

The Importance of Contract Drafting on Commercial Relationships



When contract disputes occur, a review often recognises a remedy could have occurred at a fraction of the cost, time and stress, had a more considered approach been adopted at a pre-contract stage.

This article focuses on written grain contracts (GCs) between Distributors and Farmers as a case study. GCs generally illustrate a promise to supply X tonnes of grain in consideration of a promise to pay a fair price, arrange collection and for payment within X days of collection. Simple GCs usually address these terms, but rarely go further. Problems tend to arise where:

1. a grain variety is specified which fails to match pre-contract representations;
2. there is confusion over a fixed price or open market valuation agreement; and
3. there are minimal default provisions.

Farmers should exercise caution when distributors require particular grain varieties, especially relatively untested varieties. Pre-contract representations concerning performance of new seed varieties should form part of the GCs, particularly representations relating to

disease resistance and performance in poor weather conditions. Failure to include them usually means such representations are excluded and the farmer could be left to account for unexpected quality/yield failures by purchasing supplementary tonnages at his own cost. Although recent case law suggests that difficulties in contractual interpretation could be resolved with the use of background information available to the parties at a pre-contract stage, pre-contractual negotiations remain largely inadmissible.

GCs should also explicitly state the timescales and manner by which fixed prices are agreed; usually by mutual consent in writing after contract signature. Any deadline for decision should be included and a default provision should the deadline pass without agreement. Alternatively, if an open market valuation is preferred, GCs should state the manner and timing of valuation, usually at time of collection. Grain prices are increasingly volatile and market valuations can vary considerably, even over a short period. GCs should also identify any agent(s) with authority to act on behalf of the parties.

GCs should anticipate default and dispute as defaults can then be resolved amicably by prescribed outcomes. Defaults caused by the vagaries of the weather, disease during growth, disease during storage, accidents during haulage and alleged impurities on inspection, etc. should all be covered.

The farmer's failure to provide the fixed tonnage is often anticipated; however, what of seed variety failures caused by diseases against which the seed type is allegedly immune? Dispute resolution mechanisms such as the appointment of an independent expert also minimise the potential for damaging disputes.

In short the devil is in the detail. In this increasingly litigious age, we strongly advise any business to adopt standard terms and conditions that are incorporated into a written contract before agreement and signature. Failure to do so can result in damage to commercial relationships, delays in payment and ultimately litigation. We are happy to assist with litigation if necessary but it is often more cost effective to avoid the necessity at a pre-contract stage. Our Commercial and Corporate Finance Team will be happy to help prepare standard terms and conditions or draft contracts on request.

To discuss any rural issues with our specialists, please contact 01206 217353 or email ruralbusiness@birkettlong.co.uk

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Topical Issues

Birkett Long's Rural Business Team looks after farming families and businesses throughout East Anglia and during the course of a year we come across a variety of issues. It's been a difficult year and yields from the 2011 harvest are uneven at best. Topical issues at the moment include the following:

Increase in land prices

Yes, it's true! Land prices have risen consistently over the past 12 months. Ignoring small areas of land with development and/or amenity value, blocks of bare agricultural land sold and bought by clients of ours are achieving prices of anywhere between £6,500 and £10,000 per acre.

Agricultural Property Relief (APR)

With 100% relief from Inheritance Tax available for agricultural property in certain circumstances, it is important that farming families and businesses look at their assets and structure to try to maximise the relief.

The position of the farmhouse continues to attract considerable attention with the Revenue, which puts taxpayers through two important tests: first to establish whether the farmhouse qualifies as agricultural property at all and secondly, if it does, to establish its agricultural value, as APR is available only on the agricultural value of agricultural property.

Conventionally, the Revenue argues that the agricultural value of a farmhouse is 70% of open market value and assesses the taxpayer for Inheritance Tax on the remaining 30%. Thus, if APR is available, a taxpayer is likely to be assessed for

Inheritance Tax of £120,000 on a farmhouse worth £1,000,000 (40% x £300,000). The 30% discount is a conventional rate applied by the Revenue but there will be circumstances in which the taxpayer should argue that the agricultural value is more than 70%, for example where the farmhouse is in the heart of an active farm yard.

Business Property Relief (BPR)

Historically, farm cottages that are no longer required in the business or the family and are let on Assured Shorthold Tenancies have been regarded as investment property and have attracted Inheritance Tax at 40%. Following a recent Scottish case (Balfour), farming businesses are being encouraged to put such cottages on to the balance sheet in an attempt to have them regarded as part of the overall business, thereby attracting BPR. The Revenue is likely to try to distinguish the Balfour case on its facts and a switch of cottages on to the balance sheet will not automatically lead to a successful claim for BPR. Professional advice should be taken.

Common Agricultural Policy

The current review of the CAP brings with it several threats to the East Anglian farmer, not least because proposals to cap the payment will affect those with larger blocks of land and those who have expanded their businesses.

In addition, there is a further threat if there is a change in approach to what constitutes sufficient economic activity to enable a farmer to claim European payments. Until now, a farmer whose land is farmed under a Contracting Agreement has qualified for payments, but that is under review. If it changes, there may be a knock-on effect for Inheritance Tax purposes with the Inland Revenue likely to argue that a farmhouse cannot be regarded as agricultural property for APR purposes if the owner is not regarded as a farmer for European payment purposes.

We enjoyed seeing you...

...at the following events this year:

- **Dinner for fellow professionals in March**
- **Golf at Aldeburgh in March**
- **East Essex Hunt Point to Point in April**
- **Essex Hunt Point to Point in April**
- **Hadleigh Show in May**
- **Essex Young Farmers Show in May**
- **Suffolk Show in June**
- **Norfolk Show in June**
- **Tendring Show in July**
- **The Open in July**

We look forward to seeing you at:

- **Essex Agricultural Society Autumn Conference on 17 November**

Congratulations to...

- **Vicky Raynes on her promotion to Associate on 1st June**
- **Annabelle Savage on passing the exam to become a Fellow of the Agricultural Law Association**

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Reference: NEWS/RURALBUSINESS02/2011