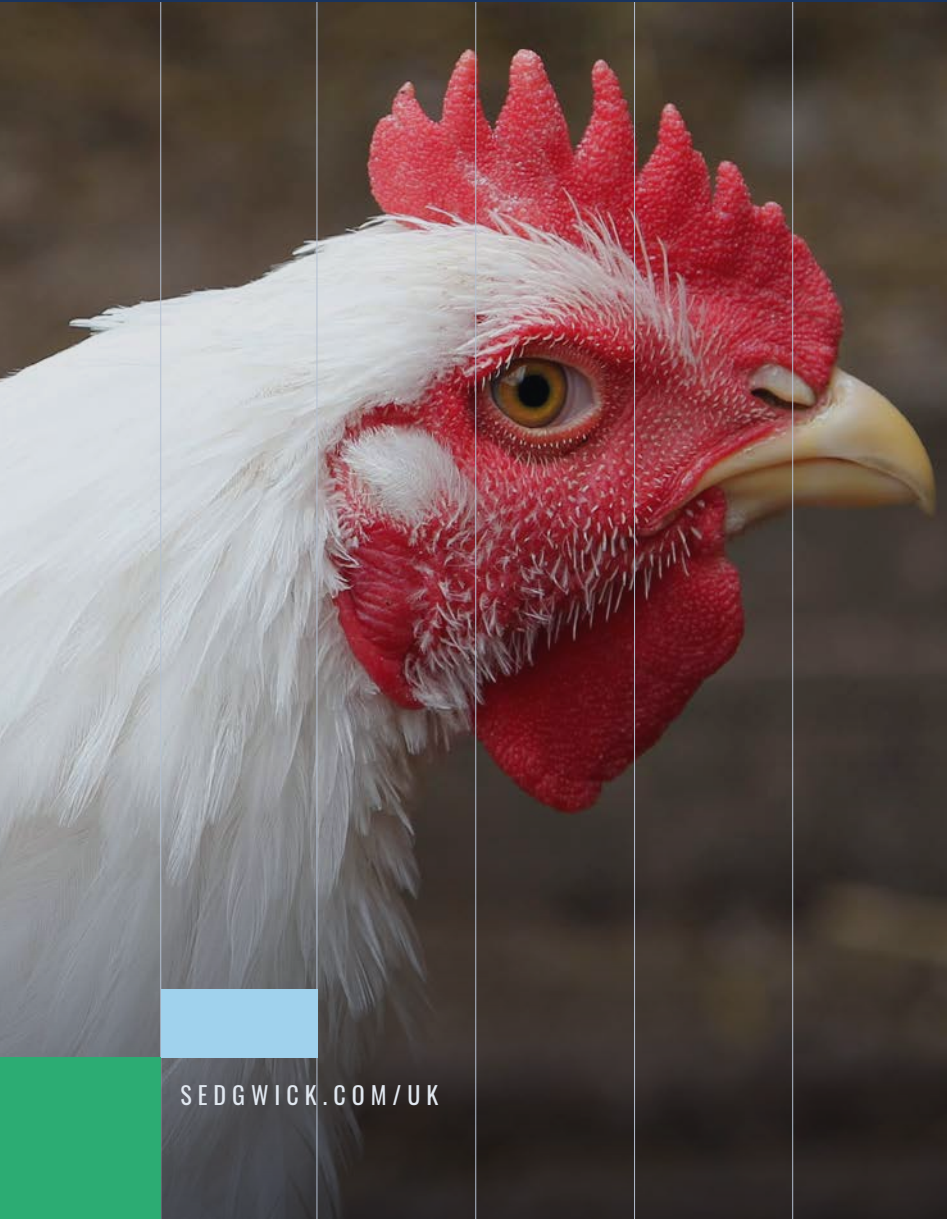




SUMMER 2023 | ISSUE 5

# ruralMatters



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## RURAL MATTERS

# Welcome

*With the news that June 2023 was the hottest June since records began, we're using this edition to explore several common themes as they relate to hot weather and global warming. You'll hear from some of our leading agriculture loss adjusting specialists, including David Orrell, Trish Plews and Graham Plaister, and we'll share a few pointers on loss mitigation to raise when talking to your customers about their risks.*

We also delve into how the national and global economic challenges are impacting fine art/valuables values, and discuss the adequacy of business interruption cover — crucial food for thought when helping clients set their insured values in the right place.

