

## Our summer legal update for the rural community

p4  
What's on guide for the summer  
and beyond

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p4  
Biodiversity net gain

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p6  
The benefits of first land  
registration

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p12  
The booming role of technology  
in the UK dairy industry





# Welcome to *Rural News 2024 Summer Edition*

As trusted advisors to many farmers, landowners and estate managers across the South West and further afield, we are well placed to help you stay informed on the legal matters that matter most to you.

Having legal advice from a law firm that genuinely understands the rural sector and the region – and who will proactively highlight new commercial opportunities for you – has arguably never been more important. Stephens Scown's specialist Agriculture and Rural Affairs team is on hand across the region to help you get your new projects off the ground while protecting your assets.

This edition, we look at the hot topics affecting rural businesses, including all you need to know about how the new regulations for biodiversity net gain will affect you, the benefits of ensuring your land is registered, the booming role of technology in the UK dairy industry and the common pitfalls of Partnership Property, as well as employment law and regulatory and compliance updates.

We also introduce two partners in our Agricultural and Rural Affairs team, Sarah Atkinson in our Family team, who specialises in advising business/farm owners on the protection of assets from the impact of relationship breakdown, and Sarah-Jane Williams-Cole, who acts for a range of clients including businesses and private individuals who require assistance through the complex planning process.

If you have any questions regarding the topics we cover, please do not hesitate to reach out to us. Our team is always available to provide guidance and legal advice.

Thank you for your continued trust and support.



**Phil Reed**  
Head of Rural



## WORKING WITH YOU



- p3 **Welcome**  
Our head of rural Phil Reed introduces our Rural News 2024 summer edition.
- p4 **What's on guide**  
Key events over the summer season which members of our rural team will be attending.
- p10 **Meet Sarah Atkinson**  
Sarah Atkinson from our family finance team talks about her role and advice for farmers.
- p11 **Meet Sarah-Jane Williams-Cole**  
Sarah-Jane Williams-Cole from our planning team talks about her role.
- p15 **Rural team sheet**  
A takeaway team sheet with contact details for all our key rural legal advisors.

## INSIGHTS



- p4 **Biodiversity net gain**  
Find out what biodiversity net gain is and its impact on landowners.
- p6 **The benefits of first registration**  
Why you should check if your land and property is registered.
- p7 **What does an employment contract need to include?**  
Why you should check your employment contracts for your employees and workers.
- p8 **Regulatory Compliance and Enforcement**  
Steve Panton provides cautionary tales and shows how we have helped clients.



- p12 **The booming role of technology in the UK dairy industry**  
Increased use of technology requires farmers to review their contracts.
- p14 **Partnership property**  
A look at the common pitfalls when owning property for business purposes.



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# WHAT'S ON GUIDE

Members of our rural team will be attending all of these shows and events. Come and meet us!

16 - 18 May 2024

## DEVON COUNTY SHOW

30 May – 1 June 2024

## ROYAL BATH & WEST SHOW

6 - 8 June 2024

## ROYAL CORNWALL SHOW

15 July 2024

## STITHIANS SHOW

1 August 2024

## HONITON AGRICULTURAL SHOW

8 August 2024

## OKEHAMPTON SHOW

15 August 2024

## CHAGFORD AGRICULTURAL AND HORTICULTURAL SHOW

22 August 2024

## HOLSWORTHY AND STRATTON AGRICULTURAL SHOW

23 - 24 November 2024

## CORNISH WINTER FAIR INCORPORATING WADEBRIDGE PRIMESTOCK SHOW

December 2024

## TRURO PRIMESTOCK SHOW



## BIODIVERSITY NET GAIN – AN INTRODUCTION FOR LANDOWNERS

### What is biodiversity net gain (BNG)?

To secure planning permission, all new developments must be able to demonstrate a 10% increase (“net gain”) in biodiversity. An ecologist will calculate (using a model produced by Defra/Natural England) the existing biodiversity value of the potential development site. The developer must then submit a plan to the local authority showing how it will deliver 110% of that biodiversity value after the development is completed, and maintain that biodiversity for a period of at least 30 years.

