



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Tenant Farming Commissioner: Review of Operation of Agents

Stakeholder Consultation





14 March 2018

Dear Stakeholder

During the passage of the Land Reform (Scotland) Bill the standard of conduct that landlords and tenants should expect of each other came under considerable scrutiny. Particular attention was also paid to the behaviour of land agents and others (such as factors, surveyors and solicitors) whose functions may require them to facilitate negotiations between the two parties.

At the end of last year, the Scottish Land Commission commissioned research to gather evidence on the views and experiences of landlords and tenants regarding their business interactions with agents. A substantial amount of evidence has now been collected by means of an independent survey providing a clear picture of the views of landlords and tenant farmers. A wide range of responses were received from throughout Scotland, with the majority reporting a positive experience regarding their interactions with agents. 17% of tenant farmers and 17% of landlords surveyed were dissatisfied with the agent they had dealt with, and re-interviewing a sample of these has enabled us to get a clearer understanding of the reasons behind the responses.

I am sharing these research reports with you and would appreciate your thoughts on the findings before I submit a final report with recommendations to Scottish Ministers as required under the Land Reform (Scotland) Act 2016.

Agents play an important role in facilitating the relationship between landlord and tenant. A good agent can deliver for the client while maintaining sound professional standards and avoiding souring the landlord/tenant relationship. We would all like to see the relationships between landlords and tenants developing for mutual benefit rather than being a competitive one, and agents are seen as being key in facilitating this. It is the responsibility of everyone involved to work together to ensure that this approach is the norm.

A handwritten signature in black ink that reads "Bob McIntosh". The signature is written in a cursive, slightly slanted style.

Dr Bob McIntosh

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Overview

The Tenant Farming Commissioner (TFC) is tasked under the Land Reform (Scotland) Act 2016 (Section 36) to review the operation of professionals engaged by landlords and tenants in relation to business conducted on agricultural holdings. The TFC must prepare and submit a report, including recommendations to improve the operation of agents, to Scottish Ministers before the 31st March 2018.

In gathering information for the TFC's review, the Scottish Land Commission (SLC) commissioned research to determine the views and experiences of tenant farmers and landlords with regard to the operation of agents. This research gathered information on the use of agents by both tenants and landlords, and obtained information on the levels of satisfaction. Further research was subsequently carried out with respondents who expressed dissatisfaction in their interaction with agents, to explore the reasons behind their responses.

Why are we consulting

This consultation seeks stakeholder feedback on the findings of SLC's research. This stakeholder feedback will form an important part of the Tenant Farming Commissioner's review; and the views expressed in response to this consultation will help inform the Tenant Farming Commissioner's report to Ministers.

We are seeking consultation with:

- RICS
- SAAVA
- STFA
- SLE
- NFUS
- ALA

How to respond

We are inviting written responses to this consultation and they must be submitted by email to sarah.allen@landcommission.gov.scot by **Friday 13th April 2018**. If you have any questions concerning the consultation please contact Sarah Allen, Head of Policy and Research – Tenant Farming T 0300 244 2536.

In your response please indicate whether you are happy for it to be published in the public domain. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Land Commission is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

1. Introduction

Following a competitive tendering process, Research Resource was contracted to carry out research on behalf of SLC to gain an understanding of the views and experiences of tenant farmers and landlords with regard to their use of agents. The surveys were developed to enable four mirror views on the conduct of agents to be analysed:

- The views of tenant farmers employing agents
- The views of tenant farmers dealing with agents employed by their landlord
- The views of landlords employing agents
- The views of landlords dealing with agents employed by their tenant.

It does not provide mirror images of specific holdings.

914 tenant farmers (having 1278 tenancies over a total of 432,563ha) and 121 landlords (holding 1705 tenancies over a total of 1,032,321ha) were interviewed by telephone between October 2017 and January 2018.

A second phase of research followed in February 2018, with further interviews being carried out with a sample of respondents (40) who had expressed dissatisfaction.

The researchers were commissioned with delivering robust factual survey results with information being collected and collated in an independent, open and fair manner.

Both reports are appended to this consultation document.

2. Landlord/tenant relationships

In general, the majority of tenants and landlords would describe the tenant/ landlord relationship as good. 82% of tenant farmers described their relationship with their landlord as either very good or fairly good and 88% of landlords described their

relationship as either very good or good. These percentages are very similar to the Ipsos MORI findings in 2014.¹

Key factors which were found to influence the relationship with the landlord were:

- regular contact,
- face to face contact, and
- direct relationships with the landlord as opposed to the use of an agent.

