

A photograph of a sunset over a body of water. The sun is low on the horizon, creating a bright yellow and orange glow that transitions into a soft pink and purple sky. The water in the foreground is dark blue and green, with gentle ripples. The text 'RISING RISKS' is overlaid in large, white, sans-serif capital letters, centered horizontally and partially obscured by the horizon line.

RISING RISKS

**EXCESS AND
CO-INSURANCE**

**CIVIL LIABILITY
BILL**

**PRIVATE
HEALTHCARE**

Definition of Cadre

'kɑ:də, 'kɑ:dr(ə)

noun

noun: cadre; plural noun: cadres

A small group of people specially trained for a particular purpose or profession.

Cadre is for everyone involved in the rural sector. Our primary objective is making sure you know everything you need to know about the shifting landscape of insurance.

Let us know if we can help you in any way. If you have a question please email or call us.

enquiries@rkharrison.com

+44 (0)1234 305555



INTRODUCTION





Welcome to the third edition of Cadre, the rural magazine from R K Harrison.

Cadre is designed to provide in depth advice and information on the many topics spanning the evolving rural sector.

I hope you find the magazine both interesting and informative. Please do share with us any topics you would like us to cover in future editions.

Patricia Jones

Executive Director - Head of Rural
+44 (0)1234 408640
pat.jones@rkharrison.com

VAT ON BUILDINGS

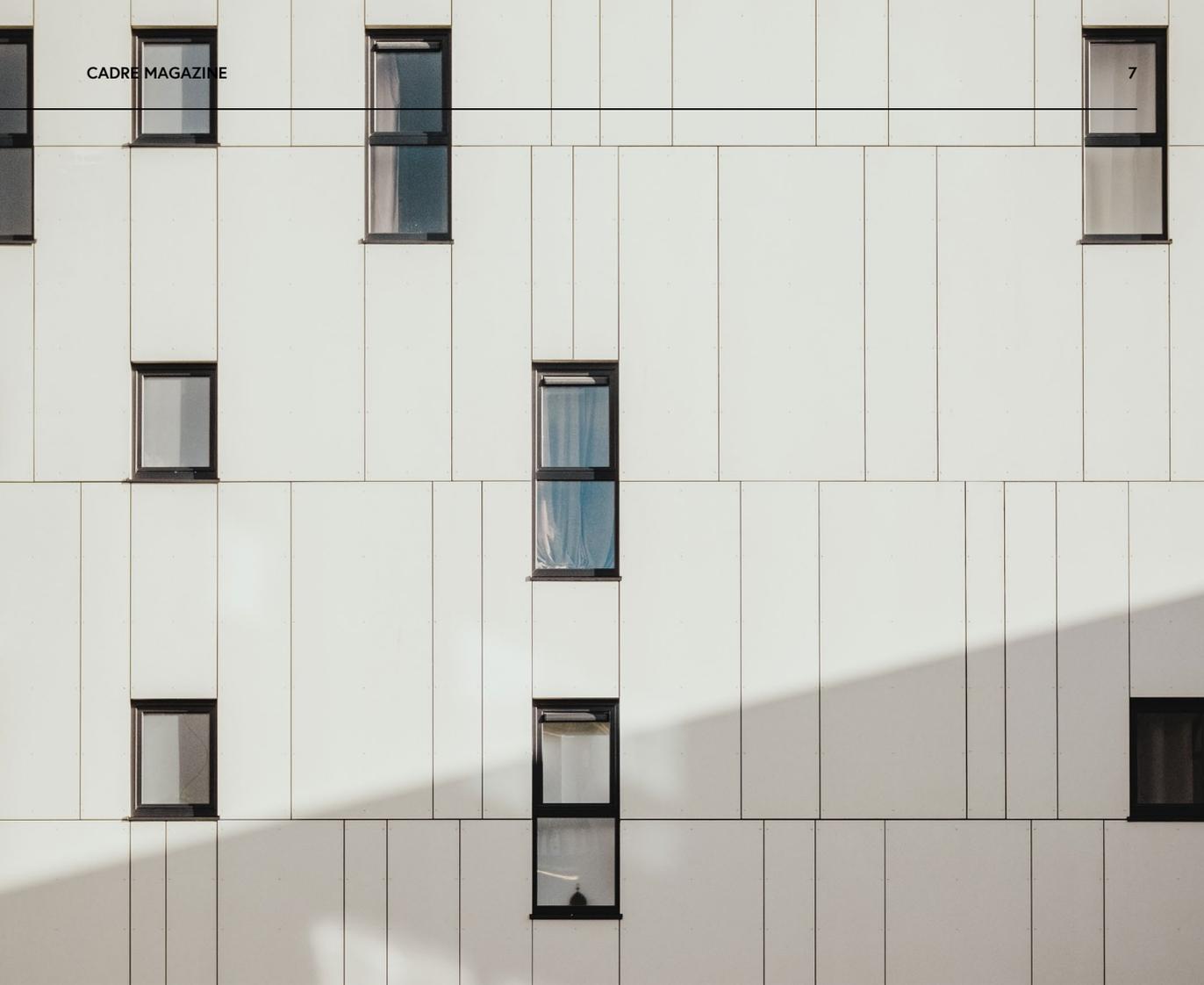
The subject of the VAT liability on buildings is something that many people find complicated

The amount of VAT to be added (if any) first of all depends on the usage of the building and whether the property owner or entity responsible for insuring it is VAT-registered.

Residential. If any building for residential use, including blocks of flats, requires to be rebuilt as opposed to repaired following major damage, such as a fire, the cost of rebuilding is zero-rated for the purpose of VAT. This means that VAT does not need to be added to the rebuild cost. However, it is very important to be aware that although the relevant VAT Notice does not give an exhaustive list, there are various works that cannot be zero-rated. These include the following:

- Detached buildings comprising swimming pools, tennis courts, stables and other leisure (as opposed to residential) facilities
- Landscaping, fish ponds, rockeries and garden walls
- Fees and demolitions.

Roads and boundary fences qualify for zero-rating, as do garages. If, for example, the cost of fees, demolitions, a detached swimming pool, tennis court, landscaping and any other relevant works add up to 30% of the total rebuild cost, VAT will need to be added to this amount only, and not to the total cost of rebuilding.



Clients often assume that if a residential building is more than 80% destroyed when compared to the sum insured, the repair cost will be subject to VAT and, at the current 20% rate, the sum insured will be exceeded and consequently VAT should be added in total. The reality, however, is that a severely damaged building (eg: 80%+ destroyed) would be more cost effective to demolish and rebuild, rather than repair, thereby attracting the zero rating.

The HMRC VAT Notice provides guidance and says a zero-rated building is constructed when it is built from scratch, and before work starts any pre-existing building is demolished completely to ground level (cellars, basements and the slab may be retained). A zero-rated building is also allowed to make use of a single facade (or double facade on a corner

site) provided the existing building is demolished completely (other than the retained facade) before work on the new building is started and the facade is retained as an explicit condition or requirement of statutory planning consent.

