

Fatal Incidents involving cattle and the public

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Agricultural accidents continue to be a hot topic for the HSE, and have been identified as a core focus in their Sector Work Plan for 2019 to 2020. The HSE's statistics for the last year shed some light on why they keep a close eye on the agricultural sector: despite employing 340,000 people, which is less than 1% of the population, the agricultural sector accounted for over 20% of worker fatalities in the last year in Great Britain.

In 2018 - 2019, there were 39 fatalities in agriculture. Perhaps unexpectedly, fatal accidents involving livestock are the second biggest killer on farms, with 9 deaths resulting in 2018 - 2019.

Over the last 3 years of records, all 19 deaths involving livestock were attributable to cattle. The question then is how can the agricultural sector best manage cattle to avoid these incidents arising, and what steps should farmers take if there is the prospect of an investigation from the HSE?

HSE Guidance

The key point to draw from the HSE guidance (*Cattle and Public Access in England and Wales*) is that there is no "gold standard" that a farm must reach in order to protect itself from the risk of incidents.

The law requires that a farm does what is reasonably practicable to protect persons from being exposed to risk due to interaction with their cattle. This assessment should properly be done on a herd by herd basis as one size does not fit all.

What is practicable will depend on size of farm, the size/type of herd, the layout of the land, and even the resources the farm has. Examples of general steps that can be taken to manage this risk properly include:

- Where possible, keeping cattle in fields without public rights of way;
- Checking the safety of stiles, gates, fences etc.;
- Checking that paths and access routes are clearly marked;
- Considering signage at appropriate points if there is a bull or cows with calves;
- Checking the cattle and the surrounding fencing daily;
- Planning any cattle movements safely;
- Ensuring that cattle handling facilities are suitably robust, available and ready for use;
- Assessing temperament of any new animals to the farm; and
- Recording all of the above in a cattle diary in order to keep an eye on trends or behaviours.

Public Rights of Way

A number of fatal cattle cases each year involve public rights of way through fields. The HSE guidance suggests that before putting cattle in a field where there is a right of way, the following points should be assessed:

- The temperament of the cattle;
- Whether alternate routes of cordoned off/signposted paths could be used;
- Whether calves/any other factors will affect the behaviour of older cattle;
- The location of feeding/handling locations so cattle are away from public routes;
- The feasibility of co-operation if there is more than one party involved; and
- Can electric fencing be used to protect the public right of way.

In special circumstances a right of way can even be closed off, but this should be an option of last resort, and for as short a time as possible whilst other measures are put into place. This would only ever be acceptable as a temporary measure, for example after an incident or while moving cattle.

Lessons from our cases

DAC Beachcroft have dealt with numerous cases involving cattle fatalities during the last year. Two points that have arisen routinely in these cases are the impact of dogs and calves as triggers for cattle stampedes or aggression.

In the case of dogs, even those that know the cattle and live on the farm can trigger defensive behaviour, especially where the cattle have been attacked or worried by another dog recently. The importance of a cattle diary cannot be overstated, as it is crucial to record bite marks or the evidence of any livestock worrying, and take steps to assess whether that may have affected the cattle's temperament. Similarly, calves can also encourage protective instincts in cattle - even those considered docile. For example, we have encountered cases where Simmentals have caused fatal accidents due to negative interactions in the field.

In many cases we have successfully argued that many of the recommendations set out in HSE guidance are simply not practicable. Animal welfare dictates that farms need to rotate grazing which means it is often impossible to avoid grazing fields which have a public right of way across them. Thus far we have managed to avoid a farmer being prosecuted in the numerous fatalities we have dealt with. In recent cases a number of HSE Inspectors have made it clear that they are under pressure to take a tougher approach to cattle related incidents due to the number of serious injuries and fatalities that have not been reflected in the number of prosecutions brought.

Steps after an incident

If you do have an injury or fatality involving cattle, there are a number of steps that should be taken promptly to help with any future investigation, or defence of any prosecution.

Preserving and photographing the scene and identifying the relevant herd is helpful, and can make it easier to establish why the attack happened. Similarly, identifying the relevant cattle involved, where possible, can assist to narrow the potential issues to be covered in the case. If signage is in place it should be photographed. Details of any eye witnesses should be recorded so they can be approached to provide statements at a later date.

The main point is that if you have taken reasonable steps suggested in the guidance, preserved the scene and made prompt notification to your insurers and HSE if the incident is RIDDOR reportable, it is far easier to establish what happened, and assist you with representing your interests as effectively as possible. Obtaining prompt legal advice from specialist lawyers will assist in securing a better outcome.

If you would like further advice in relation to this topic, please contact Richard Ottley, Bridget Sanger or Stephen Sadler from DAC Beachcroft's [regulatory team](#).

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