For landlords, analysis by the number of agricultural tenancies held shows that where just one agricultural tenancy is held the relationship is much more likely to be perceived very positively with 74% of those with one agricultural tenancy rating this relationship as 'very good' compared to 46% of those with 5 or more agricultural tenancies rating the relationship as 'very good'.

Half of all tenant farmers who responded stated that they do not believe that the conduct of agents affects relationships between them and their landlord. However, 16% stated that they believe the conduct of agents improves relationships whereas 20% stated that they believe it worsens relationships. Landlords were more likely to be positive in this respect with 39% of landlords stating that they believe agents improve relationships compared to 8% believing they worsen relationships.

3. Use of agents

Landlords were more likely to employ an agent of some sort to assist them with their business transactions (60%) than tenant farmers (25%).

Analysis for tenant farmers showed that those with larger farms and multiple tenancies were more likely to use agents than those with smaller farms and single tenancies.

Where landlords or tenant farmers choose not to engage agents, their reasons are similar: they believe there is no need, they prefer to deal with things directly or cost is prohibitive. Trust is noted as a barrier by some but is not a frequently noted barrier.

4. Benefits and drawbacks of using an agent

The most commonly stated benefit of using an agent by tenant farmers (26%) and landlords (55%) is their professional expertise/knowledge/advice. The second most commonly noted benefit by tenants (25%) and landlords (52%) was the agent's knowledge of legal requirements/legislation. Almost one in five tenants (17%) stated

¹ Views of Tenant Farmers and Agricultural Landlords on aspects of the Agricultural Tenancy System. P21-22,31. Renting-out Agricultural Land in Scotland Survey P27. Survey of Agricultural Tenant Farmers P20.

All by Myers, Hockaday & Martin, Ipsos MORI Scotland. Scottish Government Social Research 2014

that they didn't know what the benefits of using an agent were and 11% stated that they didn't believe there to be any benefits. Where the tenant farmer had not employed an agent, they were more likely to state that they didn't know what the benefits of using an agent were (21%) or that there were no benefits (13%).

The most commonly noted drawback of using an agent from the perspective of both tenant farmers (54%) and landlords (54%) was the cost.

5. Satisfaction with agents

Both tenant farmers and landlords were very positive about the agent they employ with regard to their attitude. Ratings given by tenant farmers and landlords with respect to politeness, professionalism, respect, trustworthiness, openness and honesty and treating them fairly ranged between 98% to 100% being positive.

This was less likely to be the case for tenant farmers regarding the agents they deal with who are employed by their landlord. Ratings for these agents ranged between 67% and 83% rated as 'good'. Similarly, landlords were less likely to rate their tenant's agent positively, with ratings of between 53% and 85% for the same factors. Both landlords and tenants were most positive about the politeness of the agent they were dealing with and least positive about trustworthiness, openness and honesty.

6. Dissatisfaction with agents

17% of tenant farmers and 17% of landlords were very or fairly dissatisfied with their interactions with agents. This equated to a total of 76 respondents (70 tenant farmers and 6 landlords). These proportions are also comparative with Isos MORI research carried out in 2014.¹

Of these, 53 had indicated that they would be happy to be re-contacted by the researchers to provide further information and a total of 40 in depth interviews were successfully completed in February 2018. 34 of these were tenants dissatisfied with their landlord's agent, 4 were landlords dissatisfied with their tenant's agent and 2 were tenant farmers dissatisfied with their own agent. The majority of these respondents (n=23, 58%) stated that it was a land agent they were dissatisfied with. 10 respondents (35%) stated they had negative experience with a factor and 2 with a solicitor. These proportions are in line with the stage 1 survey.

7. Reasons for dissatisfaction

The findings from both pieces of research illustrate that specific issues, notably repairs and maintenance obligations and rent reviews, can trigger dissatisfaction. However there are also more general concerns around;

- providing the correct information and responding timely

- a lack of outcomes
- listening to the views of the third party, and
- agents' attitudes, particularly around being open and honest and respectful.

The majority of respondents in the follow up interviews were dissatisfied with all aspects of the dealings they had with the agent, most notably with the attitude of the agent where 76% of respondents were dissatisfied.

