

Tenant Farming Commissioner – Consultation with Stakeholders on Review of Conduct of Agents

- 1. Do/will the TFCs 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?**

We anticipate that the Codes of Practice will address some of the issues which have been raised regarding the conduct of agents. The Codes of Practice set out the behaviour which is expected and the timeframes which must be adhered to by landlords, tenants and their respective agents. This means that there will be clear guidelines for the agent to follow which will ensure that standards are maintained. It also means that landlords or tenants dealing with agents will know what to expect and this may also prevent dissatisfaction from arising in some cases.

The Codes of Practice have, to date, been aimed at specific topics within agricultural holdings. The findings of the survey do not confirm what areas of agricultural holdings gave rise to the “issues”. It is therefore difficult to comment on whether the Codes of Practice will address the “issues raised” as the issues may relate to topics which are not the subject of a Code of Practice (or proposed Code of Practice). That being said, we appreciate that the Codes of Practice are seeking to contribute to a shift in culture and therefore have wider relevance beyond the topic specified.

Rent review is specifically referred to in the question and we note that the Rent Review Report published by Savills, Watson Bell and Hamish Lean sets out a number of areas on which guidance/codes of practice will be required, including “best practice” guidance, guidance on dispute avoidance and resolution and guidance on how to deal with improvements. Whilst we fully support the Codes of Practice and the principles behind them, we do not think that it is appropriate to use Codes of Practice or guidance to fill in gaps in legislation. In particular, we would have concerns about the Codes of Practice being used to deal with highly technical and complex matters such as the treatment of tenant’s improvements. Therefore, whilst we believe that Codes of Practice will be required on the subject of rent review, they should supplement comprehensive and workable legislation, not replace it, otherwise the likely result will be increased dispute and “issues”.

- 2. What if anything could your organisation do to address these issues of satisfaction – bearing in mind that both the instructions to an agent and the conduct of agents should be fair and reasonable.**

We think that it is important to distinguish between the instructions given to an agent and the conduct of that agent. Our understanding of the review of conduct of agents is that it is aimed at process and behaviour and ensuring that agents act in a way that is fair, open and

transparent. It is not about dictating an outcome. We think it is crucial for landlords, tenants and their agents to understand that the outcome of a course of action is wholly distinct from the manner of the process leading to that outcome. We are concerned that the wording of this question suggests that the review of conduct of agents has a much wider purpose which is not reflected in the legislation or in the wider discussion surrounding the review.

In any event, whilst we would expect landlords and tenants to act in a fair and reasonable manner and instruct their agent accordingly, we do not think that an agent should be held responsible for the reasonableness of the instructions given to him/her by their principal. We are aware that there is an argument that if an agent feels that the instruction is unfair and unreasonable, he or she is entitled to decline to act. Such an argument raises concerns about individuals being denied legal remedies given to them by parliament. An example of this would be a solicitor who was instructed to issue an amnesty notice on the last day of the amnesty – if the solicitor is aware that there has been no prior discussion with the landlord and thus it may be deemed unfair to serve a notice (and may also be a breach of the relevant Code of Practice), should the solicitor refuse to issue the notice on the grounds that it would be unfair/unreasonable and thus deny the tenant their statutory rights under the amnesty? We do not think a widespread expectation that an agent should decline from acting where he/she questions the reasonableness of an instruction is helpful. There are strict professional codes for agents which dictate when they should decline to act - if these require to be amended, this should be considered fully by the relevant professional body.

In order to address any issues of dissatisfaction we propose to:

- highlight to our landowning members that they should provide their agents with clear instructions in a timeframe which allows the agents to comply with any codes of practice which may be any place or, failing that, any reasonable timeframe.
- highlight to landowning members that they should complain to the relevant professional body if they are unsatisfied with the conduct of their own agent or the agent of a tenant that they are currently dealing with.
- reinforce to professional members that they must comply with Codes of Practice and act in a manner which is fair and reasonable.

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

From our reading of the report, we are not clear as to whether it has been identified that professional bodies' complaint services need to be improved. However, we think it would be helpful if the professional bodies raised awareness of their complaint process so that any landlord/tenant who is not satisfied with the conduct of the agent knows that they have a remedy.

The question makes reference to membership organisations' complaint services. If this is referring to the situation where a third party is not happy with one of our members

(whether it is landowning member or a professional member) and reports them to us, we would discuss the complaint with the member concerned in the first instance. We encourage all landowning members to act in accordance with our Landowners' Commitment and a number of the principles contained in the Commitment are relevant to agricultural holdings. If it was felt that the actions of a member could not be justified and did not meet acceptable standards of conduct, we would need to consider whether their membership should continue.

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?

We encourage landlords and tenants to be as open and transparent as possible in their dealings with each other – if the parties are not open and transparent, they are unlikely to be able to sustain a strong working relationship.

However, a landlord/tenant relationship is a business relationship and there will be limits to what either party feels is appropriate to share with the other eg details of succession planning and details of financial position. For example, a landlord could not expect a tenant to notify him of their plans to bequeath a lease to a family member if the tenant has not yet had that discussion with the family member.

Depending on the circumstances, it may be that the parties are able to discuss their long term plans. This may improve relationships between landlords and tenants because it gives the parties a sense of certainty which allows them in turn to make informed decisions. However, we do not think that it would be fair or reasonable of a tenant or landlord to expect full disclosure of all plans in connection with the holding. What is fair and reasonable to expect will also depend on the type and length of the tenancy.

The question asks whether communicating longer term plans will make it easier for agents to act fairly and reasonably. If all parties know the background and long term plans, the environment will be more conducive towards straightforward and open discussions.

On a more general note, we would highlight that the risk of one party communicating long term aspirations rather than firm plans is of course that the other party may make decisions based on those aspirational plans. If aspirations change, which they may do as a result of changes to the tax regime, legislative reform or political events such as Brexit, the other party may be left in a difficult position and may even suffer financial loss as a result of rushing into a decision or change of practice. We therefore think that parties should proceed with some caution.

We can support clear communications around long term planning by –

- providing clear information and guidance which allows landlords to make strong long term plans which they are likely to implement.

- highlighting to landlords that they should notify tenants of decisions which have been taken in accordance with the holding at the earliest stage possible once **firm** decisions have been made.

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

We think that the following can be done to ensure the continuous improvement of professionals for the benefit of the agricultural holdings sector -

- Encourage collaboration between professionals across firms (on a general basis not on a case by case basis) including:
 - Discussion of current and best practice;
 - Identification of barriers to improvement and how they can be overcome;
- Training of professionals on technical skills to ensure that they are informed of the rights of both the landlord and tenant under the lease and statute (this should apply to both solicitors and agents);
- Training of professionals on emotional intelligence, personal skills and how to avoid disputes;
- Raising awareness of codes of practice and guidance and how they should be applied in practice;
- Collaboration between professions (ie solicitors and land agents) so that they understand the different roles which they each play in the process when acting for the same principal and can work together effectively;
- Education of consumers to ensure that they only employ suitably qualified agents who are regulated by RICS;

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

We expected the findings to show that there is not a widespread problem but that there are isolated issues arising in connection with agents acting for both landlords and tenants. The findings are therefore as we expected.

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

We are pleased that the review has been carried out and provides an evidential, rather than anecdotal, basis for future codes of practice/guidance.

We would however reiterate our understanding that the review is focusing on process and behaviour, not outcomes. We think that it is crucial that the review is focused and transparent in its purpose to ensure that its findings can be taken forward effectively by the industry.