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12th April 2018

Response to the Tenant Farming Commissioner's Review of Operation of Agents

Introduction

The Scottish Tenant Farmers Association (STFA) is the only organisation dedicated to representing the interests of tenant farmers throughout Scotland. Its stated aim is to support and enhance the tenanted sector and in that role welcomes the opportunity to respond to the Tenant Farming Commissioner's (TFC) Stakeholder Consultation on the Review of Operation of Agents. Many problems within the tenanted sector arise from difficult relationships between tenants, landlords and agents.

Background

Over the last few years we have seen improvements in the way the majority of agents operate and a wider recognition in the industry for the need to encourage good practice through guidance and codes of practice.

While we recognise the improvements that have been brought about by the work of the Independent Advisor to Tenant Farming (IATF) and the TFC, the review has shown that one in six landlords and tenants are dissatisfied with their interaction with agents which is still a significant level.

Due to the concentrated pattern of land management in Scotland, a few agents can have a disproportionate effect on the tenanted sector as a whole, and STFA believe that a significant proportion of current tenant dissatisfaction with agents is largely due to a few individuals who are yet to be persuaded to change their methods of practice.

1. Do/will the TFC's Codes of Practice enable the issues raised concerning the conduct of agents to be addressed? For example when discussing repairs and maintenance obligations, planning the future of Limited Partnerships and (once agreed) rent reviews?

STFA believe that the TFC's Codes of Practice have an important role in improving relationships between landlords and tenants, and provide an accepted template showing all parties how negotiations should be conducted in a fair and reasonable manner. We expect further improvement to come about when the guidance notes issued by the IATF are replaced by TFC Codes of Practice, which will be more difficult to be dismissed by any party looking to circumvent best practice guidance.

It is important to ensure that codes of practice and industry good practice guidance is followed by all parties. Concerns raised from the STFA membership often result from guidance not being followed.

2. What, if anything, could your organisation do to address these issues of dissatisfaction – bearing in mind that both the instructions to an agent and the conduct of agents should be fair and reasonable?

STFA can promote the use of Codes of Practice amongst the membership which helps explain to both tenant and landlord what can be expected of the agents employed by both sides.

Where there is dissatisfaction we would encourage members to get in touch with the TFC at an early stage.

3. How could professional bodies and membership organisation's complaint services be improved?

They should be more accessible and more easily understood. Complaints need to be regarded as being helpful to an organisation, rather than negative finger pointing. Without positive examples of complaints being made available, tenants and landlords are unlikely to view the making of a complaint as progress for their current difficulty.

4. Would better awareness of the other party's long term plans improve relationships between landlords and tenants, and/or make it easier for agents to conduct business in a fair and reasonable manner? If so, how could your organisation support clear communications around long term planning?

Yes, all parties should be aware of each other's long term plans and the reasons behind them. One of the more concerning statistics from the review is that 46% of tenants meet their landlord once a year or less, and 16% never meet their landlord. Good awareness of the other party's long term plans are unlikely with such infrequent meetings, nor the building of trust and transparency between landlord and tenant.

On some estates there is little communication between landlord and tenant, and landlord's agents are employed for a single task, most commonly rent reviews. The agent is only interested in the single specific task, and there is little opportunity for a wider discussion about the tenancy. Where an agent is employed for a single task it would be good practice for landlords and tenants to meet to cover other aspects of the tenancy, including the long term plans of both.

5. In your opinion, what else could be done to ensure continuous improvement of professionals to the benefit of the agricultural holdings sector?

Like legislation, codes of practice can be interpreted in different ways by different parties. In the case of legislation the correct interpretation is given by examples of case law. For the codes of practice, in the absence of decisions arising from

official complaints, the tenanted sector may benefit from some worked hypothetical examples of the application of the codes of practice.

One hypothetical example might be a schedule of improvements for the amnesty and the level of evidence considered fair and reasonable. Another hypothetical example might be a rent proposal demonstrating the level of detail and transparency expected in the evidence used.