In terms of repaired damage, insurers will pay the VAT element up to the sum insured, the sum insured being based on the total rebuild as opposed to the repair cost.

It should also be remembered that whilst most owners of residential building are not VAT-registered, some are. If the building owner is VAT-registered and able to recover VAT, there is no need to include VAT within any part of the rebuild calculation when setting the building sum insured.



Commercial. Although the cost of rebuilding commercial buildings is subject to VAT at the standard rate, the owners of many commercial buildings are VAT-registered and able to recover VAT, in which case there is no need to include VAT within the rebuild calculation when setting the building sum insured. However, it is often overlooked that many commercial buildings are owned in a personal capacity. If the owner or pension fund is not VAT registered or unable to recover VAT, then VAT will need to be included in full at the standard rate.

Mixed – residential and commercial buildings. A good example of such a building is a block of flats with retail shops on the ground floor. Here the rebuild cost of the flats would be zero-rated whilst the shops would be standard rated, as commercial usage does not qualify for zero-rating. If the property owner is not VAT-registered, the commercial part of the building will be subject to VAT, which will need to be added to the rebuild calculations; albeit the total cost of fees, demolitions, etc. (as opposed to residential) facilities will be subject to VAT, as explained earlier in the article.

Property owners that let commercial property may elect to charge VAT on their rents, which is known as 'election to waive exemption' or 'option to tax'. If, however, a property owner has not applied to or revoked a previous option to tax, VAT will not be charged on the rent and there will be no right to reclaim VAT on any reconstruction costs. In other words, if VAT is not charged on the rent and where the property owner is responsible for insuring the building under the terms of the lease, VAT will be irrecoverable and will need to be included in full at the standard rate.

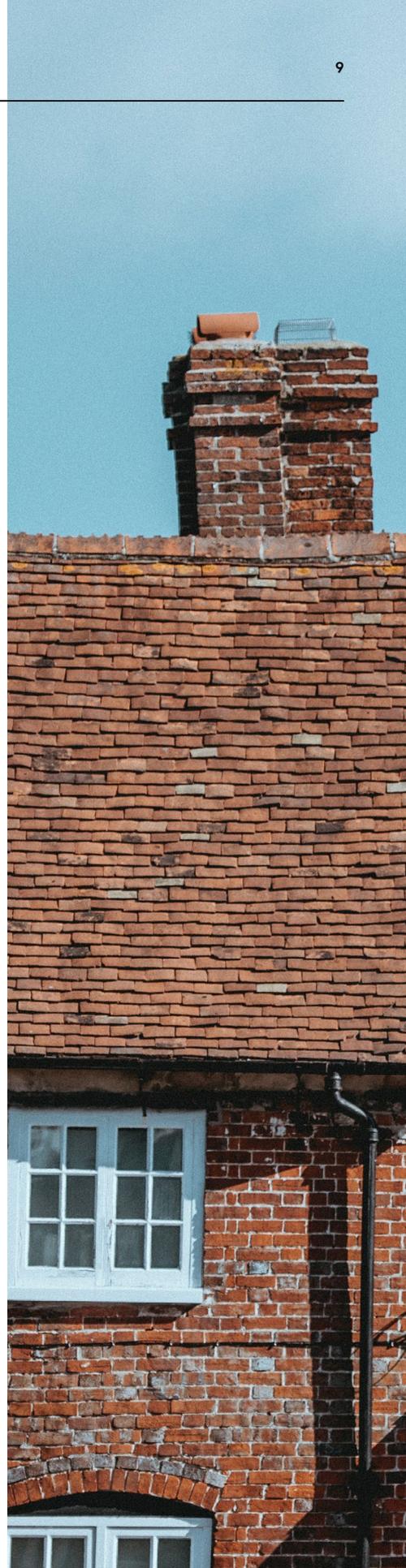
Registered charities. The rebuild cost of a building owned and used by a registered charity is zero-rated, but only for the non-business use of the charity. Where a charge is made for admission, catering etc., normally this would be deemed a business activity and VAT would apply at the standard rate. VAT needs to be added to the assessment to the extent that the reinstatement cost would be subject to VAT at the standard rate.

This can be a complex area and specialist advice should be taken from an accountant and/or HMRC to check whether any part of the reinstatement works would be zero rated and to ensure that the correct amount of VAT is added to the assessment. Of course, if the charity is VAT-registered, this would not be an issue because any VAT paid would be recoverable.

Listed buildings are usually subject to the same considerations as residential and commercial buildings, as detailed in this article.

Martyn Barrett

Director, Barrett Corp & Harrington Ltd





ENGINEERING INSPECTION

As in any form of business, there are statutes and regulations that ensure a business has regular checks of equipment and processes to make sure everything is safe and in good working order.

According to the latest annual statistics from The Health and Safety Executive (HSE), agriculture has one of the highest fatal accident rates of all British industries, second only to the construction industry. The inspection and maintenance of machinery and plants found in rural businesses has never been more important. However, it is often neglected.

Not all rural business owners or farmers know that failure to arrange these checks may mean they could be served an improvement or prohibition notice by the authorities. In extreme cases, they may even be prosecuted.

All work equipment and machinery should be subject to regular engineering inspections and maintenance carried out by competent and independent engineers with the appropriate accreditation.

Some of the types of plant and equipment that you may use and require inspection are:

- Steam boiler e.g. vertical steam boiler
- Air pressure plant e.g. air receiver
- Refrigeration plant
- Hot water heating/supply systems
- Fork lift trucks
- Lifting plant e.g. blocks and tackles, slings and other accessories.
- Excavators/loading shovels
- Telehandlers
- General electrical/mechanical plant e.g. motors, pumps
- Electrical installations e.g. fixed wiring

Other items, such as tractors and combine harvesters, for example, are not usually considered as requiring a 'statutory' inspection, although the owner/operator may consider that it is best practice to have an independent inspection carried out by a competent person as part of their health and safety policy.

Any items that use hydraulics, wires, chains and ropes should also be inspected at pre-determined times as set out in the statute and regulation. All plants and machinery need regular inspections. This includes lifting and pressure systems, compressors, pumps and ventilation. Some areas such as a dairy, for example, would have several regulations applying at the same time.

Engineering inspections are essential for workplace health and safety

All regulations are designed to ensure this happens and it is the responsibility of the owner/employer to ensure this is in place. Regular inspections go a long way to ensure you are legally compliant. However, this is not the only benefit. A minor fault or breakdown can result in loss of productivity, wasted time and an expensive bill for repair or replacement of the part or equipment as a whole.

Regular inspections can help in defending liability claims

If someone is injured because a piece of machinery you own or are responsible for is faulty, an employee or a member of the public can sue you for compensation. Regular inspections should not only prevent these accidents occurring but if they do occur, if they are regularly inspected and it is documented, a prior inspection can go towards helping defend claims against you. If regular inspections are required in terms of law and they have not been carried out, you will certainly be liable for prosecution in addition to the compensation damages. Proof they have been done shows you as a company follow 'best practice' in the workplace.