The required 10% net gain in biodiversity can be delivered on the development site itself, but in many cases some or all of it will need to be delivered somewhere else – it is this “off-site” delivery of BNG which brings potential opportunities for farmers and landowners. As well as the 10% net gain, off-site improvements in biodiversity will also often be needed to compensate for the destruction of some of the development site’s existing biodiversity, as developments like housing estates will often significantly reduce on-site biodiversity by covering large areas with concrete and tarmac.

### How does off-site BNG delivery work?

To establish an off-site BNG project, three things are needed:

- 1. Ecological appraisal** – an ecologist evaluates the existing biodiversity of the project site, creating a management plan to enhance biodiversity over the baseline, sustained for 30 years.
- 2. Legal commitment** – the landowner establishes a legal agreement, typically with the local authority or conservation groups, committing to implement the ecologist’s plan and ensure biodiversity improvements for at least 30 years.
- 3. Buyers** – developers, generally working in the same local authority area, purchase “biodiversity units” generated by increased biodiversity on the project site.

Some landowners are choosing to do this themselves – taking all of the risk, but also all of the reward if everything works out. There are also a range of companies operating in this sector who will partner with landowners to deliver off-site BNG in exchange for a slice of the rewards. There are several different models for this sort of partnership, and the right one will depend on a particular landowner’s attitude to risk and how involved they want to be in delivering the BNG.

### What are the potential benefits?

Apart from improving the environment, the most obvious benefit is the revenue generated through the sale of the biodiversity units. As with more familiar options like renewable energy, holiday letting and campsites, BNG may offer landowners a way of diversifying their businesses, and perhaps also a means of generating a meaningful income from marginal land which is otherwise unproductive.

At present, it is difficult to say what sort of figures may be achievable as the market for BNG is very new. Some eye-watering numbers are being thrown around by companies seeking to partner with landowners to generate off-site BNG – tens of thousands of pounds per acre, and so well in excess of the value of the land itself. Whether this proves realistic remains to be seen, and the revenue from selling biodiversity units also needs to be set against the likely reduction in the land value.

### What are the potential risks and drawbacks?

As this area is so new, it is difficult to say for certain, especially given that BNG projects need to last for at least 30 years. However, the following are worth noting:

- 1. The market for BNG is artificial** – biodiversity units currently have value because government policy means that developers must provide BNG. If the government changes its mind, the value of biodiversity units could collapse overnight. The agricultural sector is well used to this, given the previous abolition of similar artificial commodities like milk quota and BPS entitlements. In particular, this could happen if the cost of delivering BNG is flagged as causing a further increase in already sky-high house prices, or if the government becomes more concerned about food security and so looks to increase food production.

**2. Costs over 30 years** – the revenue from the generation of BNG comes very early on, when the biodiversity units are sold. That sounds like a good thing, but it needs to be set against the fact that the habitat improvements has to be maintained for at least 30 years – it is therefore critical that enough of the revenue is set aside to cover the ongoing costs, or some other plan is put in place to fund them. However, landowners must be aware the improved biodiversity have to be maintained throughout the 30 year period even if that proves more expensive than anticipated (and even if the cost ends up exceeding the revenue from selling the biodiversity units). That could be because of significant inflation, or climate change making everything more difficult and expensive, or from a simple miscalculation of what the costs would be (including a scenario where habitat improvement works fail and have to be redone).

**3. Insolvency** – if the landowner partners with a third party to deliver the BNG project, care needs to be taken to safeguard the landowner against that third party going bust or disappearing. Take a scenario where the third party keeps a substantial proportion of the proceeds of the sale of the biodiversity units in exchange for agreeing to carry out the habitat management across the 30 year period. If that third party then goes bust, the responsibility for managing the habitat will fall back on the landowner, but the cash kept by the third party to fund the management may have disappeared. There are several ways of avoiding this issue, but it needs to be considered with real care and I recommend you seek legal advice.

**4. What happens at the end of the 30 years?** It is naturally very difficult to guess what the political environment will be like in 30 years’ time, but one realistic possibility is that significantly more stringent environmental protections will have been put in place. It may then be very difficult to return the BNG project site to productive agricultural use. There is even a concern that the environmental improvements made to generate BNG could lead to some sites being designated as Sites of Special Scientific Interest or similar, which would drastically curtail landowners’ freedom to manage them in the future.

**5. Landowners’ own need for BNG** – the need to demonstrate a 10% net gain applies to all planning applications, including things like new farm buildings and infrastructure. Landowners need to be careful not to sell all of the potential BNG on their land, only to then discover that they need some themselves to secure their own development plans.

