



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

**A Review of the Conduct of Agents of Agricultural
Landlords and Tenants**

**A report to Scottish Ministers by Dr Bob McIntosh CBE,
Tenant Farming Commissioner**

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Executive Summary

1. This report fulfils the duty placed on the Tenant Farming Commissioner (TFC) to carry out a review of the conduct of agents of agricultural landlords and tenants. In this context agents means land agents, solicitors, valuers and any other person acting as an intermediary between landlords and tenants.
2. Agents provide a vital service to a sector which operates within the context of extensive and often complex legislation and where the knowledge and experience of agents is valued by landlords and tenants. Good agents help to facilitate a productive business and personal relationship between landlords and tenants but anecdotal evidence has suggested that insensitive and inappropriate behaviour by some agents has led to souring of the landlord/tenant relationship.
3. The aims of this review were to obtain independent and objective data on how landlords and tenants currently view the conduct of agents either employed by them or by the other party, to explore the reasons for dissatisfaction and to make recommendations for action that would lead to a reduction in the level of dissatisfaction.
4. An independent survey of 121 landlords and 914 tenants was commissioned to explore their perceptions and experiences of the use of agents. This was followed up by a second independent survey of those landlords and tenants who had expressed dissatisfaction with the conduct of an agent and with the aim of exploring in depth the reasons for the dissatisfaction. The results of these surveys were shared with the key representative bodies within the sector and their views sought on the current situation and the way forward.
5. The results suggest that landlord tenant relationships are generally good. Only 6% of tenants surveyed and 1% of landlords said that the relationship with the other party was fairly or very poor. Regular face to face contact between the parties was cited as one of the main factors leading to a positive relationship.
6. Landlords were more likely to employ an agent to assist them with their business transactions (60%) than tenants (25%). Tenants tended to use land agents and Solicitors in approximately equal measure while landlords mostly used land agents. Both parties made most use of agents for rent reviews, valuations, legal issues relating to the lease and general advice on legal and technical issues.
7. 16% of tenants and 39% of landlords thought that the use of agents can help to improve the relationship between landlords and tenants while 20% of tenants and 8% of landlords thought that it can worsen relationships.



8. Landlords and tenants expressed high levels (98% for tenants and 95% for landlords) of satisfaction with agents employed to act on their behalf but much lower levels of satisfaction (66% for tenants and 44% for landlords) with agents employed by the other party. 17% of landlords and 17% of tenants said they were dissatisfied with the conduct of an agent employed to act on behalf of the other party.
9. Dissatisfaction with an agent was not related to a perceived lack of technical knowledge but was clearly linked to aspects of the behaviour and conduct of the agent. Dissatisfaction could generally be ascribed to one or more of four causes: -
 - Poor communication and inadequate recording of the outcome of meetings.
 - Unnecessarily aggressive, condescending and insensitive behaviour on the part of the agent.
 - Lack of transparency, openness and honesty on the part of the agent.
 - Lack of consideration of the impact of a single negotiation or transaction on the longer-term landlord tenant relationship.
10. Poor interpersonal skills are at the heart of many of the problems that have occurred, along with poor recording of the outcome of meetings and insufficient recognition of the need to balance the agents desire to achieve the optimum outcome for the client in a single negotiation or transaction with the wider impact on the landlord tenant relationship. More attention to the importance of such skills in college curriculums, in appraisal systems and in-house training by firms employing agents and in continuing professional development requirements of the professional bodies would help to prevent, identify and correct poor behaviour of this type.
11. While the majority of landlords and tenants were aware of the professional standards set by the bodies to which most of the agents belong and were aware that complaints about poor standards or service or conduct can be made to those bodies, no such complaints had been made. This seems to reflect a lack of awareness of how to complain, a feeling that the system is daunting and a worry that it would further strain the relationship with the landlord, tenant or agent. There is scope for the professional bodies to consider how, individually or jointly, they can promote greater awareness and accessibility of the standards and the ability to complain about poor service and conduct and a bespoke guide for the agricultural holdings sector would be helpful.
12. There are inherent tensions among the various drivers of the behaviour of agents who are members of professional bodies. A duty to act in accordance with the client's instruction and a duty to act in accordance with the law have to be tempered with a duty to act in accordance with relevant professional standards and, increasingly, with attention to modern societal cultures and norms arising from human rights legislation



and other drivers of a moral approach to the conduct of business. Many of the issues that have come to the attention of the TFC over the past year, and which have strained landlord tenant relationships, have been caused by insensitive application of agricultural holdings legislation and agents, their employers and their professional bodies must continue to work towards a more satisfactory balance of interests in the way that agents conduct business.

1. Background and Terms of Reference

1.1 Background to the Review

13. The Final Report of the Review of Agricultural Holdings Legislation (2015) expressed concern about the state of some landlord and tenant relationships in the agricultural holdings sector and reported that some landlords and tenants who had contributed to the review were critical of the role of professional intermediaries such as land agents and solicitors. The important role that such agents play in facilitating the business relationship between landlord and tenant was recognised but it was suggested that inexperienced or insensitive agents at times caused a souring of the landlord/tenant relationships.
14. This theme was further explored and discussed during the passage of the Land Reform (Scotland) Act 2016 and culminated in the establishment of the Tenant Farming Commissioner (TFC) post with the aim of encouraging good relations between landlords and tenants through delivery of specific functions, including a requirement to report on the conduct of agents of agricultural landlords and tenants.