Last but not least, we are very pleased to present the first article from Sedgwick's new legal services team, on the emotive subject of Japanese knotweed and nuisance. The case law around this subject is continuously evolving; no doubt there will be further updates in future editions of our Rural Matters newsletter.

We genuinely hope you enjoy the articles we've chosen to share with you throughout this issue and, if there are any other areas you would like us to provide rural claims insight, please get in touch and we'll do our best to help.



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# World Meteorological Organization

*In May of this year, the World Meteorological Organization (WMO) announced that “global temperatures are likely to surge to record levels in the next five years, fuelled by heat-trapping greenhouse gases and a naturally occurring El Niño event.” (El Niño describes when surface water in the equatorial Pacific becomes warmer than average and east winds blow weaker than normal).*

The WMO have predicted a 66% likelihood that the annual average near-surface global temperature between 2023 and 2027 will be more than 1.5°C above pre-industrial levels for at least one year. There is also a 98% likelihood that at least one of the next five years, and the five-year period as a whole, will be the warmest on record.

The acceleration of rising temperature predicted within the next five years will cause increased frequency and severity of extreme weather events, such as storms and floods, along with heatwaves causing droughts and wildfires. Last year we saw a surge in wildfires throughout Europe, and the UK in particular. The UK’s July 2022 heat wave proved the extent to which we are often ill-equipped to deal with these types of weather extremes — many farmers struggled to adapt buildings that were originally designed to retain heat rather than repel it. Measures to acclimatise became insignificant as the spike in temperatures was simply too much for a number of livestock setups, causing loss of production and increased mortality.

Brazil also saw unprecedented drought conditions during the 2021/2022 growing season — the most severe in more than 100 years — which affected the main grain crop regions. Sedgwick’s agricultural team, led in Brazil by Frederico Domingues, were called upon by a large global insurer to handle their crop claims; they dealt with more than 5,000 large losses alone during the crop season across the various regions of Brazil. Some insurers in certain regions reached a loss ratio of nearly 600%, and the whole market showed a loss ratio of approximately 200%.

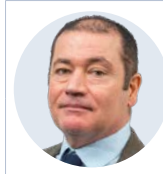
As the WMO predicts, the acceleration of temperature increases over the next five years could potentially alter the risk profiles of land-based activities. Rising temperatures, changes in precipitation patterns, and shifts in the distribution of pests and diseases affect crop yields and, therefore, the overall profitability of food and farming sectors. Insurers need to reassess and adjust their risk models to account for these changing conditions.



On a positive note for the UK: warmer temperatures could potentially increase the length of growing seasons, which could improve and increase production of crops like roots and leafy vegetables. However, the benefits of extended growing seasons would likely be outweighed by reductions in water availability longer term.

To be sure, rising temperatures over the next five years will increase the risks and uncertainties faced by farmers, leading to changes in the agriculture insurance market. Insurers are already adapting to these challenges by revising their risk

models and developing new products, particularly parametric products for crop and, more recently, livestock. Although there has been very little uptake in parametric crop insurance products launched in the UK in recent years, there will likely be renewed interest operating along indemnity-based insurance products.



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## CASE STUDY

# Make hay while the sun shines – incident details

*When it comes to hay and straw crops, spontaneous combustion is an all-too-common occurrence.*

Generally, a moisture content of higher than 20% is necessary to provide ideal conditions for microbiological activity, which can initiate a self-heating process within hay bales. If left undetected, this initial heating process will continue on an upward path and will later be supplanted by oxidation, leading to thermal runaway and ultimately ignition.

Below, Trish Plews provides a case study example that is typical of this type of incident.

In this instance, the incident took place at an agricultural building that housed 180 tonnes of barley straw and 295 tonnes of hay. The hay was cut and placed inside the building in late June or early July, which was approximately six weeks prior to the loss. There were no electrical sources in the building.

When the hay ignited, it caused a total loss of produce as well as the agricultural building it was stored in.