Make sure you keep records

All inspections should be logged and the results documented. They must be readily accessible when required, such as at the next inspection date or in the event of an incident. The records are evidence that inspections have been carried out. They help demonstrate that you are meeting your legal obligations and fulfilling your duty of care regarding workplace health and safety and, as per above, can help you in the event of a liability claim.

Here are some examples of the specific legal requirements for certain types of equipment:

1. The Provision and Use of Work Equipment Regulations (PUWER) 1998 – this covers items where safety can be at stake such as power presses.
2. The Lifting Operations and Lifting Equipment Regulations (LOLER) 1998 – this applies to all lifting equipment, such as lifts in mansions and houses open to the public, cranes and cherry pickers.
3. The Pressure Systems Safety Regulations (PSSR) 2000 – this applies to most working systems that work under pressure, such as a dairy. This is due to pressure of plant, temperature and storage. Clear operating instructions are also a requirement here.
4. The Control of Substances Hazardous to Health Regulations (COSHH) – for engineering inspection purposes would apply to the likes of equipment that takes away fumes, dust and vapours. On a farm this could apply to a workshop or in hand sawmill.

What do you get once an inspection has been carried out?

1. You will receive an independent report detailing the general condition and wear and tear of your equipment.
2. You will receive advice where preventative maintenance may be needed or repairs required which will reduce costly repairs and extend the life of your equipment.
3. You could prevent incorrect working practice and, therefore, avoid an unfortunate incident or injury to employees and/or members of the public.



EXCESS AND CO-INSURANCE

Insurance is primarily about managing and dealing with risk

One aspect of risk management by the insurer is the application of a policy excess to ensure the policyholder shares in any loss.

An **excess** is the first amount payable by you in the event of a loss, and is the uninsured portion of your loss, so when you submit a claim you will have to pay the excess that is either a standard excess written into the policy or a voluntary excess.

Be clear with your broker or insurer because a voluntary excess may be in addition to the standard excess or could be in place of the

standard excess. A policyholder generally selects a voluntary excess to bring the cost of the insurance down.

In some cases an insurer may choose to increase their standard excess for no premium discount. This is generally when an insurer considers their risk or a particular cover to be higher than normal. The claims history may dictate that a higher excess is necessary, or perhaps a flood risk is considered high but manageable with a higher excess.

Please see a few examples on the right.



EXAMPLE 1

A building is damaged by fire and there is an excess of £500. The cost of repairs was agreed by insurers at £4,500.

The amount of the claim is £4,500 less the excess of £500.

Amount payable by insurer = £4,000.

EXAMPLE 2

If the policyholder had a voluntary excess of £500 in addition to the Standard Excess of £500, the total excess would therefore be £1,000.

In the example above the claim would be settled as follows:

The amount of the claim is £4,500 less the excess of £1,000.

Amount payable by insurer = £3,500.



When referring to **Co-insurance**, it is generally not fully understood that it is a form of excess.

Co-insurance is the amount, generally expressed as a fixed percentage that an insured must pay against a claim after the deductible is satisfied.

Whilst there is a minimum and retained excess, there is also a percentage applied to the claim as an excess, thus not capping the uninsured portion of your loss. Insurers will use a Co-insurance clause to help keep the price of cover down to enable them to quote for risks or covers where they normally would not want to offer cover. For example, a property is in a high risk flood area, or there is an exposure they feel could be much larger than they are prepared to take. The insurer will apply a minimum and retained Excess and they will apply a selected percentage such as 10%, 15% or even 25% for the uncapped excess.

EXAMPLE 1

A property becomes vacant and is at risk of burst pipes given the size and age of the property. To agree any cover for damage to the property caused by burst pipes, the insurers apply a Co-insurance clause.

The Co-insurance clause is worded as follows:

“We will not cover the first £10,000 or 10% of the value of the agreed claim, whichever is greater, for loss or damage caused by the escape of water from any fixed water tanks, apparatus or pipes.”

CASE STUDY

Below are three examples where the value of the claim is different.

A pipe bursts, causing damage to the property over several floors.

EXAMPLE 1

The value of the claim is £500,000.
If we apply the Co-insurance clause, the 10% = £50,000 and this is the uninsured portion the policyholder has to pay.
Amount payable by insurer = £450,000.

EXAMPLE 2

The value of the claim is £100,000.
If we apply the Co-insurance clause the 10% = £10,000 and this is the uninsured portion the policyholder has to pay.
Amount payable by insurer = £90,000.

EXAMPLE 3

The value of the claim is £50,000.
If we apply the Co-insurance clause the 10% = £5,000 however a £10,000 excess would apply as this is the minimum and retained amount in the Co-insurance clause. Amount payable by insurer = £40,000.



DIVERSIF

How innovation is driving new revenue streams for farmers



IFICATION





A growing number of farms are diversifying in a bid to generate new income, embracing innovative business ideas to stay ahead of the game.

Long gone are the days when farms specialised only in agricultural enterprises with perhaps an occasional focus on tourism to bring in extra revenue.

The list of add-on services offered by farmers now ranges from offering up farms as wedding venues to brewing beer, providing cake baking classes and, in the case of one farm in Dorset, taking alpacas into care homes.¹

Brothers Charlie and Will Moreton were even named the Farmers Weekly 2018 Diversification Farmers of the Year in October thanks to the launch of a 'wild running' event on their land – showing that innovation is thriving.

All these ventures bring in much-needed revenue streams but also come with extra risks to consider for the business – together with new insurance requirements.

What is clear is that diversification is on the rise.

A DEFRA Farm Survey for 2016-17 revealed that 36,600 farms had diversification businesses worth on average £17,100 a year, with a combined sector income of £620m.²

Letting out buildings was by far the most common enterprise, followed by solar energy projects and sport and recreation activities. Catering and tourist accommodation (including glamping) also featured highly, along with retail and other sources of renewable energy.

Farms are becoming more creative in their approach to diversification.

An article in Farmers Guardian earlier this year looked at diversification trends for farmers and pulled out some of the best ideas.³

These included:

- Installing a microbrewery on site and brewing beer
- Using the farm as a wedding venue
- Care farming – using the farm to help vulnerable individuals
- Craft classes in heritage pastimes such as weaving and spinning
- Kennels and catteries
- Applying for environmental grants. For instance, for woodland creation and restoration, the Higher Tier Countryside Stewardship Scheme provides incentives for land managers to look after the environment.

¹ <https://www.countryliving.com/uk/wildlife/countryside/news/a3016/bbc-countryfile-viewers-reactions-alpacas-care-home/>

² <https://www.fginsight.com/news/news/what-you-need-to-know-about-farm-diversification-as-an-extra-income-69015>

³ <https://www.fginsight.com/news/news/the-top-10-diversification-trends-for-uk-farmers-to-look-out-for-60369>

What to consider when choosing a new revenue stream

- Research the market to find out what is out there. The Woodland Trust, for instance, suggests utilising existing woodland to provide a source of timber, firewood or biomass.⁴ Planting fruit and nut trees is also growing in popularity.
- Think about what your Unique Selling Proposition (USP) will be.
- Consider doing something that you are passionate about – this can make the work more enjoyable and give the business a better chance of being successful.
- Talk to other businesses that have succeeded in the same field.
- Carefully consider costs and realistic return on investment.
- Engage professionals early. Talking to an insurance expert can ensure you do not make errors that are costly or increase your exposure to risk.