**6. Tax** – as ever when generating new streams of income, advice should be sought from an accountant or tax advisor to ensure that the project is structured as efficiently as possible, and to ensure that there are no unwelcome tax surprises.



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## THE BENEFITS OF FIRST REGISTRATION



Many assume that all land is registered. This is incorrect. According to His Majesty's Land Registry, as of September 2019, 13% of land in England and Wales remains unregistered. It is hoped that by 2030, the Land Registry will have achieved comprehensive registration. The benefits of doing so are explored in this article.

### Ownership of registered land

The ownership of registered land is officially recorded on the digital database of the Land Registry. Once registered, a piece of land is assigned a 'title number' which serves as an individual identifier. Each title number has its own 'register of title' which provides details of the land and estate, the proprietor(s) of the land, any charges or matters that affect the land and the class of title. A 'title plan' accompanies the register of title, this is a plan that maps the boundary of the area of land in the registered estate, using Ordnance Survey mapping software.

### Ownership of unregistered land

The ownership of unregistered land relies upon possession of physical, paper documents that chart the chain of proprietors. Amongst these pre-registration documents, some of which may be very old, there should be the 'root of title'. This is the deed to which title to a property is ultimately traced to prove that the owner has 'good title' and will ultimately permit the property to be registered in the proprietor's name.

Since 1990, all land that has been sold, gifted, or mortgaged ought to have been registered. If your land has not been subject to one of these 'triggering events', chances are that it could be unregistered. Given that Cornwall is a predominantly rural area of the country, land has not changed hands or been subject to triggering events at the same rate of rather more urban areas. As such, there remains a sizeable amount of unregistered land in the County. However, this amount is constantly decreasing.

### Land Registry

If your land is registered with the Land Registry, there is clear, accessible proof of your ownership. This brings with it certain benefits. Should you wish to mortgage, sell, grant a lease, enter into an easement or transfer ownership for business restructuring or succession planning purposes, the process can be made easier, quicker and cheaper if your land is registered. Missing documents or poor plans can cause delays in the process of the transaction. Proprietors can very easily be unaware of such matters.

Additionally, it affords protection from property fraud given that the Land Registry require confirmation of identity before registering the transfer of property. For land that is registered, the Land Registry operate a 'Property Alert' service, for no charge. This notifies proprietors of any significant activity on the property being monitored. For example, if an individual is attempting to make an 'adverse possession' claim against a property. This makes it much harder for others to make a claim on your land, i.e., neighbours seeking to extend their boundaries or squatters making an effort to assert ownership of your property.

If your land or property is unregistered, be reassured that your ownership is of no lesser quality. Land being unregistered does not mean that it is without an owner, it just means that the details of the land (which includes details of the proprietor) are documented solely in physical documents and not centrally (and securely) logged on the database of the Land Registry.

Reliance on physical paper documents that can be damaged or lost brings with it a certain degree of worry. There have been instances of fire and flooding destroying deeds that are securely stored. In addition, there are, of course, numerous examples of individuals simply misplacing deeds.

As evidenced, leaving your land unregistered leaves it vulnerable to property fraud, risk of encroachment and potential adverse possession.

### Registering your land or property

The cost of registering your land or property depends on the value of the said land or property. However, the Land Registry offers a 25% reduction in fees for voluntary first registrations.

Should you wish to check if your land or property is registered, or you wish to commence registration, please do get in touch.



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## WHAT DOES AN EMPLOYMENT CONTRACT NEED TO INCLUDE?

It is important that you have employment contracts in place for anyone who is an employee or a worker. Then both parties (employer and staff member) start off on the right foot, being clear on the terms agreed between them to ensure a good working relationship and to guard against potential misunderstandings, plus employment claims going forward.

### When do you need to issue a contract of employment?

An employment contract should be issued on an employee or worker's first day of employment or beforehand.

Employers have a statutory obligation to give employees and workers a document that states their main conditions of employment when they start work, sometimes referred to as a 'section 1 statement'. A wider statement with additional information must be provided within the first two months of employment. The best way to achieve this is usually by way of a contract of employment.

