



Department
for Environment
Food & Rural Affairs

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

Date: 16th November 2023

We are the Department for Environment, Food and Rural Affairs. We are responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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Any enquiries regarding this Call for Evidence should be sent to us at agriculturaltenancies@defra.gov.uk

www.gov.uk/defra

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Overview

Tenant farmers are hugely important stewards of the countryside doing invaluable work to keep food on our tables and nurture our natural environment for the next generation. Approximately a third of agricultural land in England is occupied and managed under agricultural tenancy agreements and a diverse and vibrant tenanted sector is vital to the future of agriculture.

[The government response to the Rock Review on tenant farming](#) recognises that there is a need to balance rights, interests and obligations of both tenant farmers and landlords to ensure the tenanted sector can thrive. As the Rock Review recognised, many tenants, landlords, land agents, rural surveyors, and other advisors work collaboratively and positively to navigate and balance their interests for mutual benefit.

However, the Rock Review also highlighted examples and concerns about poor practice and negative relationships which can lead to a breakdown in communication and curtail the ability of some tenanted farm businesses to thrive. The evidence provided in the Rock Review shone a light on the impact poor practice can have on some tenant farmers and provided very important insights on this issue. Through this targeted industry Call for Evidence, we want to complement that evidence by exploring in more detail the extent and nature of poor practice in the sector and the extent to which existing industry complaints and dispute mechanisms are effective or could be improved. We also want to explore what more industry and government can do to spread collaboration and responsible conduct throughout the whole of the tenanted sector. This Call for Evidence does not set out new policy, it is however intended to gather in evidence and views to help us explore in more detail:

- The issues identified in [the Rock Review on Tenant Farming](#) about tenant, landlord, land agent/rural surveyors and other advisors' practices and the extent and nature of poor practice in the sector.
- Whether existing complaint routes and dispute mechanisms are effective in addressing any issues of poor practice and if not, how they could be improved in future.
- The role of new mechanisms in addressing poor conduct including: a new Code of Practice on expected standards of responsible conduct for all parties in the sector; and the potential role of a Tenant Farming Commissioner (TFC) for England to provide oversight and scrutiny of practices in the sector.

Alongside evidence already gathered in the Rock Review the views and evidence provided through this targeted industry Call for Evidence will help to inform future policy development in this important area. Agriculture is a devolved matter in the UK and this Call for Evidence and any subsequent policy development relates to England only.

Audience

During the Rock Review the views of individual tenants, landlords and advisors were sought through townhall events around the country and an online survey. Evidence and insights gathered from that process are summarised in the Rock Review report. This targeted industry Call for Evidence is complimentary by seeking evidence and views from representative industry organisations and professional bodies from across the whole sector. The Call for Evidence will be open for twelve weeks to ensure that industry organisations and professional bodies have time to engage with their wider membership to gather in views to inform their response. We will also invite responses from some sector experts/academics, and organisations who may have insights, experience, and evidence on the issues we are exploring. This approach will enable us to gather in detailed representative responses from all parts of the sector. A list of trade bodies, organisations, and experts that we have invited to respond to this Call for Evidence to is attached at Annex A separately.

As we are seeking consolidated views from representative organisations, forums, and experts/academics we will only be analysing responses from those we have directly invited to respond. We encourage tenant farmers, landlords and advisors to contribute their thoughts to their relevant trade / professional body.

Why your views matter

The views and evidence gathered through this Call for Evidence will sit alongside the evidence gathered through the Rock Review to deepen our understanding of the issues and solutions to inform future policy development on how collaboration and responsible conduct can be spread throughout the whole of the tenanted sector.

It would be helpful to include in your response insights from your membership's views and experiences on these issues. This could include where members views have already been sought and collated on these issues. However, if any survey data is provided, please clearly document the survey methodology together with an assessment of how representative you feel the views are for your organisation and membership base as a whole.

We do encourage all organisations and respondents to complete the online survey wherever possible. If you have evidence to share that you cannot otherwise share, attach, or upload to your response, please email us at agriculturaltenancies@defra.gov.uk.

