is the horse being kept on the land for the purpose of a trade or business?
4. If there is a trade or business use, is it an agricultural one? Agriculture is defined as including:

   "… horticulture, fruit growing dairy farming, the breeding and keeping of livestock (including any creature for the production of food, wool, skins or fur, or for the purpose of its use in farming the land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of the land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly"

That definition appears in s.336(1) Town and Country Planning Act 1990 – it should be noted that it is a slightly different definition from that contained in s.96 Agricultural Holdings Act 1986 where agriculture is defined as including "horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and

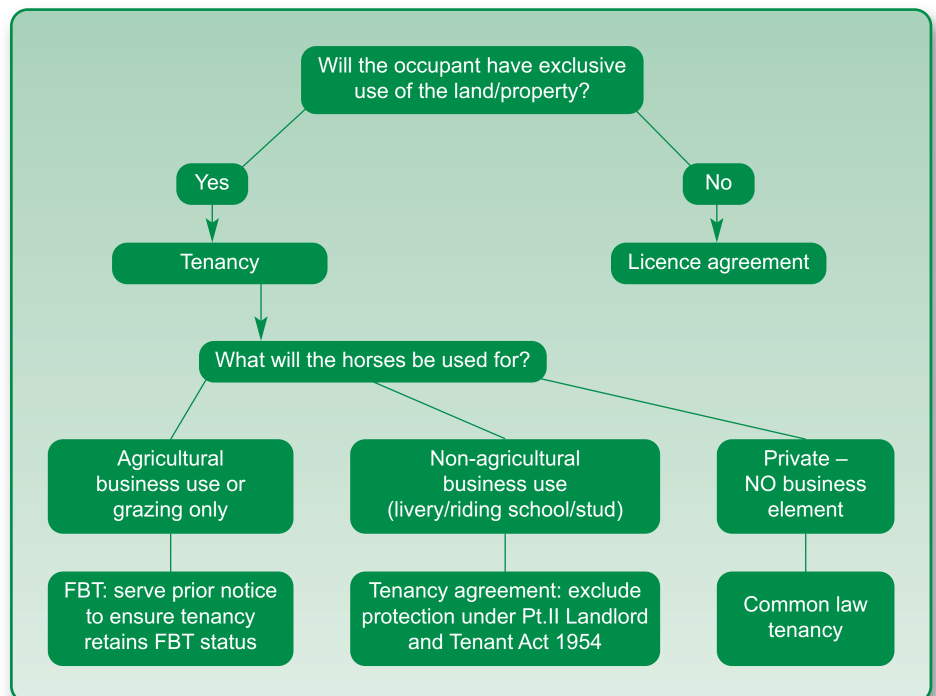

Figure 1

the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes. 'Agricultural' should be construed accordingly." An identical definition as in the AHA1986 also appears in s.38(1) Agricultural Tenancies Act 1995.

Following the diagram in Figure 1 should help to assess what type of agreement would be most appropriate, although as you will see below there are some caveats that I would add and also there are the additional considerations to bear in mind in order to ensure correct provisions are included in any agreement that is created.

If the use is wholly or primarily agricultural then an FBT will be the most appropriate type of agreement to use. However, it is only horses that come under use Classes 1 and 6 above that completely meet this requirement.

Certainly, grazing is an agricultural activity but putting stables on the land could turn it into recreational horse use or alternatively, the occupier may erect several stables and start to run a livery business, thereby changing the status into a business tenancy which may then attract protection under ss.24-28 Landlord and Tenant Act 1954.

In ALL cases when granting an FBT it is prudent that prior notice should be served on the tenant to ensure that the tenancy remains within the 1995 Act for so long as the original business use continues.

Similarly, in all cases it is wise to include covenants requiring the tenant to conduct agricultural business use throughout the term. The 1995 Act provides that any use in breach of the terms of the tenancy is to be ignored in judging whether it complies with the conditions, and this therefore gives the landlord added protection.

Other factors to consider

Planning permission

Depending on the use of the horse it may mean that the land use classification changes as a result. For example the recreational horse that is kept on agricultural land may mean that the land use has changed to a recreational use; or it may result in a mixed use classification of agricultural and recreational use – land may still be taken to be in agricultural use for planning and tax classification purposes, however the proportionality of the determining factors is not clear.

Could there be a breach of planning regulations in allowing the intended activity to go ahead? If so, there may be a need to indemnify the landowner against any enforcement activity this may attract from the local authority. If change of use is required, is this something that you are willing to accept? The landowner may wish to place the onus for obtaining the requisite planning permission on the tenant. Provisions should be considered for compensation at the end of the term for the planning permission if it is granted.

Rating

In *Hemens (VO) v Whitsbury Farm and Stud Ltd*[1] it was confirmed that horses and ponies, other than those used for farming the land or reared for food, are not "livestock" within the definition in s.1(3) Rating Act 1971 (now para.8(5) of sch.5 Local Government Finance Act 1988) and any buildings used to keep them do not fall within the definition of agricultural buildings (paras.3-7 of sch.5 Local and Government Finance Act 1988) and as such are rateable.

If land is used only for grazing, it can be construed as "pasture land" and will qualify as exempt agricultural land. Although it should be noted that for the purposes of para.2A(1) of sch.6, Local Government Finance Act 1988, "agricultural land" should equate to more than two hectares and not be land used exclusively for pasturage of horses or ponies. For this reason, it is common that sheep are also grazed on land in common with the horses in order to try and preserve the "agricultural" status.

Tax

For the purposes of Inheritance Tax, in the case of *Wheatley's Executors v CIR*[2] it was considered whether the grazing of horses qualifies for agricultural property relief (APR). It concluded that meadow land used for grazing horses failed to qualify for APR. The horses were used by their owner for leisure and therefore although grazing is an agricultural activity, it was held that the meadow was not "occupied for the purposes of agriculture". Grazing land constitutes "pasture land" under the provisions of s.115(2) Inheritance Tax Act 1984 (IHTA 84) but in order to qualify for APR grazing horses would only fall within the provisions of s.117 IHTA 84 if they are connected with agriculture. The decision in Wheatley may be seen to be harsh but it reinforces the need for landowners to obtain clear advice before they enter into any agreements with third parties over the use of their land.

With regard to business property relief, the above must also be taken into account as there is no relief available for hobby enterprises.

Insurance

All tenancy agreements as a matter of course should provide for insurance to be obtained. If the occupier is intending to run a livery yard or other business additional consideration needs to be taken in relation to what type of insurance must be obtained especially in relation to third parties and visitors to the property. Also, additional covenants from the tenant ought to be included to ensure that they are entering into an agreed format of livery agreement with their customers.

Conclusion

Although the law relating to horses can be complex, if a methodical approach is given in thinking through each step of entering into an agreement and also looking at what the future consequences of doing so could be, then appropriate safeguards can be put in place to ensure that there are no nasty surprises for the landowner later on.

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1 (1998) RA 277 HL

2 (SpC 149) (1998) STC (SCD) 60

More regulation, but CAP revisions still incomplete

Geoff Whittaker, West Mersea

Just as we were beginning our cycle of CAP Conferences around the country came the publication of the first round of secondary legislation from the EU.

The Delegated Regulations covering the Basic Payment Scheme (BPS), the Integrated Administration and Control System (IACS) and rural development were adopted in mid-March by the Commission. We must now wait to see the reaction of the Council and Parliament; in the absence of objections from those quarters, the regulations will enter into force in mid-May.

The initial reaction from the Parliament is understood to have been somewhat negative. How that will develop remains to be seen; with the Parliamentary elections at the end of May, any difficulties will need to be resolved swiftly. The consequences for the industry of any further delay beyond then do not bear thinking about.

The new regulations provide the framework for Member States to finalise their own opinions on implementation relevant to their own jurisdictions. There is a remarkable amount left to their discretion, albeit within fairly restrictive boundaries.

Those who know no better might see impressions in the delegated regulations of a washing of hands on the part of the Commission. Others will understand the difficulties inherent in balancing measures which have to apply in 28 Member States with different topographical, geological and climatic – not to mention political – environments.

However, when one sees a provision which requires a Member State to do X, or in the alternative to do Y, but then by way of derogation gives a permission to adopt "alternative criteria", one cannot escape the conclusion that it lacks certainty.