Insurance issues to consider when diversifying

Diversifying can expose farmers to new risks, especially if it takes them into a business sector they have little experience of.

Some of the issues to consider are:

- If you need to take on new staff, are they covered by Employers' Liability insurance?
- Are all business activities insured for Public or Products Liability?
- Business Interruption cover could be vital – have you got that in place?
- Are all revenue streams insured in the event of a material loss?
- Have risk assessments been carried out on any new activities involving members of the public?
- Have you purchased any air pressure or lifting equipment for new projects? If so, do you have Engineering Inspection insurance?



⁴ <https://www.woodlandtrust.org.uk/blog/2018/01/farm-diversification/>



COLD CALLING

The Civil Liability Bill:
Why it matters

There is, perhaps, nothing more annoying than rushing to answer the phone only to hear an automated message asking whether you have been injured in a car accident.

This is just the tip of the iceberg when it comes to the problems that the Civil Liability Bill – otherwise known as whiplash reforms – aims to solve when it becomes law.

On 20 November 2018, the Civil Liability Bill passed through the House of Lords. The next step is Royal Assent, which will make it law. Politicians have long grappled with the Bill, which seeks to bring about reform in the process for whiplash claims.

Cold calling and exaggerated claims are rife in the UK

Whiplash is a common injury for motorists and passengers involved in collisions and other traffic incidents. The injuries can be minor yet receive payouts in the thousands. The compensation

culture around whiplash claims is common knowledge – as is the fact that many of these claims are exaggerated or even fraudulent. Despite a reduction in the number of reported road accidents, related Personal Injury claims are 50 per cent higher than a decade ago.⁵ Many blame this cultural issue for driving up the costs of insurance premiums.

A survey of over 10,000 drivers revealed that 63 per cent had received a nuisance call in the last 12 months, with 88 per cent of those affected stating that they had been called on multiple occasions.⁶ Following the news that the Queen's Speech, on 21 June 2017, made mention of the new legislation, one industry expert told The Telegraph, "The UK is the world capital for whiplash claims."⁷

What changes will the Bill make?

Under current legislation, claims for whiplash are often settled without any medical evidence. This presents problems for both insurers and claimants. If the claimant has not sought medical attention, then they do not have a proper understanding of their injury. This could prevent them from receiving the correct amount of money. It could also be detrimental to their health.

When insurers understand the severity of an injury, they can ensure that the claimant receives an appropriate sum. This may be stating the obvious, yet existing laws do not make this kind of provision for whiplash claims. The Civil Liability Bill will make medical evidence a legal requirement for whiplash claims, taking the guesswork out and putting common sense in its place.

⁵ <https://www.gov.uk/government/news/justice-secretary-unveils-new-bill-to-cut-car-insurance-premiums>

⁶ https://www.insurancetimes.co.uk/claims/civil-liability-bill-is-good-news-for-drivers/1428600.article?utm_source=adestra&utm_medium=email&utm_term=&utm_campaign=19889

⁷ <https://www.telegraph.co.uk/insurance/car/fake-whiplash-claims-crackdown-makes-queens-speech/>

As Simon Clarke MP put it in the House of Commons: *“The Bill is designed to make sure there is a closer connection between whiplash claims and medical evidence by introducing a ban on seeking or offering to settle whiplash claims without the appropriate medical evidence. That will discourage fraudulent claims, encourage insurers to investigate claims properly and protect genuine claimants from accepting a settlement without knowing the full extent of their injury.”*⁸

Changes will also be made to the small claims track, a court procedure for handling disputes of £10,000 or less in cases where there is a defendant. The lower limit currently stands at £1,000 for minor injuries. With the introduction of the Bill, this will increase to £5,000 for road traffic injury claims. This reflects the reality of claims for minor injuries – lower value claims can incur disproportionately high legal costs.

A fixed tariff system for whiplash compensation and a simple online process for claims registration are to be introduced alongside this legislation. This will mean a far more straightforward claims process.

The Personal Injury Discount Rate relates to a lump sum award for future losses. It should maintain claimants in the same financial position as they would have been without being injured, with the expectation that the award will be invested. The Bill will make changes to how it is calculated, with claimants viewed as ‘low risk’ investors rather than ‘no risk’ investors, to reflect the realities of investment and avoid overpayment. This is expected to have a positive knock-on effect for the NHS and other organisations with large Personal Injury Liabilities.⁹



⁸ [https://hansard.parliament.uk/Commons/2018-10-23/debates/08FEE407-6D41-4294-9098-DA400C53EB83/CivilLiabilityBill\(Lords\)](https://hansard.parliament.uk/Commons/2018-10-23/debates/08FEE407-6D41-4294-9098-DA400C53EB83/CivilLiabilityBill(Lords))

⁹ <https://www.gov.uk/government/news/justice-secretary-unveils-new-bill-to-cut-car-insurance-premiums>

Motor insurance premiums are falling

As well as reduced nuisance calls from predatory companies – or scammers that claim to be personal injury specialists – members of the public stand to benefit from a reduction in their motor insurance. It has been estimated that motor insurance premiums will be reduced by around £35 a year thanks to an estimated £1bn in savings for insurers, who have pledged to pass the savings on to their customers.¹⁰

According to AA's British Insurance Premium Index, the average quoted premium for a comprehensive car insurance policy has fallen by 9.9 per cent in 12 months and by 3.9 per cent in the third quarter of 2018.¹¹ Anticipation of the Civil Liability Bill is partly to thank for this reduction.¹²

This saving on annual premiums, along with a change in culture that is likely to encourage further reductions, will be particularly beneficial to people that depend on their vehicles to get around. Those that live in rural communities cannot rely on the cheaper option of public transport and should not have to bear the costs of a broken claims industry through paying more for their motor insurance.

A fairer system is on its way

For insurers, the Civil Liability Bill means that the cost of whiplash claims will be curbed, with less time spent processing claims for minor injuries too. As whiplash claims without medical evidence will be banned, fewer resources will be misspent on fraudulent claims.

"The Bill is fantastic news and represents a fairer system which balances care and compensation for genuine injuries while removing excess costs," said Rob Townend, managing director of Aviva UK's general insurance business. "The result will help to make motor insurance more affordable for us all."¹³

With the date for Royal Assent yet to be set, the circus of the whiplash claims industry will continue to rumble on, with thousands awarded for unevicenced minor injuries, until the Bill becomes an Act of Parliament. This could be as late as 2020.

However, the direction of travel is clear: cold calls, fraud and exaggerated claims will soon be replaced with transparency, accuracy and common sense. And, as motor insurance premiums continue to fall, it appears that the UK's image as the 'world capital' for whiplash claims is set to finally diminish.