### Extent of damage

- Loss of 180 tonnes of barley straw.
- Loss of 295 tonnes of hay intended both for personal use and for sale.
- Total loss of two hay sheds and a livestock lean-to, and cosmetic damage to two surrounding buildings.

The moisture content of the hay was not measured prior to its harvesting. However, the policyholder advised that, on visual inspection, it appeared to be adequately dry.

Most hay fires occur within the first six weeks after baling. When produce is baled at a moisture content of above 20% it has the correct environment for the multiplication of bacteria. The bacteria in turn releases heat, which causes the bale temperature to increase; moisture temperature in the centre of the bale can increase to above 125 degrees Fahrenheit.

The higher the moisture content, the longer the bale can retain its high temperature, and the higher the temperature of the bale can reach.

Other factors can increase the chances of spontaneous combustion occurring, including the density of the bale and the air ventilation in the area surrounding the bales.

The policyholder had not completed mitigating factors, which resulted in the insured losing all their produce for the year, in addition to the lost income from the produce they would have otherwise sold.

The insured has opted to rebuild the damaged buildings apart from each other to reduce the chance of ever losing the full value of produce again.



## Issues the policyholder faced

- Delays in reinstatement due to contractor's prior commitments.
- Delays in receiving planning permission which would allow the lost buildings to be reinstated apart from each other.
- Struggles with replacing the lost produce when, due to weather being high, only the first crop took and not enough grass grew for a second or third crop.

## Conclusion

When harvesting hay, be sure to complete the following in order to mitigate the chance of spontaneous combustion:

- Ensure all hay is removed from the fields as soon as possible after harvesting, and that it is dry with a moisture level of less than 20%.
- Store hay and straw away from other buildings.
- Store hay and straw in stacks at least 10 metres apart with space between the top of the stack and electric roof lighting.
- Keep the hay dry in a watertight storage building or covered outdoors.



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# Poultry heat stress

*On 19 July 2022, a new UK record temperature of 40.3 degrees Celsius was recorded at Coningsby in Lincolnshire, whilst large parts of the UK experienced temperatures of more than 38 degrees Celsius over a 48-hour period.*



Providing heat stress cover for intensive livestock risks is the domain of a small number of specialist insurers and the focus in this field of niche cover relates to broiler chickens.

Cover is arranged on an income basis, with claims adjusted for savings and the major element being feed costs. Policies are usually subject to significant excesses, which may be as high as 50% of the adjusted claim value.

Broiler chickens are intensively reared, entering houses as day-old chicks and normally housed for between 28 and 38 days. With regards to heat stress, broiler flocks are particularly at risk during high temperature and high humidity levels. Birds are most vulnerable near the end of the cycle, when stocking densities are high, and the birds are close to their target weights.

During such periods of high temperature and humidity, birds will attempt to self-regulate their body temperatures. An early sign of heat stress is panting, which is done to expel warm moisture from the birds' airways and maintain their body temperatures at a comfortable level.

Other indicators include birds lifting their wings, looking to perch on cool surfaces, reduced activity and feeding intake, and greater water consumption. If a bird's body temperature increases by 4 degrees Celsius or higher, the bird is likely to expire.

There are several factors the broiler producer can implement to mitigate these risks. These include:

- Well-insulated poultry houses to prevent thermal solar gain and subsequent increased temperatures within broiler houses.
- Adequate air ventilation, with airflow of at least three metres per second surrounding the birds, using side, tunnel or roof-mounted ventilation systems.
- A lower stocking density strategy during the summer months; the Department for Environment, Food & Rural Affairs (DEFRA)'s welfare code states a maximum of 33kg per metres squared, extending to 39kg per metres squared, with extra requirements. Stocking densities during summer months could be lowered by approximately 10% to significantly mitigate the chances of heat stress losses.
- Misting systems to cool the birds, although when humidity levels are high, such a measure can be counterproductive.
- Thinning of birds to manage stocking densities during the later days of the broiler cycle. However, the process of thinning itself can in some circumstances induce heat stress and this process should be carefully managed.
- Alarm systems to notify the producer of ventilation system failure, combined with back-up generators. These are often policy requirements by endorsement.

