



Issued by:
Bob McIntosh,
Tenant Farming
Commissioner



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

A GUIDE TO – The Professional Conduct of Agents and How to make a Complaint

This guide outlines the standards expected of professional agents working for landlords and tenants of agricultural holdings. It provides information on how and where to complain about an agent who does not adhere to the relevant standards. For the purposes of this guide, agents comprise of surveyors, factors, land agents, solicitors and any other professional adviser acting for either party.

EMPLOYING A PROFESSIONAL AGENT – CHECKLIST

1. We recommend employing an accredited agent as they are bound to professional standards.
2. Never ask an agent to do anything that would conflict with their professional standards and if in doubt ask the agent for advice.
3. If you feel an agent has not adhered to the relevant standards, always raise this with the agent directly.
4. If this does not resolve the issue, draw things to the attention of the agent's employer.
5. If this still does not resolve the issue, report the breach to the relevant professional body.

INTRODUCTION

In recent years the standard of conduct that landlords and tenants should expect of each other has come under considerable scrutiny. Particular attention has also focused on the behaviour of land agents and others (such as factors, surveyors and solicitors) whose functions may require them to act on behalf of and facilitate negotiations between the two parties. The Tenant Farming Commissioner (TFC) was tasked under the Land Reform (Scotland) Act 2016 to review the operation of professionals engaged by landlords and tenants in relation to business conducted on agricultural holdings. As part of the review, independent telephone surveys (121 landlords and 914 tenants) were carried out to explore perceptions and experiences of the use of agents. The results of these surveys were shared with industry stakeholders and their views sought on the evidence gathered and the way forward.

During the TFC's review, a wide range of responses were received from throughout Scotland, with the majority reporting a positive experience regarding their interactions with agents. However, 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. Whilst these percentages seem relatively small, the issues arising are significant.

Dissatisfaction with an agent was not related to a perceived lack of technical knowledge but to aspects of the behaviour and conduct of the agent, generally falling into one or more of four categories:

- Poor communication and inadequate recording of the outcome of meetings.
- Unnecessarily aggressive, condescending and insensitive behaviour.
- Lack of transparency, openness and honesty.
- Lack of consideration of the impact of a single negotiation or transaction on the longer-term landlord-tenant relationship.

The TFC made nine recommendations in his report to Ministers that was published on 9th May 2018 landcommission.gov.scot/tenant-farming/reviews-and-reports/.

In discussing these recommendations stakeholders, including NFUS, SLE and STFA, agreed that it is important that landlords and tenants do complain about unacceptable conduct of agents, as only by making complaints will standards be driven up and unacceptable behaviour be addressed.

The purpose of this guide is to help landlords and tenants to understand what standards of conduct they should expect from an agent, and the actions that they should take to help ensure that any instances of poor conduct are addressed promptly and effectively.

Helping to Maintain Good Standards

Landlords and tenants who engage an agent are partly responsible for that agent's conduct. We recommend that they select someone who is a member of a reputable professional body. A landlord or tenant should never ask an agent to do anything that would conflict with professional standards, and if in doubt they should ask the agent for advice on this.

What are Professional Standards?

Professional standards are prescribed by professional bodies, and their purpose is to set a baseline for the level of care, diligence and skill that people should expect from all members of that professional body. Professional standards may in some circumstances be underpinned by a Royal Charter which usually create a form of accreditation system for members. Failure to adhere to professional standards, can in serious cases, result in the agent being expelled from the professional body and losing accreditation.

Most agents are affiliated to a professional body and covered by that organisation's published standards of conduct. Land agents are most likely to be affiliated to the Royal Institution of Chartered Surveyors (RICS) and covered by the RICS Global Professional and Ethical Standards. Solicitors are covered by the Rules of the Law Society of Scotland, and valuers by the Central Association of Agricultural Valuers (CAAV) byelaw 5.