Two of the areas which seem to be causing the greatest concern through lack of certainty are the application of the rules on active farmers and the detail of the greening conditions, crop diversification in particular.

> "Not all who actively farm will be 'active farmers'"

What is an 'active farmer'?

The question of who is or is not an active is addressed by arts.9ff of Regulation 1307/2013, the Council and Parliament's regulation which came into force before Christmas. It is important to recognise that the technical definition bears little relation to what one might understand colloquially by the term 'active farmer' – not all who one might think of intuitively as actively farming will qualify.

Article 9 *prima facie* disqualifies those whose agricultural areas "are mainly areas naturally kept in a state suitable for grazing or cultivation and who do not carry out on those areas the minimum activity" to be defined by Member States.

It also disqualifies those on the so-called negative list: airports, railway services, waterworks, real estate services, permanent sport and recreational grounds. The lack of clarity remains, in particular, over what is meant by real estate services and permanent sport and recreational grounds, and those who have holiday lets, caravan sites, pitch-and-putt courses etc. to their business will continue to watch developments carefully.

Those disqualified may be accepted as eligible if they can show (a) that direct payment receipts are at least 5% of receipts from non-agricultural activity; (b) that its agricultural activities are "not insignificant"; or (c) that its main business is carrying out agricultural activity.

"Suitable for grazing or cultivation"

The delegated regulation puts a little more flesh on those statements. First and most simply, "mainly kept in a state suitable for grazing or cultivation" involves the keeping of more than 50% of the agricultural area in that condition. Fairly obviously, but for the avoidance of doubt, it is confirmed that those who actually conduct an agricultural activity on those areas are 'active farmers'.

For the purpose of the receipt calculation, agricultural activity is defined by art.4 of Regulation 1307/2013 in ways with which we have become familiar, save that the former reference to keeping land in good agricultural and environmental condition is replaced by a requirement to carry out a minimum activity, as noted above to be defined by Member States.

As to the level of receipts, it is provided that receipts from processing of agricultural products – defined by reference to the products listed in Annex I to the Treaty – are to be deemed receipts from agricultural activity.

The criteria for deciding the significance of the level of agricultural activity are fundamentally unhelpful. The starting point is that 'significance' requires the obtaining of at least one third of all receipts from agricultural activity. But the regulation goes on to permit a lower threshold so long as it does not allow those with "marginal agricultural activities" through the net.

It does not stop there: Member States are permitted, if they wish, to adopt "alternative criteria" to demonstrate the significance of the agricultural activity. The authorities have the cold towels ready (so far as not already in use) and zealous agricultural litigators will be sharpening their pencils. Everyone is acutely aware of the pressing need to have this clarified and any appeals in cases of doubt settled before the first applications under the new scheme next Spring.

Greening conditions

The greening conditions, as is now well known, involve three elements: crop diversification; permanent pasture ratio; and ecological focus areas.

The crop diversification requirements apply when a farmer has more than 10ha of arable land, subject to certain exceptions the details of which are set out in art.44 of Regulation 1307/2013.

Those with between 10ha and 30ha will need to grow two crops, the smaller of which will need to occupy at least 25% of the eligible area; and those with more than 30ha will need to grow three, the smallest of which must occupy at least 5% and the largest no more than 75%.

Some smaller arable farmers and livestock businesses may therefore not be concerned, and larger farmers will more easily be able to manage their affairs to achieve a balance. It is those in between who will have the most difficulty.

What is a crop?

A question which has been troubling everyone since the concept first emerged is 'what is a crop?' for these purposes. The delegated regulation helps a little but does not provide the final answer.

Regulation 1307/2013, art.44(4), defines "crop" as (a) a culture of any of the different genera defined in the botanical classification of crops; (b) a culture of any of the species in the case of Brassicaceae, Solanaceae, and Cucurbitaceae; (c) land lying fallow; (d) grasses or other herbaceous forage. It goes on that winter and spring varieties of the same genus shall be treated as separate for these purposes.

Beyond that, the delegated regulation provides that where two or more crops are grown in distinct rows, each will be taken separately provided it occupies more than 25% of the overall area. However, only the main crop will be considered in undersown areas and, likewise, an area sown with a crop mix will be treated as a single crop.

Farmers will also need to be careful to ensure that crops are indeed of a different species: brassicas, for example, which include cabbage, cauliflower, broccoli et al. will be a particular trap for the unwary.

Exemptions are available from crop diversification on three grounds.

1. if more than 75% of a claimant's eligible land is permanent grassland; used to produce grasses (or herbaceous forage); used for the cultivation of crops under water; or a combination of those and the remaining arable land is 30ha or less;
2. more than 75% of a claimant's arable land is lying fallow; used to produce grasses (or other herbaceous forage); or a combination of those and the remaining arable land is 30ha or less; or
3. the claimant has new land and different crops – there are two parts to this exemption: more than 50% of the eligible arable land declared on the BPS 2015 application must be different from the land declared on the SPS 2014 SPS application; and all the eligible arable land declared on the BPS 2015 application must be used to grow a different crop from the 2014 calendar year.

Full cropping records will be necessary to establish ground 3 above, so farmers will need to keep all relevant information ready for inspection.

Ecological Focus Areas

The introduction of greening into Pillar 1 and the need to ensure that the same activity is not funded from both Pillars ('double funding') impacts actions and calculations relating to Ecological Focus Areas (EFAs). Buffer strips or woodland, for example, which might qualify as EFA but which are in place under ELS agreements will attract attention. How any

balancing exercise will be applied remains uncertain.

Initially, 5% of a claimant's land must be devoted to EFA, but that percentage may not mean what it appears to mean because of "weighting" of different features. Member States have until 1st August 2014 to notify the application of any weighting factors. DEFRA drafts indicate that hedges, for example, might be weighted by a factor of 2, i.e. 5m2 will be treated as 10m2; field copses and ponds, might have a factor of 1.5.

Other elements of the process add complication. The measurement of the relevant area of a tree (or group of trees – begging the question of what is a group) is far from straightforward.

Let us not forget also the massive remapping exercise that will be needed to establish exactly what areas exist. EFAs will take effect in 2015, but the mapping of "stable features" has been extended to 2018. How matters will materialise in the interim is another open question. There will be plenty of work on the table for surveyors and valuers!

Guidance and decisions

In fairness to DEFRA, it is further into the decision-making process than any of the UK authorities and is working hard to ensure that the new system is implemented as quickly and efficiently as possible, mindful of the dreadful and costly errors that were made on the introduction of the Single Payment Scheme (SPS) in 2005. Its ambition, so it is understood, is to provide the simplest solutions so long as they do not risk the imposition of EU penalties.

The Rural Payments Agency has produced, for English farmers and their advisers, a short guide on the position to date highlighting the immediate issues and appropriately titled *CAP Reform in England: What you need to know now*.

It confirms, as DEFRA was very quick to announce last year, that there will not be a new allocation of entitlements for 2015, the old SPS entitlements merely being carried forward.

However, two points emerge. First, the minimum area of claim will be increased for 2015 and beyond to 5ha; and, secondly, any excess of entitlements over the area of land claimed in 2015 will be lost – they will not be capable of being carried forward. It will be more important than usual for farmers to ensure their entitlement and land holdings are in balance.

There will be a moratorium on notification of transfers from midnight on 19th October 2014 until a date in mid-January 2015, to be confirmed. There will be no prohibition on contracts containing provisions for entitlement transfer, merely a block on notifying them to the RPA. This is purely administrative – there must be a period of stability within which the carry-forward of entitlements and the establishment of the new rules can be finalised.

Further – implementing – regulations are being prepared in Brussels and are expected shortly. The saving grace is that they will not also be subject to the Council and Parliament's approval. We now await their next comments on the delegated acts with bated breath.

HS2 compensation claims – Hints from the Scottish experience

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As most readers will know, the first high speed rail link to be built in the UK was the Channel Tunnel Rail Link (now often referred to, by engineers at least, as "HS1"), which opened in 2007 and cost £5.8 billion to build (excluding the cost of the Channel Tunnel itself). High Speed 2 ("HS2") is the proposed high speed railway between London, the English Midlands and Northwest England. It is an *English* railway, so what can a Scottish lawyer possibly have to add to the already heated debate?