1.2 Remit of the Review

15. The remit for the review is set out in Section 36 of the Land Reform (Scotland) Act and is reproduced below:

(1) The Tenant Farming Commissioner must—

(a) prepare a report on the operation of agents of landlords and tenants in relation to agricultural holdings,

(b) submit the report to the Scottish Ministers before the end of the period of 12 months beginning with the day on which this section comes into force.

(2) The report submitted to the Scottish Ministers under this section—

(a) must include such recommendations as the Commissioner considers necessary to improve the operation of agents of landlords and tenants in relation to agricultural holdings,



(b) may include such other recommendations as the Commissioner considers appropriate.

(3) In preparing the report to the Scottish Ministers under this section, the Commissioner must consult any persons appearing to the Commissioner to have an interest in the operation of agents of landlords and tenants.

1.3 Context for the Review

16. The existence of a thriving tenanted farming system is considered to be in the public interest and crucial to its development is the willingness of landlord and tenant to work in partnership to build a business and personal relationship that brings mutual benefit. The system generally works well where those relationships are good but badly where the relationship between landlord and tenant is fractious and dysfunctional.
17. The business relationship between landlord and tenant is set within the context of over a century of agricultural holdings legislation. Successive Governments have regularly reviewed the legislation in an attempt to provide a supportive background for the sector and to seek an appropriate balance between the rights of the landlord and the rights of the tenant. The result is a plethora of legislation which is sometimes complex and open to interpretation and where the implications of a wrong action or a missed deadline can be serious for either landlord or tenant.
18. It is not surprising, therefore, that few landlords or tenants have the will, or the ability, to keep abreast of current legislation or have the confidence to conduct all discussions and negotiations with the other party without the benefit of professional advice and assistance from agents such as land agents, solicitors and values.
19. The role of such agents is an important one. They bring experience and knowledge which is invaluable to their clients but if the exercise of those attributes in furtherance of what they see as their clients' best interests is pursued insensitively, any short- term gain may be outweighed by the implications of longer term damage to the landlord/tenant relationship.
20. Submissions to the Review of Agricultural Holdings Legislation, and the experience to date of the TFC's interactions with landlords, tenants and agents, have provided anecdotal evidence of poor practice by some agents in some situations. While those instances are concerning, it would be wrong to draw conclusions about the overall position without attempting to set those reported instances in context. The aim of this report therefore is to make recommendations based on an objective review and consideration of the conduct of agents of landlords and tenants.



2. The Review Process

2.1 Stage 1 – An Independent Survey of the views of landlords and tenants

21. The Scottish Land Commission commissioned Research Resource to carry out a telephone survey of the views and experiences of agricultural landlords and tenant farmers in relation to their engagement with agents in business transactions relating to their agricultural holdings.
22. The research was designed to be robust and reliable and to capture a representative picture of both the qualitative and quantitative views of landlords and tenants. Specifically, it sought to:
 - Identify the current level of usage of agents by landlords and tenants.
 - Identify their views and experiences regarding the conduct of agents working for them and for the other party.
 - Capture both positive and negative experiences.

2.2 Stage 2 – Follow Up Discussions with Parties Expressing Dissatisfaction with the Conduct of Agents

23. The Scottish Land Commission commissioned Research Resource to carry out a telephone survey of those respondents to Stage 1 who had expressed dissatisfaction with the conduct of an agent and who had indicated a willingness to provide additional information on the reasons for the dissatisfaction.

2.3 Stage 3 – Consultation with Relevant Organisations

24. The reports arising from the Stage 1 and Stage 2 processes were circulated to key representative bodies and meetings held to discuss the results with them. These bodies were the Scottish Tenant Farmers Association (STFA), Scottish Land and Estates (SLE), The National Farmers Union Scotland (NFUS), the Royal Institution of Chartered Surveyors (RICS), The Agricultural Law Association (ALA) and the Scottish Agricultural Arbiters and Valuers Association (SAAVA).
25. Written responses were sought from these organisations both in response to the results of the Stage 1 and Stage 2 processes but also in response to a number of questions posed in a consultation document.

2.4 Stage 4 – Report to Ministers

26. This report to Scottish Ministers by the Tenant Farming Commissioner, summarises the results of Stages 1, 2 and 3 and makes recommendations for action. Section 6 on 'Discussion and Recommendations' is based on the evidence collected in the surveys



but also draws on the personal experiences of landlords and tenants which were provided on a confidential basis.

3. Summary of the Results of the Stage 1 Survey of Landlords and Tenants

The full research report can be found at <https://landcommission.gov.scot/tenant-farming/reviews-and-reports/>

