

MEET THE NFU

Legal Affairs Team



Sitting in the policy services team, members of the Legal Affairs Team advise the NFU on a wide range of legal issues affecting its farming members.

DRY WEATHER

It probably hasn't escaped your notice that there has been a lot of attention on the weather recently. The team has produced briefings on the legal restrictions on water use and abstraction which can be put in place when there are water shortages, the EA's powers of entry to inspect compliance with abstraction licences and also on the legal position when farmers are unable to produce their full contractual quotas due to the dry conditions, which are available in the Dry Weather area on NFUOnline. We are aware that these issues are significant concerns for NFU members, so these briefings aim to provide farmers with as much information as possible to help members plan for these events.

ENVIRONMENT

We're looking into issues relating to the assessment of ammonia emissions from farms (particularly livestock housing and slurry stores) on protected sites such as Special Areas of Conservation and Sites of Special Scientific Interest. These issues usually arise as part of the planning process or when applying for environmental permits. We are concerned that these issues have the potential to have significant impacts for NFU members, and are liaising with colleagues in the Environment Team and in the Regional Offices to monitor the situation and look for opportunities to influence decisions in this area.

CONTRACTS

The team has played a key role over the years, working with the NFU's Dairy team, to try to make dairy contracts fairer for members. We were part of the NFU's team that negotiated the Voluntary Code of Practice on contracts (VCOP), and we're currently working up a response to Defra's expected consultation on the regulation of dairy contracts. In short, we think it's just not going to be possible for farmers to get a fair deal without the government regulating the terms of dairy contracts; the question is what regulation should we be asking for? We'll be working hard over the next few months to lobby for our members to get fairer and more equitable contracts that create a fairer balancing of risk and reward; as it stands, our members shoulder much of the risk and see little of the reward.

We are also working with the NFU Crops Team to review certain terms of supply in the crops sector. Our aim is to ensure that the contract is easier for farmers to understand, and to try to tackle some of the perceived unfairness within the sector.

The Team



Nina Winter
Chief Legal Adviser



Hannah Harrison
Senior Legal Adviser



Jo Woodhams
Legal Adviser



Kate Tandy
Legal Adviser



Kieran Pearson
Trainee Solicitor



Fiona Forrest
Administrator

FORTHCOMING SUPREME COURT CASE

We have filed an application for permission to intervene in a Supreme Court appeal which is being brought by a food processing company. The case concerns the categorisation of desinewed meat as mechanically separated meat. We have concerns that the Court of Appeal decision could have a detrimental impact on broiler producers as significant amounts of valuable poultry meat could be prevented from being included in food products and will be wasted. The NFU is intervening in this case as we believe that it is important to ensure that any such restrictions are interpreted and applied correctly, so that farmers achieve the maximum value for their produce.

AGRI-ENVIRONMENT

The team has been looking into the potential for bringing a legal challenge regarding late payments. The issue is complicated by the absence of a payment date in most (if not all) countryside stewardship agreements. A briefing explaining the legal position is available to members via NFU CallFirst or the NFU website, but in summary, those with HLS agreements may have a claim based on the payment timings communicated to them as part of the payment realignment exercise. We are now seeking information about potential claims so that the NFU can consider its position.

We are also continuing to look into a number of issues relating to agri-environment contracts, in particular in relation to Natural England's approach to varying those contracts, the backdating of penalties under those contracts, and the delay in making payments under those contracts.

We are concerned about the way in which Natural England is treating farmers in these situations, and are aiming to ensure that farmers are treated fairly, and in accordance with the terms they signed up to.

SSAFO

Following an increase in enquiries, the team has produced a Q&A for members on the SSAFO Regulations, which regulate the storage of slurry, silage and agricultural fuel oil. We are aware that replacing or carrying out substantial repairs to these facilities is likely to require a substantial investment. The Q&A discusses some of the key powers that the Environment Agency has to regulate the use of these stores, which we hope will help members understand their legal obligations, so that they can plan for any necessary works well in advance where possible.

CROSS COMPLIANCE WIN!

The NFU intervened in judicial review proceedings, challenging the RPA's approach to penalties under the Single Payment Scheme. In particular the challenge focused on the RPA's approach to considering intent/negligence. We were so concerned about the RPA's approach that we intervened in the proceedings to support the farmer's arguments. The member was also supported by the Legal Assistance Scheme.

The Court found in favour of the farmer and the NFU, and concluded that the RPA had not adequately assessed whether the farmer had acted intentionally or negligently. Consequently, the penalty imposed was overturned.

This case will fundamentally change the way the RPA approaches the consideration of intent or negligence, so is a big win for the farming sector. Now the RPA will have to consider whether the SPS claimant (not just its employees or contractors) acted intentionally or negligently in respect of cross compliance breaches. We are starting to see this reflected in some of the appeal decisions we are seeing from the RPA, confirming that this was a significant victory for farmers.

LEGAL SUPPORT FOR NFU MEMBERS

NFU CallFirst (0370 845 8458)

Based at NFU HQ in Stoneleigh, the Specialist Advisers at NFU CallFirst can offer NFU members free initial legal and professional advice regarding a wide range of issues affecting their farming business. The Specialist Advisers can also arrange referrals to the NFU's panel firms of solicitors and talk members through the LAS application process.

The Legal Assistance Scheme (LAS)

For an annual payment of £33 + VAT per year, the NFU's LAS offers members who subscribe support with their legal and professional costs in relation to disputes affecting their farming business. In the 2016/2017 financial year, the Scheme made awards totalling £1,520,546 to support members. For further information, please contact NFU CallFirst; further information can also be found in the membership section of www.NFUonline.com

Panel firms

The NFU has appointed a number of panel firms of solicitors; these firms offer NFU members a discount on their hourly rate in connection with disputes affecting their farming business. Further information can be obtained via NFU CallFirst or on www.NFUonline.com