

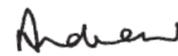
## Welcome

I write this as the country (and the agricultural industry with it!) heads into the unknown. Unknown because the Brexit referendum in June could take us all into uncharted territory. Landowners and farmers are rightly apprehensive, especially at this time when commodity prices are depressed, inputs high and the

resultant balance sheets under some pressure.

The agricultural show season is upon us and hopefully this will give the industry reason to be positive as well as optimistic for the future. These annual events represent a huge opportunity to showcase the countryside and the great work which goes on there.

All the agri-team at Langleys look forward to meeting you at the events during the summer.



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## Private Landlord Legal Update

The last quarter has seen significant changes in the law relating to let dwellings

If you are a landlord letting property to farm workers, family members or professionals it is important to stay ahead of the new rules and regulations whilst managing your properties. This article summarises 4 of these changes and how they may affect you.

### 1. ASSURED SHORTHOLD TENANCY AGREEMENTS

It is recommended that any farm worker given occupation of a farm cottage should be granted an assured shorthold tenancy agreement (AST), to ensure no security of tenure is inadvertently given. Farm workers must be provided with prior notice of any AST to ensure it is valid.

If a landlord wants to end the tenancy at the end of a fixed term then they must serve two months' notice on the tenant to vacate the property. From 1 October 2015 all such notices must be in a prescribed form to ensure the notice is valid.

### 2. FLOOD

Although George Osborne committed £700 million to flood defences in his most recent budget speech, the Environment Agency estimates that one in six homes in England are at risk of flooding. Aside from the physical damage and emotional trauma caused by such floods, if a property is at risk of flooding it may be difficult to obtain suitable insurance cover at a reasonable price, ultimately leaving the property unmortgageable and unsellable. It goes without saying that this will affect the capital value of the property.

In order to protect dwellings the Flood Re programme has been developed, aiming to ensure that dwellings at risk can obtain affordable flood insurance at a reasonable price. However, there are exceptions to the Flood Re protection. Most notably for buy to let properties where the Landlord arranges the buildings insurance for the dwelling and residential property built post 1 January 2009.

Comfortingly farmhouse dwellings and cottages are protected by the scheme even if they are included in a commercial policy. However, it is likely that if the dwelling is let under an AST the landlord will be responsible for obtaining and paying for the buildings insurance cover for that property. In that event Flood Re would not be available to you.

### 3. RENT CHECKS

The Immigration Act 2014 prohibits private landlords of residential properties from allowing certain people to occupy those properties, based on their immigration status. Landlords must check the status of prospective tenants, and other authorised occupiers, to ascertain

whether those parties have the right to be in the UK (right to rent checks). If landlords fail to comply, they may be fined up to £3,000.

From 1 February 2016 this law was rolled out to all private landlords in England. Consequently, if you are granting any form of occupancy, you must carry out the right to rent checks beforehand, together with appropriate follow up checks to ensure the tenant's status has not changed.

### 4. SDLT INCREASE ON SECOND HOMES

From 1 April 2016 all dwellings purchased that are additional to your main residence will be charged at a higher rate of stamp duty land tax. The new charge will now stand at 3% above the SDLT rate that you would usually pay for a main residence. The 2-tiered test for whether the higher SDLT rate applies is, if at the end of the day, you own two or more residential properties and whether it will be your main place of residence.



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#### Meet Amy

Amy Cowdell has over 10 years experience in all aspects of property transactions and landlord and tenant work.

Amy has joined the agricultural team and advises on all agricultural matters, such as, sales and purchases of farms and farm land (including farmhouse dwellings), agricultural tenancies and farming partnerships, advising land owners on promotion and option agreements for potential development.

# OPENING THE FLOODGATES

Some of our family's farm land sits in a York flood protection zone as 'flood storage' land. Several times a year our local flood gates on the River Ouse are closed and we lose many acres to flood waters in order to ease the pressure of the rising water in York city centre. We are not entitled to any compensation despite the significant impact on crops as such schemes were implemented under Statutory powers. However, what if your land doesn't sit within such a designated zone, can it still be intentionally flooded and if so, are you entitled to compensation?

Very recently the Upper Tribunal (Land Chamber) considered a landmark case dealing with such a question. Indeed the Judge indicated that it was a test case and acknowledged that the ruling would have far reaching consequences. The Tribunal considered a matter of flooding near Driffild in 2012, when a stream known as the Gypsy Race burst its banks. Several houses in the nearby village were flooded and the sewage system had failed. With

the assistance of the Environment Agency and the fire service, East Riding Council began pumping water into a 30 acre field of a local farmer. As a result the carrot crop in that field was destroyed. The farmer sought compensation from East Riding Council and the matter ended up before the Tribunal in early 2016.

There was much passing of the buck in the proceedings, with the 3 agencies seeking to blame each other. However, the Tribunal concluded that East Riding Council were liable. Consequently section 14A (9) (g) of the Land Drainage Act 1991 was applicable and the temporary pumping operations to relieve flooding were to be considered 'flood risk management works'. Such works are liable for compensation under section 14 (5) of the Act.

