



Review of Buccleuch Estate Agricultural Tenancy Negotiations

Appendix 2

Case No. 1 Termination of SLDT

Background

1. The tenant had worked as farm manager for the previous tenant since 2000 and had been granted a 4-year SLDT in the tenant's own name from 30/4/07 to 28/2/11, which was later extended to Feb. 2012.
2. On 8th Feb. 2012 the estate wrote to the tenant recognising the tenant's desire to secure a tenancy through to retirement age in 2022. The letter mentioned the estate's intention to extend its woodland portfolio and that this may require some of the hill ground on the farm to be resumed, but said that a decision on this may not be made for a few years. Consequently, the tenant was offered a one-year SLDT on the farmhouse, steadings and low ground (274ha) for the period March 2012 to Feb. 2013 and a grazing licence for the same period on the hill ground (293ha). At the same time, it was said that the intention was to grant a SLDT for up to 5 years from March 2013, subject to the review of tree planting options.
3. In March 2013 a 5-year SLDT covering the whole farm was granted through to 28th Feb. 2018 for the house, steadings and low ground but terminating on 28th Feb. 2016 for the hill ground. In 2016 the estate said that it had no intention of planting the hill ground in the immediate future so the SLDT was varied by minute of agreement to extend the occupation of the hill ground to Feb. 2018, in line with the rest of the farm.

Termination of the SLDT

4. In September 2017 the estate visited the tenant to discuss the future of the SLDT. It was stated that it was unlikely that it would be renewed as the estate had plans to plant the hill ground and would probably sell the remainder of the farm. The tenant said that it would only be possible to run a much reduced number of livestock if the hill ground was removed and that termination of the lease at its expiry in Feb. 18 would be difficult because it would be immediately prior to lambing. The tenant therefore requested that if termination was to take place it should be in November 18. The tenant also asked if another farm might be available on the estate. The Estate said it would consider these requests and get back to the tenant once the planting proposals were clarified. The future of the sheep flock was also discussed. The estate said that it had no obligation to purchase the sheep but probably would do so.
5. On 4th October 2017 the estate wrote to the tenant proposing two options:

- a) That the lease terminates as planned in Feb. 18. The estate to take over the sheep stock at valuation along with any silage and fodder and, if required, a 6 month tenancy to be granted on the farmhouse.
 - b) The lease terminates as planned in Feb. 18 and the tenant is offered a grazing licence through to September 18 along with continued occupation of the farmhouse. This would get around the lambing issue and would give the summer/autumn period for disposal of the cattle. The sheep to be taken over by the estate at market value plus 30% with the premium paid in Feb. but the tenant to sell the sheep in the autumn sales or, alternatively, the estate to take over the sheep stock in Feb. 18 and contract the tenant to manage the flock through to the autumn sales.
6. On 11th October 2017 the tenant wrote to the Duke asking that the hefted flock be retained on quality grounds and objecting to the hill ground being planted. The estate replied on 25th October to say sorry that the main decisions would remain unchanged but offering to discuss the options put forward in October.
 7. On 27th October 2017 the tenant's agent wrote to the estate proposing that the tenant stay on the farm until November 18 rather than September 18, that the sheep would be sold to the estate in September 18 and that the tenant would agree to remove the stock from the hill ground if the estate was in a position to begin preparing the ground for tree planting before Nov. 18. The estate replied on 1st November 17 to say that that proposal seemed sensible, tenant's agent to send through Heads of Terms.
 8. On 8th Nov. 17 the estate contacted the tenant's agent to chase up Heads of Terms and say that possession of the hill ground probably would be required before November.
 9. On 14th November the estate contacted the tenant's agent again to request a response.
 10. On 7th December the estate again contacted the tenant's agent to request a response and said that the agent handling the case on behalf of the estate would be away from 12th December to 10th January and could a response be provided before he goes.
 11. On 12th December the estate wrote to the tenant and copied in their agent, the letter was to propose a meeting to progress matters.
 12. On 11th Jan. 18 the estate wrote to the tenant to say that since no response had been received they would assume that the tenant would be vacating the farm at the end of the lease in Feb. 18.
 13. On 17th Jan. the estate and tenant met and provisionally agreed that the tenant would remain in occupation until 1st November 2018, that the tenant would make the BPS and LFASS claims in 2018 and that the estate would purchase the sheep stock at market value plus 30%. The tenant would agree to give the estate access to the proposed planting land during the licence period. The tenant requested an extension to 2022 for the whole farm but that if that was not possible then at least for the farmhouse, steading and low ground.
 14. On 31st Jan. 18 the estate wrote to the tenant to confirm that a SLDT would be granted through to 30th April 2019 for all except the hill ground. It was suggested that the estate would not purchase the sheep as previously agreed but would pay the 30% premium with the tenant selling the flock to best effect. In addition, a grazing licence would be granted for

the hill ground through to the end of October 18. Draft agreements were sent by the estate to the tenant's agent on 6th Feb.18.