3.1 Methodology

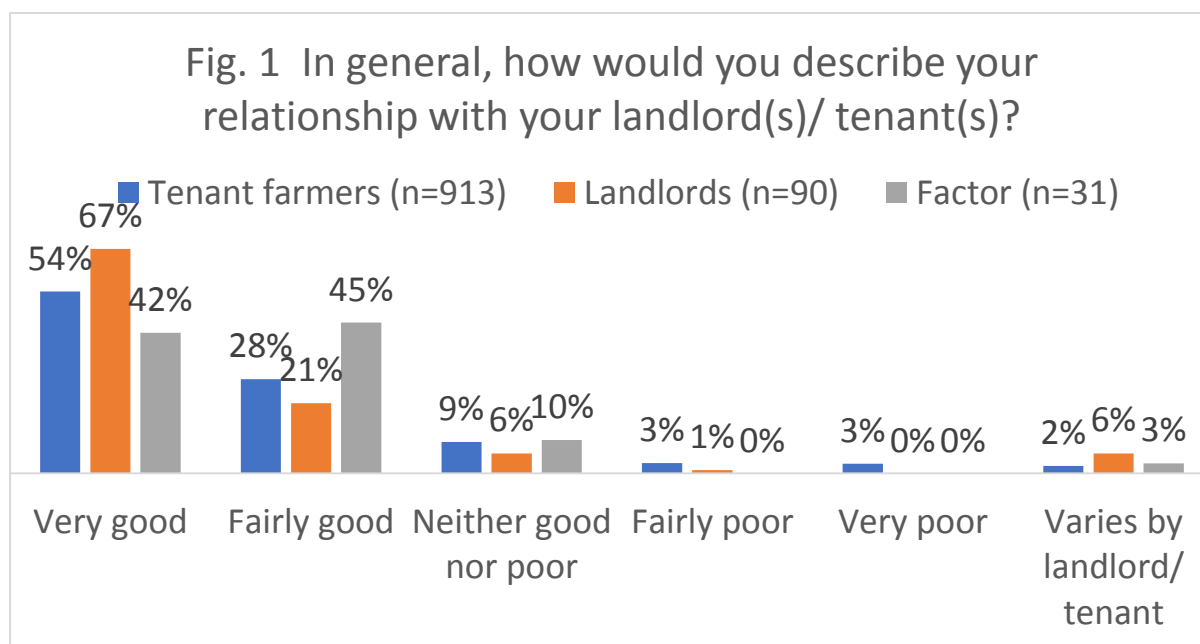
27. The research was designed to be robust and reliable in order to develop an understanding of the views and experiences of landlords and tenants with regard to their business interactions with agents. Agents are defined as land agents or other professionals who act on behalf of landlords or tenants, such as agricultural advisors, factors, surveyors and solicitors.
28. Two separate surveys were undertaken, one seeking the views of landlords and the other seeking the views of tenant farmers. The questionnaires were designed to mirror each other within the survey questionnaire and across questionnaires, so respondents were asked about their experience of dealing with agents that they employ and then the same set of questions with respect to dealing with the agents employed by their tenant/landlord.
29. Using a telephone methodology, a total of 914 interviews were completed with tenant farmers (providing data accurate to +/-3% based upon a 50% estimate at the 95% level of confidence) and 121 with landlords (providing data accurate to +/-8.4%) to ascertain their views and experiences of dealing with agents.

3.2 Summary of key findings

30. The key objective of this research was to gain an understanding of the views and experiences of tenant farmers and landlords with respect to the conduct of agents. The surveys were developed in a way to provide mirror images of views both within surveys and between surveys. It was possible therefore to develop four mirror views on the conduct of agents:
 - 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 tenants.
31. The analysis of these findings has shown similarities between the views and experiences of both tenants and landlords. In general, the majority of tenants and landlords would describe the tenant/landlord relationship as good. (Fig.1). 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.



32. 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.

33. 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'.

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

35. Analysis for tenant farmers showed that those with larger farms were significantly more likely to use agents than those in smaller farms with 12% of tenant farmers with <5ha stating they have employed agents to assist them in their business transactions with their landlord compared to 43% of those who have >=250ha.

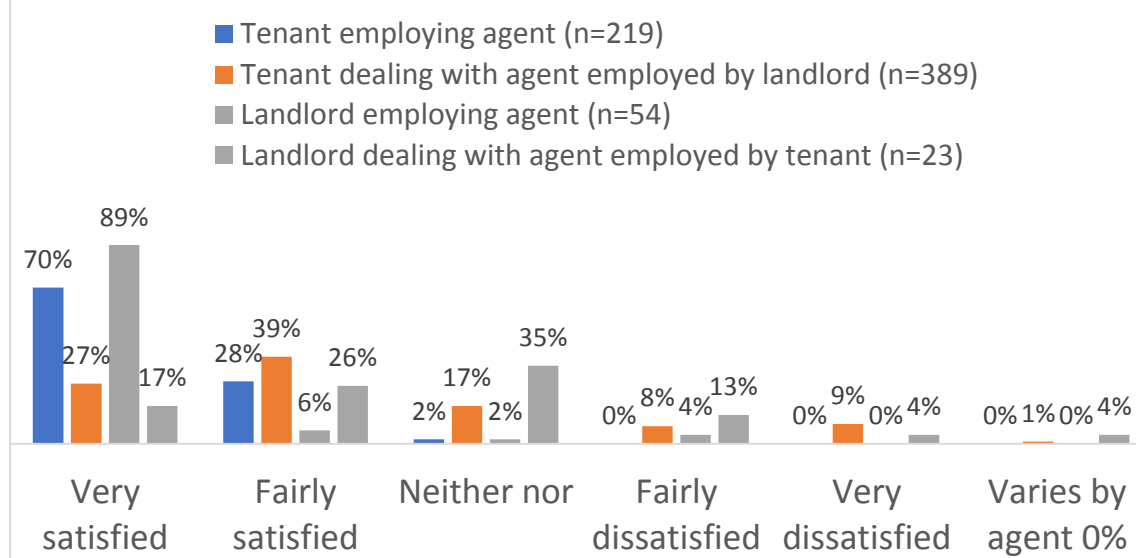
36. Where landlords or tenant farmers choose not to engage agents, their reasons are similar: they believe there is no need, they prefer to deal with things directly or cost is prohibitive. Trust is noted as a barrier by some but is not a frequently noted barrier.