The original claim had been for £115,010.72, however the parties agreed on a settlement of £14,500. The parties had obtained a raft of expert evidence between them, along with legal fees this would have resulted in considerable sums

being spent over a period of several years. Whilst the final Judgment sum was modest in comparison, it is easy to see that there are circumstances where intentional flooding could lead to significant compensation claims.

In January the Farmers Weekly ran a survey which concluded that 59% of respondents supported the idea of paying farmers to take flood waters. If a formalised scheme were to be implemented it would certainly reduce litigation and costs since a framework for consensual flooding, rather than forced flooding of land resulting in years of expensive litigation. The effects of this case are sure to be long running and far reaching as it would appear that incidents of serious flooding are only likely to increase over coming years.



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## CHANGE OF USE

### AGRICULTURE TO EQUINE

Horses occupy an ambivalent and grey area in agricultural law and, as a consequence, the issues raised by changes to equine use are often challenging.

In the West Midlands, Mrs Davis was granted planning consent several years ago for a change of use from agriculture to a paddock for grazing and exercising horses with a menage facility. However, the consent was framed so as to specifically exclude commercial use. What is more, the local authority specified that no other structures e.g. shelters, trailers, jumps or lighting should be used without prior written consent. Quite rightly, the local authority specified that the object of the condition was to protect the rural

character of the area and to stop any intensification of the use.

Mrs Davis established with the Council that she could have four mobile stables on skids but that they would have to be genuinely mobile and moved regularly around the site. This was clarified to require a twice-yearly move to a completely different location within the property.

Inevitably, a dispute arose and an Enforcement Notice was served in 2014. The Notice specified two breaches which concerned, respectively, erection of field shelters and stables and, secondly, the installation of hard-standings.

The Planning Inspector had decided that one of the shelters which had been erected was permanent and therefore did not have permission. The case was

appealed to the High Court and the Judge had the unenviable task of reviewing the evidence and the Inspector's conclusion. The Court decided that the Council had already made its position regarding the required temporary status of the shelters perfectly clear and, in effect, Mrs Davis was asking permission for something which had already been agreed as unacceptable.

The Judge concluded that the Inspector's approach could only be criticised if it were unreasonable which was not the case in this instance.



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### AGRICULTURAL BUILDINGS

There are many hidden dangers in putting agricultural buildings to alternative use. For instance, there may be a loss of Agricultural Property Relief and the exemption from non-domestic rates can be endangered.

In a recent case in the Lands Chamber of the Upper Tribunal, exactly the opposite occurred. A large commercial farmer owned a conventional industrial unit near Bedford. Some of his farmland abutted the unit, which before 2010 had been let

out as a furniture warehouse. However that use ceased and, pending a new retail use beginning in 2012, the farmer stored agricultural machinery, animal feed and other items there. An application was made for an exemption from rating but this was denied and an appeal to the Lands Chamber followed.

HMRC argued that the interim use was contrived and unnecessary and did not fulfil the test that during the period in question, the unit was occupied with agricultural land and used solely in connection with agricultural operations on that land. The Valuation Tribunal had also

previously decided the test had not been met.

In this case, the presiding Judge did not agree with either this interpretation of the events or the applicable law put forward by HMRC and allowed the appeal. It was accepted that issues of "motive" and "necessity" were not relevant for the purpose of the decision.



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# Terminating an Agricultural Tenancy

“Old-style” agricultural tenancies under the Agricultural Holdings Act 1986 continue to provide the Courts with work. Traditionally, most of the issues raised concern the ability to succeed to a tenancy. Every now and then, a different problem presents itself.

A rarely-used means of terminating a tenancy is for the Landlord to obtain a certificate that the Tenant is not farming the holding in accordance with statutory

rules of good husbandry. Once obtained, the Landlord can then serve an incontestable Notice to Quit. One of the reasons that this facility is rarely used is that the judgment as to the quality of husbandry is so subjective and often difficult to prove.

A case decided in the latter part of last year in the First-Tier Tribunal Property Chamber addressed exactly these issues. The holding in question was near Keighley in Yorkshire and inspections had revealed over-grazing and poaching of land, collapsed stone walls, missing gates and the dereliction of farm buildings.

Naturally, the members of the Tribunal inspected the Holding at the time of the hearing. Some of the defects had been rectified but many had not. There was also evidence of past failings in relation to the welfare of livestock but the Tribunal

found the cattle to be in reasonable condition, despite some missing ear tags.

The Tribunal accepted that the unit had to be considered as a whole, and not merely parts of it, that the conditions are not required to have been breached across the whole unit. In this particular instance the Tribunal found that the standard of farm maintenance in general had been “wholly inadequate” and this led to the grant of the required certificate. Clearly this is catastrophic for the Tenant as it will inevitably lead to a successful Notice to Quit. The moral for all tenant farmers is clear; rules of good husbandry are there to be followed!