Well, many readers may not be aware that HS1 is not the only new railway to have been built in the UK in the last decade. In fact most of the new railway lines are in Scotland. Indeed, these heavy rail projects contribute the largest increase in mileage to the Scottish rail network since the railway boom of the 1800s: Stirling-Alloa-Kincardine (opened in 2008) added 13 miles; and Airdrie-Bathgate (opened in 2010) added 15 extra miles plus upgrades to 20 miles of existing track. Airdrie-Bathgate was, remarkably, the longest section of new passenger railway to be completed in the UK for over 100 years.

Currently under construction, the 30-mile Borders Railway from Edinburgh to Galashiels is due for completion in 2015. This project will re-open part of the last of the UK mainline railways to be closed during the Beeching era, the line from Edinburgh to Carlisle (commonly known as the Waverley Line) which closed in 1969.

From the perspective of one whose team was responsible for land acquisition for all three of these new railways, I propose to consider some of the compulsory purchase compensation issues that may have an impact on the HS2 project.

Compulsory Purchase compensation

As many readers will be aware, compulsory purchase compensation for land owners from whom land has been or is proposed to be acquired has already been a significant issue for the promoters of HS2. The promoters' initial approach to this topic was successfully challenged in recent high profile judicial review actions launched by opponents of the project (see *R (on the application of Buckingham Borough Council and others) v Secretary of State for Transport.*[1] This forced the UK government to rerun the consultation process on property compensation, though other grounds of challenge to the project were not upheld. (Some of these were later the subject of appeals to the Court of Appeal and subsequently the Supreme Court but in each of those cases judicial review was unsuccessful for the project's opponents).

Thus far, the focus of the compensation schemes has concentrated on addressing the blight effect caused by setting the limits of safeguarded zones within which the outlines of the new routes lie. The Government proposes advance purchase and voluntary purchase schemes, a 'hardship' scheme, a strategy for the loss of social housing and measures relating to properties above tunnels. But once the project reaches the stage where the land required to build the railway lines, stations and associated facilities is compulsorily acquired, the focus will turn to compensation for the loss of land acquired, severance of land, injurious affection, disturbance, and the impacts of construction. All of these impacts are likely to be encountered by the owners of farms and other rural land, where railway lines cut through part of the property and cause an economic impact on the remainder.

Agricultural land – recent Scottish experience

My team's experience in handling the compulsory acquisition of land for the three new railways in Scotland has shown that impacts on existing farm businesses can be considerable. Most of the 15 miles of new railway on the Airdrie-Bathgate route and a large part of the 30 miles of new railway on the Borders Railway route run through agricultural land. Ironically many of these miles of new railway formed the routes of the original railways closed by British Rail, whose land was then sold off to neighbouring farmers after closure. A large amount of land owned by farmers has therefore had to be compulsorily acquired for the new railways and a large number of compensation claims were made. Details of all compensation claims are of course confidential and cannot be disclosed here.

Although compulsory purchase legislation is not exactly the same in England and Scotland, partly because the law of property is quite different, many principles are similar. In particular, the need for compliance with the European Convention on Human Rights which is highly relevant given that compulsory acquisition of land constitutes an interference with private property rights.

However, this article is not intended to consider the theoretical justifications for compulsory purchase. Rather I intend to look at some of the compensation issues that my team faced.

Engagement is a Good Investment

Those affected by the scheme need to know about it and what is likely to be acquired. And subsidiary questions can be just as important: Why is land being acquired? What for? Are there alternatives? Will acquisition be permanent or temporary? The answers to these questions may affect the likely measure of loss and therefore the compensation which may be claimed. The 'head in the sand' approach does not usually help!

Good engagement can also help the promoter of the scheme to find alternative solutions which avoid a bigger loss to claimants and therefore reduce the cost to the public purse. And so provided that queries raised are framed in a constructive way and, most importantly, the project is at a stage where answers can be given, most promoters' teams will be keen to engage with affected parties and their advisors. One of

> "The compensation framework must be explained to avoid landowners' unrealistic expectations"

the major issues, however, is that at an early stage of the project, when feasibility studies are being carried out there is often no clear answer to a number of the questions raised by landowners.

Managing expectations

It must be recognised that, whilst the compulsory purchase compensation legislation is intended to place parties from whom land is acquired in an equivalent position to that which they were in prior to the acquisition, it is rarely the case that a landowner will end up "better off". Indeed in my experience, most claimants believe that they end up "worse off". Therefore, in advising any landowner, it is crucial that the compulsory purchase compensation framework is explained so that landowners do not maintain unrealistic expectations as to the compensation they might receive. In particular, landowners sometimes think they hold "ransom value" and can therefore negotiate whatever price they like for the land being acquired. As readers will be aware, compulsory purchase provisions were introduced to avoid ransom based on the scheme and prevent any one party "holding out" for a high level of compensation at a late stage in proceedings, thereby receiving a far higher compensation payment than other affected parties who negotiated terms at an earlier stage

Claims and Heads of Claim

Compulsory purchase compensation claims are governed by the same principles and concepts as any other claim for damages. This means that the claimant must prove a causal link between the losses claimed and the scheme; that the damage was not too remote; and that he has sought to mitigate his claim.

Most readers will be aware that the Heads of Claim will include the following: value of land acquired; disturbance (including practical damage and legal and agents' fees); and injurious affection (which also includes severance). Framing the claim under these heads will make it easier not only for the claimant's adviser but will also avoid wasted time in pursuing claims for items that are not recoverable. For example, I once received a claim for the cost of clipping the horns of cattle which the claimant's agent indicated was necessary in order to transfer the cattle from one field to another due to the acquisition of the field in which the cattle were originally situated. Unsurprisingly, I recommended to my client, the acquirer of the land, that the claim was not accepted on the grounds that the cost of "horn clipping" is not a valid claim for compensation under the Compulsory Purchase Code! However had the same claimant's adviser framed that as a claim for injurious affection resulting from severance – i.e. as a claim for compensation for the amount to which the farmer's remaining land was reduced in value as a result of the acquisition, the claim would have been considered.

Reimbursement of professional fees

One issue which it is well to have understood at commencement of negotiations, is the extent to which legal and surveyor's expenses can be reclaimed. A compulsory purchase compensation claim is not a 'blank cheque' for legal and other advisers. The law is clear that professional expenses do form a valid head of claim as part of the landowner's disturbance. However, landowners are obliged to mitigate their loss and agents should be aware that if they are looking at a small piece of verge adjacent to a public road or a piece of scrub at some distance from the rest of the land holding which has no real value, that does not justify a full examination of title; preparation of complicated reports; employment of experts; and many hours of meetings. Moreover, claimants and their advisers should also be aware that fees need only be reimbursed if they have actually been paid.[2]

A number of Lands Tribunal cases have considered the extent to which claims for legal and agents' fees are reasonable and have established the principle summed up in the RICS guidelines as follows:

"The fee should in all cases be proportionate to the size and complexity of the claim, and be commensurate with the time, effort and expertise required to deal with the case."

Is there any loss?

A further principle which is sometimes overlooked is that which was established in the Lands Tribunal case of *Service Welding Limited v Tyne & Weir Council*[3] that where expenditure is incurred in respect of alternative accommodation, it will be presumed that value was received for that expenditure so that the cost of it cannot be recovered in compensation. Another way of looking at that principle is that compensation is not paid where the landowner claimant has "received value" for his expenditure.

Development value

This is a huge topic in its own right, but it is surprising how many compensation claims have been submitted to my team where the claim for development value is not supported by any proof of that value e.g. that there is or would have been Planning Permission granted for future development. Appropriate professional advice and evidence will be needed to support such a claim. In some cases a Certificate of Authorised Alternative Development (a "CAAD", or hypothetical planning permission) may be the appropriate solution. In other cases, planning permission may already exist. However, even where a claim is based on hope value alone, appropriate expert evidence will assist in substantiating the claim – the claimant's own subjective opinion is unlikely to be enough. However, evidence that there is or would be planning permission for development is only part of the story. The actual 'developability' of the site concerned is also relevant. For example, if due to the ground conditions or limitations of access, the site would have been difficult or expensive to develop, that falls to be considered in ascertaining compensation.