37. 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.
38. 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.
39. The greatest differential, noted by tenant farmers, between employing the agent compared to dealing with the agent employed by the landlord was noted with respect to:
- The agent **considers the wider community or public interest** (differential of 41% where 91% of tenant farmers employing agents agree with this statement and only 50% agree with this with respect to the dealings of the agent employed by their landlord).
 - The agent has **regard for both landlord and tenant positions** (differential of 32% where 95% of tenants employing agents agree with this and only 62% agree with respect to the dealings of the agent employed by their landlord).
40. Respondents were then asked to state whether they agreed or disagreed with several statements about the agent they employ, and the agent employed by their landlord/tenant. Again, tenant farmers and landlords were more positive with respect to the agents they employ than the agents they dealt with who were employed by their landlord/tenant.
41. Overall satisfaction with the agents employed by tenant farmers/landlords was much greater than their satisfaction with the agents they were dealing with who were employed by their landlord/tenant.
- 98% of tenant farmers were either very satisfied or fairly satisfied with the agent they employ, compared to
 - 66% of tenant farmers were either very or fairly satisfied with the agent they deal with who is employed by their landlord.
 - 95% of landlords were either very satisfied or fairly satisfied with the agent they employ, compared to
 - 44% of landlords were either very or fairly satisfied with the agent they deal with who is employed by their tenant.



Fig. 2 How satisfied are you overall with the agent(s) you employ/
deal with?



42. 17% of tenant farmers and 17% of landlords were very or fairly dissatisfied with the agent(s) employed by the other party.
43. A total of 70 tenant farmers and 6 landlords stated that they had been dissatisfied with the service provided by an agent. They were asked about their experience. Where tenant farmers were dissatisfied with the behaviour of their landlord's agent the main feeling was that the agent solely looks out for their landlord's interests. Whereas landlord comments made in relation to the agent employed by their tenant illustrated that they are working for the tenant and therefore not necessarily acting in the landlord's best interest. Suggestions from tenants as to how the agent could have improved how they dealt with them included:
- Listen to our views / show more understanding (32%)
 - Be more professional (26%)
 - Be more open/honest (23%).
44. The most commonly stated benefit of using an agent by tenant farmers is their professional expertise/ knowledge/ advice (26%). This was also the main benefit noted by landlords (55%). The second most commonly noted benefits by tenants was the agent's knowledge of legal requirements/ legislation (25%). This was also the second most commonly noted benefit by landlords (52%). Almost one in five (17%) tenants stated 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%).



45. When asked about the drawbacks of using an agent, the most commonly noted drawback from the perspective of the tenant farmer was the cost or expense of using an agent (54%). This was also noted by 54% of landlords.
46. Half of all tenant farmers who responded (50%) 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.
47. The most important things that tenant farmers believed that agents could do to improve the relationship between tenants and their landlord for the future benefit of all were:
- Better communications / regular meetings (19%)
 - Bring both parties together / on side (10%)
 - Disclose information (7%).
48. The most important things that landlords believed agents could do to improve relationships was to be professional, open and honest, improving communications, trying to understand both parties' situations and working to maintain good relationships.

4. Summary of the Results of the Stage 2 Follow Up Survey of Dissatisfied Respondents

The full research report can be found <https://landcommission.gov.scot/tenant-farming/reviews-and-reports/>

4.1 Methodology

49. A total of 70 respondents to the original survey noted dissatisfaction and, of these, 50 stated that they would be happy to be re-contacted if any issues arose through the research that the Land Commission would like to explore further. These 50 respondents were therefore the population for this follow up research.
50. A broad topic guide was developed in order to guide the conversation and explore the circumstances around dissatisfaction in more depth, whilst providing a structure to the interview and gaining feedback in a way that is comparable across interviews.



51. A total of 40 telephone in depth interviews were successfully completed from the potential population of 50 dissatisfied respondents to the original survey. This is an 80% response rate.

52. It should be noted that due to the small number of interviews and their qualitative nature, this research is not designed to be statistically robust, nor representative of the population of tenant farmers or landlords, rather it has been designed to provide a depth and detail of understanding of circumstances surrounding dissatisfaction.

4.2 Summary of key findings

53. Of the 40 respondents 36 were tenants and 4 were landlords. 29 of the respondents had at least one secure tenancy, 9 had at least one short duration limited tenancy (SLDT), 7 had at least one Limited Partnership arrangement and 6 stated that they had a tenancy that would fall under the category of 'other'.

54. The majority of respondents (n=23, 58%) stated that it was a land agent that they were dissatisfied with. 10 respondents (25%) stated that they had negative experiences with a factor or resident factor. 2 respondents (5%) stated that they had negative experiences with a solicitor. 3 respondents (7.5%) dealt with an agent that did not fall into any of the categories previously established in the previous research (Office Staff and Estate Managers). The remaining 5% of respondents dealt with a combination of both a land agent and a solicitor.

55. The most common reasons for dissatisfaction were:

- Nothing being done about their concerns (7 cases).
- Agent was fixated with financial outcome or had imposed unfair financial obligations on the tenant (7cases).
- The attitude of the agent was aggressive, confrontational or rude (6 cases).
- The tenant believed that the agent, through accident or design, had provided incorrect information (5 cases).

56. Only 5 % of respondents expressed dissatisfaction with an agent employed by them. The majority of respondents were dissatisfied with an agent employed by their landlord (85% of respondents) or by their tenant (10% of respondents).

57. In terms of frequency of contact with the agent,

- 30% of respondents stated that they would deal with the agent at least annually (Ranging from once or twice a year to four or five times a year).
- Other respondents recalled communicating with the agent less than annually (22.5%) with as long as three years between each contact.