¹⁰ <https://www.gov.uk/government/news/justice-secretary-unveils-new-bill-to-cut-car-insurance-premiums>

¹¹ <https://www.theaa.com/insurance/british-insurance-premium-index>

¹² https://www.insurancetimes.co.uk/claims/civil-liability-bill-is-good-news-for-drivers/1428600.article?utm_source=adestra&utm_medium=email&utm_term=&utm_campaign=19889

¹³ <https://www.insurancebusinessmag.com/uk/news/breaking-news/civil-liability-bill-rubberstamped-insurance-industry-reacts-116785.aspx>

FIRE, FLOOD AND NATURAL DISASTERS

Why land agents, farmers, estate
and land owners need to consider
catastrophe cover

2018 has been a year of extreme weather, from a cold and late winter to a record-breaking heatwave of a summer. Home and business owners should take steps to prevent building damage as a result of extreme weather conditions.

Following a freezing winter, memorably featuring the month-long 'beast from the east', the UK's summer of 2018 was the joint hottest on record according to the Met Office.¹⁴ For a six-week period between June and August, day time temperatures regularly topped 30 degrees Centigrade.

For some sectors, such as tourism, warm temperatures are a welcome change. But for home and property owners and many businesses, the sunshine can cause unexpected issues, such as subsidence.

With extreme weather predicted to continue as the effects of climate change set in, what can be done to minimise the impact to buildings?

The threat of subsidence

Subsidence has the potential to be a big problem for anyone who owns or maintains a building, whether domestic or for business.

If your building has subsidence it can be very expensive to resolve. Ignoring the problem could lead to the value of a house or office going down or the emergence of dangerous structural issues for families, tenants or employees.

Subsidence occurs when dangerously dry soil conditions result in a sudden sinking of earth.

It is particularly problematic for buildings built on clay and near trees, with the loss of moisture in the soil causing the earth to dry and shrink. This can even lead to movement in the building foundations, causing cracks and structural damage.

The issue is common in London where not only are buildings built on clay, but the city also generates its own microclimate, known as the Urban Heat Island (UHI) which often results in the centre of the capital being up to 10°C warmer than rural areas, aggravating the effects of a heatwave.¹⁵

¹⁴ <https://www.theguardian.com/uk-news/2018/sep/03/summer-2018-uk-joint-hottest-on-record-met-office-says>

¹⁵ <https://www.independent.co.uk/environment/city-countryside-urban-environment-temperature-heat-warmer-a8427446.html>

According to one report, UK subsidence claims have gone up by more than 350 per cent in the summer of 2018.¹⁶ This follows a subsidence surge in 2003 which saw 54,100 insurance claims.

The *Times* reported on the issue in August 2018, claiming that the heat had also led to sunken driveways and decking, fallen ponds, shifting walls and cracks in plaster – with insurers bracing themselves for a rise in claims.¹⁷

It also referenced that the Met Office's MORECS scale, which measures soil moisture deficit, was heading towards 'high risk territory'.

Whilst subsidence is generally included within building insurance policies there is usually a higher excess. If the building is in a high risk area, or there has been a previous subsidence claim, it is likely the insurers may charge a higher premium or refuse cover entirely. If your insurance provider is concerned about the risk of subsidence, they might insist on seeing a report from a Chartered Structural Engineer before agreeing to insurance cover.

You may consider underpinning your property; by strengthening the foundations underneath, the risk of subsidence is reduced and there is more likelihood of being insured. Conversely, partially-underpinning the property could incur further issues later down the line; reinforcing one problem area could weaken the rest of the property.

How can you spot and mitigate building problems caused by extreme weather?

House and building owners are being advised to be more vigilant in future and inform their insurance provider as soon as possible when they spot signs of subsidence or any hot/cold weather related damage. These include bubbling in wallpaper (not caused by damp), cracks in walls and sinking patios.

Is this a sign of permanent climate change?

A Met Office spokesman said: "The heatwave and lack of rainfall we experienced in summer 2018 were part of natural cycles in the weather which cause temperatures to be elevated far higher than normal. However, the risk of heatwaves is increasing due to greenhouse gas emissions."¹⁸

"Since the industrial revolution, global temperatures have risen by about 1°C, meaning that temperatures experienced in 2018's heatwave were higher than they would be without the additional effects of global warming."

The bottom line is that hot summers and wet winters are becoming an increasing threat to buildings in the UK. If you are concerned about the risk to a property you own or manage then seek impartial advice from your insurance broker to find out how you can mitigate the risk in the most effective way.

¹⁶ <https://www.propertycasualty360.com/2018/09/06/property-risks-beyond-wildfires-what-to-watch-for/?slreturn=20190014092603>

¹⁷ <https://www.thetimes.co.uk/article/subsidence-and-the-heatwave-what-impact-will-it-have-on-your-home-rws8tjkxw>

¹⁸ <https://www.theguardian.com/uk-news/2018/sep/03/summer-2018-uk-joint-hottest-on-record-met-office-says>

POLLUTION

Not only an environmental issue
but now a regulatory and legal
risk for farmers

Sharp rise in fines and increased legislation focuses minds in rural business

As the world becomes ever more aware of the impact of environmental damage, rural businesses should be assessing how their own activities could be adding to the problem.

By its very nature, farming has the potential to cause damage to the environment through pollutants, whether that is fuel, pesticides or even the storage of silage and milk.

Now, with increasing legislation in this field, the issue is not only a moral one but also a legal one with huge potential fines for those who fall foul of the law.

A report by the Environment Agency (EA) in July 2018 showed it is now handing out average fines of £147,575 compared with £23,731 in 2013-14.¹⁹

A wide range of national and international laws have also been developed to ensure companies and individuals can be prosecuted for damage caused to the environment.

In many cases, failure to comply with these standards can lead to other costs including clean-up fees, remediation costs or even, in extreme circumstances, imprisonment.

Despite this, not all farmers are completely aware of the damage that could be caused by gases, powders and liquids used in the business, or aware that they may be gradually poisoning the surrounding environment through leaking pollutants.

How common is damage from pollution?

The Environment Agency (EA) says thousands of pollution incidents are reported every year and many are serious.

The latest report published in October 2018, noted there were 419 serious pollution incidents in 2017²⁰ of which the farming sector was responsible for 68, waste management activities for 65 and water companies – 52.

There were also 14 fires at sites with permits that caused a serious pollution incident, 226 incidents of illegal large-scale dumping and more than 800 illegal waste sites that needed closing down.

Ground contamination, from oil and tars, asbestos, radioactive material and heavy metals (such as arsenic, cadmium and lead) was also reported.²¹

What punishments are being handed out?

Companies which pollute the environment are investigated by the EA and can also end up in court.

Fines worth £25.5m were handed out for environmental offences in 2017 – up from £8m in 2016.

“A guiding principle in environmental policy is that the polluter pays,” the EA said. “Where a company causes serious pollution it is right that it pays a serious price. That is why we welcome the stronger sentencing guidelines now being enforced by the courts. The record £20m fine imposed in 2017 for a series of very serious pollution incidents caused by a water company sends a clear and compelling signal that such events are simply not acceptable.

