

Review of Agents - Stakeholder Consultation

RICS Submission

April 2017

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?

Most, if not all, professionally qualified land agents will be aware of their respective obligations and responsibilities regarding issues covered by Codes of Practice.

Whilst the publication of a quantity of codes may benefit the sector, they may not be sufficiently exhaustive to cover every scenario within a land agent's day-to-day operations.

Indeed, instances may arise where an agent, instructed to carry out a rent review, will experience other matters or issues during the discourse that are not covered by a specific Code of Practice, or require reference to a separate Code. This could raise issues around whether the agent undertook "good practice".

That said, TFC's Codes of Practices should provide a useful mechanism to raise awareness of an agent's responsibilities, as well as acting as an aide memoire.

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?

This survey uncovered several salient issues around land agent behaviour and the effect it can have on the rural landlord-tenant relationship; the 17% dissatisfaction figure is undoubtedly disappointing for the sector.

RICS rural practice professionals represent both landlords and tenants, and whilst the survey did not distinguish between land agents that are regulated or employed by a firm that is regulated by RICS (or another regulatory body), and non-regulated agents, RICS is keen to reduce this figure in conjunction with rural stakeholder bodies.

We recognise that in order to turn dissatisfaction around, there is a need for strong and cordial working relationships amongst sector participants.

Our own stringent Code of Conduct ensures professionals practice ethically, and to assist RICS is exploring the inclusion of seminars within our CPD Foundation framework and speaker slots at our biannual Rural Mid-Sessions based around landlord-tenant relationships.

Furthermore, we have made provisional plans to host another 'Rural Training Day' (initiated in 2016) which looked at emotional intelligence and mediation in rent reviews.

We appreciate that the TFC has worked well to improve the sometimes fragile landlord/tenant relationships – many of which arise from rent reviews – and we will continue to work constructively with the Commission to continue this ongoing development.

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

RICS takes professionalism and ethics very seriously. Whilst we do not prescribe how regulated firms or individuals should practice, if they operate in a manner out-with our strict RICS Code of Conduct we suggest a complaint is initially made by following the firm's Complaints Handling Procedure (CHP) – a necessity for any RICS professional. Failing this, RICS has the power to investigate and undertake redress where required.

As a global organisation, RICS' Regulation Department undertakes checks to ensure compliance with our Codes and Regulatory framework, and we are confident that our regulated firms attain this 'gold standard'. Any infringements of this standard result in member firms being encouraged back into compliance; if it becomes apparent that the firm does not make the appropriate changes, further action is taken by the Regulation Team and, ultimately, by the independent Regulation Board.

We therefore believe that there is little need for RICS to change its regulatory framework.

Furthermore, RICS' Dispute Resolution Service provides access to mediators who have technical expertise in rents reviews, as well as offering mediation training to anyone who wishes to expand and enhance their professional skill set.

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?

From the RICS professionals we contacted regarding this survey, it was made apparent that long-term planning is not particularly commonplace in Scotland. However, awareness of the other party's long-term plans for a holding should improve relationships between landlords and tenants, as well as making it easier for agents to conduct their business, but this may not always be achievable.

This is because there will always be matters of commercial confidentiality, particularly where options are being entered into for development. For example, where the landlord's long-term plan is to amalgamate two holdings and sell off one set of house and steading when one of the tenants retires. This will prove a difficult and delicate issue to raise in discussion.

In terms of communicating the support of clear communications for long term planning, RICS will discuss this internally with the Rural and Geomatics Professional Group Board and communications team and revert directly to the TFC and his commission. In addition, as mentioned previously, we will look to expand our CPD seminar offering to RICS professionals.

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

As mentioned above, as well as acquiring a significant degree of knowledge and experience, once qualified RICS professionals must undertake 20 hours of CPD, that is relevant to their sector and vocation, per annum, as well as abiding by a strict Code of Conduct. Indeed, the Scottish Land Commission Chair, Andrew Thin, when posted as the Interim Tenant Farming Advisor, recognised the diligent RICS Code of Conduct as “excellent”.

As such, the TFC may wish to consider exploring the establishment of a legal obligation that all land agents practicing in Scotland must be a member of a recognised professional or regulatory body, such as RICS.

The reason being that regulation could play an important role in the effective functioning of the rural sector in Scotland. By having all land agents signed up to abide by strict codes of conduct, and having access to redress mechanisms for disputes, instances of malpractice could reduce, and confidence in the rural sector will grow through professional standards.

Alternatively, the TFC may wish to consider the introduction of minimum entry requirements and mandatory CPD for all land agents wishing to practice in Scotland.

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

RICS welcomed the undertaking of the survey, and we were not surprised by the results. An agent carrying out a rent review, which is where most of the problems seem to arise, is in immediate conflict with the other party and the other party is unlikely to be satisfied. Where there is a potential conflict and either landlord or tenant foresees it, they are more likely to employ services of an agent to shield themselves from the potential dispute or conflict that may arise.

That said, a key finding from the survey was that 66% of tenants were either very or fairly satisfied with the agent they deal with who is employed by their landlord (compared to 17% who were either very or fairly dissatisfied).

This is a very interesting observation, as throughout the Agricultural Holdings Review (2013/14) and Land Reform (Scotland) Act evidence gathering phase (when the Act was in Bill form), RICS (as well as many other stakeholder groups, and the public) were led to believe that a significantly higher percentage of tenants were dissatisfied with their landlord’s agent; which was one of the main drivers behind the legislative provision for the TFC to undertake this survey.

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

The survey did not distinguish between land agents that are RICS qualified, those who belong to a regulatory body (RICS or other), and non-regulated agents – doing so may have produced further clarity into exposing those most likely to damage the reputation of the land agent profession.

That said, as a whole, this was a welcome survey, and RICS looks forward to working with the TFC and the Commission to improve the sector.