- A significant proportion of respondents (27.5%) stated that they would never ordinarily have contact with agents outside of rent negotiations but recalled contacting them between 3 and 6 times while negotiations were ongoing.
- Only 7.5% of respondents recalled communicating with the agent monthly while 12.5% could not recall how often they had contact.

58. Respondents were asked if they were able to recall a specific point in the relationship when the dissatisfaction began to arise. Almost half (47.5%) of respondents claimed that they had been dissatisfied with the agent from the start of their relationship with the agent. The remaining 52.5% recalled various instances that initially triggered their dissatisfaction but these typically involved a dispute with the agent over issues like rent (4 cases) and unresolved concerns (4 cases).

59. When asked what could have been done to improve the transaction the most common response was a recommendation of more direct contact between landlord and tenant.

60. The majority of respondents (80%, 32 out of 40) said that they had not made a complaint about their negative experiences while 20% did make a complaint to a person or body. Of those who did complain (n=8), 2 complained to the landlord employing the agent, 3 complained to the agent directly, 1 complained to the Tenant Farming Commissioner, 1 complained to the Tenant Farming Association and 1 to the Crofting Commission. One third of respondents were not aware that professional bodies have codes of conduct for their members.

5. Summary of Stage 3 Consultation Results

61. Responses were received from SLE, RICS, ALA, STFA, NFUS, Law Society of Scotland and SAAVA. Their responses are summarised below, and the full stakeholder consultation and submissions can be found at <https://landcommission.gov.scot/tenant-farming/reviews-and-reports/>

a) *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?*

62. STFA, ALA, SLE, RICS and NFUS expressed support for the TFC codes of practice and believe these will play a vital role in behavioural change, contribute to a shift in culture and have an important role in improving relationships between landlords and tenants. However, as the codes are aimed at specific topics they will not be able to



address all issues where agents are involved in transactions between tenants and landlords. NFUS suggests that a general Agents Code would be a positive step focussing on the importance of information provision, timeous responses and conduct. SLE are of the view that codes of practice should supplement comprehensive legislation and not be used to fill gaps in legislation or deal with highly technical and complex matters.

b) *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?*

63. STFA, ALA, SLE, RICS and NFUS all said that they would be encouraging appropriate behaviour by continuing to work constructively with SLC and by promoting the role of the TFC.
64. RICS referred to their own code of conduct and is exploring the inclusion of seminars around landlord-tenant relationships within their CPD Foundation framework and speakers at Rural Mid-Sessions. RICS is also planning a Rural Training Day to look at emotional intelligence and mediation in rent reviews.
65. Law Society of Scotland highlighted a difficulty that they have with this consultation question in pointing out that an instruction to a solicitor has no requirement to be fair and reasonable provided that the instruction is lawful. They state that a solicitor's duty is to act in the best interests of their client and if, for example, one party misses a time limit which puts the other party at an advantageous position, it is of little relevance to a solicitor whether the TFC (or any other person) thinks that it is unfair or unreasonable to use that advantage, as long as the solicitor is acting within the boundaries of their professional rules. Situations may arise where a solicitor's professional duties do not allow them to act in the way a member of the public may think is reasonable. The Law Society goes on to say that improvements suggested in Section 10 of the consultation document to "disclose information" and to "play fairly" may well be incompatible with solicitors' duties of confidentiality and to act in their client's interests.
66. SLE think it is important to distinguish between the instructions given to an agent and the conduct of that agent. An agent should not be held responsible for the reasonableness of the instructions given by their principal.
67. SLE also expressed concerns about individuals being denied legal remedies if an agent declined to act on their behalf as they felt an instruction was unfair and unreasonable. SLE stated that professional codes for agents should dictate when they should decline to act, and if these require to be amended, this should be considered by the relevant professional body.



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

- 68. SLE suggested that professional bodies should raise awareness of their complaint process. STFA would like complaint services to be more accessible and easily understood and suggest that complaints should be regarded as helpful to an organisation.
- 69. RICS sees little need to change its regulatory framework.
- 70. NFUS again suggested that a new TFC code would help complainants and help practitioners adhere to best practice standards.
- 71. Law Society of Scotland states that the current system for complaints against solicitors in Scotland is slow, bureaucratic and expensive. They have submitted recommendations for improvements to the complaints process to an ongoing independent review of legal services

d) *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?*

- 72. NFUS, ALA STFA, RICS and SLE agreed that open and transparent discussions do enable good relationships between landlords and tenants and promotes more conducive conditions for agent's transactions; although RICS and STFA pointed out that this is not currently commonplace. ALA, SLE, NFUS and RICS said that they could all promote the importance of long term planning. RICS and SLE pointed out that there will be limits to what either party feels is appropriate to share, particularly where personal and commercial confidentiality is required and some future plans may be difficult and delicate to raise in discussion.
- 73. STFA points out that good awareness of the other party's long term plans are unlikely where agents are often brought in for a single specific task and suggest that it would be good practice for landlords and tenants to meet to cover other aspects of the tenancy. STFA highlights one of the statistics from the research which shows that 46% of tenants meet their landlord once a year or less and 16% never meet their landlord. Such infrequent meetings are unlikely to build trust and transparency.

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

- 74. RICS made two suggestions that the TFC might like to consider exploring:



- the establishment of a legal obligation that all land agents in Scotland must be members of a recognised professional or regulatory body; or
- the introduction of minimum entry requirements and mandatory CPD for all land agents wishing to practice in Scotland.

75. NFUS feels there is a gap in training or guidance in some of the more “human” aspects of agricultural tenancies, and that this should be included in training for new agents and worked into CPD requirements for qualified agents.