¹⁹ <https://www.thetimes.co.uk/article/fines-for-environmental-breaches-rise-sixfold-in-five-years-kxkwsifjw>

²⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748416/Regulating_for_people_the_environment_and_growth_2017_summary.pdf

²¹ <https://www.gov.uk/contaminated-land>

“We will always prosecute when a business causes severe harm to the environment. But court action is not always the right response, nor will it always repair the damage done to the environment. So, where incidents cause less serious damage we are making increasing use of enforcement undertakings, under which companies admit liability and make a financial offer to put right the damage.”

What else to consider?

Pollution comes in many forms. The EA says air pollution is the fourth biggest public health risk behind cancer, obesity and cardiovascular disease and costs the UK £20bn each year.

Agriculture, together with manufacturing, industrial processes and transport, is seen as one of the biggest contributors to poor air quality, which can affect natural habitats and ecosystems.

Ammonia emissions from intensive pig farming and poultry farms continued to rise in 2017. Additionally, emissions from bioaerosols – currently unregulated – are an emerging concern. These come mainly from intensive livestock housing and the use of manure and slurry. As the government consults on its Clean Air Strategy they may come under scrutiny.

Rural businesses have a duty of mitigation under environmental law – meaning they are required to take every possible action to minimise the extent of any damage and prevent it from growing. So, it is vital they understand the law and insure against all potential risks.

What kind of insurance is needed?

A specialist policy is preferable because many standard Public Liability policies limit cover to injury or damage caused by pollution from a sudden or accidental leak. That may not include damage brought about by a gradual leak of gases, powder, liquids or waste into the environment.

The benefits of Environmental Liability insurance

R K Harrison's Land and Estate policy extends to include Environmental Liability. It can provide the extra cover necessary and cover against:

- Site clean-up costs
- Clean-up of third party sites
- Investigation and defence costs
- Gradual pollution which results in Legal Liability claims
- Bio-diversity and environmental damage to protected sites and areas of scientific interest.



VALUATIONS AND THE ART OF DISCOVERY

It is a source of constant fascination that items of major art historical importance are still discovered from routine valuations. Every year, without fail, exceptional paintings, works of art, jewellery and even barn-find cars lost for generations are unearthed. The value of the appraisal itself therefore cannot be underestimated.

Valuation is, first and foremost, a comparative exercise of matching as closely as possible the object to be valued with previous examples appearing on the market; an objective discipline of price checking databases and factoring the current market conditions. However, the valuer must also consider subjective criteria, much in the same way as an antiquarian or collector would: authenticity, rarity, condition, provenance and, perhaps most subjective of all, the vagaries of contemporary fashion and taste. For this reason, hugely valuable items (that at first glance may appear fairly ordinary) can languish in collections, in certain cases unregarded, for generations.

Paintings

The following example encapsulates everything one would want to find: an undiscovered, unique work of art by a world-renowned artist in untouched condition from a private family collection. In 2010 Bonhams was asked to value a collection of paintings by the 19th century British artist Matthew Shepperson, for an Estate valuation pending sale. Among these works, there was a small portrait of a gentleman. From the outset, Andrew McKenzie, our Director of Old Master Paintings, believed it was not by Shepperson, but by the great 17th century master, Diego Rodriguez de Silva y Velázquez (1599-1660), and possibly portraying Juan Mateos, Philip IV's Master of the Hunt. Many months were spent consulting international experts and museums about the painting; technical analysis and an x-radiograph further confirmed the attribution to Velázquez. Having previously had a nominal value associated with it, the painting realised its true potential when it went under the hammer at Bonhams and sold for £3,000,000.

Motor Cars

Given their size, one would think that cars would be harder to forget about, and consequently owners would be aware of their potential value. Occasionally, however, we come across 'barn finds' that have 'hibernated' for decades. A 1929 Bentley 4½-litre, unearthed from a family barn after 30 years, sold at Bonhams Beaulieu in 2015 for £695,900. The vendor had found the car gathering dust in his

grandfather's garage. It was an incredible discovery: the chassis, engine, axle, gearbox, steering box numbers were all present and correct, and the interior still in original green leather. The vendor's grandfather purchased the Bentley in 1935 and was known to have used it for family holidays (complete with fitted tow bar and caravan) throughout the 1930s and 1940s.



Jewellery

Small and often hidden away, jewellery is one of the most important things to remember if you are considering having an insurance valuation. Currently coloured gemstones carry with them a considerable premium, and vintage emeralds from leading jewellers command strong prices. One of last season's most talked about emeralds caused somewhat of a stir when they went under the hammer at Bonhams London in April last year. The necklace, attributed to Hennell (one of Britain's oldest and most venerable jewellers), featured a double-sided cabochon emerald crescent, of Colombian origin, weighing 12.13 carats. It is thought that the extraordinary cabochon crescent in the pendant was an old-mine gem, originating from a much earlier Indian jewel. The necklace hailed from the private collection of Louise Stephens, wife of Michael Stephens, scion of the Stephens Ink family. After the 1930s and the death of their former owner, the pieces stayed in the family but were hardly worn. As a result, they were in exceptional condition. Greatly admired during the auction house's previews in New York, Geneva, Hong Kong and London, the necklace became the subject of a bidding frenzy, eventually selling for a total of £1,328,750 against an estimate of £150,000-200,000.



Chinese

Most of our clients are aware of the phenomenal increase in value of Chinese artefacts during the last 20 years, as collectors from the mainland China have set about repatriating major works of art that have resided in the West for the last three centuries. Bonhams has realized many multi-million pound prices for rare Chinese items over this period. However, there are still many less rare, but potentially undervalued, Chinese items in family collections. Last year, whilst on a routine valuation, our valuers were asked by the family as something of an afterthought to value a teapot which was still in occasional use for special occasions. It was a very good example of 19th century Yixing enamel ware. Estimated at £5,000-8,000, it surprised everyone when it fetched £47,000 in our Edinburgh salerooms.

Modern Chinese paintings of the mid-late 20th century period increasingly provide surprising buoyant results. We have seen many examples hidden in UK collections, collected by expats working in Hong Kong and the Far East in the mid-20th century, much the same as their forebears would have collected Ming porcelain. Today artists from this period, such as Zang Daqian and Fu Baoshi, can realise millions of pounds at auction. A rediscovered masterpiece by the Chinese master Fu Baoshi (1904-1965), *Spring Morning at Mount Shao*, painted in 1961 and unseen in public since 1968, led our Fine Chinese Paintings auction in Hong Kong. The painting made its debut at auction since it was acquired in Hong Kong more than half a century ago by a distinguished private British collector, and fetched HK\$2,740,000.



Whisky

All of these examples achieved exceptional prices, partly because of their rarity, condition and provenance. In the case of my final example, however, we have an item that has never been, and arguably will never be properly enjoyed, and yet collectors are currently prepared to pay six figure sums to acquire it. I am referring to rare bottles of whisky, which, as result of demand from China and the Far East, saw Bonhams set three world record prices in the space of the last year alone.