15. On 14th Feb. the estate contacted the tenant's agent to point out that the lease was due to expire in 14 days time and that no new agreement had yet been signed. The tenant's agent responded the same day to say that the tenant was asking the estate to reconsider and to grant a longer extension and asked why the estate had changed its position on the sheep flock. The estate said it was a more practical way of dealing with the sheep which would enable the tenant to sell at best value. Later the same day the estate contacted the tenant's agent to say that unless a meaningful response was received to the draft agreements by 0930 the next day the estate would assume that the offer was rejected and that proceedings would be initiated to have the tenant removed at the end of the month. The tenant's agent got back the same day to say that the tenant accepted the agreements except for that relating to the sheep flock. Having built up a significant emotional attachment to the flock, the tenant did not want to be the one selling the sheep in the market place.
16. On 19th Feb. 18 the estate sent updated agreement which included agreement that the estate would take over the sheep flock at the end of April 19 even though this would create practical difficulties for the estate because of the proximity to lambing.
17. On 20th Feb.18 the tenant requested a meeting with the estate to enable a full and frank discussion before any final decisions were made. A meeting was held on 21st Feb. at which the estate said that no further negotiation was possible and that the new agreements should be signed forthwith. The new agreements were signed on 22nd Feb. 18.
18. On 23rd Feb. a further meeting was held between the estate and the tenant at which the tenant said that, although it had been expected that the hill ground would be resumed at some point, a lease up until retirement on the rest of the farm would have been manageable with support from some off-farm work and the tenant was disappointed that no explanation had been given as why this would not be possible. The tenant also believed that there had been a gentleman's agreement with the previous Duke that their occupation of the farm would be on a long term basis. The estate said that it has no record of such an agreement.

Current Position

19. The tenant will be required to vacate the whole farm at the end of April 2019.

Tenant's grievances about the handling of the case

- a) The tenant believes that there was a gentleman's agreement that the occupation of the holding was to be on a long term basis.

Estate Response: There is no record of this in the file, the Estate worked on the basis that the tenant's occupation is based on the lease terms.

- b) The ultimatum delivered on 14th Feb. was unnecessary and added to the stress already being experienced as a result of losing their home and livelihood.

Estate Response: This was not a situation the Estate wanted to be in, however the lack of communication from the tenant and their agent during the course of

November and December left the Estate with limited options and time to put a lease in place before the expiry of the then SLDT.

- c) The change of mind by the estate, at a late stage in proceedings, regarding purchase of the sheep stock was unhelpful and contributed to the tenant's delay in responding.

Estate Response: The proposed change to the sheep agreement was at the end of January so had no bearing on the two month delay in communications from the tenant and their agent in November and December.

The proposed change was suggested with good intentions that it would allow the tenant to maximise the sale value of the stock, once the emotional issue was made apparent by the tenant, the Estate honoured the original proposal.

- d) Occupation of the house, steading and low ground for a further 3 years would have enabled the tenant to continue farming to retirement age and no explanation has been provided as to why this was not possible.

Estate Response: The Estate informed the tenant in September 2017 that the intention is to sell the remainder of the unit. (*this is disputed by the tenant*)

The Estate has publicly stated that it is reviewing its assets and intends to reduce its land holdings through the sale of farms.

The Estate has had follow up meetings in February, March and April with the tenant to confirm that the intension is still to sell the remainder of the farm in spring / summer 2019. The Estate has informed the tenant that the decision to sell is based on commercial reality of the cost of retaining this farm, i.e. the cost of maintaining this farm over the next 3 years is going to be significantly more than the revenue it will generate.



Case No. 2. Termination of Limited Partnership

Background

1. The tenant (technically the LP is the tenant but for simplicity I have referred throughout to the General Partner as the tenant) and the estate entered into a Limited Partnership (LP) in 1991 for 9 years which was allowed to run on from year to year.

Termination of the LP

2. On 24th March 2017 the estate requested a meeting with the tenant and a meeting was held on 14th April 2017. At that meeting the estate asked for a summary of the tenant's business and their aspirations for the future, the estate then followed by sharing the estate's aspirations for the farm. This included that the estate wanted to move away from the LP and was considering whether to afforest some of the holding. Proposed offering a 5-year SLDT on that part of the farm not wanted for forestry. This came as a shock to the tenant who said that this would significantly affect the viability of the unit. The estate offered to discuss further in May/June once the forestry aspirations had been clarified but said that a notice of intention to dissolve the LP would be issued in May 2017.
3. A follow up letter was sent on 24th May 2017 enclosing the notice of intent to dissolve the LP with effect from 28th Nov. 2017 but reserving the estate's position depending on the outcome of further discussions.
4. On 5th July 2017 the tenant and the tenant's agent met the estate. The estate had identified two possible areas for afforestation and the tenant said that one of these was very important to the viability of the unit. The possibility of afforesting only one of the two areas was discussed and the estate agreed to consider this. The estate said it was only prepared to offer a 5-year SLDT on the area of the holding not to be afforested and the tenant said that a 10-year agreement, with only one area being resumed for afforestation, was preferred. The estate was aware that the tenant currently purchases forage from circa 15 miles away and therefore the estate offered the possibility of a grazing/mowing licence or 5-year SLDT on another area of land some 16/17 miles away (Farm A). The tenant said a 5-year SLDT would be preferable and asked for a plan of the land. The estate said it would purchase any sheep displaced by the result of the resumption of part of the holding.
5. On 13th July the tenant wrote to the Duke to express surprise and shock at the proposal to terminate the current agreement.
6. On 20th July the estate suggested to the tenant's agent that another area of land (Farm B) might be a better alternative than Farm A offered at the previous meeting. The estate asked that the tenant visit Farm B and on 27th July the tenant's agent replied to say that the tenant was viewing the proposal favourably but would want at least a 5-year SLDT.
7. On 25th August 2017 the estate proposed offering a 10-year LDT with effect from 28th Nov. 2017 on an area of 1116 acres, having reduced the proposed planting to one area only. The estate considered that this reduced area represented a viable unit. It was planned that

