



BY EMAIL agriculturaltenancies@defra.gov.uk

Call for Evidence: encouraging good practice in the tenant farming sector, and examining the potential role of a Tenant Farming Commissioner in England.

Q1. Would you like your response to be confidential? No

Q3. What is your name? Helen Shipsey, on behalf of the CLA. The CLA (Country Land & Business Association) represents 26,000 members across rural areas in England and Wales. Our members are predominantly owner-occupiers; a proportion are landlords, and some are tenants as well. Many use the range of other farming structures available. We believe that this gives us a good overview of the farming sector as a whole.

Q4. What is your email address? helen.shipsey@cla.org.uk

This is optional, but if you enter your email address you will be able to return to edit your Call for Evidence response on Citizen Space at any time until you submit it. You will also receive an acknowledgement email when you complete the Call for Evidence.

Q5. Which of the options below best describes the organisation you are responding for? Please tick only one option. If multiple categories apply to you, please choose the one which best describes you and which you are representing in your response. (Required)

- **Industry representative organisation/body**

Q6. If responding on behalf of an industry organisation or professional body or other organisation please provide the name of the organisation you are responding for and whose views you are representing from the list below. Organisation name: Country Land and Business Association

Who does your organisation represent?

- **Tenant Farmers**
- **Landlords**
- **Land agents / rural surveyors**
- **Solicitors / lawyers**
- **Other professional advisor** – membership body representing those who choose to be members of an organisation representing rural businesses

7. Do you agree that there are issues of poor practice and conduct in tenant, landlord and advisor relationships that the industry and government need to address further?

Disagree

To develop this response, we have invited members to share their thoughts on the questions posed in this exercise, including through workshops and a survey. Those who responded to the survey covered 871 Agricultural Holdings Act (AHA) tenancies and 1,232 Farm Business Tenancies (FBT). The results show positive trends. For example, 72% of respondents (who cover 1,975 agreements) plan for regular engagement with their tenants. Of those, around 96% planned to engage at least annually if not more frequently. 80% are also actively



encouraging them to enter into the Countryside Stewardship or Sustainable Farming Incentive schemes. On the whole, both AHA and FBT tenants were treated equally.

In addition to the snapshot provided by survey results, our response is informed by our caseload. The CLA's specialist legal adviser on agricultural tenancies has over 25 years of experience in advising our members. We do not get involved in litigation but assess members' legal situations after taking details and analysing their documents, without pressure to generate work or invoices. Members, whilst generally all owning land, may also be tenants and seek advice in respect of issues relating to these tenancies. In addition, land agents and lawyers also seek specialist advice from the CLA.

There are instances of poor conduct in these relationships, but they are rare. The difficulties experienced have more to do with the legislation governing tenancies and the expense of addressing any areas where differences arise. These tend to be where there are Agricultural Holdings Act tenancies in place. This was also reflected in the survey responses. Often the hardest issues to navigate are where the parties are related. This is quite common for AHA tenancies.

The balance of power between a landowner of a small estate and their one or two AHA tenants lies more often with the tenants. This is because the low level of rent and the uncertainties of pursuing disputes through court or arbitration mean that it is rarely prudent for the landowner to pursue a rent review where it is challenged. Equally, where there is a failure to maintain the buildings or farmland adequately, the cost and risk of taking action may feel prohibitively high for those smaller landowners.

There has been speculation in the industry about landowners seeking to recover vacant possession of land in order to enter into environmental schemes or natural capital markets. It is worth bearing in mind that there will always be movement and changes in farming structures depending on the finance available and objectives of the landowner, as we have seen in the various transitions through CAP and now to the post-Brexit context. However, it is very difficult to recover land from an ongoing AHA. There are limited circumstances and rules for compensation where land can be recovered for non agricultural purposes, but where there is no planning permission for a change of use, a Tribunal must be convinced that only a fair and reasonable landlord would insist on possession.

FBTs are by their nature more flexible, time-limited, and sometimes they will have break clauses. In a time of policy transition, landowners will wish to re-assess the long-term strategy for their assets. The evidence from the CLA membership is that a minority of landowners are looking at recovering vacant possession to restructure with a view to entering an environmental scheme. Often, the land will be farmed by the same farming families, albeit on a share farming or contract farming basis.