Finally, when broiler sheds are depopulated, transportation of live birds to the processor should, if possible, be undertaken during cooler times of the day — although broiler producers are often at the behest of the processor in terms of delivery timing. In addition, stocking densities within transport containers should be appropriate

to give live birds adequate ventilation in transit, although such measures will also have an impact on costs borne by the producer or processor.

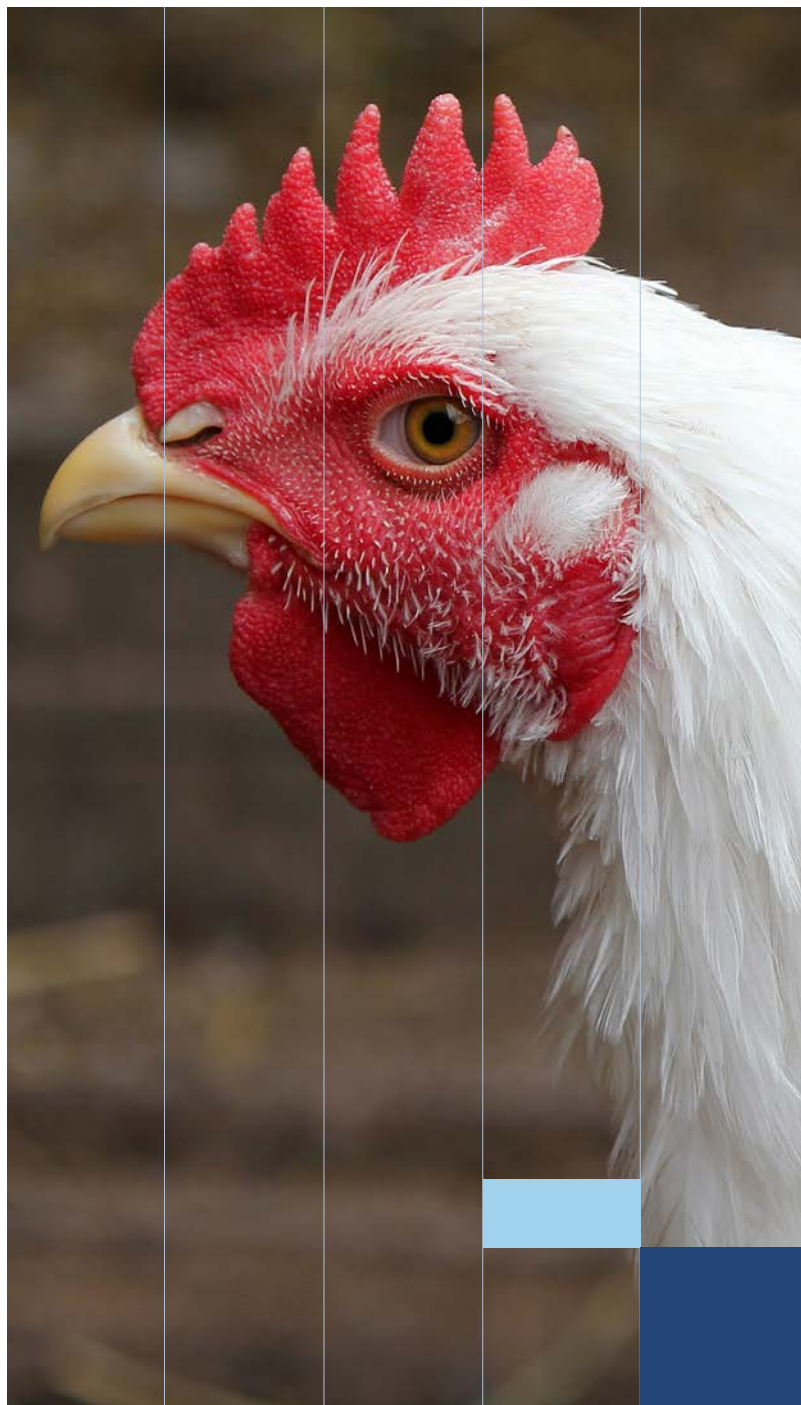


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## BUSINESS INTERRUPTION

# Recent global events and the **impact on coverage**

*We have seen an increase in the price of grains and seeds, driven largely by recent global pressures including the war in Ukraine and higher energy costs. In the UK, animal feed prices have increased by 15.6% over the last 12 months and cost of agricultural fertiliser has risen by 152%.*