You can't claim it if it wasn't yours!

It may seem surprising that someone would claim compensation for land which was not his. However, this has happened. In most cases this is more by mistake or oversight than intention. Sometimes it is because title deed plans are inconclusive, missing or overlap the titles of another owner. In other cases, the loss of rights over other properties can present difficulties if the rights themselves are hard to evidence, or the occupation of land is disputed. And

sometimes a claim comes in from someone who owned the land at the start of the scheme but who sold it (normally along with other land) prior to the vesting date. In that case, the owner at the date of vesting of the land in the acquiring authority is the person entitled to compensation. Sometimes, the date of vesting is simply not considered in the contract for sale.

However, sometimes parties agree a method for dealing with compensation in such circumstances, for example, they agree that the new owner will claim compensation and then pay that to the original owner when compensation is received. However, such arrangements can be fraught with difficulties and traps for the unwary – if the new owner has not suffered any loss, what is the new owner claiming compensation for? And if the original owner was not the owner at the date of vesting, he has no entitlement to claim.

So whilst contracts can be drafted so as to deal with such situations, careful thought needs to go into drafting to avoid the promoter receiving a windfall where the arrangements are such that compensation is not due to anyone!

The date for 'fixing interests' is crucial

In some cases, claimants have missed the opportunity to receive full compensation because they have not understood the date at which interests will be fixed for compensation purposes. It is crucial that any adviser knows the date that will be used since this can make a huge difference, particularly where land is tenanted.

If acting for a landlord where land is let for agriculture, it may be that an opportunity can be taken to bring the lease to an end prior to interests being fixed. If successful this may allow the landlord to receive full open market value for land with vacant possession. The alternative might be open market value for tenanted land. In those circumstances the tenant will receive compensation in his own right for his interest as tenant. However, it is highly likely that the sum of compensation paid to the landlord and to the tenant will be less than the open market value of the land with vacant possession.

> "The date at which interests will be fixed can make a huge difference to the amount of compensation paid, particularly where land is tenanted"

It's not always about money

Finally it can be easy to forget that many property owners have strong emotional ties to their homes and their land. Mitigating the impacts on remaining property can often be as important to claimants as financial compensation for the land taken. So agreeing accommodation works (works provided to reduce the impact on land not acquired e.g. alternative access roads, fencing, replacement drainage and water supplies) often has a high value to claimants. Negotiating accommodation works can be of benefit to the promoter, too, since it may be that works can be done comparatively cheaply if contractors are already on the land to carry out the construction. Sometimes accommodation works can be a 'win, win' for promoter and landowner and early engagement with promoters to see what accommodation works can be offered is well worth the investment of time.

In conclusion, I wish colleagues south of the Border all the best in their endeavours – whether in delivering HS2 or in advising landowners affected by it – and hope that my experiences will be of some small help to them in the months to come.

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1. [2013] EWHC 481 (Admin)
2. *Acrofame Properties Limited v London Development Agency* [2012] UKUT 107 (LC)
3. LT 8/305

PROCEDURE

Directions, withdrawal and costs under the new Rules

The transfer of ALT functions to the First-tier Tribunal has brought into being new Rules. Some of the issues arising from the changes were highlighted in *Bailey v Lockitt* (ALT/W/SR/222) and are discussed in these two articles by **Christopher McNall**, Deputy District Judge (Civil), Lawyer-Chairman (Residential Property Tribunal (Wales)) and Barrister, 18 St John Street Chambers, Manchester and **Caroline Hutton**, Barrister of Enterprise Chambers, London.

In an earlier edition of the *Bulletin* I noted the abolition of the ALT and the transfer of its functions to the Property Chamber of the First-Tier Tribunal.[1]

As of 1st July 2013, proceedings are subject to a new set of procedural rules.[2] These prominently feature an express overriding objective[3] which is that the Tribunal shall "deal with cases fairly and justly". That aim includes (amongst other matters) "(a) dealing with cases in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and the Tribunal", "(b) avoiding unnecessary formality and seeking flexibility in the proceedings", and "(e) avoiding delay".

Although the 2013 Rules were enacted at the same time as the 'Jackson' reforms of civil procedure and costs, the link (if any) between the underlying philosophy of the revised Civil Procedure Rules and the new Tribunal Rules remained unclear. On one view, it was arguable that the amendment of the overriding objective in civil courts with its reference to "enforcing compliance with rules and orders"[4] cannot have been intended to play any part in the Tribunal, since the Tribunal's new overriding objective contains no such provision. That would not be inconsistent with the view that Tribunals are intended to provide a forum which is cheaper, quicker, less formal, and more flexible than courts.

Court of Appeal guidance

As to courts, after some initial hesitation, the Court of Appeal in the 'Plebgate' case[5] gave very clear guidance that a "tougher, more robust approach to rule-compliance" was to be adopted. Mitchell emphatically endorsed the approach that "parties can no longer expect indulgence if they fail to comply with their procedural obligations". At paras.40 & 41 of his judgement, the Master of the Rolls gave the following guidance:

"40. ... It will usually be appropriate to start by considering the nature of the non-compliance with the relevant ... court order. If this can properly be regarded as trivial, the court will usually grant relief provided that an application is made promptly. ... The court will usually grant relief if there has been no more than an insignificant failure to comply with an order: for example, where there has been a failure of form rather than substance; or where the party has narrowly missed the deadline imposed by the order, but has otherwise fully complied with its terms. ...

41. If the non-compliance cannot be characterised as trivial, then the burden is on the defaulting party to persuade the court to grant relief. The court will want to consider why the default occurred. If there is a good reason for it, the court will be likely to decide that relief should be granted. For example, if the reason why a document was not filed with the court was that the party or his solicitor suffered from a debilitating illness or was involved in an accident, then, depending on the circumstances, that may constitute a good reason ... But mere overlooking a deadline, whether on account of overwork or otherwise, is unlikely to be a good reason ... the need to comply with rules, practice directions and court orders is essential if litigation is to be conducted in an efficient manner. If departures are tolerated, then the relaxed approach to civil litigation which the Jackson reforms were intended to change will continue..."

The decision in Bailey v Lockitt

The recent decision of the Property Chamber in *Bailey v Lockitt*[6] provides valuable guidance as to the application of the *Mitchell* principles in the Tribunal. Mr. Bailey applied to succeed to his father's agricultural tenancy. In May 2013, the Tribunal gave directions which included provision for the exchange of expert evidence to take place in summer 2013.

In July 2013 Mr. Bailey served his expert evidence, including a business plan assessing the current and proposed farming business. The respondent did not serve any expert evidence at that time.

In January 2014 a two-day hearing was listed to begin on 26th February 2014. On 12th February 2014 the respondent applied to serve and adduce expert evidence (in the form of a report dealing with the viability of the farming enterprise) out of time, and that evidence was in fact served on 17th February 2014. Due to its urgency, the application was heard, by telephone, on 19th February.

In considering the respondent's application, the Tribunal[7] noted, as its starting point, that it was important to recognise and maintain the essential distinction between tribunals and courts. But, that said, it considered the guidance given in *Mitchell* as "plainly based on fundamental principles of fairness and justice, and, as such, of general application". Rule 8 provides a wide range of sanctions for default, from striking-out to waiving the requirement.

A three-stage test

In regulating the exercise of its discretion, the Tribunal adopted a three-stage test:

(1) Was the default trivial?;

(2) If not, was there a good reason for it?;

(3) If there was no good reason, where did the balance of prejudice lie?

(1) and (2) are closely modelled on *Mitchell*, whilst (3) flows from the Tribunal's particular characteristics, and the emphasis on informality.

First, the Tribunal found that the respondent's non-compliance, in seeking to adduce evidence several months out of time, could not be categorised as trivial. It was serious and of long-standing. Secondly, it considered, in a detailed and forensic way, the explanation for the non-compliance (which was a failure to have provided the expert with the necessary instructions to provide a report within the time originally set down) and whether there was any good reason for it. It found that there was no good reason.