Instead of hypothetical examples it may be possible to provide actual examples of good practice for each of the codes where both parties are willing to do so.

Adherence to the codes of practice will be key to improving relationships, and worked examples to accompany the codes would help tenants, landlords and agents better understand what good practice looks like.

Adherence to codes should also be encouraged by some form of policing or auditing of agents, so there is an incentive to comply with codes even where official complaints are unlikely.

There appears to be a small minority of agents who view the industry guidance and codes as being voluntary and who show little intention of adhering to them. There is a growing concern amongst tenants and their agents that bad practice by a few has gone on for too long, and if not addressed then other agents will be tempted to operate with less respect for the published guidance and codes.

6. Are these research findings generally as you would have expected? Please explain.

These findings are in line with expectations and show similar results to earlier surveys. Within the membership of STFA the level of dissatisfaction with landlord's agents may be higher than that reported in the survey, but we recognise that many tenants join STFA due to problems with agents, so we can expect a higher level of dissatisfaction amongst our members. The key factors found to influence relationships are also as expected.

What is unexpected in the survey results is the make up of the samples of both landlords and tenants who have been interviewed.

In the case of the tenants surveyed, there were 914 tenants having 1,278 tenancies over 432,563 ha, which is an average tenancy size of 338 ha, and an average farmed area of 473 ha per tenant. This is more than double the average tenancy size for Scotland of 168 ha (2013 Scot Gov figures show 7,011 tenancies over 1,180,000 ha). If these figures from the consultation document are correct the survey sample would appear skewed towards larger tenancies, which is what might be expected for a telephone survey since the smaller tenants are unlikely to employ labour and will be more difficult to contact by telephone compared with larger tenants who are more likely to be in an office or have a staffed office.

The lack of smaller tenants in the survey is significant as our experience of the STFA membership would suggest that a disproportionate number of

landlord/tenant/agent relationship problems arise from smaller tenancies in the 30 - 80 ha bracket. There will be a number of reasons for this, and the main reason may be that small tenants are unable to justify the cost of employing their own agent and are more likely to be pushed towards an unfair agreement. Other reasons may be higher landlord expectations of gaining vacant possession where there are small tenancies, and the limited farm income from a smaller unit may not be sufficient to satisfy both landlord and tenant.

Similarly, the landlord sample would appear skewed towards the larger landlords with larger tenants. The sample of 121 landlords holding 1,705 tenancies over 1,032,321 ha gives an average tenancy size of 605 ha, over three times the Scottish average, and an average estate size of 8,531 ha which is over 21,000 acres. STFA would expect such a sample to show better than average satisfaction ratings due to there being a greater likelihood of estates using a resident factor, or if not resident then an agent who spends several days a week on the estate and is likely to have built good relationships with the tenants over time. Similarly, with larger tenancies the tenants are more likely to employ professional help and there may be good long term relationships between landlord's and tenant's agents. Furthermore, the owners and managers of the larger estates are more likely to be aware of the published guidance and codes of practice which will be of benefit to relationships.

Amongst the STFA membership poor relationships are often found on the smaller estates where the only interaction with the landlord's agent is at rent reviews, sometimes a different agent at successive reviews. Smaller landlords may be less likely to be aware and informed on the work of the AHLRG and the TFC, and may have unrealistic expectations for the agents they employ.

7. Do you have any other observations or comments to make regarding the TFC's review of agents?

Reflecting STFA's comments to Question 6 above, one of the challenges ahead is to improve awareness of the work of the TFC to the smaller tenants and landlords, and any others who may not benefit from engaging mainstream professional advisors.

To underpin the importance of adhering to the codes of practice there needs to be a complaints process that individuals and agents are willing to use. It remains difficult to imagine one agent making a complaint about the conduct of another agent. Similarly, tenants do not see the raising of a complaint as a route to better long term relationships. Complaints need to be seen in a more positive light, as a means to encouraging better practice, rather than the negative light of highlighting bad practice. Without complaints being made there is a danger that the codes of practice and guidance will only receive lip service from some agents.