planting consent would be sought on 390 acres of the hill ground and that this would be available to the tenant on a grazing licence from Dec. 17 to Sept. 18. In addition, the land at Farm B was offered on a 5-year SLDT and a rent proposed.

8. On 29th August 2017 the tenant met with the Duke and an agent from the estate. The tenants asked that if the current proposals went ahead the LDT on the reduced area would be extended for another 10 years on expiry. No guarantee was given that this would be possible.
9. On 4th October 2017 the estate met with the tenant and the tenant's agent to discuss details of the proposals and visited Farm B. The tenant expressed concern about a clause in the draft lease that allowed the estate to resume land at any time. The estate said that this was a normal clause in all their leases and would not be removed. The rents for the fields offered at Farm B were discussed and it was agreed to hold further discussions.
10. On 10th November 2017 the estate sent draft Heads of Terms to the tenant's agent.
11. The tenant met with the tenant's agent on 20th Nov. 2017 to finalise details.
12. On 29th Nov. 2017 the tenant's agent agreed with the estate the number of sheep to be purchased and the tenant and the tenant's agent met with the estate to sign the lease for the reduced area.
13. On 7th Dec. 2017 Heads of Terms were produced by the estate for the draft SLDT covering the land at Farm B
14. On 27th March 2018 the estate and tenant agreed arrangements for transfer on entitlements.

Current Position

15. The tenant will continue to farm the reduced area on a 10-year LDT and will have the use of the hill ground until the autumn of 2018. In addition, a 5-year SLDT has been agreed on Farm B.

Tenant's Grievances

- a) Timing of meeting (2 days before Lambing time)

Estate Response: The estate acknowledges that the time of year for the initial meeting was not ideal however with the notice needing to be served at May then it was difficult to avoid lambing time and it was felt that initiating this discussion was best done pre-lambing than mid-lambing.

- b) Approach from representative from Buccleuch (it was a case of like it or lump it , this is what will happen –go out and get job)

Estate Response: This is not the case, the estate representative explored the aspirations of the tenant at the first meeting, took on board the concerns regarding the area proposed for planting and adjusted the proposed planting area accordingly.

- c) Unhappy that any ground was being taken from us – as what is a ‘viable’ (only just) business , was then to become non-viable.

Estate Response: The Estate is using its Whole Estate Development Plan to look at land use across the whole Estate and where necessary change the use of land where a more viable activity could take place. We appreciate that this may not align with other land users however we endeavour to reach compromises which allow viable farming and forestry to co-exist on the Estate.

- d) First notice of intent to happen May 2017 –followed by second letter November 2017

Estate Response: There are set timescales for the termination of the LP which the Estate followed.

Between the months noted above a number of meetings took place between the estate and the tenant and their agent along with exchanges of written proposals in order to reach a new lease with effect from Nov 2017.

- e) Demolition of sheds by Buccleuch Estates- no mention of replacements.

Estate Response: The estate calculated what level of fixed equipment was required for the holding.

The estate informed the tenant and their agent in a letter on 25 August 2017 that the estate intended to class four small buildings as redundant as part of the new lease as there are sufficient other buildings on the holding. The estate met with the tenant and their agent on 04 October 2017, the condition of the buildings were discussed. The estate issued Heads of Terms to the tenant’s agent which detailed that two parts of one the redundant shed would be demolished due to its condition within 6 months of the start of the LDT.

The lease signed by both parties detailed the contents of the Heads of Terms regarding redundant buildings, at no point did the estate commit to replacing these buildings nor are the estate required to replace this buildings given the extent of the fixed equipment within the lease.

- f) We would have liked a longer tenancy agreement than the 10 years Buccleuch have given us.

Estate Response: Given the uncertainties with agriculture and the fact that both parties are committed to the full term of the lease, the estate concluded that a 10 year lease is suitable and the occupation of this holding can then be reviewed again after the 10 years.



Case No. 3 Purchase of One Farm and Lease of Another

Background

1. The tenant was the general partner in a Limited Partnership on Farm A since 1987. The adjoining farm (Farm B) was vacant and the tenant took grazing on Farm B for a few years.
2. In 2015 discussion took place about the possibility of the tenant purchasing Farm A. On 15th Dec. 2015 the estate and the tenant met to discuss how the valuation would be arranged and to discuss the ongoing work on agreeing tenant's improvements.
3. On 24th Feb. 2016 the estate wrote to the tenant to say that a sale of Farm A was agreed subject to agreement on terms. The letter set out the valuation process and asked that, once the valuation had been received by the tenant, the tenant should accept or decline within one month. The estate noted that the tenant had expressed an interest in buying Farm B rather than Farm A and would like a lease of Farm A.