Thirdly, the Tribunal considered whether there was any circumstance of the case which, having regard to the need to give effect to the overriding objective, would justify the granting of permission. Put another way, the Tribunal sought to identify, weigh, and balance the potential prejudice to the applicant were permission granted with that to the respondent were permission refused. That is a 'balance of prejudice' test which is not to be

found in *Mitchell*, but which potentially affords defaulters a life-line not available in court.

In considering this aspect, the Tribunal set out a list of the competing material factors (including delay, and the likely additional time, effort and expense in dealing with the respondent's report, against the potential jeopardising of the respondent's chance to defeat the substantive application). Weighing these against each other, it concluded that the respondent's application should be dismissed. That is an outcome which sits comfortably within r.8(2) which provides that "if a party has failed to comply with a requirement in these Rules ... the Tribunal may take such action as the Tribunal considers just, which may include – (e) barring or restricting a party's participation in the proceedings".

Although permission was refused in this case, the situation facing defaulting parties is not always irretrievable. Once directions are set, the parties should keep case progression under suitably close review, working to the assumption that they will not be routinely granted permission to rely (for example) on late evidence. But, if it becomes clear that a direction cannot be kept, then the proper step is to apply for an extension of time, preferably as soon as the situation becomes apparent.[8]

Scrutiny of evidence

The second point of interest is that practitioners should expect the Tribunal conscientiously to scrutinise the evidence
given in support of applications made out of time.

The third point is that, even if a default is not trivial, and there is no good reason for it, relief may still – at least in theory – be available if the defaulting party can show that the non-defaulting party is not prejudiced by the default, or, if there is prejudice, it is outweighed by that to the applicant if relief is not granted.

Finally, although the Tribunal touched upon whether any prejudice could be compensated for in an order for costs, it does not seem as if that particular factor weighed heavily in the balance.

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1. Issue 73, Summer 2013
2. Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, SI2013/1169
3. *ibid*. Rule 3
4. CPR 1.1(2)(f)
5. *Andrew Mitchell MP v News Groups Newspapers Limited* [2013] EWCA Civ 1537
6. *Richard Bailey v David Lockitt* ALT/W/SR/222, Michael Heywood, Regional Judge
7. At para.8
8. para. 21

Christopher McNall

Christopher McNall has noted above the impact of what are rapidly becoming known as the *Mitchell* principles in relation to the case management of cases before the First Tier Tribunal (Property Chamber) (Agricultural Land and Drainage) – the AL&D (or what will almost certainly continue to be known by ALA members as the ALT for a long time to come and will be referred to here as "the Tribunal")

This very recent retirement succession case is also interesting as an illustration of the application of the new rules in two other respects:

(1) in relation to the new rules applicable to withdrawal of an application, and

(2) in relation to the award of costs in a transitional case i.e. a case in which the application was made before 1st July 2013 but the case continues after that date.

This note covers both those points and their interrelationship.

The procedural rules as from 1st July 2013 are the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013[1] ("the 2013 Rules") whereas the procedural rules of the now abolished ALT were the Agricultural Lands Tribunal (Rules) Order 2007[2] ("the 2007 Rules") and, before 2007, the Agricultural Land Tribunals (Rules) Order 1978[3] ("the 1978 Rules")

Withdrawal of Applications

Rule 22 of the 2013 Rules applies in relation to the withdrawal of an application unless, in a transitional case, the Tribunal decides that it would be unfair in which case the Tribunal has a discretion under the transitional provisions to apply r.6 of the 2007 Rules, which provides that a party may withdraw his application without consent at any time until the hearing of the substantive issues after which the Tribunal's consent is required but there is no jurisdiction to grant conditional consent.

Under the 1978 Rules no consent was necessary for a withdrawal at any time.

By contrast r.22 of the 2013 Rules sets out a formal process for giving written notice of withdrawal including under r.22(7) a requirement that the Tribunal itself give written notice to each party of the receipt of a notice of withdrawal and a requirement under r.22(3) that "Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal".

It is therefore necessary in every case for the Tribunal to consider and make a formal decision as to whether or not to grant consent. Further, r.22(4) provides that the Tribunal has a discretion in making that formal decision to "make such directions or impose such conditions on withdrawal as it considers appropriate". That discretion must of course be exercised judicially.

In court the procedural rules for discontinuance are to be found in CPR Rule 38 which provides that discontinuance of court proceedings can take place without consent in every case save where there are continuing injunctions or undertakings (CPR Rule 38.2) and there is a presumption that the party or parties against whom claims are withdrawn are entitled to their costs to be assessed on the standard basis unless circumstances indicate that indemnity costs are appropriate (CPR Rule 38.6).

A claim discontinued after it has been defended can be repeated – i.e. a new claim made arising out of the same facts – only with the permission of the court (CPR Rule 38.7). Under RSC Order 21.3 permission to discontinue had been required and would often be made subject to a condition that no new action be brought and/or that the defendant's costs be paid. These have now been made express presumptions requiring exercise of the court's discretion to do otherwise under the new rule.

Rule 2 of the 2013 Rules provides that "Nothing in these Rules overrides any **specific provision** that is contained in an enactment which confers jurisdiction on the Tribunal". It was correctly held in *Bailey v Lockitt*[4] that s.53(10) of the Agricultural Holdings Act 1986 is such a specific provision and that r.22 cannot override it, but that s.53(10) merely provides that a succession application, once withdrawn, is a nullity for the purposes of s.51(2) of the 1986 Act.

It has nothing to say on procedure and certainly does not provide that withdrawals shall be unconditional. It was the old procedural rules that permitted withdrawal unconditionally. Section 53(10) merely deals with the consequences of a withdrawal once completed. It does not deal with the **process** by which an application may be withdrawn. Process is, as it always has been, governed by the Rules.

The 2013 Rules appear to be directed to the potential problem arising from applications repeatedly made and withdrawn at the expense both of the landlord and the public purse by making express provision for the Tribunal to be

seized of the matter, including the issue of costs, but without expressly imposing any presumption such as is found under CPR Rule 38. It is submitted that common sense and the requirement that the Tribunal exercise its discretion judicially and in accordance with the overriding objective set out in Rule 3 will, save in exceptional circumstances, have the same consequences as the presumptions as to costs and repeated applications in CPR Rule 38. Although it is, of course, accepted that the CPR do not govern tribunals, the authorities under the original RSC Order 21 indicate what is appropriate exercise of discretion in relation to such questions.

The 2013 Rules expressly contemplate that the Tribunal might choose within its discretion to refuse a withdrawal or might consent subject to compliance with procedural directions or substantive conditions but require that the Tribunal exercise that discretion before any withdrawal can take effect.

In *Bailey v Lockitt* the Tribunal decided that:

(1) there was no ground under the overriding objective for disapplication of the 2013 Rules, and that

(2) notwithstanding that the Tribunal did not consider that, in seeking a withdrawal, the conduct of the applicant was in any way frivolous, vexatious, or oppressive so that it would not be appropriate to make an adverse costs order in a transitional case it was in the circumstances appropriate to require the applicant to make a contribution to the landlord's costs of the application from the outset reflecting the balance of the respective parties' responsibility for such costs being incurred.

Adverse costs orders

As Mr McNall has noted, sch.3 of the Transfer of Tribunal Functions Order 2013[5] makes transitional provisions in a transitional case. Paragraph 3(7) of sch.3 to that Order further provides that an order for costs may only be made if, and to the extent that such an order could have been made prior to 1st July 2013.

Therefore, even though the 2013 Rules are to presumed to apply unless the Tribunal expressly exercises its discretion to disapply them in some particular respect, the 2013 Rules will not apply to costs which are to be dealt with in the old way i.e. under s.5 of the Agriculture (Miscellaneous Provisions) Act 1954, which provides that the Tribunal only has power to make an adverse order as to costs:

> "where it appears to them that any person concerned in an application to them … has acted frivolously, vexatiously or oppressively in applying for or in connection with an application may order that person to pay to any other person either a specified sum in respect of the costs incurred by him at or with a view to the hearing or the taxed amount of those costs; and an order may be made under this subsection whether or not the application proceeds to a hearing".