Responding to this Call for Evidence

Please respond to this Call for Evidence in the following ways: Online using the citizen space Call for Evidence at: <https://consult.defra.gov.uk/farm-tenancy-policy-team/da7bd616>

By email: agriculturaltenancies@defra.gov.uk

Duration

This Call for Evidence will run for twelve weeks. This is in line with the Cabinet Office's 'Consultation Principles' which advises government departments to adopt proportionate consultation and Call for Evidence procedures. The Call for Evidence opens on 16th November 2023 and closes at 23.59pm on 8th of February 2024.

Handling comments after the Call for Evidence

A summary of the responses to this Call for Evidence will be provided to all those that have responded. The summary will include a list of names and organisations that responded, but not personal names, addresses or other contact details. However, information provided in response to this Call for Evidence document, including personal information, may be subject to publication or release to other parties, or disclosure in accordance with access to information regimes, such as the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018.

If you want information, including personal data that you provide to be treated as confidential, please say so clearly in writing when you send your response to the Call for Evidence (if responding via mail or email) and explain why you need these details to be kept confidential. If responding via Citizen Space, you will be asked whether you would like your response to be treated as confidential or not. If we receive a request for a disclosure under the FOIA, we will take full account of your explanation, but due to the law we cannot provide any assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as a confidentiality request.

Defra is the data controller in respect of any personal data that you provide, and Defra's Personal Information Charter, which gives details of your rights in respect of 15 the handling of personal data, can be found at:

<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs/about/personal-information-charter>

Compliance with consultation and Call for Evidence principles

This Call for Evidence is being conducted in line with Consultation Principles set out in the Better Regulation Executive guidance, which can be found at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments or complaints about the Call for Evidence process, please address them to:

By email: consultation.coordinator@defra.gov.uk

Or in writing to:

Defra Consultation Co-ordinator,
Ground Floor of Seacole,
Desk G125,
2 Marsham Street,
London,
SW1 4DF.

Confidentiality and data protection information

A summary of responses to this Call for Evidence will be provided to all those who have responded. An annex will list all organisations that responded but will not include personal names, addresses or other contact details.

Defra may include the content of your response in the summary of responses without your personal name and private contact details (for example email address, etc).

If you click on 'Yes' in response to the question asking if you would like anything in your response to be kept confidential, you are asked to state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality. The reason for this is that information in responses to this Call for Evidence may be subject to release to the public or other parties in accordance with the access to information law (these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances. In view of this, your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance these obligations for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this Call for Evidence, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.

If you click on 'No' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won't make your personal name and private contact details publicly available.

There may be occasions when Defra will share the information you provide in response to the Call for Evidence, including any personal data with external analysts. This is for the purposes of Call for Evidence response analysis and provision of a report of the summary of responses only.

This Call for Evidence is being conducted in line with the Cabinet Office “Consultation Principles” and be found at: [Consultation principles: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultation-principles)

Please find our latest privacy notice uploaded as a related document alongside our Call for Evidence document. If you have any comments or complaints about the process, please address them to:

Defra Consultation Co-ordinator,
Ground Floor of Seacole,
Desk G125,
2 Marsham Street,
London,
SW1 4DF.

Or email: consultation.coordinator@defra.gov.uk

About You

Q1. Would you like your response to be confidential?

Please refer to the information on confidentiality and data protection at page 6 of this document.

Yes / No

Q2. If you have answered ‘Yes’ above, please give your reason.

Q3. What is your name?

Q4. What is your email address?

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
- Professional representative organisation/body
- Local Authority
- Non-governmental organisation
- Academic
- Individual expert or practitioner
- Other – please state

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:

Who does your organisation represent?

- Tenant Farmers
- Landlords
- Land agents / rural surveyors
- Solicitors / lawyers
- Other professional advisor – please state profession
- Other – please state

Introduction

Approximately a third of agricultural land in England is occupied and managed under agricultural tenancy agreements. Agricultural tenancies are a key route into farming for those without a family connection to land or capital to buy land and they provide a flexible way for farm businesses to grow and respond to market changes. Defra statistics show that approximately 14% of farms in England are wholly tenanted (around 14,506 holdings) accounting for 15% of farmed area and approximately 31% of farms are mixed tenure (approximately 33,000 holdings) accounting for 48% of farmed area in England. There are approximately 17,500 holdings in England with an Agricultural Holdings Act (AHA) tenancy agreement covering around 1.2m ha of agricultural land and approximately 16,400 holdings in England with a Farm Business Tenancy (FBT) agreement covering around 1.3m ha of agricultural land.