Failing to do so can result in a potential breach of the obligation to provide a section 1 statement leading to compensation being awarded in Employment Tribunal proceedings, of 2 -4 weeks' pay (subject to the statutory cap, currently £700 per week). But, perhaps more importantly not being clear on contractual terms can damage the employment relationship. If you have failed to do this already, do not delay. It is better to issue a contract of employment now than not at all.

### What should an employment contract include?

These are the minimum terms we advise that you should include in a contract of employment:

- Name of employer.
- Name and start date for the employee or worker (including if any previous employment counts towards service).
- Terms of any probation period (or confirmation there isn't one).
- Their job title or description of duties.
- Their place of work if there might be different places of work.
- Salary – rate of pay, how it is calculated and intervals of pay.
- Hours of work. The days of the week the worker is required to work, and whether the working hours or days may be variable, including details of how they may vary such as working on Sundays, during the 'night period' or overtime.
- Terms and conditions relating to sickness, including sick pay, self-certification and delivery of medical certificates.
- Holiday entitlement including public holidays, when the holiday year runs and approval process. Whether holiday can be carried forward and entitlement on termination.

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It is important that you have employment contracts in place for anyone who is an employee or a worker. Then both parties (employer and staff member) start off on the right foot, being clear on the terms agreed between them to ensure a good working relationship and to guard against potential misunderstandings, plus employment claims going forward.

- Any other benefits provided to the employee e.g. accommodation and if this is provided you must ensure it is correctly documented so that staff do not have greater rights to occupy your property than intended. (Taking specialist legal advice is highly advisable.)
- Termination and notice periods for both employee and employer.
- Disciplinary and Grievance Procedures and where to find them, including how to appeal.
- Details of any pensions scheme. Your staff may be eligible to be enrolled into an auto-enrolment pension scheme and if this is a legal requirement, it is important you comply as an employer. It is important to get this right so ensure you speak to your accountant if you have any concerns.
- Any entitlement to paid leave (for example maternity leave and paternity leave).
- Any training provided which the employee/worker is required to complete and any other right to non-compulsory training provided by the employer.
- Details of any collective agreement (or confirmation if there isn't one).

### Are there enhanced rights for agricultural workers?

Agricultural workers that have been employed before 1 October 2013 may have enhanced rights under the Agricultural Wages (England and Wales) Order 2012, for example, enhanced rights to paid holiday, sick pay, on call allowances and breaks from work. It is important that you adhere to these rights otherwise you could end up changing your employees' contract without their permission, which could lead to a potential claim.



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## REGULATORY COMPLIANCE AND ENFORCEMENT – WHAT YOU NEED TO KNOW AND HOW WE CAN HELP?

Over the last 12 months there has been a noticeable increase in activity levels by the main UK regulators; conducting inspections, investigations and prosecutions where significant breaches of legislation have taken place resulting in actual harm or a risk of harm.

In this article, Steve Panton, who leads the firm's regulatory team, looks at the consequences of non-compliance and some examples of why things go wrong and explains how we have been able to help our rural clients.

### What is the cost of getting it wrong?

In the event of a successful prosecution brought by the Health and Safety Executive, Environment Agency, Food Standards Agency and Local Authority Environmental Health Departments, the Courts have unlimited sentencing powers in terms of the fines that can be imposed. There are other consequences that are less straightforward to quantify in financial terms, such as reputational damage, the impact of director disqualification and having a criminal conviction.

Fines are worked out by taking account of an organisation's culpability, the level of harm caused or harm risked, and their financial status. As an example, an organisation with an annual turnover of less than £2 million whose culpability in the context of a work-related accident was found to be "high" involving a high likelihood of a significant harm, would be exposed to a potential fine of over £100,000 excluding costs. Individuals convicted of a health and safety offence can receive a custodial sentence of up to two years.

Similar sanctions can be, and often are, imposed for environmental offences. Recent examples include;

- a 12 month custodial sentence and £600,000 prosecution costs order imposed on a Herefordshire farmer for undertaking non-permitted dredging and re-profiling of a 1.5km stretch of a river in a site of special scientific interest (SSSI), and
- custodial sentences of up to 30 months handed to individuals involved in a large -scale illegal waste operation at a Staffordshire farm.

### Why things have gone wrong and how we have been able to help

#### Health and Safety

**What happened?** A member of the public claimed to have been injured after coming into contact with cows with calves at foot at the client's farm. Warning signs had been put up but these were regularly vandalised or removed.