When asked about the cause of their dissatisfaction in the follow up survey, respondents gave a diverse range of responses:

- The most common issue was dissatisfaction at the fact nothing was being done about their concerns. In 7 cases these were tenant farmers citing issues relating to general maintenance of their farms.
- Respondents expressed general frustration with the length of time taken, with some claiming that it took years to conclude the interaction. In 7 cases, respondents expressed the belief that the process was being drawn out unnecessarily or that time was being wasted.
- Lack of information. In 15 cases, respondents stated that they did not receive any information from the agent handling the transaction and in 7 cases, respondents recalled receiving delayed information.
- A belief that the agent they dealt with was fixated with making money or had imposed an unfair financial obligation on them (7 cases). Those concerned that the agent was determined to financially exploit them were tenant farmers who expressed beliefs that their rents were being increased unfairly and in one instance, retrospectively. Some of these respondents described the agent they had dealt with as "greedy" and "out to make money".
- Another issue was dissatisfaction with the attitude of an agent (6 cases). These respondents felt that the attitude of an agent had hindered the interaction with some describing the agent as "aggressive", "confrontational" and "rude".
- Other concerns included being supplied with dishonest or incorrect information (5 cases) and concerns that an agent did not fully understand the matter being discussed (4 cases).

Almost half of respondents claimed that they had been dissatisfied with the agent from the start of their relationship with the agent. The remaining 53% recalled various instances that initially triggered their dissatisfaction; these typically involved a dispute with the agent over issues like rent and unresolved concerns.

Of these 40 respondents in the follow up survey, 25 had experience of employing agents directly themselves.

Consultation Question 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?

Consultation Question 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?

8. Making a complaint

76% of tenant farmers said that they would complain if they were unhappy about the service provided by their landlord's agent, with 54% saying that they would complain directly to their landlord and 17% to the agent. Similarly, 60% of landlords said that they would complain about their tenant's agent if they were dissatisfied with the service, with the majority also stating that they would complain directly to the agent or their tenant.

In the follow up interviews 8 out of the 40 respondents had made a complaint about the agent, although no-one had complained to an agent's professional body. 13 of the 40 respondents said that they were not aware of professional bodies codes of conduct. Of those who were aware, 22 respondents (82%) said that they did not consider using these channels to make a complaint. The most common reason given for their reluctance to engage with these channels was a feeling that the codes of conduct would be of no help to them. There was also a fear that using the channels would "do more harm than good" and a feeling that such action was not necessary when they could deal with the matter themselves. The 5 respondents who considered using these channels but ultimately did not, cited various reasons for their decisions including a desire to avoid straining the relationship with the landlord, a feeling that accessing such channels was not necessary or that such channels would be of no help.

Consultation Question 3

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

9. Long term plans

When considering awareness of long term plans, 62% of landlords and 45% of factors stated that they were aware of their tenant's long term plans for the farm. 70% of landlords and 58% of factors stated that their tenant(s) were aware of their long terms plans for the farm. There were strong links between these two questions with 82% of those who said that they were aware of their tenant's long term plans also stating that their tenants were aware of their long term plans.

Just under half of tenant farmers (44%) stated that they were aware of their landlord's long term plans and just over half (55%) stated that their landlord was aware of their long term plans for the farm. Where tenants were aware of their landlord's long term plans for their farm, they were also more likely to state that their landlord was aware of their long term plans for the farm (70%).

90% of tenants who were aware of their landlord's long term plans for the farm were also more likely to state that they had a good relationship with their landlord.

Factors (97%), along with two thirds of tenant farmers (65%) and landlords (64%) were of the opinion that they believed it would help if both parties were aware of each other's long term plans.

Consultation Question 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?

10. Making improvements

Analysis of the findings of the surveys shows similarities between the views and experiences of both tenant farmers and landlords. This is perhaps best illustrated when at the end of the surveys landlords and tenants were asked what was the most important thing that agents could do to improve relationships. They made similar suggestions:

- Improve timescales for dealing with issues
- improve communications, have regular meetings and work to maintain good relationships
- disclose information
- listen
- play fairly

- try to understand both parties situations
- be more professional, reasonable and respectful during negotiations
- be more open, honest and transparent, as well as less arrogant and aggressive.

In the follow up survey when asked what they believed the Scottish Land Commission should be doing to improve the relationships between landlords, tenants and agents, a range of suggestions were given but the most common was allowing landlords and tenants to deal with each other directly without as much intervention from agents or through face to face meetings. Others stated that they believed the legislation being progressed through the Scottish Parliament would go a long way towards rectifying their concerns – TFC Codes and fair rent provisions were cited.

Consultation Question 5

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

Consultation Question 6

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

Consultation Question 7

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

SUMMARY OF QUESTIONS

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?
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?
3. How could professional bodies and membership organisation's complaint services be improved?
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?
5. In your opinion, what else could be done to ensure continuous improvement of professionals to the benefit of the agricultural holdings sector?
6. Are these research findings generally as you would have expected? Please explain.
7. Do you have any other observations or comments to make regarding the TFC's review of agents?