



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Tenant Farming Advisory Forum

Minutes of the Meeting of the Tenant Farming Advisory Forum (TFAF) held online on Wednesday 27th October 2021

Present:		Actions:
Dr Bob McIntosh	Tenant Farming Commissioner	TFC
Sarah-Jane Laing	Scottish Land & Estates (SLE)	SJL
David Johnstone	Scottish Land & Estates	DJ
Christopher Nicholson	Scottish Tenant Farming Association (STFA)	CN
Angus McCall	Scottish Tenant Farming Association	AM
Douglas Bell	Scottish Tenant Farming Association	DB
Gemma Cooper	NFUS	GC
Jane Mitchell	SAAVA	JM
Mark Fogden	SAAVA	MF
Andrew Wood	RICS	AW
Jon Robertson	Agricultural Law Association (ALA)	JR
Fiona Leslie	Scottish Government (SG)	FL
Alan Barclay	Scottish Government (SG)	AB
Sarah Allen	Scottish Land Commission (SLC)	SA

1. Welcome and Apologies

TFC welcomed everyone to the meeting and introduced Lorna Shaw from Research Resource.

2. Minutes of the last meeting – 27th August 2021

The minutes were agreed.

Matters Arising

SA advised that she had written to the National Access Forum (NAF) following the last meeting and would bring the matter up in AOB.

3. Presentation of Rent Review Survey findings & discussion

Lorna Shaw of Research Resource presented the key findings from [SG's Tenant Farming Rent Review Survey](#). Members discussed the findings, noting that:

- Lorna clarified that whilst there is further information in the report on the reasons for dissatisfaction, it was not investigated whether dissatisfaction was due to the rent review process or the outcome of the rent review itself. Of those who were dissatisfied the survey did not investigate whether these rent reviews were ultimately resolved to their satisfaction.
- Members expressed surprise at the lack of awareness of the TFC Code (29% were familiar with the Code) which (almost) correlated with the lack of awareness of the legislation (36%

were familiar with the legislation). Several members said that it was now good practice to include the TFC Code along with the rent review notice.

- There was recognition that the survey showed that dispute and dissatisfaction was modest and there was discussion around satisfaction being lower when parties were represented by professional agents.
- CN raised a question about the survey sample as 60% of respondents had holdings of <100ha. CN thought that 10% of STFAs membership held tenancies of <100ha and the sample perhaps represented a high proportion of farmers who held a tenancy as a subsidiary to their main owner-occupied business. He suggested that those with tenancies which were not core to their business may be in a better position to walk away from unsatisfactory rent reviews. He suggested there was a risk that the views of larger secure tenants where the tenancy is core to the business could be diluted. SJL noted that the majority of respondents in the survey were secure tenants.
- SJL said that the findings highlighted that familiarity with the rent review process is related to satisfaction, and education support and awareness raising of the process could improve satisfaction.
- TFC noted that the online version of the [2016 Act rent review legislation](#) may also be causing confusion over the status of enactment of the legislation.
- AM commented that the survey results show that most rent reviews take place satisfactorily without referencing the legislation, but the backstop of the law has to produce a result that is fair to all parties.

FL informed members that SG intends to repeal the 2016 legislation and put in place new legislation. Her team would be looking to use the recommendations from the TFC's paper on rent reviews and plan to bring a paper to the next TFAF meeting in January.

Action	SA to circulate TFC Paper on Rent Determination. It was agreed that this was not confidential and could be circulated to wider membership.
Action	FL to bring a paper to TFAF in January on proposals for new rent review legislation.

5. Member Updates & AOB

Items 5 and 6 were taken before the presentation on natural capital.

SA updated members on NAF response to issues raised at TFAF. The next meeting of the NAF (with LAFs) is on 25 November and the Secretariat has agreed to informally table the issues that had been raised at TFAF. If TFAF wished the issues to be discussed at the next formal NAF (February) we would need to do this through a NAF member such as NFUS or SLE. SJL offered to table a paper to NAF and would ask SLE's access officer to work with SA to produce a paper highlighting the issues.

Action	SJL to put SA in touch with SLE Access Officer with the view to producing a paper on access issues raised at TFAF for consideration at NAF in February 2022.
--------	--

CN highlighted that carbon codes for some habitats were missing or a long way from completion causing friction between sectors – as some could benefit and others couldn't. TFC suggested this might be addressed in the following presentation.

JM raised an issue concerning succession - a landlord who did not object to a successor on statutory grounds would not know when that successor had taken over. TFC advised that the successor would automatically succeed if the landlord didn't object.