8 If you agree that there are issues that need addressing, using the knowledge, experience and evidence you/your organisation has can you provide views on how widespread you think problems of poor practice/conduct are across the sector?

As set out in our answer to Question 7, our experience is that poor practice is rare. A Rock Review premise was a goal of improving relationships between landlords and tenants. This requires the building of confidence and knowledge. It is reductive to base an analysis of problems within the tenanted sector as being down to poor practice and/or conduct.

The industry representatives in 2016 were united in their support for the Agricultural Tenancies Act 1995 as the best framework for agricultural tenancies. The Agricultural



Holdings Act 1986 is more complex, and generates a sizeable amount of work for professionals. The security of tenure (albeit on an annual periodic basis) it confers gives the tenant and his/her family the not unreasonable sense of a greater title to the land than the landowner, and does not encourage collaboration. The next generation landowner may expect a commercial income and a viable business from this asset. The reality is that an AHA rent is low, whereas the financial demands on a landowner, particularly where there is a residential element to the holding or other regulatory requirements, are growing. There is a lack of understanding by the enforcement authorities about the distribution of responsibilities under the 1986 Act agreements and how they might vary from standard residential agreements which can put pressure on the landowner to take on responsibilities and expense that are attributable to the tenant.

The more this pressure grows on the landlord, the greater the likelihood that they will look to other structures to have the land farmed as and when the land becomes available to relet. This is entirely legitimate estate management and does not need to be a negative from the perspective of the person farming (they may continue to be the party who is farming), but could have a negative impact on the total volume of land available to the let sector.

9. Are there any specific situations or times where poor practice/conduct is more prevalent, for example for certain types of tenancy agreements or during rent reviews or renewal of the tenancy agreement, and if so how might they be avoided in the future?

As expressed above in response to question 8, the problems experienced are rare, and not so much to do with poor practice or conduct. Indeed, 62.5% of our survey respondents (covering 1,405 tenancy agreements, or 80% of the agreements covered by responses to this question) felt that there were no such issues to address. In comments, the most common themes were around frictions that arise when tenancy conditions are not being adhered to, or with secretive/obstructive tenants.

We are aware of the results of the TFA's recent survey, which suggest that tenants want more frequent engagement on the part of their landlord. This would be welcome by many of our members, but it conflicts with another prevalent view, which is that tenants – in particular AHA tenants – would expect minimal involvement and maximum autonomy. It is therefore difficult for landowners to gauge what is right. In the CLA's own survey, comments included: "Our AHA tenant is a neighbour and also our contract farmer, managing that web of relationships is tricky but I wouldn't say there is poor conduct or practice"; "They pay a low rent and want to be left alone" "secretive and comfortable" and "I have one AHA tenant, very nice man but completely unmotivated and farm in a mess, very low rent and no incentive to move".

Examples of factors which may have an impact on relationships include:

- Often the hardest scenarios to navigate are where the parties are related. In such instances, there are factors beyond commercial or contractual relationships that make negotiations more difficult. This is quite common for AHA tenancies.
- There is a complexity of language in tenancy agreements that makes them less accessible to the lay person. This can lead to differences in interpretation.
- The lack of resources available to a small-scale landowner means it is not cost effective to increase the rent or seek arbitration to resolve issues which further exacerbates frictions in relationships.



- Rent reviews and dispute resolution through arbitration is expensive and unpredictable. This presents problems with AHA tenancies, which can be exacerbated where the tenant has the benefit of an insurance policy that encourages them to pursue a rent review or dispute to arbitration. Respondents to the survey expressed a desire for greater transparency as regards relevant financial detail and timely responses in the rent review process.
- Where an AHA tenant (often last generation with no succession option) continues to hold the tenancy without farming the land themselves and possibly generates an income in excess of the rent he or she is paying. This may or may not be in breach of the terms of the AHA but is a problem when the tenant is not transparent about sources of income.

Although arbitration decisions are rightly made on the facts of an individual case, there would be benefits in guidance to others considering whether to pursue an issue or not. We understand that such guidance was developed by the Tenant Farming Commissioner in Scotland, although it could be done by Defra officials, without the need for a Commissioner.