Conduct of the Discussions

4. On 7th March 2016 the tenant's agent contacted the estate to say that following receipt of a letter outlining the process for a potential sale of Farm A to the tenant, as previously discussed with the Estate the tenant wanted clarity on the purchase of Farm B before reaching a conclusion on the potential sale of Farm A.
5. On 21st March 2016 the estate spoke to the tenant's agent and confirmed that the principle of sale of Farm B and a lease of Farm A was acceptable but that various repairs and maintenance issues needed to be clarified at both farms.
6. On 30th March 2016 the estate wrote to the tenant with a draft farm summary for Farm B and said that a valuation would be provided.
7. On 6th April 2016 the estate met with the tenant and the tenant's agent. The estate confirmed that it would sell Farm B at valuation but excluding the farmhouse. There was discussion about an access bridge and the need to agree any works necessary at Farm A before finalising the lease. The estate mentioned that it would like to consider planting some of the hill ground at Farm A. Also suggested that the tenant might not need the farmhouse and two of the cottages at Farm A but offering to sell the second cottage at Farm A to the tenant.
8. On 3rd June 2016 the estate wrote to the tenant with a formal offer to sell farm B, including the steading and three cottages but excluding the farmhouse and adjoining paddock. The tenant would have the right to relocate the access bridge on estate land given the practical and condition issues with the existing bridge. A valuation was proposed.

9. On 7th July 2016 the tenant and estate met and the tenant expressed serious concerns about the state of the access bridge and proposing an alternative purchase price for Farm B. The estate agreed to provide details of the bridge report.
10. Mid-August 2016 a sale price was agreed for Farm B on the basis that the estate would repair the bridge up to a maximum figure of £60k. Since the tenant was not at that point in a position to purchase the surplus cottage on Farm A, it would be included in the proposed lease of Farm A for a period of 3 years until the tenant could afford to purchase the cottage.
11. On 21st October 2016 the estate sent draft Heads of Terms for the sale of Farm B plus a draft 5-year SLDT which would become redundant once the sale was completed.
12. On 25th October the estate sent draft Heads of Terms for the lease of Farm A to the tenant's agent.
13. On 10th Nov. 2016 the estate's solicitor asked the tenant's solicitor for a response. The latter replied to say that comments would be sent tomorrow but that completion by 28th Nov. looked challenging.
14. On 10th Nov. 2016 the tenant's agent returned draft Heads of Terms to the estate with thoughts and comments.
15. On 16th Nov. 2016 the tenant's solicitor confirmed the tenant and purchaser of Farm B wanted the farm de-opted, this process takes up to 8 weeks to complete.
16. On 1st Dec. 2016 the estate sent amended Heads of Terms for the lease of Farm A. Within the initial Heads of Terms the estate proposed a reasonable rent increase, the tenant's agent had responded with a proposal of no rent increase, the estate asked for justification of no increase as part of the response on 1st December.
17. On 12th Dec. 2016 the estate and the tenant spoke about the continuing issue of the access bridge and about whether a new bridge was viable. The estate restated its position which was a maximum contribution of £60k towards repair or replacement of the bridge. The tenant said that he was not happy with the way that negotiations were proceeding.
18. On 13th Dec. 2016 the tenant's agent asked the estate about progress and the estate replied to suggest a meeting to discuss the rent for Farm A and said that the sale of Farm B was now going through the legal completion process. The estate was also arranging an estimate for the cost of a new bridge.
19. On 22nd Dec. 2016 the estate and the tenant and their agent met to discuss details of the rent and lease for Farm A. The estate explained its workings for the proposed rent increase, the tenant's agent was not in a position to disclose their comparables.
20. On 5th Jan. 2017 the estate and the tenant met, along with a bridge engineer, to discuss the new access bridge.
21. On 16th Jan. 2017 the estate met with the tenant and their agent to discuss the outstanding points for the negotiations at Farms A and B. The outstanding points were predominately to do with the new lease for Farm A, with the main point being the rental level. The estate

representative explained the workings for the proposed increase, this included a list of comparables and the fact that the estate will be taking on more maintenance liability under the new lease and that the farm hasn't had a rent review for 6 years. The tenant's agent again was not in a position to disclose their comparables for keeping the rent the same.