Corn is one of the most widely consumed grains domestically and globally. Whilst the current price of corn is now recovering following an agreement between Russia and Ukraine which will allow Ukrainian grains to be shipped through the Black Sea, the current price of the grain is still remains very volatile predominately to the ongoing conflict. Poultry and pig farmers specifically have seen a significant increase in feed prices, which now make up nearly 70% of their total input costs.

These issues have led to concerns with the level of cover farmers have under their policies.

Underinsurance can occur when the declared gross income or gross profit is insufficient or if the indemnity period (maximum length of time the policy provides cover for) is too short. Whilst most agricultural policies are now on a declaration linked basis, policyholders should look to ensure their covers are sufficient and fit for purpose.

### Declared values

Generally, business interruption cover for farming risks is on an income basis. With the significant rise in the cost of seeds, grains and other inputs, many farmers have passed these costs on to customers, resulting in higher income. We have seen many instances where policyholders have been relying on historic declarations and not reviewing these figures at renewal.

Due to the rising costs of feed and fertilisers, many policyholders have also diversified their business activities and moved away from food produce. These new income streams need to be incorporated in the declared values and care should be taken to ensure that the new business activity is being covered under the policy.

## Indemnity periods

More than 75% of policies are on a 12-month indemnity period — in many cases, this period is too short. Following a loss, there could be significant rebuild times and long lead times for specific plant and machinery. Once reinstatement is complete, policyholders must allow time for the business to ramp up to pre-loss levels.

Livestock farmers, for example, could easily take 24 to 36 months to restock and to see income levels to return to pre-loss levels. Therefore, care should be taken in selecting the correct maximum indemnity period.

## What next?

When considering coverage for business interruption, policyholders should consider the key business risks, project forward considering expected revenue and costs, rather than relying on historic information. A regular review of the coverage should be completed on an annual basis, at minimum.



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# Fine art and valuables — are your sums insured adequate?

*We've seen the cost of living increase sharply across the UK since 2021: in October 2022, inflation was at 11.1% — a 41-year high — and the consumer price index (CPI) was at 10.1% as recently as March 2023. These inflationary pressures, combined with labour market volatility, mean we have all seen the impact on the price of goods and the squeeze on disposable income.*

Whilst it is easy to see the impact on weekly shopping costs and electricity bills, we are less likely to think about the cost of repairing, restoring or replacing the paintings hanging on the walls, tucked-away family jewellery or great granny's armchair. Obtaining the correct insurance cover on fine art, antiques, paintings, valuables and jewellery is so important — they are often cherished items not only for holding family memories and sentiments, but also because they have become the inflation hedge investment of choice.

Investors' growing demand has buoyed the market and, in some cases, created supply issues with items such as antique furniture and designer watches. So not only is it costing more to replace these items, there are often long waiting lists for designer brands and valuables. There has been a significant rise in the cost of restoration as well, as the specialist restorers are impacted by the increased cost of transportation, storage, energy and materials. The cost of restoring a specialist piece is often disproportionate to its full market value as, in addition to the stabilisation, cleaning and restoration costs, there are expert fees to



factor in for assessment and valuation, packaging, transportation and climate-controlled storage. If these items are insured under a general contents sum insured, this can eat into the cover available for all other household items.

For pieces of merit and value, it is therefore recommended that the items are specified under an insurance policy, so that the cover is 'ring-fenced'. Sums insured should be reviewed each year against the full market value/ replacement value and a professional valuation (including photos) obtained every three years (or as specified by your insurers) to ensure the level of cover is adequate and up to date. Safely keep all documentation of provenance and purchase. It is a good idea to photograph items room by room, which not only assists your loss adjuster but could help jog your memory if ever in the unfortunate circumstance of compiling an inventory of your personal effects. Many of the bespoke high-net-worth insurers do not enforce underinsurance penalties but, if the sum insured is inadequate, you might only be able to replace your Lladró with Lidl.