There are instances of poor behaviour by agents acting for tenants reported infrequently by the membership. As professionals regulated by their professional body these individual acts of poor behaviour should be capable of being addressed. It is likely that the Code of Practice will assist in recalibrating what it means to represent a client well in this sector, which is a positive development.

10. Are these mechanisms to raise concerns about the conduct of professional advisors widely known about by tenants and landlords.

They are very widely known about

The professional firm is obliged to share this information. The majority of those who responded to the CLA survey confirmed these mechanisms are widely known, most particularly that of RICS.

Where parties are unrepresented it is less likely that they will know about these mechanisms.

11. Are these mechanisms to raise concerns about the conduct of professional advisors widely accessible for tenants and landlords to use.

They are very accessible

Based on member feedback, we believe this to be the case. However, for landlords and tenants who are unrepresented, this may not be the case.

12. Are these mechanisms effective in tackling poor practice in the sector and upholding expected standards of conduct?

Professional Codes place responsibilities on their members which we expect to be taken very seriously.



13. *What improvements to professional complaints mechanisms and procedures could be made more accessible and effective in upholding standards of conduct in the sector?*

The CLA does not have sufficient experience of the schemes to comment on this.

14. *Are these dispute resolution mechanisms widely known about for tenants and landlords to use?*

They are widely known about

The findings of our survey showed that arbitration is the most recognised mechanism for dispute resolution, followed by mediation, independent expert determination and, close behind, the simplified arbitration.

Much of the feedback about arbitration was that it needs to be quicker, with one respondent saying *"It is slow, costly and known for its variable outcomes"*. In order to make these dispute resolutions more accessible, some responses suggested clearer, more accessible guidance (perhaps on gov.uk) and cost/budget estimates from the outset.

15. *Are these dispute resolution mechanisms accessible for tenants and landlords to use?*

They are not very accessible

The lack of speed and the cost were given by CLA members as reasons not to use them.

16. *Are these dispute resolution mechanisms effective in resolving disputes between tenants and landlords quickly and cost effectively?*

Not very effective

Few survey respondents felt they were speedy or cost effective.

17. *What improvements to these dispute resolution mechanisms could be made to make them more accessible and effective in future?*

Dispute prevention is more important, in our view. Therefore, the focus across all parts of the industry should be on improved awareness and dissemination of information about each party's rights and responsibilities.

18. *Please provide views on how this code of practice could be used and embedded in the sector to ensure that tenants, landlords, land agents, rural surveyors and other advisors abide by it.*

The CLA, once approval has been given, will use the wide variety of communication channels at its disposal to make members aware of the Code of Practice.



19. How can the industry best monitor uptake and use of the new code of practice by tenants, landlords, land agents, rural surveyors and other advisors?

This is hard to measure. There will be no consensus on what poor practice or conduct is. It will be difficult to establish benchmarks to understand the scale of poor practice and then how it is impacted by a Code of Practice. Feedback could be sought from professional bodies and bodies representing tenants, including surveys and numbers of arbitration and dispute resolution. In addition, in cases of arbitration and dispute resolution, it could be that a requirement is needed to make known that the code has been followed.

Any monitoring should take account of the likelihood that, if there is greater awareness of complaints processes, it is likely the complaints will rise at least at the outset.

20. What benefits would a Tenant Farming commissioner deliver that is different from or would add value to existing industry led mechanisms to raise concerns about the conduct of advisors or parties to tenancy agreements?

Given the widespread awareness of other mechanisms, it is perhaps unsurprising that, of those who responded to the CLA survey, only 26% thought that a Tenant Farming Commissioner was needed. Most respondents expressed reserve and caution. There is widespread concern that the role of the Tenant Farming Commissioner would be to assess matters solely from the tenant's perspective, or that they would take a biased position. Some were concerned at how this position would be funded. Many wanted a more neutral title.