22. On 16th Jan. 2017 the estate wrote to the tenant's agent with the list of works needed to the chimneys at Farm A and a breakdown of who is responsible following the meeting earlier that day.
23. On 26th Jan. the estate's solicitor wrote to the tenant's solicitor regarding who was to be the tenant of Farm A.
24. On 13th Feb. 2017 the solicitors for the tenant and the estate exchanged correspondence concerning the outstanding issues of the bridge and the transfer of entitlements. The estate also said that it would like the sale of Farm B and the LDT for Farm A to be completed at the same time and no later than 24th March 2017 for BPE transfer reasons.
25. On 20th Feb. 2017 the estate chased the tenant's agent for rental comparable evidence per the meeting of 16th Jan.
26. On 6th March 2017 it was agreed that the LDT would be in the name of the tenant and the tenant's agent provided the estate with some rent comparables however not a worked rental proposal for Farm A.
27. On 10th March 2017 the estate and the tenant's agent discussed the outstanding points. The estate identified that the tenant's agent had not suggested a rent for Farm A nor were the comparables suitable in terms of land type and tenure. The estate also raised the issue of a significant length of woodland march fence needing replaced and that estate wished to create a water margin between the farm and said woodland and the estate would send through a plan of the area in question. The estate sent the plan through later that day and the tenant's agent also sent the estate a rental proposal later the same day.
28. On 14th March 2017 the estate and the tenant's agent discussed the rent for Farm A and the issue of planting the stream sides of a watercourse running through Farm A. Neither of the above were agreed.
29. On 16th March 2017 the estate wrote to the tenant's agent to say that the latest rent proposal was not agreed, that the biomass boiler is a tenant's fixture and that the chimneys at Farm A needed to be repaired by the tenant. The estate said that it wished to retain the area required for the streamside planting and was not prepared to accept that the land would be included in the LDT for the tenant to carry out the planting.
30. On 17th March 2017 the tenant's agent agreed the position on the biomass boiler and the chimneys. The situation regarding the streamside planting was reluctantly agreed but clarification was sought of the fenceline and the area to be planted. The estate replied to say that about 18 hectares was required but the exact area to be confirmed once it had been mapped with the GPS and proposed a figure for the associated rent reduction.
31. Over 21st and 22nd March 2017 further exchanges took place regarding the rent for Farm A.

32. On 23rd March 2017 the estate and the tenant's agent agreed the rent and agreed to meet on the ground to finalise the fencelines for the streamside planting. The estate offered to phase the increased rent over 3 years and that the second cottage would remain in the farm and could be sub-let by the farm tenant for 3 years until the tenant was in a position to purchase it.
33. On 28th March 2017 the estate's solicitors sent an updated draft LDT for Farm A to the tenant's solicitors and included the right the tenant to buy the cottage in 3 years' time.
34. On 14th April 2017 the estate and the tenant met to sign the LDT. At that meeting the tenant said that he felt that the estate had acted unreasonably throughout the negotiations. The estate disagreed and summarised with a timeline of events. There was also disagreement over whether rent was due for Farm B for the period taken to complete the sale. A reduced figure was agreed and the lease was signed.

Tenant's Grievances

- a) The process was unnecessarily prolonged and complicated due to the attitude of the estate. Specific concerns were:

The estate would not consider the two transactions (sale of farm B and lease of farm A) as two separate issues and insisted on linking them, leaving the tenant feeling that he had no option to agree to issues related to one transaction for fear that it would influence the outcome of the other transaction.

Estate Response: The two transactions were linked from the outset. The tenant's agent would not disclose the tenant's position on a sale of either farm in isolation. The original proposal was to sell Farm A and the estate to retain Farm B. When the decision was taken to sell Farm B to the tenant of Farm A this was on the basis that Farm A would move from a LP which was running from year to year onto a longer term LDT.

The sale of Farm B also gave the tenant of Farm A the opportunity of an off market purchase of a farm with vacant possession.

- b) Delay in agreeing tenant's improvements because the estate had lost the relevant records.

Estate Response: The estate had not lost the relevant records.

Once the proposal of sale and then lease of Farm A was discussed, historic discussions regarding the tenant's improvements were re-started by the estate and the tenant's agent and the fixtures / improvements were agreed as part of the Heads of Terms process.

- c) A price was agreed for farm B in July but it took until the following March to finalise the deal because of delays and changes of mind by the estate.

Estate Response: The sale was agreed in mid-August 2016 and the Heads of Terms were then drafted and issued in October 2016.

Thereafter, the delay was predominately as a result of the disagreement in rental level for Farm A, with 5 months passing between the estate issuing the Heads of

Terms which included the new rent and the tenant's agent producing a counter rent supported by comparable evidence and workings.

During the perceived delay, work was being carried out by the estate to establish whether it was best to repair the existing bridge or explore the possibility of building a new bridge which would be a better use of resources and provide a more practical route into Farm B for the new owner.

- d) It was agreed that the farm justified 2.5 labour units but the estate would only agree to lease the farmhouse and one cottage, requiring the tenant to purchase the third.

Estate Response: From as early as April 2016 when the proposal of leasing Farm A to the tenant rather than selling this farm to the tenant, the estate informed the tenant that Farm A would be leased with the farmhouse and one cottage and the second cottage would be available to purchase with Farm B should they wish to do so.

The tenant was interested in purchasing the surplus cottage however as negotiations progressed it transpired that the tenant was unable to afford Farm B and the surplus cottage on Farm A, therefore the estate agreed to include the surplus cottage in the new lease of Farm A for a period of 3 years, during which time the tenant could sub-let said surplus cottage and would have first refusal of the purchase once the 3 years had passed.

- e) Having agreed all the details and acreages the estate then decide to keep a section of land around a stream for planting. Came late in the day and no proper boundaries were provided initially. Caused further delay.