An investigation was undertaken by HSE and an Improvement Notice was served. Acting on our advice, the Improvement Notice was appealed.

**How did we help?** We successfully argued that there were no reasonably practicable alternatives to placing cows with calves in the field in question or offering other routes for rights of way users routes to follow. To minimise the risk of a future incident, the client agreed to monitor and replace warning signs more frequently and also committed to only letting cows with calves graze in the field that had established good temperaments.

We were able to persuade HSE to withdraw the Improvement Notice for technical reasons and, as a result of the prompt and effective remedial action taken by the client, also to agree not to serve a further Improvement Notice or take formal enforcement action in the form of a prosecution.

#### Environmental

**What happened?** The following is not an uncommon story. A farming client was approached by an individual who claimed to be the owner of a permitted waste transfer station and recycling operation nearby. The client was offered the opportunity of being provided with significant volumes of what was described as clean hardcore/construction waste to make good his farm tracks and also to receive a modest payment for each load.

No enquiries were undertaken by the client to make sure that the individual was a legitimate waste operator, there was an environmental permit in place for their site and also an exemption registered for the intended activities. The client also failed to check, or ask for documentation, to confirm the material's waste type and, importantly that it was clean and therefore free from hazardous substances.

**How did we help?** Shortly afterwards, the Environment Agency became aware of what had happened and established that the imported waste was heavily contaminated with asbestos containing materials. We then became involved.

The Agency initially suspected the client of deliberately accepting contaminated hardcore in return for payment. However, through written caution representations, the background and circumstances were explained to the Agency, who quickly accepted that the client should no longer be treated as a suspect.

The client subsequently provided a witness statement to the Environment Agency for use as evidence against the prosecution brought against the illegal waste operator.

The client was fortunate as he was able to recover the costs of removing the waste to a properly permitted site as part of the victim compensation order made by the sentencing judge. We raised the making of an application for a victim compensation order with the Agency at an early stage and collated the necessary evidence required for the Agency's application to succeed.

#### Food Safety/Food Hygiene

**What happened?** We were approached by the owner of a farm and farm shop who was being prosecuted by the Food Standards Agency. The client was alleged to have committed multiple food safety offences associated with the sale of a dairy product.

The prosecution's case was that the client's offending was deliberate, occurred over a substantial period of time and had caused a serious health risk.

**How did we help?** We went on the record for the client and, following analysis of the evidence, we challenged the basis of the Food Standards Agency's case.

As a result of undertaking focused lines of enquiry and gathering further evidence, we were able to persuade the Food Standards Agency to accept that the quality of only one small batch of the dairy product had been compromised and that the reason was due to a sudden, isolated and unknown, malfunction with the client's processing equipment.

Had the case originally advanced by the prosecution not been challenged, the sentencing guideline that would have applied (to the client) included the ability for the court to impose a custodial sentence of up to two years. Instead, a very modest fine was imposed.

Contacting us is the best way to make sure that you receive the advice you need if you have a compliance-related concern or are being investigated by a UK regulator.

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In the event of a successful prosecution brought by the Health and Safety Executive, Environment Agency, Food Standards Agency and Local Authority Environmental Health Departments, the Courts have unlimited sentencing powers in terms of the fines that can be imposed.



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MEET THE TEAM

# Sarah Atkinson

Partner in our Family Finance team

## Can you share with us a little bit about your role and a typical day?

First of all, I would say there is no typical day – which is partly why I love it! I work closely with junior lawyers in the team, check their work and have weekly co-working meetings to review our shared cases and actions needed. We go to client meetings together (the client only pays for me of course) and a junior lawyer is usually joined in on calls and Teams meetings so that they can be part of every stage of my cases and help do the follow up work and liaise with clients cost-effectively.

I also head up the specialist Family Finance team which involves running team meetings including knowledge sharing sessions where we all share legal updates and any nuggets we have learnt and discuss tricky issues we have on cases. I love running those because I think it is great that our team has such an open culture where people feel able to ask questions. This makes all of us better lawyers as there is always something to learn as a family lawyer.

## Why did you specialise in family law?

When I did my training I was clear in my mind I wanted to be an employment lawyer. Then I was put in the family team first and got totally hooked. The human side of family law is what appeals most to me. Even before I had a child, I could relate to everything my clients were going through in a way that reviewing commercial contracts all day would not draw me in. After trying a few other areas of law, I was clear this was the job for me, and I haven't looked back!