In February 2022, Defra commissioned Baroness Rock to lead a review looking at how the tenanted sector can be better supported as farming in England is reformed to be more sustainable through the agricultural transition. The Rock Review published its findings in October 2022. The government welcomes the Rock Review report and published [a response](#) in May 2023. Our response included a commitment to delivering this Call for Evidence to explore in more detail issues raised in the review about poor practice in the sector and on the benefits and impacts of the proposal for a Tenant Farming Commissioner (TFC).

Issues and evidence identified in the Rock Review on tenant-landlord and advisor relationships

The government response to the Rock Review on Tenant Farming recognises that there is a need to balance the rights, interests and obligations of both tenant farmers and landlords

to ensure the tenanted sector can thrive. Landlords have property rights to ensure that the use of their land and assets will not be significantly changed without their approval. Tenants have the right to manage the land and develop a viable farm business within the terms of their tenancy agreement without interference.

The Rock Review on Tenant Farming found that there is a wide spectrum of how tenants, landlords, land agents, rural surveyors, and other advisors work together to balance these rights and responsibilities. Some landlords/land agents and tenants work collaboratively and positively to navigate and balance their interests for mutual benefit. Others might be absent landlords or have negative relationships with their tenant's leading to a breakdown in communication which can limit the tenants' ability to develop a thriving business.

The Rock Review noted that there are landlords, land agents, and tenants all along this spectrum and included examples and evidence of both good and bad practice. The Review reported that for every good practice example they found an equal number characterised by poor communication or where the business relationship was acrimonious. The Review included examples of good practice such as landlords, land agents/rural surveyors having early and regular conversations with their tenants about how the landlord can support their tenant to diversify, expand or become more resilient. The Review also included examples of poor practice such as landlords and land agents/rural surveyors not providing adequate time and notice of changes to agreements for example waiting only a few weeks before a tenancy is due to expire before providing confirmation that it will be reviewed, rolled over or extended. The Review highlighted that this can place significant mental health stresses on the tenant and their families.

The Rock Review highlighted that land agents/rural surveyors play an important role in tenant- landlord relationships. It was reported that whilst many land agents/rural surveyors help to facilitate positive collaboration, sometimes they are perceived to take an adversarial or heavy handed approach, pressurising tenants into accepting changes they may not want. The Review recommended that scrutiny of land agent/rural surveyors' performance and behaviour should be improved so they are held to account.

The Rock Review highlighted concerns that for some tenants there can be a power imbalance in the tenant-landlord relationship. This was evidenced by nearly half of the tenants responding to an online survey (of 391 respondents) who said they were uncomfortable discussing changes to their tenancy agreement with their landlord or their land agent/rural surveyor. The Review also included evidence from a CLA survey published in September 2022 that found that two thirds of landlord's responding (of 250 respondents) said they would be willing to collaborate over scheme entry with their tenants if the agreement and schemes enabled that. This indicates that many landlords do recognise the value of open and positive communication with their tenants.

The Rock Review survey and CLA survey provide very important insights, but represent a small sample of the wider sector of approximately 46,880 wholly tenanted and mixed tenure holdings. Therefore, through this Call for Evidence we are seeking to complement the insights and evidence already gathered by asking for informed industry views and evidence from all parts of the sector on the extent and nature of poor practice and

conduct. This will help us to get a better understanding of the scale and nature of the problems to inform proportionate solutions going forward. We are also seeking views and evidence (in the next section) on whether existing industry complaints and dispute mechanisms are accessible and effective in addressing any issues of poor practice or need improvement.

Q7. 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?

Strongly agree

Agree

Disagree

Strongly disagree

Don't know

Please provide comments and evidence to support your response.

Free text box.

Q8. 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?

Free text box.

Q9. 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 future?

Free text box

Consideration of existing mechanisms to raise and investigate concerns about poor practice or conduct of advisors working in the sector.

A tenant or landlord who is unhappy with the conduct of a land agent, rural surveyor or other professional advisor can raise concerns directly to that agent or via their employer's complaints handling procedures. Other routes for raising concerns are available through the professional bodies that set and oversee expected standards of conduct for those professions.

