

Advice to anyone considering making an allegation that a breach of a TFC Code of Practice has occurred.

Introduction

The Tenant Farming Commissioner (TFC) has statutory powers to prepare and publish Codes of Practice that seek to promote good practice in the interactions that take place between landlords and tenants of agricultural holdings. The TFC may conduct an inquiry into an alleged breach of a code, with the authority to request relevant information from the parties involved and to publish a report of the inquiry, with recommendations where appropriate.

This guide provides advice to anyone considering applying to the TFC to inquire into an alleged breach of a code of practice. Applicants, and those alleged to have committed a breach, should note that the report of an inquiry into an alleged breach will be a public document and that the names of those involved, and the circumstances of the case, will be in the public domain.

Who may apply?

A person can apply to the TFC to inquire into an alleged breach of a code of practice if they have an interest in the relevant tenancy. In practice this means the landlord or tenant, or any agent contracted by them to act on their behalf. A land agent or solicitor acting for a landlord or tenant can therefore make such an application but, for example, someone who is a friend of a landlord or tenant and believes that they have not been treated in accordance with a code would not qualify as an interested party.

It is recommended that, before a formal allegation is made, the applicant has an informal discussion with the TFC to discuss the situation. It may be that intervention by the TFC can resolve the issue or that advice can be given on how to use the TFC mediation scheme.

Making an application

The application must provide details of the applicant and of each other relevant person having an interest in the tenancy, so far as the applicant is aware of them. Applicants should ensure that the holding and the tenant and landlord are all accurately identified, along with any other person or agent involved.

The application should indicate which code is alleged to have been breached and should provide full details of the alleged breach and the relevant provisions in the code that the alleged breach relates to.

The application should be made using the [form provided](#) for this purpose.

Consideration of the application by the TFC

The TFC will proceed to an inquiry if satisfied that the applicant has a relevant interest in the tenancy, that the application contains sufficient information to proceed to an inquiry and

that the application is not based on substantially the same facts as a previous application made by the same applicant.

The TFC may require the applicant to provide further additional information before deciding whether to proceed to an inquiry and may set a date by which that information has to be provided.

The TFC may dismiss the application at this stage if the applicant is not a relevant party, has not provided that additional information within the time period set or if the TFC considers that a request for additional information would not provide sufficient information to proceed to an inquiry.

Where the TFC is satisfied that sufficient grounds exist for an inquiry to be instigated, notice of that will be given to the applicant and to each person with a relevant interest in the tenancy and each will be provided with a copy of the application. A response to the application will be required within a time period set by the TFC.

Provision of information

The TFC is empowered to require any person to provide such information as the Commissioner considers appropriate for the purposes of the inquiry and may impose a financial penalty, not exceeding £1000, on a person failing to provide that information within the time period set by the Commissioner. A person subject to such a penalty may appeal to the Land Court on the basis that the penalty was based on an error of fact, was wrong in law or unfair or unreasonable for any reason.

Reporting the results of an inquiry

As soon as practicable after an inquiry is complete, the TFC must publish a report setting out whether or not the Commissioner considers that there has been sufficient information to make a decision. If a decision has been made by the Commissioner the report will set out:

- The Commissioner's decision as to whether or not the code has been breached.
- The reasons for the Commissioner's decision.
- The relevant facts on which the decision is based.
- Such recommendations as the Commissioner considers appropriate.

A published report is admissible evidence in any proceedings before the Land Court. If a such a report appears to the Land Court conducting any proceedings to be relevant to any question arising in the proceedings, the Land Court must take that report into account in determining the question.

For further information please see our website at [Codes of Practice - Tenant Farming - Our work - Scottish Land Commission](#) or email tfc@landcommission.gov.scot