Estate Response: The estate aired the idea of retaining part of the hill of Farm A for planting as early as April 2016. However at the time the tenant expressed a strong desire to keep the larger area as farmland and the estate didn't pursue this further.

During the Heads of Terms process the estate surveyed the fences of Farm A and identified a significant stretch of fence (circa. 2km) needed replaced between the hill of Farm A and neighbouring estate owned forestry.

At which point both the estate and the tenant expressed an interest in planting a water margin along the length of the burn as this made practical sense for both the farm and the forestry, the Estate took the view that the scheme would be best placed to be delivered through the estate's forestry department rather than the farm lease. The area was inspected by forestry team on 30 March 2017, and a reduced area mapped and sent to agent as part of updated Heads of Terms 05 May 2017. Therefore the land was excluded from the leased area, the estate proposed a pro-rata rent reduction to that detailed in the Heads of Terms. Both parties agreed that a new fence would be erected on the agreed location once the planting scheme was approved, the scheme has taken longer than anticipated to prepare the application however during which time the estate has endeavoured to carry out repairs to the soon to be redundant march fence.

- f) Because of the delays and shifting goalposts the deadline for transfer of entitlements was only just met. Tenant felt pushed into agreeing to issues such as bridge maintenance in order to meet the deadline for transfer of entitlements.

Estate Response: The delays from the issuing of the Heads of Terms were predominately as a result of disagreement over rent. As stated earlier, 5 months

passed from the estate issuing the Heads of Terms which included the new rent and the tenant's agent producing a counter rent supported by comparable evidence and workings.

The purchaser of Farm B was given an option of the estate spending money on the old bridge or the money being put towards the cost of a new bridge to the benefit of the soon to be new owner. The estate did initial investigation works to see if there was mileage in opting for the new bridge option, thereafter the purchaser of Farm B opted to take forward the new bridge idea and have the purchase price of Farm B reduced accordingly.

Miscellaneous grievances from the estate

- Prior to the negotiations detailed above the estate had a healthy working relationship with the tenant and had identified them as tenants who the estate wanted to work with going forward. The estate recognised the tenants desire to grow their business and changed its strategy for the two farms in an attempt to create a business that would accommodate the tenant and his family going forward. However in doing so the complex negotiations together with the lack of information coming from their side has soured what was a good relationship. In hindsight the estate would have been better maintaining the original strategy of selling the tenant Farm A and consider other options for Farm B. It is also disappointing that the lessons learnt during this transaction will undoubtedly influence our willingness to do something similar in the future.
- The tenant's agent requested late additions to add items to Heads of Terms to include the estate contributing to double glazed windows on Farm A and giving consent for a tenant's improvement with regard to a new shed extension, no formal justification was provided by the tenant or their agent for said extension however it was accepted by the estate.
- There was a list of works documented in the Heads of Terms and lease for Farm A which consisted of repairs and renewals to be completed within 6 months of the commencement of the lease. The estate completed its works (renewals) within circa 8 months of the commencement of the lease. The estate is still awaiting confirmation / proof / certificates of the repairs agreed to be carried out by the tenant.
- The estate has made several attempts to carry out a record of condition of the holding however has received numerous delays and / or hostile exchanges from the tenant which is preventing the record of condition being completed.
- The estate felt that the tenant's agent's unwillingness to provide information regarding a rental proposal and comparables in order to agree the Heads of Terms for Farm was a stalling tactic in order to frustrate the combined negotiations.



Case No. 4 Termination of Ltd Partnership

Background

1. The family has been in occupation of the farm for 90 years. Until 1988 the tenant's father had a secure tenancy. When he died, the estate would not agree to continuing the secure tenancy as the tenant was not working full time on the farm. Instead, the tenant was offered a Ltd Partnership in 1989. There was no compensation for the change in tenancy.

Termination of the Ltd Partnership

2. On 23rd Sept 2016 the estate wrote to the tenant giving notice of rent review in November 2017 and enclosed Guide to Good Practice for Farm Rent Reviews. On 11th October the tenant wrote back to say that a preliminary conversation would have been a good starting point, or even a phone call. Also asking that farm inspection be carried out before the 6 month period. The estate apologised for not phoning and arranged to meet at the farm.
3. On 23rd November 2016 the estate met the tenant at the farm to discuss a rent review and the LP lease. At this time the tenant was told that the estate wished to terminate the LP and enter an LDT. The tenant thought that this would be beneficial for him as the onus for maintenance under the LDT would return to the estate. At this stage the tenant hoped for a 12 (or 10) year tenancy to take him to retirement age.
4. The tenant attended a meeting at the estate office on 22nd December 2016, where the tenant was told that an LDT was now not being considered. The estate sent an email later that day clarifying:
 - a) The estate wished to sell the farm, with vacant possession likely obtained at 28 Nov 2020.
 - b) The tenant was asked if he wanted to purchase all or part of the farm.
 - c) Alternatively, the farm could be let on an SLDT from Nov 2017 to Nov 2022 and then sold.
 - d) The tenant was offered an incentive to terminate the LP early- the earlier he came out, the greater the incentive.
5. On 25th December 2016 the tenant heard from another source that someone had been approached about the possible purchase of the farm.
6. On January 16th 2017 the tenant's agent emailed the estate asking for a valuation as the tenant was interested in purchasing.
7. On 24th January 2017 tenant receives a formal Notice of Termination of LP from the estate.
8. In w/b 13th February 2017 the tenant's agent met with the estate and sought clarification that the farm hadn't yet been sold and again asked for a valuation. The estate confirmed that the farm had not been sold and that they had not had any approaches from any other interested parties.