Most professional advisors working in the tenant farming sector such as rural surveyors, land agents, solicitors, and arbitrators will be a member of one or more of the professional bodies that set standards of conduct for those professions. These bodies include the Royal Institution of Chartered Surveyors' (RICS), the Central Association of Agricultural

Valuers (CAAV), the Solicitors Regulatory Authority (SRA) and the Chartered Institute of Arbitrators (Ciarb). Each of these organisations has published standards of conduct and behaviour which require their members to act professionally at all times including with honesty, integrity, and respect for others. Each professional body has a process in place which is summarised below that enables serious concerns about a member's conduct to be investigated.

RICS: If anyone (for example a tenant farmer or landlord) wants to raise a concern about a RICS member or regulated firm, they can do this by reporting their concern using the online [Reporting Concerns \(rics.org\)](https://www.rics.org/Reporting-Concerns) portal or by sending an email to complaints@rics.org, or by providing the information by post. RICS will need to see the evidence, including documents, emails, and anything else that is relevant to the concern raised. The information will be assessed to determine the seriousness of the concern and whether the Member has failed to meet the requirements as set out by the Rules of Conduct, Professional Standards, and Bye-Laws. Where RICS finds that the conduct has fallen below the standard expected, this may result in the member receiving a penalty or sanction, such as a published reprimand, a fine or even being expelled from membership.

Gathering evidence is an important step in the investigation process and the evidence provided by witnesses is crucial in proving the case. RICS does consider concerns made on an anonymous basis and, if requested, will do their best not to disclose the source of the information to the Member or firm under investigation. However, this may limit the ability to investigate or take disciplinary action if witness evidence is required. In some circumstances, RICS may have to disclose the source, if the concerns are so serious that it is in the public interest to take disciplinary action against the Member or firm, so anonymity cannot be guaranteed.

CAAV: has an established [complaints process](#) for anyone to use if they have a complaint about the conduct of a CAAV member. The CAAV advises that in the first instance the complaint should be made directly to the member's business, firm or organisation or, if a sole trader directly to the member. If an issue remains outstanding after that process the complaint can be made in writing to the CAAV as the professional body regulating that member. The written complaint should set out which parts of the CAAV's Bylaw on professional standards have been breached and include supporting evidence that will help to explain the complaint.

SRA: has an established [complaints process](#) set out on their website for anyone who feels a solicitor or other legal professional has not acted in line with the SRA principles and codes of conduct. However, if a complaint is about poor service from a solicitor that must be made through [the legal Ombudsman](#). If the Legal Ombudsman thinks a case involves a breach of the SRA Principles and codes of conduct, they will refer the case to the SRA to investigate.

Ciarb: has an established [complaints process](#) for anyone to use if they have a complaint about a Ciarb member which can be made using their webform. Ciarb will contact the complainant for further information and to request their permission to send the details to the respondent in order for the investigation to proceed. When Ciarb have all the

information they need from the complainant, they will write to the respondent and ask for a response within 14 days. A sub-committee of Ciarb's Professional Conduct Committee (PCC) will review the case and determine whether any further information is needed before making recommendations to the PCC who in turn will make a decision on the case and any further actions that are needed.

Q10. 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
- They are known about to some extent
- They are not very widely known
- They are not known at all
- Don't know.

Please provide comments and evidence to support your answer.

Free Text

Q11. Are these mechanisms to raise concerns about the conduct of professional advisors widely accessible for tenants and landlords to use?

- They are very accessible
- They are accessible to some extent
- They are not very accessible
- They are not accessible at all
- Don't know.

Please provide comments and evidence to support your answer.

Free Text

Q12. Are these mechanisms effective in tackling poor practice in the sector and upholding expected standards of conduct?

- Very effective
- Sometimes effective
- Not very effective
- Not at all effective
- Don't know.

Please provide comments and evidence to support your answer.

Free text box

Q13. What improvements to professional complaints mechanisms and procedures could be made to make them more accessible and effective in upholding standards of conduct in the sector?

Free text box

Consideration of existing mechanisms for tenants and landlords to raise and resolve disagreements and disputes.

There are a range of existing mechanisms that tenants or landlords can use when the relationship has reached a point that they have a disagreement or more formal dispute that needs resolving. There is a spectrum of approaches summarised below that can be taken many of which can help to resolve a disagreement before it becomes a more formal dispute.

