

■ **STOP PRESS . . .** A reminder about our Christmas talk on December 6 at Moreton Hall when we will be looking back on the year and providing an update on the law as it relates to agriculture. Contact Deanne Clay on 01926 884614 for details.

■ Welcome to solicitor Helen Gough who has joined the Farming and Rural Business Unit. Helen has particular experience in agricultural property matters.

■ Don't forget to review your wills in the light of the changes to trusts in the March Budget. See the enclosed briefing note for more information.



Inaccurate data has blighted the Single Payment Scheme. However, it is imperative that farmers ensure their paperwork is correct if they are to avoid paying a penalty.
PAUL RICE reports.

High price for failure to chase up inaccuracies

In the summer newsletter I suggested that the best thing that you could do was get on with your core business of farming. Whilst that still stands, the extent to which the RPA is up to its neck in FYM is becoming clear. The former chief executive, Johnston McNeill, has refused to appear in front of the Public Accounts Committee citing stress; the National Audit Office has produced a damning report; the current interim chief executive has stated that the system may not be on track until 2008; and a provision of some £131 million has

Follow your query up at regular intervals . . . If you have pointed out the discrepancies to RPA, you cannot be penalised (although overpayments will still have to be paid back).

been put aside by Defra to pay any disallowance imposed by the Commission – and we've not yet seen anything published by Europe.

To me it is clear that the RPA has failed to ensure that its original data capture was accurate. We have all heard stories of fields being missed off or figures transposed; this was partly because the HVDC (high volume data capture) was a mechanistic process carried out by people

who had no need to understand the system, operating under extreme pressure to complete the task. This is significant as 2005 is the base year for the SPS and establishes the number and initial value of entitlements. Therefore any initial errors will be perpetuated throughout the period of the scheme.

From discussions I've had within the industry it is clear that many of you know your maps are incorrect or that you have received a number of entitlements that did not equate with the number you were expecting. You have sought clarification/rectification but, in the absence of a reply or an unsatisfactory one, have given up. My message to you is: don't!

As an accredited paying agency paying out European money, RPA is legally obliged to do so accurately (and on time). If it fails to do this it will be censured by the Commission, it will have to make good the data, and will have to recover any monies incorrectly paid. We know at present that some £6.5 million has been identified as being overpaid, and £17.4 million underpaid. RPA has no option but to recover that money and any other money identified in the future as being overpaid. However, it may take the same amount of time to make good the under-payments. In addition, if you are farming land that does not appear on the RLR and is not on your pre-populated form, on the face of it, if an inspection identifies that land, the starting point for RPA will be to impose a penalty.

Therefore, if you think your maps are still wrong, entitlements statement is incorrect or the payments are flawed, it is in your interest to pursue this with the RPA and seek clarification/rectification. You should write to RPA with as much information as you can (even if already given), quoting your SBI, and stating the problem. You will receive a pro-forma response. Do not leave it at this, follow your query up at regular intervals, each time rehearsing the issue and quoting your SBI. If you have pointed out the discrepancies to RPA, you cannot be penalised (although overpayments will still have to be paid back). However, if the RPA discover the discrepancies in the future, and you were aware of them, there may then follow an uphill struggle to prevent penalties being imposed. Good luck!

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HERE TO STAY
Once you have a mobile phone
mast you may be stuck with it

RED ALERT FOR VILLAGE GREENS
Could your land be in danger of being
adopted as a village green?

Danger posed by village green

Village greens are a quintessential feature of our English heritage conjuring up images of lazy summer days. Their status is derived by local residents having indulged in lawful sports and pastimes on them for a period of at least 20 years. Appreciation is so high for the 'village green' that this year it is up for an award as the Icon of England.

This is fine, providing it's not your land that is registered as one. Where land has been used in the above way, anyone in the locality in which the land is situated can apply to register it as a village green 'as of right' without the permission



HELEN GOUGH alerts landowners to the possibility that their land could be registered as a village green without their say so.

of the landowner! And there are no size limits on the extent of your land that could be registered.