A bottle of the extremely rare The Macallan Valerio Adami 1926 60 year old sold at Bonhams Whisky Sale in Edinburgh last October for a new world record of £848,750. Amazingly, it broke the previous

world record Bonhams set five months previously when another bottle of The Macallan Valerio Adami 1926 was sold for £814,081. Although 12 bottles of The Macallan Valerio Adami 1926 were produced, it is not known how many of them still exist, and we can only hope they are stored away safely somewhere awaiting discovery.

The fascinating discoveries that professional valuations often provide are among the great pleasures of the job for myself and my colleagues. With a dozen offices across Great Britain, Bonhams' Valuations team provides our clients with the reassurance of a local presence backed up by our internationally renowned specialist departments.

Harvey Cammell

*Bonhams Global Director
of Valuations*



PRIVATE MEDICAL INSURANCE

Get access to healthcare
when you need it most



It's difficult to ignore the frequent headlines about the deepening crisis in our National Health Service. Waiting times for GP appointments at an all-time high; A&E targets not being met and mental health services under strain.

These challenges are compounded by our ageing population and the fact that more of us than ever before are living with multiple long-term health conditions, putting pressure on an already overstretched system.

The NHS undoubtedly does its best to meet growing demand for its services, but having to provide care against this backdrop and under growing financial strain can result in delays in getting a diagnosis and treatment. Subsequently some people are now considering the benefits of Private Medical Insurance (PMI) as an additional and more flexible option.

What is Private Medical Insurance?

Private Medical Insurance is an insurance policy that provides faster access to leading UK medical care and hospitals. PMI has changed in recent years in order that policies work to compliment and support the NHS rather than acting as a replacement.

For example, many policies include access to a Private GP so that an initial period of worry from feeling unwell and waiting to see your GP is eliminated and you are referred to a specialist, if required, more quickly. Some medical policies can also provide the ability to get second opinions and in some cases will offer access to the most expensive cancer drugs.

What are the features of a PMI policy?

The features of your policy will depend upon the level of cover you choose but could include:

- Specialist referrals to get a second opinion or specialist treatment
- Reduced waiting times
- Choice over your surgeon and hospital
- Option to stay in a private room
- Access to physiotherapy
- Specialist drugs and treatment may be available.

Do you need PMI?

You don't have to take out PMI – but if you don't choose to use the NHS, you might find it hard to pay for private treatment without insurance, especially for serious conditions. PMI lets you take control of your healthcare and gives you a choice in the level of care you receive and how and when it is provided. It can also offer peace of mind that you have something in place should the NHS be unable to help.

How much does PMI cost?

The cost of your PMI premium will depend upon a number of factors – such as your age, location, and medical history.

Access to private cover can be expensive but there are ways that you may be able to reduce the cost. You could choose a scheme that offers full inpatient treatment but only limited outpatient care, and no extras. Alternatively, you could opt for a voluntary excess on claims, like on your car insurance, which reduces your premium without cutting the cover. Another option is to take out a policy that will treat you only if the NHS waiting list for your condition is more than six weeks.

What's the best way to organise PMI?

You may choose to arrange cover yourself and there are plenty of websites out there which can help. If you take this approach, it's important to check:

- the terms and conditions offered
- the type of cover you're buying
- any limitations of the policy
- the cost of the insurance premium.

With so many options available to you, you may prefer to get professional advice. Medical insurance brokers are experienced and know all of the different providers and understand the product in all of its complex intricacies. They'll be able to research the market on your behalf and give you information about the most suitable cover to meet your individual health needs.

Reviewing your existing PMI

In the same way that it pays to shop around for your car or home insurance, the healthcare insurance market is also competitive and constantly changing. So if you have PMI in place, it's sensible to review your policy annually to check you're covered for the things you need, and aren't paying for things you don't.

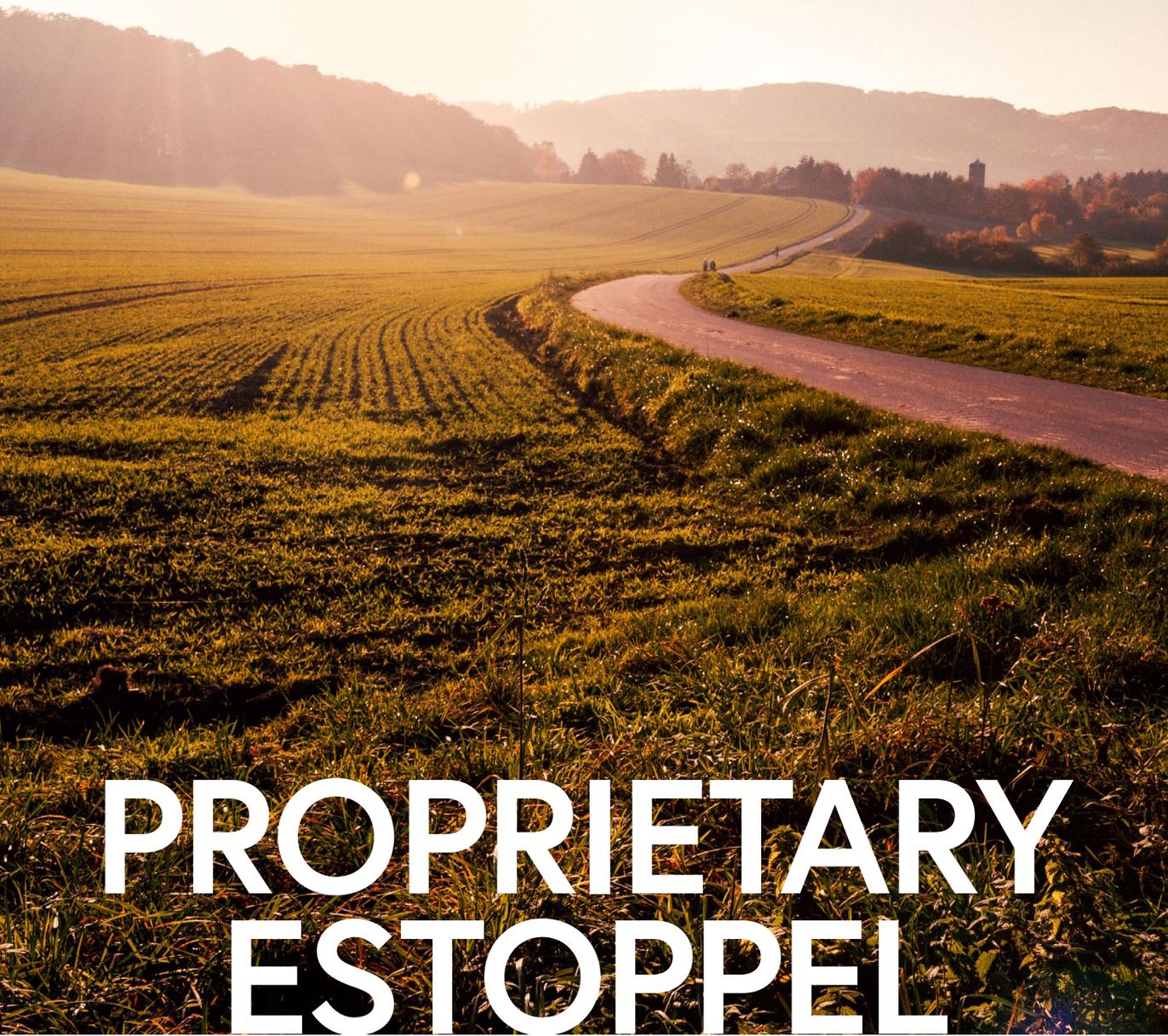
Here are some simple questions to ask yourself:

1. When was the last time you reviewed your PMI arrangements?
2. Do you know what you are actually covered for?
3. And knowing that, does this level of cover continue to suit you and offer you what you need?
4. Are you covered for a private room in hospital should you require treatment?
5. Could you reduce your premium without reducing your cover?
6. Does your health cover provide you with any other benefits?