## What do you love most about your role?

Our amazing team! We have some brilliant people and I love working with them to collaborate on complicated issues and to help develop and support the junior lawyers. I also feel privileged to help my clients through one of the toughest times in their lives and to get to know their situation on such a deep level. I definitely feel like I go through it all with them rather than keeping a distance and I think my clients appreciate that.

## What do you think are the biggest challenges and opportunities for those seeking family law advice?

One of the biggest challenges is probably finding the right family lawyer in the first place – there is such a variety out there and people have different styles and abilities so if you don't have complete trust in your adviser, you should consider a switch. The internet is a complete minefield and there is no substitute for good and early legal advice to set you on the right track. There are lots of potential pitfalls – tax and other unforeseen consequences of actions being one – which people simply would not be aware of without advice.

For business owning clients, getting clear advice from the beginning is crucial so that they can get through the process as quickly as possible. For farmers, often the trickiest part is first working out who owns what. We often see land ownership which is not reflected in the partnership accounts and clarifying the background and intentions, particularly when wider family members are involved, is very important. It can be necessary for any family members who own part of the farm to take their own independent legal advice and intervene in the divorce if it is not agreed by all parties who owns what.

Therefore, involving your farm business consultant/accountant at the outset is crucial to ensure your lawyer knows the history of ownership and how things have been presented to HMRC and others.

## How do you spend your time outside of work?

Having grown up in rural Cornwall I love the outdoors and am a keen coastal path walker. I have a young daughter so spend a lot of time with her – we have a little dog, Indy, and love taking her for runs on Chapel Porth beach as well as out on the paddleboard! The summer is beach-based and then in the colder months I am obsessed with doing up my house and am a keen amateur interior designer. I also do yoga regularly to de-stress.

## If you weren't a lawyer, what would you be and why?

I used to think I would have liked to be a vet but it turns out I am completely squeamish so I think I'm in the right job!

## What does it mean to work for Stephens Scown, what makes us different?

Having worked at two other great firms in Bristol, this is by far my favourite and the work I am doing is the most interesting of my career. The people are brilliant and we have fantastic lawyers in our team.

With our sector specialisms it is great to be able to draw on expertise from colleagues who really know what they are talking about. When I am dealing with a farm, I know I have access to the most knowledgeable rural property and private client lawyers in Cornwall and we have an excellent network of rural professionals outside of the firm. That ensures I can draw on all of that expertise to feed into the approach we take in a divorce.

We work hard at Stephens Scown but also make time for people and for fun things including attending the County Shows across the South West.



MEET THE TEAM

# Sarah-Jane Williams-Cole

Partner in our Planning team

“

I deal with all aspects of planning; this can range from negotiating and completing planning obligations, to appealing refusals, advising on agricultural occupancy conditions, permitted development, preparing certificates of lawfulness or judicially reviewing a decision.

## Can you share with us a little bit about your role and a typical day?

I usually start the day by running through the to-do list with my trainee. I enjoy mentoring trainees and empowering them to run their own files under my supervision. Once work has been delegated appropriately, I then deal with my work in priority order, but this can often change, especially if we are instructed last minute on something with a tight deadline such as a planning appeal or an enforcement issue.

I have a wide variety of clients with a focus on the rural sector, the minerals industry, developers and providers of social housing. I deal with all aspects of planning, as a team we help to unlock development for clients and solve planning issues. This can range from negotiating and completing planning obligations, to appealing refusals, advising on agricultural occupancy conditions, permitted development, preparing certificates of lawfulness or judicially reviewing a decision.

I also head up the infrastructure team which deals with the planning, highway and utility agreements to enable developments to come forward. One of the reasons why I enjoy my role is because every day is different, planning law also constantly changes, so it is an area where you are kept on your toes.

## Why did you specialise in planning law?

I like the variety of work and the clients I act for. It is also an area where we get to work collaboratively with other teams, such as carrying out the planning due diligence for large purchases and getting any planning concerns dealt with prior to completion. It is an area which is constantly evolving with legislative changes, and I enjoy updating clients and looking at ways clients can prepare in advance. No day is ever the same.