Don't make the mistake of thinking that this couldn't apply to you. It is important that you protect your land: if it is registered as a village green your rights over it will be substantially affected and dramatically reduced. You can only use it in a way that does not interfere with the recreational rights of others; furthermore land registered as a village green becomes subject to Victorian planning legislation which makes any potential development on it virtually impossible. So if you have earmarked a piece of land for development at some stage to provide a rosy future for you and your family, think again. You could potentially be losing thousands of pounds.

In the recent Trap Grounds case, Oxford City Council had opposed the registration of a nine-acre site as a village green which it had earmarked for housing development. The Court of Appeal ruled that an application to register ground as a village green would fail if the landowner challenged the public's use of the land before the land was actually registered. This was overturned by the House of Lords which ruled that recreational use of the land should be taken in to account up to the date of registration, not application, thus denying landowners the chance to break the period of others using the land.

In addition, the Commons Act 2006 will introduce a 'grace period'. This means that even if the landowner stops people using his land, if more than 20 years' use has accumulated, registration as a village green could still result. It is not yet clear when this legislation will be enacted but it is clear that it is now more crucial than ever to protect your land. The more time you can show you have prevented others using your land, the stronger your defence will be.

Take time to assess the land you own and uncover any rights of use. Erect signs prohibiting access on the land, even better, fence it off and erect gates or barriers. This is just a start however; there are many ways you can avoid losing control over your land. For information call Helen on 01926 880747 or email

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NEWS FROM THE FARMING AND RURAL BUSINESS

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HERE TODAY, HERE TOMORROW

Recent advances in mobile telephone technology have led to a proliferation of masts across the country. The rents paid by operators for these sites are sufficiently attractive to tempt many landowners to consider agreeing to have a mast on their land.

However, agreement to host the equipment for a set period of say 10 years, is the easy bit; trying to remove it at the end can be a different matter.

Most landowners would reasonably assume that they would be able to recover possession of the land and, in order to prevent the operator from acquiring security of tenure, will enter into a lease which excludes the security of tenure provisions. Unfortunately this is no guarantee that the landowner will be able to have the equipment removed on expiry of the lease.

The amended Telecommunications Act 1984 exists to protect mobile telephone operators, the rationale behind this being that no one should be unreasonably denied access to a telecommunications system. Within the Act, lies the Telecommunications Code which governs telecommunications agreements.

If an agreement in writing (and not necessarily documented by a formal lease or licence agreement) falls within the Code (which, invariably, it will), statutory powers and rights are conferred upon the operator. The Code protects the operator by preventing the removal of the equipment even if the rights of the operator, as tenant or licensee, have come to an end.

The Code sets out a procedure for the removal of the equipment. If a landowner wants an operator to remove equipment from his property, he must serve a notice (which accords with the provisions of the Code). If the operator then serves a counter-notice the landowner can only remove it is by obtaining a Court Order.

Court Orders are not granted lightly, and the Court will focus on the principle that no one should unreasonably be denied access to a telecommunications system.

If the landowner wants to have the equipment removed because of redevelopment or change of use, the Court will only make an order for removing the equipment if it is necessary to ensure the development and if its removal will not substantially interfere with the services provided by the operator. Otherwise, if the landowner receives sufficient financial compensation, there is very little he can do to get rid of it.

Even if the lease is excluded from the security of tenure provisions of the Landlord and Tenant Act 1954, the Code will apply and, in order to get the equipment removed, a notice in accordance with the Code will have to be served.

To date there has been no case law relating to a situation where an operator has served a notice and the landowner has applied to the Court for an order for the removal of telecommunications equipment. This is likely to be because either the agreements between landowners and operators have not yet expired; or in circumstances where agreements have come to an end and landowners have requested the removal of equipment, there has always been a suitable alternative site for the equipment and the operators have taken the commercial decision to move there rather than serve a counter-notice on the landowner.

Obviously, this situation may change and operators may start to invoke the protection given by the Code.

Although landowners may think twice about entering into agreements with operators for fear of having equipment on their land for evermore, most take the view that the substantial fees are worth the risk. Others are of the view that any risk is slight because if operators began to invoke their powers under the Code, it would alienate the very people they need in order to carry on their business effectively.

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