76. STFA and SLE feel that the sector would better understand what good practice looks like by seeing some worked examples of the application of codes of practice. STFA suggests some form of auditing of agents so there is an incentive to comply with the codes even where official complaints are unlikely.

77. ALA and SLE suggest collaboration between professionals and sharing of best practice. SLE also suggest training on technical skills, emotional intelligence, personal skills and how to avoid disputes. SLE proposes education of consumers to ensure that they only employ suitable qualified and regulated agents.

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

78. SLE ALA, NFUS, RICS and STFA stated that the findings were as they would have expected and were pleased that the levels of dissatisfaction had been quantified, and provide a basis on which the industry could progress in a positive manner.

79. STFA recognised that levels of dissatisfaction amongst their membership may be higher than reported in the survey as tenants may join STFA due to issues with agents. STFA questioned whether the tenants interviewed held a larger than average size of tenancy. The average size however reflects the total size of the holding and will include those parts of the farm that are owner occupied, as interviewees were asked for the total size of their farm holding and not the area of their tenancy. STFA also pointed out that the landlord sample is skewed towards larger landlords; this is correct in that the researchers found it easier to access and interview those landlords with larger holdings. STFA suggested that poorer relationships are often found on smaller estates.

g) *Do you have any other observations or comments to make regarding the TFC’s review of agents?*

80. STFA suggested that one of the challenges ahead is to improve awareness of the work of the TFC to tenants and landlords of smaller holdings; and to underpin the importance of adhering to the codes of practice there needs to be a complaints process that all those in the sector are willing to use.



81. SLE stated that they are pleased that the review provides an evidential, rather than anecdotal, basis for future codes and guidance; and reiterate their understanding that the review of agents should focus on process and behaviour, not outcomes.

82. RICS suggests that distinguishing between land agents that belong to a regulatory body and non-regulated agents may have produced further clarity into exposing those most likely to damage the reputation of the land agent profession.

6. Discussion and Recommendations

6.1 Comparison with Previous Surveys

83. In 2014 the Scottish Government published a series of reports on the agricultural holdings sector based on surveys of landlords and tenants carried out by Ipsos Mori. Where these surveys provided comparable data, these have been compared with the results of the current survey.

6.2 Landlord Tenant Relationships

84. In order to put the views on the conduct of agents into context, tenants and landlords were asked about the current state of their relationship with each other. Table 1 summaries the responses and shows the comparison with the Ipsos Mori survey. The results suggest that landlord/tenant relationships are generally good. 82% of tenants and 88% of landlords described their relationship with the other party as very or fairly good with only 6% of tenants and 1% of landlords describing the relationship as fairly or very poor.

Table 1. Landlord /Tenant Relationships (%)

Relationship with the Other party	Current Study		2014 Ipsos Mori Study	
	Tenants relationship with landlord	Landlords relationship with tenant(s)	Tenants relationship with landlord	Landlords relationship with tenant(s)
Very Good	54	67	44	62
Fairly Good	28	21	38	26
Neither good nor bad	9	6	N/A	N/A
Fairly Poor	3	1	8	5
Very Poor	3	0	5	5
Don't Know	N/A	N/A	5	2
Varies by landlord and tenant	2	6	N/A	N/A



85. The percentage of both landlords and tenants describing their relationship with the other party as very good in 2018 is higher than in 2014 and the percentage describing that relationship as poor or very poor is less than in 2014. This **may** indicate a slight improvement in landlord/tenant relationships over the last 4 years.

86. It is clear that both landlords and tenants consider that regular, face to face contact between landlord and tenant can be a positive factor in maintaining a good relationship. However, 30% of tenants said that they either have no direct contact (16%) or that contact takes place less often than annually (14%). While the role of intermediaries is often necessary and beneficial, a greater willingness by landlords and tenants to engage in face to face dialogue, with or without the presence of agents, is likely to be very helpful in developing and maintaining a good working relationship.

Recommendation No. 1 - Landlords and tenants should make more effort to meet regularly on a face to face basis.

6.3 Level of satisfaction with the conduct of agents

87. The views of tenants and landlords on the conduct of their own, and the other party's agents are summarised below along with such comparable figures as are available from the Ipsos Mori study.

Table 2. Levels of satisfaction with agents (%)

Perceptions of agents conduct	Current Study				Ipsos Mori study
	Tenants views on own agents	Landlords views on own agents	Tenants views on landlord's agents	Landlords views on tenant's agents	Tenants relationship with landlord's agents
Very Good	70	89	27	17	32
Fairly Good	28	6	39	26	44
Neither good nor bad	2	2	17	35	N/A
Fairly Poor	0	4	8	13	13
Very Poor	0	0	9	4	6
Varies by agent	0	0	1	4	5

88. The results suggest that landlords and tenants are generally happy with the conduct of agents employed by them. 98% of tenants and 95% of landlords were either very or fairly satisfied with the conduct of the agents they have employed and agents were



rated highly both in terms of the way that they conducted their client's business and in their effectiveness.

89. Perhaps not surprisingly, both parties were less satisfied with the conduct of agents employed by the other party. This is to be expected, given that negotiations between the parties over rent and other issues can be difficult and separating dissatisfaction with the outcome of the transaction from dissatisfaction with the way that the agent conducted the transaction can be difficult. Tenants (66%) were more likely to be very or fairly satisfied with the conduct of agents employed by the other party than were landlords (43%), but only 17% of tenants and 17% of landlords said that they were very or fairly dissatisfied. The views of tenants on landlords' agents are similar to those recorded in the 2014 Ipsos Mori study.

