MILLS & REEVE

briefing

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When is a succession not a succession under the Agricultural Holdings Act 1986?

One uncertainty which has lingered for many years is the question of whether the consensual grant of a farm tenancy before 14 November 1976 (the date of coming into force of the Agriculture (Miscellaneous Provisions) Act 1976) counts as one of the two permitted statutory successions in the same way as would a similarly consensual grant of a tenancy after that date. Until now, there has been no direct case-law on this point, the only guidance being some obiter comments made by Jowitt J in *Saunders v Ralph* (1993) P & CR 335. His view was that 'successions' could be deemed to have taken place before the enactment of legislation which permits them.

In the recent case of *Kemp v Fisher & Others*, Mr Kemp's family had farmed Lodge Farm in Norfolk for a number of generations. Mr Kemp's father was granted a tenancy in 1973 which replaced his grandfather's 1947 tenancy. Mr Kemp was granted his tenancy in 1998. It was common ground that the 1998 tenancy counted as one of the two allowed successions. The question was whether the 1973 tenancy counted also; if it did, Mr Kemp's son would not have an opportunity to apply for succession on his father's death or retirement. Judge Raynor QC finding in Mr Kemp's favour concluded that the 1973 tenancy did not count. He summarised the commonly held view that: "If the statute is construed so as to apply to pre-1976 consensual grants, its operation would be capricious. Many families would have been entirely excluded from the statutory scheme because two voluntary successions had taken place years before the statutory right of succession had been conceived."

The result is that practitioners can now enjoy a degree of certainty in knowing that any handover which took place before 14 November 1976 does not count as a statutory succession for the purpose of the Agricultural Holdings Act 1986.

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