## What do you love most about your role?

I love my team and the people I work with. It makes coming to work an enjoyable experience and I am lucky to have colleagues who are friends. The work is often challenging which makes the results for clients more rewarding. I particularly enjoy seeing the end results, the developments built out and knowing that we helped to make it happen.

## How do you spend your time outside of work?

I enjoy spending my time with my husband and daughter, making memories. We like to take advantage of the beautiful beaches and gardens we have in the South West and spend as much time outside as we can, when the weather permits us to do so! I enjoy UK family adventures as well as holidays abroad and socialising with family and friends. My weekly swim in the sea throughout the year also helps to reset me each week. The colder months can be a challenge, but they are more invigorating, which gives me a heightened sense of achievement. A good cup of tea and my hot water bottle are always waiting to warm me up afterwards which also helps!

## If you weren't a lawyer, what you be and why?

I worked in banking and qualified as a teacher prior to becoming a lawyer. Out of those two professions teaching was more personally rewarding. I have always had a passion for history, current affairs and politics so I could have seen myself working in the Palace of Westminster as an alternative; but I am pleased I opted to stay in the South West.

## What does it mean to work for Stephens Scown, what makes us different?

Stephens Scown has been at the forefront of positive change in the legal industry. Stephens Scown became the first large law firm in the UK to be employee owned. We are all one team with a one firm attitude, and it really makes a difference, not only to our clients but also to everyone who works at Stephens Scown. The firm became a Certified B Corporation, the first law firm to achieve this in the South West. B Corp demonstrates the firm's ongoing commitment to balancing people, planet and profit. This is something that matters to me and I am fortunate to work for a firm that cares.

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Planning is an area which is constantly evolving with legislative changes, and I enjoy updating clients and looking at ways clients can prepare in advance.



## THE BOOMING ROLE OF TECHNOLOGY IN THE UK DAIRY INDUSTRY - LEGAL CONSIDERATIONS



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From AI-powered solutions to innovative data analytics, technology has become a prevalent element in modern dairy farming practices.

The dairy industry in the UK has experienced a transformative wave of technological advancements in recent years, reshaping operations and efficiency.

From AI-powered solutions to innovative data analytics, technology has become a prevalent element in modern dairy farming practices. In the rapid integration of technology into the UK dairy sector, the importance of robust contracts between dairy farmers and technology suppliers cannot be underestimated. These contracts govern critical aspects such as uptime guarantees, data provision and use, and service levels, ensuring seamless operations and safeguarding the interests of both parties.

### Technological Advancements in Dairy Farming

Below are just some of the technological advancements available in the UK dairy farming industry:

**Automated Milking Systems (AMS):** AMS, including robotic milking machines, have revolutionised the milking process. These systems can be programmed to select milking times that are best suited to the cows, reducing stress and improving overall herd health. They also provide real-time data on milk quality and quantity, aiding in better management decisions and enabling farmers to spot any issues quickly.

**Precision Livestock Farming (PLF):** PLF utilises sensors and monitoring devices to track various parameters such as feeding behaviour, activity levels, and health status of dairy cattle. This data helps farmers detect early signs of illness, optimise feeding regimes, inform sustainability and enhance breeding programs for improved productivity.

**Data Analytics and Management Systems:** Advanced software solutions enable dairy farmers to collect, analyse, and interpret vast amounts of data from multiple sources, including milk production, animal health records, and environmental conditions. By harnessing actionable insights, farmers can optimise operations, reduce waste, and increase profitability.

### Legal Considerations

Although technology can increase efficiencies, increase sustainability and profit – it is not without risk, and it is important to carefully review the terms of service with your software supplier to ensure that you know where you stand should something go wrong, and to protect your sensitive business information. Please see just some of the key considerations below:

**Uptime Guarantees:** once implemented, the aforementioned automated systems become an essential part of daily operations for farmers. It is therefore fundamental that any service contract with the system supplier includes uptime guarantees to ensure that the systems are operational for the majority of the time; minimising disruptions to farm activities. It is also important that any maintenance to the system is conducted outside of core business hours for the farmers. Any such contracts should clearly specify minimum uptime percentages and penalties for downtime exceeding agreed-upon thresholds.

“

As technology continues to revolutionise the UK dairy industry, dairy farmers should carefully negotiate and formalise contracts with technology suppliers to safeguard their interests.