90. In general, the results suggest that agents are regarded as providing a good service and that there is no reason to believe that bad practice is widespread. However, given that there is a not insignificant level of dissatisfaction, which does not appear to have reduced since 2014, and given the reasons given for the dissatisfaction, the sector cannot afford to be complacent and action should be taken to effect continuous improvement towards a reduction in the level of dissatisfaction. A small number of examples of bad practice can have a disproportionate effect on the reputation of agents generally and colour wider relationships within the sector.

6.4 The causes of dissatisfaction

91. There is no indication from the survey results that landlords and tenants had significant issues with agents that related to their technical competence and understanding of relevant legislation. Rather it is the way that the agents have conducted the business that has led to concern. The results from the second survey suggest that most issues are with land agents. Based on the two surveys it appears that the causes of dissatisfaction can be grouped into 4 main areas:

6.4.1 Open-ness, transparency and honesty

92. It is not possible from the surveys to separate out the extent of perceived dishonesty as opposed to lack of open-ness and transparency. The latter can be excused, up to a point, by the need for parties to "keep their cards close to their chest" during negotiations but the former is clearly inexcusable and a breach of professional standards. Clearly some landlords and tenants felt that on some occasions an agent had crossed the line from a giving a less than full representation of the facts to deliberate misrepresentation and this should be of concern to everyone involved.

93. A common complaint was that agents, particularly during rent negotiations, were entering discussions and negotiations with inaccurate information and were unwilling to share the basis of their assumptions, calculations, and proposals.



Recommendation No. 2 – Agents should adhere to the principles set out in the industry guidance note on Negotiating and Conducting Rent Reviews and should apply similar principles regarding transparency and evidence in other dealings on behalf of landlords and tenants.

6.4.2 Poor behaviour

94. We heard some evidence, from tenants in particular, of insensitive and condescending behaviour by agents. Discussions and negotiations took place in an atmosphere where the agent displayed arrogance and a tendency to talk down to the tenant and was unnecessarily confrontational. While negotiations on behalf of landlords and tenants can involve differences of view, and a degree of adversarial interaction, a successful outcome should ideally leave both parties feeling that they have had an open and fair discussion which is conducted in a spirit of mutual respect and understanding.

95. Emotional intelligence is the capability of individuals to recognise their own emotions and those of others, to use that emotional information to guide their thinking and behaviour and to adjust their emotions to adapt to circumstances in order to achieve their goals. While it is essential that all parties to a negotiation adopt this approach, it is particularly important that agents acting as intermediaries between landlord and tenant are able to combine good technical knowledge and experience with good interpersonal skills. Achieving this goal requires agents to be self-aware but also requires colleges, professional institutions and firms producing or employing agents to include training on interpersonal skills in courses, in-house training and continuing professional development (CPD) programmes. Those employing agents also have a responsibility to ensure that staff appraisal processes take appropriate account of behaviours as well as outcomes.

Recommendation No. 3 – Firms employing agents should ensure that staff development programmes include training in interpersonal skills.

Recommendation No. 4 – Firms employing agents should use 360 degree feedback, client satisfaction surveys and other means to obtain feedback on the way that staff are carrying out their functions and should include discussions of behavioural aspects in staff appraisals.



6.4.3 Poor communication and recording

96. A common complaint is that, subsequent to a meeting with an agent, there is disagreement over what was agreed and/or that the agent did not follow through on a commitment to follow up a request by the tenant or landlord for additional information or to put a proposal or question to the tenant or landlord. This can be very frustrating for the landlord or tenant involved and appears to be the source of some of the dissatisfaction. While an agent may sometimes have difficulty in contacting his/her client, or may have difficulty in extracting a decision, agents should make every effort to ensure that the outcome of meetings is agreed and recorded and that, if a commitment to take action is made, it should be followed up.

Recommendation No. 5 – At the conclusion of meetings and discussions the agent should ensure that there is agreement on the outcome(s) of the meeting, and on any action points arising, and should follow this up with a written record.

6.4.4 Insufficient regard for wider implications

97. In circumstances where an agent is engaged to carry out a specific task, such as a rent review, there may be a tendency to focus on achieving the best result for the client in respect of that task while disregarding the wider impact on the landlord /tenant relationship. For example, some respondents said that the practice of bringing in an agent with little or no previous connection with the landlord and/or tenant to conduct a rent review was more likely to result in a damaged relationship than where a resident or regularly used agent with knowledge of both parties, and a greater concern for the long term landlord tenant relationship, conducted the review.

6.5 Professional Standards and Complaints

6.5.1 Complaining about the conduct of an agent.

98. A tenant or landlord who is unhappy with the conduct of an agent can complain directly to that agent or to his employer if there is one. Other routes for complaints are available through the professional bodies that regulate the majority of agents operating in the agriculture sector and where a Code of Practice issued by the Tenant Farming Commissioner is believed to have been breached the TFC can be approached and asked to investigate.

6.5.2 The role of the professional bodies

99. The majority of agents are members of a professional body and are therefore required to operate in accordance with the professional standards set by that body.



The Royal Institution of Chartered Surveyors (RICS), the Scottish Association of Agricultural Arbiters and Valuers (SAAVA) and the Law Society of Scotland are the main bodies regulating the conduct of agents in Scotland.