9. During March and April 2017, the tenant makes repeated requests to the tenant's agent to pursue the estate for a sale valuation.
10. On 1st June the estate noted discussions with Duke Richard in which he expressed his reluctance to have the farm put on the estate's sales programme and agreed to proceed with 5yr SLDT. On the same day the estate emailed the tenant's agent requesting a meeting.
11. On 20th June the tenant's agent discussed the situation by telephone with the estate and was told that there was a change in position and the Duke was not minded to sell. and options were:
 - a) Continue LP until November 2020
 - b) Enter a 5-year SLDT from November 2017. The tenant's agent questioned whether a longer LDT for 10 or 15 years could be considered to take the tenant to retirement but this was not an option the estate would consider.
 - c) Quit with immediate effect but the estate said the incentive to end the LP early was no longer available.
12. Throughout July the tenant, tenant's agent and the estate had discussions on rent and the SLDT lease proposal which was to run for 5 years from 29 Nov 2017.
13. September/October 2017 tenant's agent sent proposed Schedule of improvements to estate. Discussions on rent were ongoing.
14. On 2nd November 2017 the estate sent a draft copy of the SLDT to the tenant's agent. The tenant's agent and the estate met on 8th November and discussion with regard to the proposed rent the estate's view is "take it or leave it". Various correspondence on amendments to Schedule of improvements.
15. A meeting was held at the Estate office on the 16th November 2017 with the tenant and tenant's agent. The tenant was informed about a proposed wind farm on part of the holding and the need for a tripartite agreement. The estate did suggest that the tenant may want to activate the appeal process as the tripartite agreement could not be sorted out by the 27th November.
16. On 27th November the SLDT was signed.
17. Feb/March 2018 correspondence on tripartite agreement for part of the farm. Not yet agreed/signed.

Current Position

18. The tenant will be required to vacate the whole farm on 28 November 2022.

Tenant's Grievances

- a) The tenant was annoyed that someone else knew that the farm was to be sold and also on hearing rumour that a prospective purchaser had been approached.

Estate Response: All information relating to the options for the farm were kept internal and no approaches were made to nor received from third parties. It is just as disappointing to the Estate that news of our consideration of selling the farm be heard outwith the parties involved.

b) Surprise at early Notice of Termination. Para. 7.

Estate Response: The Estate verbally informed the tenant that a Notice to Terminate would be served two months before they received it in the post. The Estate does not agree that the serving of the Notice was a surprise.

c) Frustration at repeated requests for a valuation and then to be told that the estate had changed their mind about selling the farm. Para 11

Estate Response: The Estate's internal process for agreeing sale properties took longer than expected on this occasion. We did not want to incur unnecessary expenditure until we had made a firm decision to sell and this held back our commissioning a valuation. We accept that this could have been done better.

d) Looking back the tenant feels the estate took advantage of his naivety in negotiating the LP after his father died.

Estate response: We are unable to comment on the events leading up to the granting of the Limited Partnership in 1988 but the ethos of honesty and integrity are values held by the current Duke and by his late father and we would hope that the renegotiation was undertaken with these values in mind.

e) The tenant feels that he can't approach the estate to discuss the future beyond this SLDT which ends in 2022.

Estate Response: The tenant should never feel that he cannot have a discussion with the Estate. Our business is subject to internal and external influences which change and therefore our position will also change. We are always willing to talk.



Case No. 5 Termination of Ltd Partnership

Background

1. The tenant was in a Limited Partnership Agreement which had been in existence for 30 years.

Termination of the Ltd Partnership, Rent Review, and negotiation of new 10 year LDT.

2. On 17th November 2016 the estate met the tenant at the farm to initiate discussions on future arrangements for the tenancy. On 18th November the estate wrote to the tenant stating that they would like to end the LP and proposed a 10 year LDT.
3. The tenant and estate met at the farm on 21st December 2016 and on 22nd December the estate agreed to send the tenant an LDT style lease for his consideration and said that they would arrange to have the tenant's improvements valued so the tenant could consider whether he would like payment at waygo (on 28 May 2017), leave them in an LDT with rent reflecting this accordingly, or a hybrid approach. The estate said that they would come back with rental value for the new LDT in early January.
4. On 5th January 2017 the estate wrote to the tenant proposing that the LP end on 28th May and LDT begin on 29th May 2017. The tenant phoned the estate on 10th January 2018 asking for a breakdown of figures for value of tenant's improvements. The estate wrote to the tenant on 11th January providing information and offering to meet.
5. The estate wrote to the tenant on 19th January asking if he wished to discuss matters further in relation to the prospect of an LDT.
6. On 25th January 2017 the estate served a formal Notice of Termination of the LP. The tenant couldn't get hold of anyone in estate office to discuss so contacted STFA who contacted ITFC. ITFC discussed due process with the estate.
7. The tenant wrote to the estate on 31st January asking where the notice to quit left him regarding discussions on the proposed LDT. The estate replied to the tenant on 1st February stating that the Notice did not affect ongoing discussions with regard to the LDT, and that they awaited a response with regard to the valuation of tenant's improvements and the proposed rental levels.
8. Throughout February various discussions and correspondence on rent valuation. The tenant's agent sent a letter on 14th February to the estate enclosing a Schedule of tenant's improvements. The estate agreed tenant's improvements with the tenant's agent on 24th February.
9. On 23rd March 2017 the estate sent the first draft LDT to the tenant and asking for comments on rent review as set out in their letter of 9th February. The proposed rent