Whether it's a family heirloom or an investment purchase, keep the sums insured adequate and under review to protect your financial interest in valuable property.

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# Nuisance update: Japanese knotweed

*Japanese knotweed (reynoutria japonica), an innocuous-looking plant that can be hard to identify, has long been a homeowner's nightmare. When it's discovered – particularly after going unnoticed for some time – it can have a significant effect on the mortgageability, saleability and ultimately the price of the property.*

Given the destruction in property value that Japanese knotweed can cause, it can lead to substantial claims against those who allow the plant to spread from one property to another. Those claims are usually framed in the law of private nuisance.

A useful [government website](#) provides guidance on disposing of Japanese knotweed.

## Cause of damage

Japanese knotweed is listed as an invasive alien species pursuant to the Wildlife and Countryside Act 1981; dealing with soil and plant material contaminated by Japanese knotweed is considered controlled waste under the Environmental Protection Act 1990.

## Current law – nuisance

Nuisance is a fault-based tort; limitation runs from six years from the date of the accrual of the cause of action (Limitation Act 1980, part 1, section 2).

The injustice occurs at properties where Japanese knotweed has been discovered after having been on a neighbouring property and left unabated. The claimant is left with a property blighted by knotweed,

without direct damage (to a building's foundations, for example) but with a much-reduced PR.

## Davies v Bridgend County Borough Council

This case was a dispute between the owners of two adjoining pieces of land; the piece owned by the defendant had Japanese knotweed, whilst the land next door had been purchased as an investment by the claimant.

In 2017, the claimant discovered Japanese knotweed on his property which had spread from the defendant's property, where it had been for approximately 50 years. The defendant failed to take steps to remove the knotweed until 2018 despite being aware of it since 2013. The claimant brought a claim in nuisance.

## Davies – Court of Appeal findings

The full judgement is available [here](#).

“Once it is accepted that there was damage leading to a loss (the diminution in value) which was consequential on the nuisance, there is no authority that consequential damage to the claimant's economic interests is irrecoverable”.



- The Court of Appeal sided with the claimant, agreeing with them that (para 44):  
“However, as the respondent pointed out, rightly in my judgment, the duty in nuisance which arises in this case depends on actual or presumed knowledge on the part of the defendant of knotweed on its land and the risk it represents. It is not a tort of strict liability”.
- Para 48 is the point that commentators might take issue with:

“Viewed at 2018, after five years of breach of duty on the part of the respondent failing to treat the knotweed on its own land adequately, the knotweed was still encroaching on the claimant's land and any treatment by the appellant would have been futile unless and until the respondent complied with its duty as a good neighbour and dealt with its own knotweed. This is not an exception to the ‘but for’ test. The harm to the quiet enjoyment and amenity suffered by the appellant persists in 2018 precisely because the nuisance is continuing one. The harm then has been caused by the breach of duty”.

### Davies – in summary

Davies reinforces the elastic concept of damage – that in a private nuisance case one can suffer damage that is not directly ‘physical’.

“Once it is accepted that there was damage leading to a loss (the diminution in value) which was consequential on the nuisance, there is no authority that consequential damage to the claimant's economic interests is irrecoverable”.

The Court of Appeal appears to bypass the usual causation rules on the basis that the breach continues. This isn't dissimilar to the limitation position in *Delaware* – that a continuing breach creates a new cause of action.

“After five years of breach of duty on the part of the respondent failing to treat the knotweed on its own land adequately, the knotweed was still encroaching on the claimant's land and any

treatment by the appellant would have been futile unless and until the respondent complied with its duty as a good neighbour and dealt with its own knotweed. This is not an exception to the ‘but for’ test. The harm to the quiet enjoyment and amenity suffered by the appellant persists in 2018 precisely because the nuisance is continuing one. The harm then has been caused by the breach of duty”.

Japanese knotweed will remain a problem for any party who has it on their land.

It is easier to claim for diminution in value than previously understood, particularly when the breach of duty was ongoing for some time – and it is possible to claim for diminution with physical damage in private nuisance matters.

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