100. Each of these organisations has published standards which require the member to act at all times with honesty, integrity and respect for others. Each also has a system which enables complaints to be made if anyone feels that a member has acted in a way that is contrary to those standards. While complaints can be made directly to the RICS and SAAVA, the situation in respect of the law profession is a little more complicated. All complaints are channelled through the Scottish Legal Complaints Commission which will handle complaints about service while passing complaints about conduct to the relevant professional organisation (normally the Law Society of Scotland).

6.5.3 The role of the Tenant Farming Commissioner

101. The TFC is empowered to produce, in association with key representative organisations, Codes of Practice which guide and shape the procedures and behaviours accompanying the interactions and negotiations between landlords and tenants, including agents and intermediaries acting on their behalf and with the aim of helping the parties to reach positions which are fair and reasonable to both parties. The TFC has the power to investigate alleged breaches of a code and to reach, and publish, a determination. The TFC role was introduced in April 2017 and codes of practice began to be published in the autumn of 2017. As more codes are produced the system will provide increasing scope for complaints to be dealt with by this route. At time of writing no requests to investigate an alleged breach have been received, reflecting a desire by the sector to follow the codes and, in some cases, an intervention by the TFC that has prevented the complaint escalating to a formal request.

6.4.5 Effectiveness of the current systems

102. The professional standards and the codes of practice, along with the associated complaints systems, should in theory ensure that agents can be held to account in most circumstances where there is a failure in respect of conduct or standard of service but in practice few such complaints are made. While 68% of respondents in the phase 2 survey said they were aware of the standards produced by the professional bodies none had used these channels to make a complaint. While complaints directly to the agent involved have taken place, there seems to be a reluctance to use more formal channels with reasons given varying from lack of awareness of how to proceed to worry that it would further strain the relationship with the landlord, tenant or agent. A formal complaint about a breach of professional standards, if upheld, could have serious consequences for the agent involved and is not something to be undertaken lightly. However, the professional standards and



associated complaints system has an important part to play in driving up standards and dealing with bad practice, so it is important that the system is widely understood and is readily accessible. This would not appear to be the case in respect of the agricultural holdings sector and there is a case for further bespoke guidance for the sector on this issue. It would also be helpful if firms employing agents ensured that adherence to professional standards was given equal prominence with client satisfaction measures.

Recommendation No. 6 – The professional bodies should work with the TFC to produce a guide to professional standards, and associated complaints systems, with particular reference to the agriculture holdings sector.

Recommendation No. 7– Firms employing agents should ensure that the promotion of, and monitoring of compliance with, professional standards is given equal prominence with other performance measures.

103. The standards set by the RICS, the Law Society of Scotland and the CAAV generally provide a clear picture of the conduct and standard of behaviour that is expected of their members, but the emphasis is generally on the agent's duty to a client. The notion that an agent should have a wider duty to a third party involved receives much less attention and clearly raises some interesting questions. In promoting the client's interests should the agent be free to ignore any impact on the landlord/tenant relationship and to use any legal argument or process to achieve the client's aims with no concern for the impact on the other party? Society has come to expect that approach in the adversarial climate of a court of law but is much less likely to support it in the day to day dealings between agricultural landlords and tenants. It is not difficult to find examples where the correct legal procedures have been followed but the end result of the way that they have been applied has caused damage to the landlord tenant relationship and reputational damage for agents and their clients.

104. The defence that everything has been done in accordance with the law, and is therefore beyond reproach, is sometimes made but this risks reinforcing the basis of the concerns raised by stakeholders and politicians, and the reasons given in the



surveys for dissatisfaction, about the conduct of some agents. Finding the right balance will not always be easy but an approach which does not recognise the need for such balance is undoubtedly the reason for most of the cases where the TFC involvement has been sought over the past year.

Recommendation No. 8– The professional bodies should consider whether their professional standards promote the achievement of an appropriate balance between a duty of care to the client and a duty of care to others including the reputation of the profession.

6.6 Monitoring Progress

105. It is to be hoped that the recommendations made in this report, if implemented, will lead to a reduction in the number of instances where the conduct of an agent has been reasonably brought into question. It is very much in the interests of firms employing agents, the professional bodies and the agents themselves to work together to improve standards and to root out unacceptable behaviour. A repeat of this survey periodically would enable an assessment to be made of progress towards these aims.

Recommendation No. 9– The TFC and the Land Commission should monitor progress and repeat this exercise in 5 years time.



7. Summary of Recommendations

- i. Landlords and tenants should make more effort to meet regularly on a face to face basis.**
- ii. Agents should adhere to the principles set out in the industry guidance note on Negotiating and Conducting Rent Reviews and should apply similar principles regarding transparency and evidence in other dealings on behalf of landlords and tenants**
- iii. Firms employing agents should ensure that staff development programmes include training in interpersonal skills.**
- iv. Firms employing agents should use 360 degree feedback, client satisfaction surveys and other means to obtain feedback on the way that staff are carrying out their functions and should include discussions of behavioural aspects in staff appraisals.**
- v. At the conclusion of meetings and discussions the agent should ensure that there is agreement on the outcome(s) of the meeting, and on any action points arising, and should follow this up with a written record.**
- vi. The professional bodies should work with the TFC to produce a guide to professional standards, and associated complaints systems, with particular reference to the agriculture holdings sector.**
- vii. Firms employing agents should ensure that the promotion of, and monitoring of compliance with, professional standards is given equal prominence with other performance measures.**
- viii. The professional bodies should consider whether their professional standards promote the achievement of an appropriate balance between a duty of care to the client and a duty of care to others including the reputation of the profession.**
- ix. The TFC and the Land Commission should monitor progress and repeat this exercise in 5 years time.**