JM advised that SAAVA was planning a survey on relinquishment and assignation, working with SA. TFC said this would be useful as he had only received 2 Notices of Intention to Relinquish and it would be good to see if people were quite sensibly using the legislation and TFC Guide as a backstop to informal agreements. TFC noted that the NIRs received to date illustrated the need to provide all information at the outset. The statutory procedures do not allow time for the process to be taken forward without all the necessary information and he advised that NIRs will be returned to applicants if they were incomplete.

FL informed members that one-to-one discussions with stakeholders about the Agriculture Bill had begun. Winter preparedness in relation to Covid had been raised with members. FL's team is involved with contingency plans around potential livestock protests at COP26.

TFC said that he had been asked to prepare a paper and make a presentation to ARIOB on the current consultation. He would like to produce a response with the help of TFAF and asked whether members would copy their responses to him.

Action	TFC to prepare a paper for ARIOB taking into account the views of TFAF. Members invited to copy their responses to ARIOB consultation to TFC.
--------	--

6. Date of next meeting

Members agreed to meet in January, SA to canvass for dates. Some members expressed a preference to continue meetings online but it was agreed that a meeting in person once per year would be good.

4. Presentation on natural capital/carbon markets & discussion

Andy Turnbull (AT), Bidwells Head of Natural Capital & Sustainable Investment joined the meeting at 3pm along with James MacKessack-Leitch from SLC. After Andy's presentation on natural carbon trading, the following points were discussed:

- AT clarified that action is required to trade carbon credits, for example peatlands are required to be restored or woodlands created. This varies in other countries, e.g., in California or NZ carbon can be traded for existing woodlands but they do require to be managed differently than at present. The UK carbon codes will therefore not apply without additionality. Carbon finance generally meets 15% of costs, which can include professional fees, income foregone and ongoing management.
- There is speculation that community benefit may be derived from carbon similar to the renewable energy sector – AT suggested that this is misguided as renewables have a significantly higher, and annual, income stream.
- Carbon trading involves a long-term (30-100 year) commitment and the risk sits with the seller to deliver. There is no obligation for an incoming landowner to take on a carbon contract agreed by the seller. Standard security will need to be considered. The obligation is on the original carbon seller to deliver the carbon and land prices are ultimately likely to reflect carbon burdens.
- AT advised that recent increases in land values are due to investors taking a different view of how that land could be used – e.g., forestry. The increase in the value of timber is also driving land values and highly productive forestry plantations are viable without the carbon credits. Good soils which can grow a commercial timber crop still have a higher financial return than native woodland, even when taking carbon credits into consideration. Producing

a commercial timber crop in the uplands may be 10 times more financially lucrative than farming sheep. The carbon value of land is likely to be more than the agricultural value but not even close to forestry. Management of the uplands for deer and grouse may transition from to management for native woodland and peatland.

- Incoming investors are being driven by corporate ESG values. AT advised that “social” responsibility requirements must be flagged with investors, with consideration given to engagement with and impact on local communities.
- FL warned that rising land values risk squeezing out tenants and new entrants and asked whether there are opportunities for agreements between land purchasers who want to produce carbon and those who want to farm alongside. AT suggested that here could be opportunities for agriculture to work alongside peatland and woodland interests, but it depends on the mindset of the investor. Investors that are interested in agriculture are likely to be more interested in regenerative systems or organic transition. AT also suggested that some clients are not interested in monetising carbon at the moment but adding to their inventory to enhance the carbon value of their asset.
- Members advised that future agricultural policy and support payments will drive how land is managed and farmers will need their carbon credits for their own businesses to reach net zero. The following points were noted with regard to future policy development for the tenanted sector:
 - All of the carbon codes are required for farmers to plan holistically – e.g., to consider soil carbon code in relation the woodland carbon code.
 - Some farm businesses have carbon audits but more support and guidance is required. This requirement is also be driven by supermarkets who are looking to source produce from net zero producers.
 - There was discussion on where carbon sits in relation to the 1991 and 2003 Acts. Members agreed that guidance would be welcome on who owns carbon rights, who benefits and how will it work in the tenant farming sector. TFC suggested that to create opportunities/provide a level playing field for the sector there may be a need to look at the legal definitions of agriculture, diversification and tenant’s improvements, and this would need to be part of the new Agri Bill.
 - AT suggested that the tax status around carbon is also unclear – is it classified as a “commercial enterprise”?
 - CN knew of one case where a landlord had consented to a diversification of planting commercial timber but was not prepared to sign the woodland carbon code contract due to future liability.

Action	All/SG Enable the tenanted sector to benefit from carbon credits and trading needs to be addressed in the new Agriculture Bill
--------	--

Action	SA to circulate slides from both of today’s presentations.
--------	--