**Data Provision:** With the proliferation of data-driven technologies, access to accurate and timely data is paramount for informed decision-making. Contracts should address data ownership, usage rights, accuracy and sharing mechanisms between farmers and technology suppliers. Farmers must ensure that they retain ownership of the data generated by on-farm systems and that suppliers adhere to strict data privacy and security protocols. In addition, it is vital for the contract to include warranties and indemnities about the accuracy of information or predictions and if artificial intelligence (AI) is used within the system, the risk of inaccuracies or “hallucinations” is even higher.

**Service Levels:** Service levels encompass the quality and responsiveness of support services provided by technology suppliers. Any contracts should clearly outline service level agreements (SLAs) detailing how support requests should be made, response times, resolution times and escalation procedures. SLAs should also define performance metrics and benchmarks for evaluating service quality, such as mean time to repair and resolution times for reported issues.

In addition, if you are collaborating with a university or a business on a project – the intellectual property position becomes even more important to review and consider. Collaborations can give rise to complex intellectual property positions, and it is therefore fundamental that you take specialist legal advice before commencing such endeavours.

By establishing clear terms and obligations, contracts can mitigate risk, disputes, and promote accountability in the implementation and maintenance of technology solutions on dairy farms.

In conclusion, as technology continues to revolutionise the UK dairy industry, dairy farmers should carefully negotiate and formalise contracts with technology suppliers to safeguard their interests, mitigate risks, and maximise the benefits of technological innovation in driving efficiency, sustainability, and profitability in dairy farming operations.



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# PARTNERSHIP PROPERTY



### What is Partnership Property?

Subject to any written agreements between the Partners, Partnerships are governed by the Partnership Act 1890 (“the Act”). Section 20 of the Act confirms that all property originally brought into the Partnership, whether by purchase or otherwise, for the purposes of or in the course of the partnership business, is defined as Partnership Property. This is a general principle that can be rebutted with evidence to the contrary.

It has been a longstanding principle that when purchasing property for the benefit and purpose of the Partnership, where there is no express declaration as to the ownership of the property, equity will usually assume that co-owners acquiring property for business purposes do not intend to hold this property as joint tenants but rather tenants in common i.e. their share in that property is distinct and will not pass automatically to the co-owners on death of an owner.

The recent case of Williams v Williams [2024]\* noted that reference to land in Partnership Accounts was not conclusive evidence that the land was Partnership Property. In this case, although the land in question was shown on the Partnership Accounts, it was held that this was as a result of the decision of the Partnership Accountant rather than an express instruction of the Partners and, as such, this fact did not form any express agreement between the Partners regarding the ownership of the land.

In this case the court expressed that it is likely to be wary of any statements relating to ownership of the property made after a dispute has arisen, but statements as to the ownership of the property made nearer the time of the acquisition are apt to provide relevant insight to the parties’ intentions at the time of the purchase.

### Who owns Partnership Property?

A Partnership is not its own legal entity; therefore, the Partnership cannot own the legal title to a property. Instead, the legal title to the property will be ‘owned’ by each individual Partner. The Partners will be named on the legal title but they will hold the property on trust for the Partnership.

It is up to the Partners of the Partnership to agree between them how the Partnership Property is to be owned.

### What happens if there is a dispute?

If there is a dispute regarding whether or not property falls to be Partnership Property, the court will first look to any written agreements between the parties. In the absence of that, the court will consider the following:

1. The circumstances of the acquisition of the property;
2. The purpose of that acquisition; and
3. The manner in which that property has subsequently been dealt with. See above comment to expand on this. For example, has the property been included in the Accounts, or have any express intentions been recorded at the time of the acquisition.

### How to protect your Partnership Property

Prevention is better than cure – a court will look to contemporaneous documents that show the parties’ intentions at the time the property was introduced to the Partnership – a Partnership Agreement allows you to set out your intentions and govern what should happen in the event of a dispute saving a lot of trouble in the long run. You can prepare a Partnership Agreement at any time.

Be aware of what property the Partnership uses and may own.

Check that your understanding aligns with that of your fellow Partners.

If a dispute is looking likely, seek early advice to understand your position and ensure you do not take premature action that could prejudice your case later. Please contact our Dispute Resolution team who will be happy to help.



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\*Williams v Williams [2024] EWCA Civ 42

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established relationship  
with farmers, landowners,  
and estate managers  
across the South West  
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