Under the new dispensation for applications made after 1st July 2013, the Tribunal's power to award costs is governed, subject to Tribunal Procedure Rules, by s.29 of the Tribunals Courts and Enforcement Act 2007 which gives a general judicial discretion to the Tribunal in which the relevant proceedings take place to make orders for costs including making wasted costs orders and the presumption is that this discretion will be exercised in order to award the 'winner' their costs.

However, in an agricultural holdings case r.13(1)(b)(i) of the 2013 Rules expressly limits the jurisdiction of the Tribunal to make any costs order to a case in which the Tribunal finds as a fact that "a person has acted unreasonably in bringing, defending or conducting proceedings" and r.13(3) entitles the Tribunal to do so on its own initiative without any application for an adverse costs order having been made.

Where an applicant for a succession order in an application made after 1st July 2013 seeks later to withdraw that claim under r.22 of the 2013 Rules, art.13.5(b) of the 2013 Rules provides a time limit for any application for costs in a case where the Tribunal consents to a withdrawal without dealing with the landlord's costs by way of direction or condition that time limit being 28 days after consent to the withdrawal was granted.

In a case which commenced after 1st July 2013, r.13 does not preclude the Tribunal, in exercising its discretion to grant conditional consent, from making an order in relation either to the costs of the application to withdraw or the costs of the application as a whole at the time that the Tribunal makes its decision under r.22. A Tribunal may, as it did in *Bailey v Lockitt*, choose to make consent to withdrawal conditional upon proof of payment of a fixed contribution to the landlord's costs a specified period of time adjourning the application in the meantime thereby providing security for and a method of enforcement of payment.

The consequence is that, in both transitional cases and cases wholly under the 2013 Rules, the Tribunal can, if it considers it just to do so, require an applicant for a succession order to pay the landlord's costs of and thrown away by the withdrawal even although, in a transitional case, it may not be entitled to make an adverse costs order in a transitional case.

Whole tribunal to make decision at a hearing

Rule 31(1) of the 2013 Rules requires a hearing because the Tribunal's consideration of the issue as to whether to consent to the withdrawal under r.22(3) will, at least potentially, result in a disposal of the whole application. Further, decisions as to the exercise of the Tribunal's discretion on substantive rather than purely case management decisions must be made by the whole Tribunal.

Unlike the 2007 Rules, which make frequent express reference to decisions being made by "the Chairman", the 2013 Rules are very clear that it is "the Tribunal" which has jurisdiction. Indeed, this is consistent with the new constitution of the Tribunal as such.

The original ALTs were constituted by the Agriculture Act 1947. Those ALTs have been abolished. Where a judicial discretion is to be exercised in the making of a substantive if not a dispositive order then it is a decision for the whole Tribunal.

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1 SI2013/1169(L.8)
2 SI2007/3105
3 SI1978/259
4 ALT/W/SR/222
5 SI2013/1036

Caroline Hutton

Trusts and trustees – Part II

Eleanor Pinfold, Pinfold & Co,. Cheam

In the last edition of the *Bulletin*, I considered the basic elements of trusts and the differences between the various categories of trust. In this article I shall look at the categories of persons appointed as trustees, factors bearing on their appointment, how they are appointed and their powers and duties.

Types of Trustees

The usual classification of the type of trustee is:

- Judicial Trustees
- Trust Corporations
- The Public Trustee
- Ordinary Trustees
- Custodian Trustees

A **Judicial Trustee** is, as its name implies, a person or company appointed by the Court, where the supervision of the Trust is under close judicial scrutiny. Appointment can be made on the application of an existing Trustee, a Beneficiary, a Settlor or a person to administer a deceased's Estate.

A Judicial Trustee is subject to a special audit and is required to give security to the Court for the proper administration of the Funds. He becomes an Officer of the Court so is able to obtain instructions from the Court directly.

A **Trust Corporation** is applied to a Company engaged in the business of acting as a Trustee, and which fulfils certain conditions and it is generally associated with banks or insurance companies. Trustee Act 1925, s.68(18), defines a Trust Corporation by reference to what are now the Public Trustee (Custodian Trustee) Rules 1975.

The **Public Trustee** was a corporation sole established by the Public Trustee Act l906. His function was to administer small Trusts but it was extended by the Public Trustee and Administration of Funds Act l986 to include all the functions of the Judge of the Court of Protection in relation to the property and affairs of mental patients under what is now the Mental Capacity Act 2005. He may not act as a Trustee of religious or charitable Trusts and can only carry on a business owned by a Trust for the purpose of winding it up.

The Public Trustee can only act if he has, in the same way as a private individual, been properly appointed. He can refuse to accept any Trusts for any reason other than the size of the Trust property. His fees are calculated by reference to work done and to the value of the property administered, so can be very substantial.

An **Ordinary Trustee** is an individual, or company or corporation sole or trust corporation which may act as a Trustee jointly with another Trustee. Generally speaking, anyone except a minor can be appointed a Trustee.

However, there are exceptions. A person who is otherwise capable may be regarded as undesirable by a Court which will remove them if they are ever appointed. The list includes those who have a history of irresponsibility such bankrupts, convicts whose crime relates to financial dishonesty or beneficiaries who would have a conflict of interest.

Some commentators consider that, except in the case of a sole Trustee who is a beneficiary of the trust, it is advantageous to have a beneficiary as one of two or more Trustees. However, the sounder view, I submit, is that such an appointment should be avoided so as to avoid tensions with other Beneficiaries. Such tensions, at best, put unfair pressure on a non-beneficiary trustee, who may need to referee disputes, and, at worst, can lead to bad feeling and litigation.

An Ordinary Trustee is not entitled to remuneration for his services unless authorised by a provision in the Trust instrument, or unless the Trustee is either a Trust Corporation or is acting as a Trustee in a professional capacity.

The term **Custodian Trustee** is applied to any Trustee, whose sole function is merely to hold the assets of the Trust, leaving the management of it in the hands of a third party. Once the property is placed in his name there need be no other appointment of Trustees and he can charge for his services which he performs in that capacity. This type of Trustee can be used by an unincorporated association which holds property for its purposes but which is not considered to be a legal entity in itself.

> “The Courts of Equity have decided the duties of trustees – interfere with them at your peril!”

Appointment of Trustees

Trustees are appointed on the creation of a Trust by a Settlement Deed and usually chosen by the Settlor. Thereafter, appointment of new or replacement Trustees may be governed by the Trust Deed. If the Deed contains no provisions, the Trusts of Land and Appointment of New Trustees Act 1996 (TOLATA), s.19, will deal with the matter.

If the Settlor is himself one of the first Trustees, he must make a Declaration (preferably in the Trust document) that he holds the Trust Fund's assets on Trust for the Beneficiaries named in the Trust Deed and that he has no further interest in them. In practice, while a Settlor may like to be a Trustee so as to "keep control" of the assets on behalf of the Beneficiaries, the contrary view has it that he would then weald too much power in determining the direction of the Trust Fund, which may not be of benefit to the Beneficiaries as a whole.

Whilst a Settlor may retain the right to appoint of Trustees, it is less open to misunderstanding or abuse if he is confined to specific duties in respect of the assets. Whatever his rights and duties, if he is allowed to use the assets for his

own benefit, any tax benefit of establishing the Trust Fund will be lost.

Apart from Trustees who are appointed by the Deed establishing the Trust, Executors also become Trustees on the first anniversary of the death of an individual.

The Trustee Act 1925, s.34, limits the number of Trustees which one can have to four. In the event that have more Trustees than this – which is often the case, especially with charitable trusts – only the first four named have the property of the Trust Fund vested in them. Those four must consult with all the other Trustees in administering the Trust.

A Trustee can ask to retire, or can be removed on certain conditions. Trustee Act 1925, s.36(1), states that where a Trustee is dead; or remains out of the United Kingdom for more than 12 months; or desires to be discharged from all or any of the Trusts or powers vested in him; or refuses to act or is unfit to act or is incapable of acting as a Trustee, then the person nominated in the Will or Trust Deed, or in default the continuing Trustees, may appoint the new trustee, subject as noted to the number of trustees not exceeding four. If the last trustee dies then his or her personal representative takes on the role. In the last resort, the Court will appoint upon application.

All appointments must be in writing. Where there is a trust for sale or a trust of land, where the legal and equitable estates remain separate, there should be one set of appointments for each. The Land Registry will need to retain one along with a change of ownership form.