If you're not sure of the answers, then it's probably time for a review.

Richard Gould

*Director of Commercial, Punter
Southall Health & Protection*



PROPRIETARY ESTOPPEL

"One day this will all be yours" –
Was 2018 the year of proprietary estoppel?



Over recent years there has been an increase in high profile court claims involving farming families where the son or daughter has brought a court claim alleging that their parents have failed to honour promises made to them about passing down the farm. 2018 was no exception with a number of high profile claims hitting the headlines and making it a bumper year for such claims.

These claims are based on the legal principle of proprietary estoppel and they all highlight the importance of good succession planning. The classic example of a proprietary estoppel claim is when mum or dad say to their children 'one day this will all be yours' and as a result the child relies on the promise and stays at home to work on the farm. Proprietary estoppel is a form of claim which seeks to 'stop' the property owner from going back on the promises they have made.

There is a three stage test which needs to be satisfied in order to bring a successful claim:

1. A promise or assurance must have been made
2. The person the promise was made to must then rely on that promise
3. In relying on the promise they must have acted to their detriment.

This article looks at a few of the recent cases which have caught our attention over the past year and illustrate the importance of farming families putting in place plans to avoid arguments over succession ever arising.

Habberfield v Habberfield [2018] EWHC 317 (Ch)

The daughter claimed she devoted her working life to the farm on the basis she would eventually take over the reins when her father retired. She claimed she worked long hours, on a low wage and with few holidays.

The daughter argued that her father in particular had made a number of promises that she would inherit the farm. Following a family dispute in 2013, the daughter left the farm. When her father sadly died in 2014 he left the farm to his wife.

The judge found that various statements had been made over an extended period of time and they amounted to a promise involving the transfer of property. The judge did not however accept it should amount to the entire farm.

The Court considered what the daughter would have done in the absence of the promises made by her parents and concluded that she would have gone on to build her own successful farming business and so should be awarded what she was promised i.e. enough for a viable farm. The daughter was awarded £1.17m in cash.

This of course, would mean rise in premiums. Some commentators predicted additional costs to motorists of 10-20%.

Moore v Moore [2018] EWCA Civ 2669

The father had owned and run the farm in partnership with his brother since 1966. His son lived in a bungalow on the farm and had worked on the farm since childhood. The son became an equity partner in the farm in 2003.

In 2009 the relationship between the son and the parents broke down and in 2012 the father purported to dissolve the partnership.

The son was able to rely on proprietary estoppel. He had relied on the promise and committed his life to the farm as a consequence. He had not taken any steps to explore alternative careers and had worked for low rates of pay on the understanding that he would inherit the farm.

The son was awarded his father's interest in the farm, the partnership, and the farm assets (including the farming assets of the Company). The judge found that the father's interest in the partnership extended to his current account, his share of the Company's cash and profits and his director's loan account.

In return the Court has ordered the son pay a lump sum to his parents to make adequate provision for the remainder of their lives. This is to recognise the fact that had the family relationship not broken down then the parents would have continued to live on the farm and have a share in the farm business for the remainder of their lives. There will be a further hearing to decide the lump sum amount but a guide of £1m to £2m was given by the Court of Appeal.

Gee v Gee & Anor [2018] EWHC 1393 (Ch)

This claimed concerned a family farm in Oxfordshire valued at £8m.

The eldest son worked on the family farm from the 1970s through to 2016 when he was dismissed for gross misconduct. Following a family fall out the father transferred all of his property and holdings to his second son.

The eldest son claimed that he had been promised the farm land and his father's share in the business (which included farming the land and letting properties). The son argued that the transfer to the second son was unfair and he should have received a controlling share in the farm business.

The son was successful in using proprietary estoppel and was awarded controlling shares in the business of 52%. He was also awarded a 46% share of the land. His two siblings were awarded interests in the remainder.

These cases are a good example of what can happen when there is not proper planning in place for passing the farm to the next generation. It is obviously sensible for families to be open, transparent and consistent with each other when discussing plans for succession. These are difficult conversations but it is much better to be up front and face the difficult decisions rather than put them off. Not documenting properly the plan for succession or a delay in dealing with the problem of succession completely, invariably makes the problem much worse. As the above cases show, it can lead to expensive court cases which cause huge damage to the businesses concerned and also destroy family relationships. Proper planning can avoid all of that.

Edward Venmore

Head of Farms, Estates and Rural Land team at Foot Anstey LLP

Danielle Spalding

Associate at Foot Anstey LLP



CONTACTS



Patricia Jones
Executive Director - Head of Rural
+44 (0) 1234 408 640
+44 (0) 7771 531 801
pat.jones@rkharrison.com



Giles Wood
Divisional Director
+44 (0) 1234 311 209
+44 (0) 7767 318 322
giles.wood@rkharrison.com

NORTH AND SCOTLAND



Tim Slinger
+44 (0) 1748 900 703
+44 (0) 7951 519 483
tim.slinger@rkharrison.com



Laura Mitchell
+44 (0) 1738 234 019
+44 (0) 7720 095 602
laura.mitchell@rkharrison.com



Tim Coulson
+44 (0) 7706 299 776
tim.coulson@rkharrison.com



Marcus Braithwaite-Exley
+44 (0) 7710 704 110
marcus.be@rkharrison.com

SOUTH AND WALES



Ian Berry
+44 (0) 20 3435 6269
+44 (0) 7785 387 245
ian.berry@rkharrison.com



Jeremy Mitchell
+44 (0) 1234 298 342
+44 (0) 7930 830 301
jeremy.mitchell@rkharrison.com



Freddie Braithwaite-Exley
+44 (0) 1234 305 555
+44 (0) 7706 299 768
freddie.be@rkharrison.com

Using a broker such as R K Harrison, who have in-depth knowledge of the rural industry and who can access a wide choice of insurers, is a sensible step to finding the right cover at a competitive price.

If you would like more information on any of the topics featured in this edition of Cadre or to find out how R K Harrison can help you with your insurance please contact us on +44 (0)1234 305555 or email enquiries@rkharrison.com.