Mediation: mediation services are offered by many professional advisors and/or a mediator can be appointed by a dispute resolution service provider. A mediator can bring the parties together and facilitate a process of discussion to help them find their own resolution. This can be a quick and cost effective option to resolving a disagreement, but it relies on both parties agreeing to appoint a mediator and also agreeing on how the cost of mediation will be covered between them.

Independent expert determination: expert determination is where both parties agree to refer a disagreement or dispute to be decided by an impartial expert in the matter. The independent expert undertakes an investigation and draws on their expert knowledge and judgement to reach a decision. This can be appropriate where the matter is technical or requires specific subject matter expertise and knowledge to resolve. This is similar to an advisor giving professional advice to one person but here they are giving an impartial answer to two people who have conflicting views, and their answer is usually in the form of a decision which is binding on the parties. There is no framework of statute governing expert determination. The terms of the appointment which are agreed between the parties will frame a contract providing the powers necessary for an independent expert's determination to be effective, final, and binding. As with mediation this relies on both parties agreeing to this process and on how the cost of the service will be covered, although costs will usually be agreed to follow the result.

Arbitration: arbitration is a private dispute resolution procedure which can be used by tenants or landlords to resolve a formal dispute instead of going to court. Under agricultural tenancy legislation tenants and landlords have the right to refer a dispute to arbitration (or if both parties agree to expert determination as highlighted above). Either party can apply to RICS, CAAV and the ALA to request the appointment of an arbitrator to resolve a dispute. Once the arbitration process is engaged, the legislation provides that the parties will be bound by the decision of the arbitrator. The process involves each party presenting evidence to support their case, and the arbitrator is obliged to weigh the evidence when making an award. Arbitration is governed by the Arbitration Act 1996 which states that the object of arbitration is to obtain the fair resolution of disputes without unnecessary delay or expense, and the arbitrator must act fairly and impartially between the parties.

RICS Simplified Arbitration Service (SAS): RICS has developed a low-cost and quick arbitration procedure to help rural landlords and tenants resolve disputes. Either party can apply to RICS for an arbitrator to be appointed. There is an application fee of £195 payable for the appointment of an arbitrator. Both parties may agree to use the RICS Simplified Arbitration Service (SAS), though it is possible that, if both parties fail to agree the procedure to be applied in the arbitration, the arbitrator can unilaterally decide to adopt the SAS procedure using powers under S.34 of the Arbitration Act 1996. RICS arbitrators will use a fixed timetable and costs regime, with the objective to reach a decision within 28 days, at a maximum cost to each party of £2,000. As long as parties comply with the SAS procedure, the arbitrator will only charge for 3 days' work at £1,000 (plus vat) per day. If the parties choose to have a hearing/meeting, the arbitrator may charge an additional fee up to £1,000. These costs will be shared equally between the parties, and each party will pay their own costs, regardless of the outcome.

Q14. Are these dispute resolution mechanisms widely known about for tenants and landlords to use?

- They are widely known about
- They are known about to some extent
- They are not widely known about
- They are not known about at all
- Don't know

Please provide comments and evidence to support your answer.

Free text box

Q15. Are these dispute resolution mechanisms accessible for tenants and landlords to use?

- They are very accessible
- They are accessible to some extent
- They are not very accessible
- They are not accessible at all
- Don't know

Please provide comments and evidence to support your answer.

Free text box

Q16. Are these dispute resolution mechanisms effective in resolving disputes between tenants and landlords quickly and cost-effectively?

- Very effective
- Sometimes effective
- Not very effective
- Not at all effective
- Don't know

Please provide comments and evidence to support your answer.

Free text box

Q17. What improvements to these dispute resolution mechanisms could be made to make them more accessible and effective in future?

Free text box

Consideration of other mechanisms to address poor conduct - a new code of practice.

In this section we are asking for your views and evidence on other potential mechanisms that could help to address poor practice or unprofessional conduct in the sector in future.

A new code of practice to encourage more collaborative tenant-landlord relationships.