Under TOLATA, in the absence of anyone empowered to appoint new trustees then, if the beneficiaries are of full age and capacity and (taken together) are absolutely entitled to the Trust property, they may give a direction in writing to the Trustees requesting a trustee or trustees to retire from the Trust and a further request naming a new trustee. This right overrides the provisions of the 1925 Act.

To do so, all beneficiaries must be in a position to terminate the trust, so where one beneficiary is a minor this procedure cannot be used.

By s.36(9), a Trustee who is mentally incapable (within the meaning of the Mental Capacity Act 2005) and is also entitled in possession to an interest in the Trust property no appointment of a new Trustee in his place shall be made under s.36 unless leave is given by the Office of Public Guardianship or Court of Protection.

However, under TOLATA s.20 a trustee can be substituted for the incapacitated trustee if notice of removal and appointment is given by all the beneficiaries entitled together to terminate the trust to:

a) the trustee's receiver (pre Mental Capacity Act 2005) or deputy (post Mental Capacity Act 2005); or
b) a registered Attorney under either the Enduring Powers of Attorney Act 1985 or the Lasting Powers of Attorney Act 2005; or
c) a person authorised by the authority having jurisdiction under either the Mental Health Act 1985 or the Mental Capacity Act 2005.

Not only do all the parties have to be of age but there needs to be one of these three people who can accept service. If none exist then the process has to be by way of Court proceedings.

A Trustee can retire without there being an appointment of a new Trustee if there are sufficient Trustees remaining to carry out the terms of the Trust.

For the sake of completeness, the Deed of Appointment of a new Trustee should contain a declaration by those appointing that the Estate and interest in any Trust property shall vest in the new Trustees and that the Deed shall operate without any conveyance or assignment to vest in those persons as Joint Tenants although, by s.40(1)(b), such a declaration in Deeds after 1925 will be implied. However, where registered land is part of the Trust Fund there needs to be a Transfer to the new Trustees and a fee will be payable to the Land Registry for registration.

Powers and Duties of Trustees

A properly-drawn trust document will set out express powers of trustees. However, statute provides a default suite of powers in the event that none are expressed.

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A Farmer's Lad – Memoirs of a Rural Solicitor

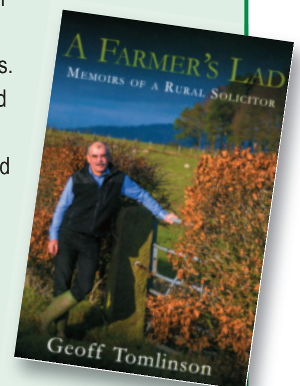
Geoff Tomlinson – published by Morrow & Co; price £10.99 – also available from Amazon

Book reviews in the *Bulletin* are normally of legal texts pure and simple, but sometimes one comes along which merits comment for other reasons. (This time we have two at once – see back page.)

A Farmer's Lad – Memoirs of a Rural Solicitor celebrates the retirement of former ALA Member Geoff Tomlinson of Napthens, who will be well known to many Members, not only in the North West of England, although that is where he has spent his life.

If all that it did was to provide a biography of a life from being brought up on a dairy farm through to a career spent advising farmers and their families and developing a regional law firm, that may be of some interest to those whose careers essentially revolve around the same features. But Geoff's book contains not merely stories and anecdotes from different phases of life, but also provides some interesting comments which will help those embarking on the same path.

Certainly, practice now is vastly different from practice when Geoff qualified in the late 1970s, not least in terms of the procedure for qualification and the slightly less frantic process than that of six months cramming and seven exams in 3½ days involved in the old Part II. Nor has it been necessary for a long time to meet with one's opposite number in a conveyancing transaction and exchange banker's draft for deeds.



But some principles hold good now as they did when the profession was founded, such as the need to know not only the law, but one's client and his/her/their business and personal needs, and it remains advisable to make sure you know their relationship with others in the community before passing comment!

There is another good reason to read this book: all proceeds from its sale will be donated to the Royal Agricultural Benevolent Institution, a favourite charity of all in the industry.

Geoff Whittaker

Statutory powers are contained in the Trustee Act 1925, as amended by the Trusts of Land and Appointment of Trustees Act 1996 and, in addition in the Trustee Delegation Act 1999 and the Trustee Act 2000. Together I shall call these the Trustee Acts.

The Trustee Acts generally deal with the mandatory powers of Trustees and are comprehensive enough for a trust to be run without more. However, the statutory powers – for example, of investment – may need to be expanded. For instance, if Trustees for Sale were to mortgage trust property to purchase another they would need specific power in the Trust Deed or Will appointing them.

Trustees must administer the Estate for the benefit of the Beneficiaries. If there is a tenant for life with remainder(s) over, they must strike a balance between providing income for the tenant for life without decreasing the capital fund to the extent that future generations will not benefit. As well as providing an income for the tenant for life, the capital should if possible be grown for the benefit of the remainder.

The powers of Trustees are usually listed as:

- to invest the Trust Fund, including making investments and transposing them as and when necessary;
- to invest in freehold land (not leasehold because that is a wasting asset);
- to invest in Government Bonds and chattels such as jewellery pictures and furniture provided that it is authorised by the Trust Deed;
- to sell any property;
- to mortgage any freehold property;
- to insure the properties;
- to deposit money on any deposit account;

STATUTORY INSTRUMENTS to 28th February 2014

Instruments with a Welsh reference (W...) apply to Wales only unless otherwise stated

The date stated is the date on which the Instrument comes into force

SI2013/3171 = Agricultural or Forestry Tractors (Emission of Gaseous and Particulate Pollutants) and Tractor etc (EC Type-Approval) (Amendment) Regulations 2013 – amend eponymous Regulations of 2002 (SI2002/1891) and 2005 (SI2005/390) following changes to arts.1 & 3a and Annex IV of Directive 2000/25/EC of the European Parliament and of the Council – 28th January 2014

SI2013/3231 = Agriculture (Cross compliance) (No.2) (Amendment) Regulations 2013 – amend eponymous Regulations of 2009 (SI2009/3365) to add provisions under Environmental Permitting (England and Wales) Regulations 2010 (SI2010/675) as additional element of cross compliance – 1st January 2014

SI2013/3235 = Single Common Market Organisation (Consequential Amendments) Regulations 2013 – amend several Regulations consequential upon Regulation 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations 922/72, 234/79, 1037/2001 and 1234/2007 – 1st January 2014

SI2013/3270(W320) = Single Common Market Organisation (Consequential Amendments) (Wales) Regulations 2013 – Welsh equivalent of SI2013/3235 (*q.v.* above) – 1st January 2014

SI2014/41(W3) = Agricultural Holdings (Units of Production) (Wales) Order 2014 – revokes and replaces Agricultural Holdings (Units of Production) (Wales) Order 2012 (SI2012/3022(W306)) – 4th February 2014

SI2014/112 = Uplands Transitional Payment Regulations 2014 – partially implement Council Regulation 1698/2005 on support for rural development and Council Regulation 1257/1999 on support for rural development insofar as those Regulations relate to less favoured areas – England only – 14th February 2014

SI2014/182 = First-tier Tribunal (Property Chamber) Fees (Amendment) Order 2014 – specifies fees payable in respect of applications in respect of mobile home sites introduced by Mobile Homes Act 2013 – 25th February 2014

SI2014/185 = Olive Oil (Marketing Standards) Regulations 2014 – enforce in UK provisions of Regulation 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products regarding marketing standards for olive oil and characteristics of olive oil and olive-residue oil and on the relevant methods of analysis – reg.5(2)(c): 13th December 2014; remainder: 1st March 2014

SI2014/219(W29) = Commons (Severance of Rights) (Wales) Order 2014 – revokes revokes and replaces Commons (Severance of Rights) (Wales) Order 2007 (SI2007/583(W55)) – 1st March 2014

SI2014/255 = Environmental Permitting (England and Wales) (Amendment) Regulations 2014 – amend eponymous Regulations of 2010 (SI2010/675) – regs.9, 16 & 20 and Schedule: 1st October 2014; remainder, (subject to para.(3)): 5th March 2014.

SI2014/257 = Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014 – amends sch.1A Commons Act 2006 to provide additional trigger and terminating events excluding right to apply for designation of a town and village green under s.15(1) 2006 Act – 11th February 2014

SI2014/331 = Sheep and Goats (Records, Identification and Movement) (England) (Amendment) Order 2014 – amends eponymous Order of 2009 (SI2009/3219) implementing Council Regulation 21/2004 establishing a system for the identification and registration of ovine and caprine animals – art.6: 1st January 2015; remainder: 6th April 2014

SI20141/371(W39) = Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2014 – amend eponymous Regulations of 2004 (SI2004/3280(W284)) to require protection of groundwater to be included in standards of good agricultural and environmental condition – 21st February 2014

SI2014/442 = Mobile Homes (Site Licensing) (England) Regulations 2014 – prescribe how local authorities shall exercise discretion whether or not to issue or consent to the transfer of site licence in respect of relevant protected site – 1st April 2014

- to employ agents to do their work and to generally deal with the property in the Trust Fund as if the property were their own;
- to settle claims;
- to apply to the Court for guidance on how to interpret the Trust Deed;
- to advance income for the maintenance of an infant beneficiary during minority;
- to accumulate income during a specified time (usually the minority of a beneficiary);
- to advance capital for the benefit of any beneficiary;
- to mortgage the property to buy land for the Trust Fund (subject to my previous comments);
- to lease, subject to conditions limiting the length of lease;
- to carry on the deceased's business for the benefit of the beneficiaries – in some cases e.g. solicitors, a specific Trustee should be included in the Will who has power to deal with the deceased's practice;
- power to sell by auction;
- power to give receipts;
- power to agree with creditors in the way in which they deal with any debts of the deceased;
- powers of appointment to transfer assets to the Beneficiaries for specific purposes e.g. for the purchase of a house (beware the taxation implications of any such transaction!).

The duties of the trustees arose from decisions of the Courts of Equity over a very long period and one interferes with them at one's peril!

BRUSSELS UPDATE to 28th February 2014

Commission Implementing Decision 2013/747 authorising the United Kingdom to use certain approximate estimates for the calculation of the VAT own resources base

Commission Implementing Decision 2014/12 amending Decision 2010/221 as regards national measures for preventing the introduction of certain aquatic animal diseases into parts of Ireland, Finland, Sweden and the United Kingdom

Commission Implementing Directive 2014/19 amending Annex I to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community

Commission Implementing Regulation 1320/2013 correcting Implementing Regulation 385/2012 on the farm return to be used for determining the incomes of agricultural holdings and analysing the business operation of such holdings

Commission Implementing Regulation 1322/2013 on the granting of unlimited duty-free access to the Union for 2014 to certain goods originating in Norway resulting from the processing of agricultural products covered by Council Regulation 1216/2009

Commission Implementing Regulation 1333/2013 amending Regulations 1709/2003, 1345/2005, 972/2006, 341/2007, 1454/2007, 826/2008, 1296/2008, 1130/2009, 1272/2009 and 479/2010 as regards the notification obligations within the common organisation of agricultural markets

Commission Implementing Regulation 1337/2013 laying down rules for the application of Regulation 1169/2011 of the European Parliament and of the Council as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry

Regulation 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation 1698/2005

Regulation 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations 352/78, 165/94, 2799/98, 814/2000, 1290/2005 and 485/2008

Regulation 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation 637/2008 and Council Regulation 73/2009

Regulation 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations 922/72, 234/79, 1037/2001 and 1234/2007

Regulation 1310/2013 of the European Parliament and of the Council laying down certain transitional provisions on support for rural development by the EAFRD, amending Regulation 1305/2013 of the European Parliament and of the Council as regards resources and their distribution in respect of 2014 and amending Council Regulation 73/2009 and Regulations 1307/2013, 1306/2013 and 1308/2013of the European Parliament and of the Council as regards their application in 2014

Decision 1/2013 of the Joint Committee on Agriculture amending Annex 10 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products

Decisions of the EEA Joint Committee 135, 136, 153 & 154/2013 amending Annex I (Veterinary and phytosanitary matters) to the EEA Agreement

Decisions of the EEA Joint Committee 137/2013 amending Annex I (Veterinary and phytosanitary matters) and Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement

Decisions of the EEA Joint Committee 172-174/2013 amending Annex XX (Environment) to the EEA Agreement

See the following Official Journals for information regarding cases before the ECJ and other tribunals: C359 (7.12.13); C367 (14.12.13); C377 (21.12.13); C9 (11.1.14); C15 (18.1.14); C24 (25.1.14); C31 (1.2.14); C39 (8.2.14); C45 (15.2.14); C52 (22.2.14)

See the following Official Journal for information regarding cases before the EFTA Court: C372 (19.12.13)

Troyboys

William Barr – published by Morrow & Co: price £10.99 – also available from Amazon

Were the *Iliad* and *Odyssey* true historical records or triumphs of spin doctoring over reality? Did the Trojans turn and run out of fear of the oncoming armies or because they were laughing so much at the military incompetence of their opposing forces that they were collectively in desperate need of the bathroom? Was Odysseus the genius that history makes him out to be or a pawn in the gods' plot, conjured out of boredom, to torment mortals with a plague of management consultants from the Athens Business School? And who was Homer, anyway?

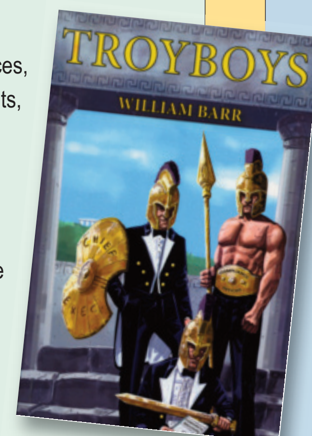
These questions and more are at the heart of *Troyboys*, an entertaining yet provocative new book from former ALA member William Barr, now consultant to Mills & Reeve LLP.

The best satire retains an element of plausibility and, for all its outrageousness, *Troyboys* achieves this particularly well. We view modern business thinking – love it or loathe it – as just that: a modern creation. But had it been alive in historical times, who is to say that at least some of this story would not be credible.

The idea of the Greek armies being corporately restructured after 10 years without success in recovering Helen from Troy might be superficially attractive. Clearly something had to be done to improve their performance. Armed with new skills learned in Athens, Odysseus sets to work.

King Agamemnon is required to reapply for his own job; Achilles applies his self-obsession to the completion of his self-assessment form.

With the aid of a corporate brochure, a new mission statement, an away-day and a smart new uniform (Rosy Dawn pink tunics), they are ready to go into action.



But on the day of battle, thousands of the Greek soldiers are assigned to Human Resources, Marketing, Finance and Compliance departments, leaving only three – Agamemnon, Achilles and Odysseus – to do the fighting.

This story of how the battle was won and how the travails of the journey home were overcome is vastly entertaining and will provoke more than one involuntary chuckle.

But it has a deeper level, giving food for thought as to the outcome of the triumph of corporation over individuality, of process over result, of box-ticking over service.

There are two caveats: management consultants should not read it, unless they can cope well with having their waste water extracted by others; and once you've read it, you will never consider Cyclops in the same way again!

Geoff Whittaker

Forthcoming events...

ALA/SAAVA – CAP Reform etc.
10th April 2014
Dunblane Hydro Hotel

ALA South Central
5th June 2014
Laverstoke Park Farm, near Baskingstoke

ALA/WS Society Joint Conference
6th June 2014
Signet Library, Edinburgh

ALA Somerset & Dorset
19th June 2014
Blackmarsh Farm, Sherborne

ALA East of England
3rd July 2014
Mock Mediation: British Racing School, Newmarket

ALA South Central
2nd October 2014
Sparsholt College, Winchester

ALA Fellowship 2014
21st-23rd October & 5th/6th November 2014
Scarman Conference Centre, Warwick University
Examination: 25th November 2014, London

ALA AGM & Annual Dinner 2015
6th March 2015
Royal Over-Seas League, London

ALA Starter for Ten 2015
14th-16th April 2015
Mount Hotel, Tettenhall Wood, Wolverhampton

Details of all meetings are posted on the Events Calendar on the ALA website at *www.ala.org.uk*