If a Commissioner, through both the way their remit is shaped and the personal characteristics of the appointee, had the trust of the different voices in the sector, then it could help move the sometimes adversarial tone of the public discourse to a more collaborative one. It would be essential to consider a mechanism in the selection process that ensures neutrality, such as assessment by and support from panel of the key member organisations. The appointment of the current Tenant Farming Commissioner in Scotland has been seen by all as having a positive impact on the industry. The appointment has had the support of all parties. If the Government decided to set up a similar role in England, we strongly recommend that it considers carefully the structures and processes that have made the current appointment in Scotland successful, and how the Scottish model needs to be adapted to work in the context of England.

There was again some reticence from respondents in terms of willingness to show outright support or otherwise for a possible Tenant Farming Commissioner, simply due to a number of unknowns causing some scepticism. This meant that whilst 47% felt there was little benefit to having a Tenant Farming Commissioner, 53% could see some benefits (as well as potential issues). More particularly, we found some resistance around the name 'Tenant Farming Commissioner' as it sounds as though it is for the benefit of tenants, and thus would not be an unbiased, neutral ombudsman-like entity which is what many landlords/agents would be keen to see. Moreover, there were questions raised around who would pay for a commissioner and whether they would be adequately funded, and also if they would have any real power to make decisions and create/enforce change.



21. What might be the potential unintended consequences or impacts of establishing a Tenant Farming Commissioner in England?

Apart from issues of costs pointed out under question 20, the appointment of anyone aligned (or perceived to be aligned) to a particular interest in the sector could seriously damage confidence in the role and thereby the future of the sector.

Many members raised the prospect of an increase in bureaucracy.

22. What are your views on delivering an industry led approach by establishing a new code of practice on standards of conduct for all parties to tenancy agreements, to address issues of poor practice/conduct in the sector?

Strongly agree with an industry led approach.

CLA members are not complaining of poor practice or conduct in the main. That is not to say that no problems are ever experienced in these relationships. The Code is aspirational, and we hope that it will raise standards. The CLA survey was run before the recent consultation on the draft Code of Practice was launched. Survey respondents expressed scepticism, and the fear of a focus on benefits for tenants and greater pressure on landlords. However, having taken part in the Code's drafting, and assuming that it remains in the current shape (subject to any amendments suggested by the CLA or ILG), the CLA is reassured that the Code will deal with all parties equitably.

23. Do you agree that in addition to an industry led approach to establish a new code of practice, an independent Tenant Farming commissioner is needed to provide more oversight and scrutiny of the tenant farming sector in England?

Disagree

There is no overwhelming enthusiasm within the membership for a Tenant Farming Commissioner. There is real concern that the appointee will focus on the interests of the tenant and disregard the interests of the landlord.

24. From the list below please can you choose and rank in order of importance from 1 to 5 (with 1 being of highest importance and 5 being of lowest importance) your views on what might be the most important functions of a potential Tenant Farming Commissioner in England?

1. Facilitation services: helping to resolve disagreements between the parties to a tenancy agreement and encouraging parties to use mediation services.
2. Scrutiny of arbitration: reviewing the cost of arbitration and collating and reporting arbitration decisions
3. Delivering guidance and setting standards: developing codes of practice, guidance, and standards for parties and advisors to tenancy agreements to follow.
4. Providing independent scrutiny: investigating complaints about poor conduct and investigating and reporting breaches of any established codes and guidance.
5. Expert advice: collate expert advice for government and other public bodies on policies, regulations, and schemes from the tenanted sector perspective.



25. In your view would a potential Tenant Farming Commissioner (TFC) need statutory powers to be effective?

Statutory powers are likely to be necessary for a TFC to be effective

The majority of the membership expressed scepticism about the creation of such a post. There is however recognition that if there is to be a Tenant Farming Commissioner there would be a need for statutory powers to make the role effective.

26. If your view is that a potential Tenant Farming Commissioner would need statutory powers to be effective, please set out below what powers you think the role should have?

A neutral party addressing issues and areas of concern together with producing guidance and codes of practice.

To look at arbitration decisions – monitor for trends and identify areas that need further guidance or attention.

27. How might the role of a Tenant Farming Commissioner work with existing dispute resolution mechanisms and regulations such as the regulations that govern arbitration?

This is not clear, and there are concerns about the potential for duplication and the need for a Commissioner (and inevitably, their advising team) to acquire significant technical knowledge.