The government response to the Rock Review agreed with the recommendation that a new industry led code of practice would be beneficial to set out clear expectations for all parties to a tenancy agreement of what is required for collaborative tenant-landlord and advisor relationships. An industry led Expert Working Group (EWG) has been established to develop this important new code. Members of the EWG include the Tenant Farmers Association, the Country Land and Business Association, the National Farmers Union, the Institutional Landowners Group, the Royal Institution of Chartered Surveyors, the Central Association of Agricultural Valuers, and the Agricultural Law Association.

The EWG will develop the content of the new code over the coming months and report to the joint Defra / industry Farm Tenancy Forum (which includes representatives of tenants, landlords and professional advisors). The new code will build on existing industry guidance which set out the steps that tenants, landlords and their advisors can take for a positive approach to agreeing variations to agricultural tenancy agreements and entering environmental schemes. Whilst the content of the new code is still under development it is envisaged that it will set out clear principles and standards of responsible conduct and behaviour for all parties involved in tenancy agreements to follow. There will be a separate industry led engagement process to gather feedback on the new code and help ensure it has wide support and endorsement across the tenanted sector. The aim of the new code is to spread and embed best practice conduct leading to collaborative farm tenancy relationships across the whole sector going forward.

Q18. Please provide views on how this new 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?

Free text box

Q19. 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?

Free text box

Consideration of other mechanisms to address poor conduct – a Tenant Farming Commissioner

The government response to the Rock Review agreed to the recommendation that Defra should examine in more detail the proposal to establish an independent Tenant Farming Commissioner (TFC) in England. This section provides more information on the potential role a TFC might play. It also asks for views and evidence on the need for a TFC in England and the functions it might deliver. We also ask for views and evidence on the potential benefits and impacts of a TFC and how a TFC might fit within existing industry led mechanisms for addressing poor practice and resolving disputes in the sector.

Background: the role of the Tenant Farming Commissioner in Scotland

As a relevant example this section provides further information on the role and legislative functions of the TFC in Scotland established through the Scottish Land Reform Act in 2016 (the Act). The Act followed an independent review of land ownership in Scotland and it established the Scottish Land Commission which is a non-departmental public body funded by the Scottish Government. The board is made up of five Land Commissioners and one Tenant Farming Commissioner, appointed by Scottish Ministers and supported by a small team of core staff. The Scottish Tenant Farming Commissioner is responsible for promoting and encouraging good relations between landlords and tenants in Scotland. The Commissioner's statutory functions are set out in the Act and include powers to:

- Prepare and promote codes of practice and guidance for landlords and tenants of agricultural holdings and their agents.
- Inquire into alleged breaches of codes of practice and to publish reports on the outcome of any such inquiry into alleged breaches.
- Prepare a report on the operation of agents of landlords and tenants.
- Provide recommendations on modern improvements to agricultural holdings in Scotland.
- Refer to the Land Court any question of law relating to agricultural holdings in Scotland.

The Scottish TFC has the backing of statutory powers to report poor practice in the sector. However, in practice the Scottish Commissioner has focused on resolving complaints and encouraging mediation to deliver solutions by mutual agreement without referring to the

statutory reporting powers. The Scottish TFC works with all parties that have an interest in the tenanted sector in Scotland including landlords, tenants and professional advisors and their representative trade bodies. The TFC chairs a Tenant Farming Advisory Forum which is made up of representative industry and professional bodies and is the main forum for discussing agricultural holdings issues with the sector in Scotland. More information on the role and activities of the TFC in Scotland can be found here: [Tenant Farming - Our work - Scottish Land Commission](#)

Other sectors that have an independent ombudsman or commissioner

Most independent ombudsman bodies have been established in sectors that are consumer or public facing. Examples include:

- The Property Redress Scheme: for consumers to complain about property agents withholding a deposit unfairly.
- The Financial Services Ombudsman: for consumers who are unhappy with the service of a financial advisor or feel they have been given incorrect or misleading financial advice.
- The Local Government and Social Care Ombudsman: which investigates complaints from the public about councils and other social care providers including care homes and care agencies.
- The Competition and Markets Authority: to tackle anti-competitive behaviour.

All these independent ombudsman organisations have been established through primary legislation and have statutory powers.

There are also some examples of business-to-business sector ombudsman established due to widespread issues of unfairness or anticompetitive behaviour and where industry self-regulation has not been successful in addressing issues. Examples include:

- The Grocery Code Adjudicator: to oversee the relationship between large retailers and their often smaller suppliers.
- The Small Business Commissioner: to tackle late payment issues between very large and smaller businesses.
- The Pubs Code Adjudicator: which regulates the relationship between large pub companies and their tied tenants (who are obliged to buy products from their pub company) and to enforce the statutory pubs code of practice.