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# Entrepreneurs Relief

## Welcome Changes in the 2016 Budget

Last year's Finance Act (2015) introduced some extremely severe restrictions to entrepreneurs' relief for capital gains tax. Essentially these restrictions were designed to prevent claims for entrepreneurs' relief (and therefore to a 10% rate of capital gains tax) in relation to structures commonly used in management buy outs and management buy ins when the individuals concerned would not each have the necessary minimum 5% ownership of the main business in order to qualify for entrepreneurs relief. In these circumstances a separate company would be set up, often run as a joint venture with the main company, in which each of the management team involved in the buy out or buy in would have the minimum 5% stake.

Unfortunately, as has so often been the case with tax changes over the last ten years or so, there were problems in the legislation which inadvertently restricted claims for relief in relation to the

succession of many family businesses and a few genuinely commercial business joint ventures. These restrictions introduced by the 2015 Finance Act were extremely unhelpful for a number of farming clients with whom we were working in relation to succession and inheritance tax planning.

The most significant problem caused by the 2015 Finance Act changes was in relation to associated disposals. Following the 2015 Finance Act, when a business (or part of a business) was sold to a family member and there was an associated disposal of a personally owned business asset, entrepreneurs' relief was not available on the capital gain on the asset.

The 2016 Finance Bill is reversing this change and, very helpfully, the change will be backdated to 18 March 2015, which was the date when the 2015 Finance Act became effective.

This change is to be wholly welcomed because it supports family businesses in particular in planning for succession. Successful succession planning (which often also involves inheritance tax planning) is a very important element in securing the future of a family business and the wealth and income streams represented by that business.



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David Wood has been appointed Under Sheriff of Lincolnshire. In his new role, he will support the new High Sheriff for Lincolnshire, Jill Hughes, who is also Deputy Lieutenant for the county. By law, the Under Sheriff has to be a Solicitor. David will assist with the arrangement of events such as the annual High Sheriff's awards, garden party and the annual Legal Service in Lincoln Cathedral.



# FARM VISIT

Thank you to our hosts Mr & Mrs John Fenton and to all our agricultural friends who joined us at the private tour of Elmswell Farm on the Yorkshire Wolds on a beautiful sunny day in June. If you would like to join us at future events please email: [isabelle.forth@langleys.com](mailto:isabelle.forth@langleys.com)

## Qualified Mediator

Andrew Fearn has recently become an ADR Group Accredited Civil & Commercial Mediator. Mediation is a means of resolving disputes between two or more parties, addressing the real issues and obstacles behind conflict in the process. Andrew is qualified to mediate in a wide range of disputes. Having advised clients in the agricultural industry for upwards of 40 years, he has particular experience in the world of private client, agricultural and rural law.



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## Langleys News

Emma Mennell has joined the Commercial Property Team as a Legal Assistant working alongside Phil Robinson. She is assisting Phil with conveyancing of land, farms and residential properties. She holds a law degree and aspires to be an Agricultural Solicitor. Emma is Yorkshire born and bred. She grew up on a small beef cattle farm and now lives on a fourth-generation mixed farm of sheep and arable just outside York. In her spare time, she enjoys competing with her horses or working on the farm.



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## Danby Court Leet Appointment

Hugh Thompson, Private Client Associate Solicitor has been appointed as the Steward of the Danby Court Leet, one of the area's most historic institutions. The court leet holds five meetings a year with jurymen, freeholders and tenants who must each pay a fine of twopence if they fail to attend. The meetings are held in the court room at Danby Castle, still a magnificent building despite much of it now being in ruins.



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## Chambers Accreditation

The latest rankings have been published by the Chambers & Partners legal directory.

Langleys has been ranked in Band 1 for Agriculture and Rural Affairs in Lincoln for the 4th consecutive year. The firm has also gained a new ranking for Agriculture and Rural Affairs in York.

Françoise Vandale is featured as a 'Leader in their Field' for the first time.



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## Dates for the Diary

Watch out for Langleys agri team at the following events (all details correct at time of going to press)

**LINCOLNSHIRE SHOW**  
22nd, 23rd June 2016  
Lincolnshire Showground

**BEST OF BRITISH  
SUMMER PICNIC CONCERT**  
2nd July 2016  
North Lodge Farm

**NATIONAL SHEEPDOG TRIALS**  
5th, 6th, 7th July  
Castle Howard

**GREAT YORKSHIRE SHOW**  
12th, 13th, 14th July 2016  
Great Yorkshire Showground

**DRIFFIELD SHOW**  
20th July 2016  
Driffield Showground

**TOCKWITH SHOW**  
7th August 2016  
Tockwith Showfield

**SCULPTURE AT DODDINGTON**  
8th September 2016  
Doddington Hall

**SOUTHWELL RACES**  
27th September 2016  
Southwell Racecourse



Andrew Fearn, Françoise Vandale, Amy Cowdell, David Wood and Jacqui Barr from Langleys attended a special reception to mark the 40th anniversary of the Agricultural Law Association hosted by Lord Burnett of Whitchurch on the terrace of the Houses of Parliament. It was attended by lawyers, land agents and accountants together with guests.



Langleys has sponsored several Point to Point events in Winter/Spring 2016, most notably the Badsworth & Bramham Moor Point to Point at a rather windswept Askham Bryan on the Easter weekend