Broadly speaking the conduct that should be expected of any professional agent is encapsulated in the good practice described below.

What should I Expect from an Agent?

You should expect any agent to follow the general principles of good practice set out below.

1. Treat others with Respect and Sensitivity

At the heart of a collaborative and stable relationship is mutual respect. Lack of respect or sensitivity to another's circumstances can lead to tension and conflict.

An agent should:

- Always be courteous, polite and considerate
- Think carefully about how the other party will wish to be treated
- Treat everyone as an individual and adapt their behaviour accordingly
- Identify and plan ahead for particular areas of sensitivity
- Monitor and respond to non-verbal as well as more overt signals
- Consider what the other party might be thinking
- Quickly act to repair the damage if a mistake is made

2. Act with Integrity and Promote Trust

Suspicion and mistrust can cause people to change their behaviours, doubt what is said, be less inclined to agree to things and more likely to resort to bureaucratic formality in order to protect themselves.

An agent should:

- Be honest and straightforward
- Be fair to the other party
- Ask themselves whether the other party trusts them
- Consider how to strengthen trust
- Mean what they say, and do what they say they will do
- Treat others as they would wish to be treated
- Speak up when they encounter dishonesty in others
- Never compromise integrity for short term gain
- Quickly admit to, and rectify mistakes

3. Operate with Openness and Transparency

Information can often result in an imbalance in power in landlord/tenant relationships. For example, if one party knows more about comparable rents in the locality than the other party, then they may have an unfair advantage in a rent review. A market economy cannot operate efficiently unless there is equal access to relevant information, and a distorted tenant farming economy is in nobody's long term interest.

An agent should:

- Communicate with all parties timeously
- Record accurately and share outcomes from meetings
- Provide any relevant information to the other party and request any relevant information when the situation is reversed

4. Demonstrate Responsibility and Accountability

There is nothing to be ashamed of in making mistakes, and indeed provided they are acknowledged and act as a basis for learning, mistakes can improve future performance. However, agents who make mistakes and then try to cover them up are undermining respect, eroding trust and obstructing transparency.

An agent should:

- Encourage constructive feedback and appraisal from other parties
- Seek advice on how they might continually improve
- Respond to complaints in a positive and open-minded manner
- Consider the impact of a single negotiation in the long term
- Never be afraid to own up to having made an error

How to Make a Complaint

Most agents are diligent professionals who work hard to maintain the standards expected of them. Feedback from landlords and tenants, both positive and negative, provides valuable information that helps to drive up standards, and will be welcomed by any good agent. It is important that this comes both from the person engaging the agent and from the third party to the transaction (the tenant where the landlord is the client or vice versa), as each can offer a different perspective.

If an individual feels that an agent has not adhered to the relevant standards, the first step should always be to raise this directly with the agent and politely draw the issue to their attention. A discussion may be all that is required to show that there has been a misunderstanding between the parties. For example, it may appear that an agent is not being honest and straight forward when in fact they have simply made a false assumption about the other person's understanding of a situation. Or it may appear that an agent is not being courteous, polite and considerate when in fact they have simply misconstrued the other person's reaction. Errors of judgement can and do occur that are in no sense deliberate.

If direct contact with the agent has not resolved the issue, then the next step is to draw matters to the attention of their employer. Usually a short note explaining what has happened and referring to the relevant professional standard will elicit an explanation or apology if appropriate, and the matter can be laid to rest. Feedback like this, if offered in a constructive and non-confrontational way, will be welcomed as contributing to service improvement in the organisation concerned.

It is inevitable that in any large and diverse profession there will be a small number of individuals who deliberately ignore established standards. Agents involved in tenant farming are no different from other professions in this respect. Where a landlord or tenant encounters a deliberate breach of this nature they should always raise the matter formally with the agent's employer and seek a formal response. Most firms have a comprehensive complaints handling procedure that deal with complaints directly.