reflected an increase higher than CPI and tenant had concerns that correct rent review process not been followed.

10. Estate and the tenant met on the farm on 31st March. On 2nd May the estate sent a letter to the tenant on points raised at meeting in relation to the rent review. Estate suggested a revised (lower) rent increase and stated that agreement must be made by 10th May or they would make an application to Land Court or seek some other form of mediation/arbitration.
11. On 9th May the tenant's agent sent a letter to the estate about fixed equipment under the new LDT and proposed an alternative rent for the LDT. The tenant's agent and the estate met on 23rd May to discuss rent; the tenant's agent emailed the estate on 24th May suggesting another new rental agreement for the LDT with the understanding that fencing would be carried out by the estate. The estate emailed the tenant's agent on 25th May agreeing in principle the rental for the LDT (from Nov 2017), but only if the tenant accepted the proposed rent increase under LP, which was due at 28 May. Estate said "take it or leave it" with regard to their original proposal. Tenant agreed LDT and rent.
12. Recorded delivery letter was sent from the estate to the tenant on 25th May stating agreed LP rent increase from 28 May 2017 and new LDT rent from 28 November 2017.
13. On 22nd June the estate sent the latest draft LDT to the tenant's agent. The tenant's agent responded on 17th July referring to unanswered queries (about fixed equipment and condition) sent in emails dated 9th and 24th May
14. The tenant's agent and the estate met on 30th August and the tenant's agent sent an email to the estate on 31st August email confirming points agreed in relation to new LDT taking into account comments made in email of 17th July, and specifically noting a plan of fencing to be completed within 6 months of contract beginning. The estate sent an email on 4th September to the tenant's agent agreeing to the fencing.
15. On 20th September and 6th November the estate sent updated LDTs to the tenant's agent.
16. On 24th Nov the estate sent a copy of signed LDT to the tenant.

Current Position

17. The tenant will be required to vacate the whole farm at the end of 28 November 2027.

Tenant's Grievances

- a) The Notice to quit came as a surprise, being issued in advance of agreeing details of the new LDT (paragraph 7). It was very upsetting and stressful especially when the tenant could not get in touch with anyone at the estate to discuss.

Estate Response: The tenants had been advised verbally that the Notice to Terminate the Limited Partnership would be served to safeguard the Estate's position and that this gave three years for discussions to take place if necessary.

- b) The tenant had told the estate that he would like to continue the LP to retain flexibility, but with the termination notice being issued there was no scope to negotiate the continuation of the LP.

Estate Response: Industry guidance was that these types of tenancies were to be moved away from. Added to this the tenant regularly complained that he was unable to take advantages of Capital Allowances on machinery due to the Limited Partnership.

- c) The tenant felt manipulated into accepting the rent review to secure agreement on the LDT (paragraphs 11 & 12).

Estate Response: The tenant had an experienced Land Agent who does work for many Buccleuch tenants acting for him on the rent review. We do not accept that he felt manipulated into anything.

- d) The tenant feels the basis for the calculation of rent reviews is not consistent from one rent review to the next.

Estate Response: Rent reviews are a two way process and we work with tenants to use the best available information at the time to gain a satisfactory review for both the estate and the tenant.

- e) The tenant spent a lot of money on agents and legal fees dealing with the estate's proposals – the business can't support the level of input required.

Estate Response: The Estate has no comment on this except to say that agricultural law has become so complicated that we have sympathy with the tenant on this grievance.

- f) The Estate personnel often changes – the tenant has dealt with 3 people from a contracted Land Agency, plus estate employees.

Estate Response: There is sympathy with the tenant on this grievance point. Buccleuch is a good employer and pays above average salaries to try and recruit and retain the best surveyors. Unfortunately it is not in Buccleuch's gift to make surveyors stay with us.

- g) The tenant is not always copied in to correspondence between the estate and his agent and is left feeling ill-informed on negotiations.

Estate Response: It is now standard practice that tenants are copied in on all correspondence between the Estate and their agent. We would point out this grievance is more to do with his relationship with his agent than with the Estate.

- h) The tenant finds it difficult to plan for the uncertainty when the lease ends.

Estate Response: We find it difficult to reconcile this grievance with the comments at grievance 'b' above where the tenant said that he wanted to retain the Limited Partnership for flexibility purposes. The Estate would hope to continue to talk to the tenant throughout the tenancy term so both parties will understand their position leading up to the lease termination date.