All these bodies have also been established through primary legislation and have statutory powers.

Potential role of a Tenant Farming Commissioner in England (TFC)

The Rock Review proposed that the role of an independent TFC in England would be to provide more oversight and scrutiny of poor practice and behaviour in the sector with the aim of encouraging greater collaboration and positive tenant-landlord and advisor relationships. The Rock Review report and a follow up paper from the Rock Review Working Group to Defra listed the following functions that a TFC in England might deliver:

- Develop, maintain, and promote codes of good practice to achieve collegiate and collaborative landlord tenant relationships.
- Provide a mechanism for either party to a landlord tenant agreement to raise a grievance which can be investigated by the TFC and which, if upheld, may lead to recommendations similar to the operation of the Local Government & Social Care Ombudsman.
- To provide a structure within which land agents, rural surveyors and other advisors can be held to account and to work with existing bodies that represent land agents/rural surveyors and other advisors to develop a more robust system of accountability.
- To review the costs of dispute resolution through arbitration which may be a barrier to parties accessing justice and provide practical advice and assistance to encourage greater use of the RICS simplified arbitration process.
- To look into legal pathways for collating and reporting the decisions of arbitrators so there is more oversight of the body of arbitration decisions to ensure consistency whilst recognising the benefits of keeping arbitration as a private and confidential process.
- To provide a trusted route for the government and other public bodies to ensure that there is both an understanding of the landlord tenant system of agriculture and that new policies, statute and regulation are sensitive to the needs of the landlord tenant system in agriculture where required.

The Rock Review follow up paper on this proposal also envisaged that whilst the role of a TFC may more often be involved in resolving issues raised by tenants, it would be equally open to landlords who feel in a vulnerable position or have issues with their tenants that need resolving.

Q20. 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?

Free Text

Q21. What might be the potential unintended consequences or impacts of establishing a Tenant Farming Commissioner in England?

Free Text

Q22. 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.

Agree with an industry led approach.

Disagree with an industry led approach.

Strongly disagree with an industry led approach.

Don't know.

Please provide comments and evidence to support your answer.

Free text box

Q23. 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?

Strongly agree

Agree

Disagree

Strongly disagree

Don't know

Please provide comments and evidence to support your answer.

Free text

Q24. 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?

Delivering guidance and setting standards: developing codes of practice, guidance, and standards for parties and advisors to tenancy agreements to follow.

Providing independent scrutiny: investigating complaints about poor conduct and investigating and reporting breaches of any established codes and guidance.

Facilitation services: helping to resolve disagreements between the parties to a tenancy agreement and encouraging parties to use mediation services.

Scrutiny of arbitration: reviewing the cost of arbitration and collating and reporting arbitration decisions.

Expert advice: collate expert advice for government and other public bodies on policies, regulations, and schemes from the tenanted sector perspective.

None of the above

Other: please list any other potential functions you think are important.

Please provide comments and evidence to support your choices.

Free text

Q25. In your view would a potential Tenant Farming Commissioner (TFC) need statutory powers to be effective?

Statutory powers would be very necessary for a TFC to be effective.

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

A TFC could still be effective without statutory powers.

A TFC would not need any statutory powers to be effective.

Don't know

Please provide comments and evidence to support your answer.

Free text

Q26. 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?

Free text

Q27. How might the role of a Tenant Farming Commissioner work with existing dispute resolution mechanisms and regulations such as the regulations that govern arbitration?

Free Text

Any other comments

Q.28 If you have any other views and evidence on the issues and questions raised in this Call for Evidence, please provide them here.

Free text box

Feedback on the online survey tool

Thank you for taking your time to participate in this online Call for Evidence survey. It would be appreciated, if you can provide us with an insight into how you view the tool and any area(s) you feel need of improvement, by completing our feedback questionnaire below.

Q29. Overall, how satisfied are you with our online survey tool?

Very satisfied

Satisfied

Dissatisfied

Very dissatisfied

Don't know

Please give us any comments you have on the tool, including suggestions on how we could improve it.

Free text