If the response from the agent's company is unsatisfactory, or if the breach is a serious one, the breach should be reported to the relevant professional body. Reporting a deliberate breach is not a matter to be taken lightly. The impact on an agent's reputation and career can be serious. It is essential that the complaint is justified, and that it is accompanied by robust evidence to support whatever breach is being alleged. An agent will rightly be presumed innocent of any alleged breach unless good evidence is presented to prove otherwise, and someone alleging a breach without good evidence risks being accused of malicious and vexatious behaviour.

The most useful forms of evidence are usually written communications, but some of the standards expected of an agent may be difficult to evidence in this way. In some circumstances a landlord or tenant may ask an independent witness (a respected neighbour or other credible person) to attend any discussions that take place with the agent. In other circumstances landlords or tenants may choose to audio record meetings with agents, and it is entirely reasonable and permissible to do so if the consent of all parties has been obtained in advance (for example during a rent review discussion).

A formal complaint should set out clearly and succinctly which specific professional standard has been breached, how, and what evidence is available to support the allegation. The language used should be calm, non-judgmental and focused on setting out the relevant facts in a clear and unambiguous manner.

Who to Complain to

1. In the first instance, always discuss any issues with the agent directly.
2. If discussing the issues with the agent does not resolve them, then contact the agent's employer. Ask their firm or company for information on their complaints handling procedure and how to submit a complaint.
3. Finally, if the complaint hasn't been resolved with the agent directly or by making a complaint to their employer, establish which professional body the agent is affiliated to and submit a formal complaint to them. The professional body may then investigate further before coming to any decision on the matter. The contact details for professional bodies can be found below with further information at Appendix A.

Professional Body	Contact for complaints
Land agents affiliated to the Royal Institution of Chartered Surveyors (RICS)	www.rics.org/uk/footer/contact-us/complaints Service Improvement Team RICS 53 Colmore Row Birmingham B3 2AA T: 024 7686 8555
Valuers, arbiters, surveyors and other professionals affiliated to Scottish Agricultural Arbiters' & Valuers' Association (SAAVA)	Mrs Christine Nisbet SAAVA Secretary Seed and Co. Cothill Duns Berwickshire TD10 6YW T: 01361 882920 E: secretary@saava.org.uk
Any solicitor, advocate or other legal practitioner	There is a single gateway for all complaints about legal practitioners in Scotland www.scottishlegalcomplaints.org.uk T: 0131 201 2130 E: enquiries@scottishlegalcomplaints.org.uk

Tenant Farming Commissioner's Codes of Practice

The TFC's Codes of Practice apply to agents as well as to landlords and tenants. Any agent found to have breached one of these codes may find themselves also in breach of professional standards. Information on how to report an alleged breach of a Code of Practice can be found at landcommission.gov.scot/tenant-farming/

APPENDIX A

Further Sources of Information

RICS publishes in full on its website the Global Professional and Ethical Standards that members and others associated with the organisation are expected to follow:

www.rics.org/uk/regulation1/compliance1/ethics--professional-standards/

The Law Society of Scotland publishes in full on its website the Rules that lawyers in Scotland are expected to follow:

www.lawscot.org.uk/rules-and-guidance/table-of-contents/

Further information on making a complaint can be found here:

www.lawscot.org.uk/for-the-public/client-protection/complaints-against-solicitors/

www.scottishlegalcomplaints.org.uk/

SAAVA does not publish its own professional standards, but it expects members to follow byelaw 5 of CAAV (a sister organisation south of the border):

www.caav.org.uk/ then click on the contact button and scroll down to find an email link to the SAAVA Secretary who will be able to send you a copy.

Tenant Farming Commissioner's Codes of Practice can be found at:

landcommission.gov.scot/tenant-farming/codes-of-practice/



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NAH-ALBA

Contact us

@ tfc@landcommission.gov.scot

☎ 01463 423 300

🌐 www.landcommission.gov.scot

Find us on:

