



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 19 June 2013



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**RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**  
**22<sup>nd</sup> Meeting 2013, Session 4**

**CONVENER**

\*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

**DEPUTY CONVENER**

\*Graeme Dey (Angus South) (SNP)

**COMMITTEE MEMBERS**

\*Jayne Baxter (Mid Scotland and Fife) (Lab)

\*Claudia Beamish (South Scotland) (Lab)

\*Nigel Don (Angus North and Mearns) (SNP)

\*Alex Fergusson (Galloway and West Dumfries) (Con)

\*Jim Hume (South Scotland) (LD)

\*Richard Lyle (Central Scotland) (SNP)

Angus MacDonald (Falkirk East) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Roderick Campbell (North East Fife) (SNP) (Committee Substitute)

Phil Thomas (Tenant Farming Forum)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

Committee Room 6



## Scottish Parliament

### Rural Affairs, Climate Change and Environment Committee

Wednesday 19 June 2013

[The Convener opened the meeting at 10:00]

### Agricultural Rent Review Procedures (Review)

**The Convener (Rob Gibson):** Welcome to the 22nd meeting in 2013 of the Rural Affairs, Climate Change and Environment Committee. Members and the public should remember to switch off their mobile phones, as they can affect the broadcasting system if they are left on. Angus MacDonald has sent his apologies and is replaced by our substitute Roderick Campbell. He has been on the committee before, so there is no need for a declaration of interests.

Agenda item 1 is the review of agricultural rent review procedures in Scotland. We will take evidence from the chair of the tenant farming forum, Phil Thomas, whom I welcome to the meeting. I invite him to make a short opening statement. Good morning, Phil.

**Phil Thomas (Tenant Farming Forum):** Good morning, convener. I will make it very short. I would like to say just two things, one about me and one about the tenant farming forum. I am not and never have been a tenant farmer, and I have no land holdings outside the curtilage of my house. Therefore, I am genuinely independent as the chairman of the TFF.

The TFF was formed around 2003, when the Agricultural Holdings (Scotland) Act 2003 was introduced. The forum's primary purpose is to promote a healthy farm tenanted sector in Scotland. It brings together key players across the sector and works on the basis of discussion papers, which are prepared by members or the TFF's legal advisers at the Law Society of Scotland. Occasionally, straw-man papers are prepared by the chairman to start discussions. Following those discussions, we hope to come to a consensus that will lead either to a guidance paper or a policy paper or, sometimes, to recommendations to Government for changes in legislation.

We have recently been involved in what has been referred to as a route-map process, wherein we have tried to address a range of things simultaneously or, at least, in parallel, in view of the announcement that there will be a review of the whole area by the Scottish Government in

2014. In particular, we have looked at rent reviews—which we are going to talk about today—arbitration, fixed-equipment issues, diversification, investments and waygo. We have also just started work on assignments and successions. That is quite a panoply of topics. As a consequence, TFF meetings, which used to take place quarterly, are now taking place once a month, and there is a good deal of intensity behind what is being done.

That is the background. I am happy to talk about rent reviews or any other topic that the committee wishes to discuss.

**The Convener:** Thank you very much. I would like us to start off with a discussion about the relationship between the parties. During a committee round-table session, Angus McCall of the Scottish Tenant Farmers Association said that

“the situation on the ground is often a little more fractious and contentious than is publicly made out to be the case.”

Andrew Howard of Scottish Land & Estates said:

“It is not the case that there is a great sword of Damocles hanging over one of the parties but not the other.”

Scott Walker of NFU Scotland said:

“Virtually every tenant in Scotland would say that the balance of power is very much with the landlord rather than the tenant.”—[*Official Report, Rural Affairs, Climate Change and Environment Committee*, 20 March 2013; c 1942, 1958, 1955.]

With those comments in mind, what view does the TFF take of the relationship between landlords and their agents and tenants?

**Phil Thomas:** You must first take into account a fact that is often missed in the discussion, which is that there is no clean break between tenants and landowners. In fact, many landowners are also tenants, and there are occasions when landowners who are tenants are also landlords, in the sense that they let out land to other people. The platform of relationships is slightly more complex than it might seem at first sight.

The relationship between tenants and landlords is an important one. This is a personal view—it is not necessarily the TFF view—but the position as I see it is that most landlords have a business that involves renting land, which is in part a way of reducing their exposure to the risk of farming that land: they are reducing their risk by allowing somebody else to farm the land. Tenants, on the other hand, benefit from their tenancy in being able to buy their way into farming without the up-front capital cost of having to buy land. The relationship benefits both sides mutually.

However, in any relationship of that type there are tensions and differences in perception. There are about 6,500 to 7,000 tenancies in Scotland and, unfortunately, it is the tenancies with which

there are problems that cause the most issues and the greatest amount of interest. In any May or November rent review period, lots of rents will be fixed and lots of deals will be done on the basis of discussion around a table, and agreements will be reached pretty quickly. However, in some cases there will be tensions, and those are the cases that tend to come to light most often.

The way forward—this is the TFF's view—is by having much greater transparency and a much more systematic approach to the whole process of setting rents. There is a feeling in some quarters that the setting of rent is a process that has a little bit of smoke and mirrors about it because it often involves balancing a range of factors. The more transparency that we can get into that process, the better.

I do not know whether that has answered the question.

**The Convener:** You have started to answer the question. You have obviously focused on trying to make the process more transparent and easy to follow.

This is basically a 19th century problem manifesting itself in the 21st century. The Government hoped that more land would be let to tenants over the period, but the statistics suggest that the opposite has been the case over a long period. We will want to go into the reasons for that—we know some of them. You say that new entrants can buy into farming, but new entrants have not been helped either. We will ask some questions about those things during the course of our discussion. The TFF view of the relationship seems to be that you are trying to sort out the existing processes. On the other hand, there is a view out there that, in fact, nothing much is changing.

**Phil Thomas:** I am not sure that the second of those statements is supported by the evidence. You are factually correct in saying that the number of tenancies has gone down, although not hugely. That, too, is a complex issue. In part, it is due to the consolidation of land: the number of tenancies has gone down because holdings have, by and large, got bigger. That is tucked away in the trends. Another issue—it is not a TFF issue, but a political issue—is that land ownership in Scotland could be said, on whatever basis, to be too concentrated. That political point is made quite often. However, land ownership is not too concentrated as a consequence of the agricultural holdings legislation; the issue goes back into history way before the introduction of any agricultural holdings legislation.

New entrants face a challenge. There is a limited amount of land available, and there are some difficult barriers for new entrants in getting

access to land. The TFF has campaigned, with limited success, for smaller holdings to be made available to entrants. There have been one or two initiatives. For example, the Forestry Commission recently released some holdings on that basis, and the Crown Estate has become more sympathetic to the notion that it might have some smallholdings that would allow people to get into agriculture. There have been some changes there.

**The Convener:** I think that members will want to follow that up in more detail.

**Roderick Campbell (North East Fife) (SNP):** Good morning, Mr Thomas. Will you put a wee bit more flesh on your comment that there has been some success with new entrants and smallholdings? What quantity are we talking about?

**Phil Thomas:** We are talking about handfuls. We are not talking about a huge movement. The reality is that land turns over, if I can put it in that way, relatively slowly. The amount of land that is traded into tenancies or indeed sold is relatively modest compared with the amount of land that is owned.

I think that many of you were at the NFUS conference that was held about 10 days ago at the Macdonald hotel just up the road. The representatives from the new entrant group of farmers argued that the present system under the Agricultural Holdings (Scotland) Act 2003 is too inflexible. They would like more flexibility—that is the argument that they put forward.

**Alex Fergusson (Galloway and West Dumfries) (Con):** I was at that conference in the afternoon and I was struck by the two young farmers who spoke, who were pleading for more flexibility in the system, although they had worked their way through that system very successfully. I was particularly taken by the fact that both of them attributed a degree of the success that they have achieved to the fact that they were able to sit down face to face with their owners or landlords and plan a future for their holdings. We might want to bear that in mind as our discussions continue.

I want to touch on what I think is an elephant in the room that we are all rather tiptoeing around. My question is on the availability of land for rent. Let me say that nobody in the room would like to see more land available for rent than me. It is a tragedy that it has not happened. However, the elephant in the room is the right to buy. Do you agree that, for as long as the spectre of an absolute right to buy continues to exist, landowners will look for every possible way to let land without tying themselves into the prospect of that land possibly being removed from them against their will?

**Phil Thomas:** It certainly creates a risk element that landowners are sensitive about. There is no doubt about that. It is probably fair to say that the individual organisations around the TFF table and even the tenants organisations—both the NFUS, which has quite a number of tenants among its members, and the Scottish Tenant Farmers Association—are not supportive of the absolute right to buy, on the basis that most people recognise that it might create a one-generation shift in land, but then renting land would become more difficult because there would be less land to rent. I think that that is everybody's concern.

The absolute right to buy is an issue—there is no question about that. Despite the fact that, politically, it has been put on the back burner, it is still there. However, I am not sure whether it explains all the issues around the reduction in tenanted land. By and large, in a mature industry such as agriculture, there is consolidation of businesses. They get larger, which means that the land areas that are farmed by businesses tend to increase anyway, and that reduces the availability of land.

**Alex Fergusson:** Okay. For now, thank you.

10:15

**The Convener:** I want to pursue that a little further. I do not know whether you saw the Bank of Scotland's annual review at the beginning of the year, which provided us with information on a sample of its customers—some 240, I think, out of 2,000. Many of us attended the bank's presentation. One of the questions that it asked was about attitude to certain issues to do with the right to buy. The interesting thing is that 70 per cent of owner-occupiers strongly opposed any automatic right to buy. There were 53 who were strongly opposed—mainly owner-occupiers, but some were tenants. However, those in favour of the right to buy were mainly tenants.

Is it not interesting that people who already own their land are opposed to others being able to do so too? Do you not think that that is the impasse?

**Phil Thomas:** Perhaps it is a natural reaction that those who own land wish—as I see it—to preserve their interest and that those who do not own land see it as in their interest to own land. For any farming business, the notion that you could own land would become an objective to hold. The problem is that if there is no tenanted land, the barriers to people getting into farming are huge, because there is then the problem of buying land up front, which leaves people with very little investment to put into stock or anything else. If we had a situation where all land was owned, the barriers to entry would be even greater.

**The Convener:** Some members want to come in on this, quite rightly. It is useful at this early stage to consider the situation philosophically. Has any analysis been done of what happened in Ireland, for instance, or of how farm land changes hands in Denmark, where there is a limit to the amount of land that people can have? Most tenants in Ireland were changed into owner-occupiers by the Wyndham act. By comparison, in Scotland, fewer tenancies are being let and new entrants find our system very difficult, yet you are saying that in an owner-occupied system, people have to spend a vast amount of money on buying land. There is a real impasse.

**Phil Thomas:** Let me say first that we are taking the discussion slightly away from the TFF into wider areas. I am happy enough about that, but clearly anything that I say is my own opinion; I could not say where TFF stands on these issues.

In answer to your direct question, in the time that I have been associated with the TFF no comparison of that type has been done. I am aware of the farming situation both in Denmark and, in particular, in Ireland. I happen to have spent four of the past five weeks in Ireland on various different matters. I know Ireland very well and both it and Denmark are different from Scotland in particular ways.

In my opinion, there is now a significant problem in Ireland to do with farm size. According to the last set of figures that I saw, which was published just a few weeks ago, around two-thirds of Irish farms were not making any profit at all and were being sustained completely by the single farm payment, which on average accounted for about 80 per cent of turnover across the farms. Many people would say that that is not a particularly healthy situation. That is in part the consequence of the small farm size. Therefore Ireland is a good example of what can happen.

In its own way Denmark is slightly different. The pattern in Denmark for many years has been that farming co-operatives have been a major part of the farming scene. To some extent, therefore, the pattern of farm viability in Denmark has been linked to a very active co-operative system. It is difficult to be sure that we are comparing like with like across different countries. That is where we sit.

**The Convener:** That is interesting. Can anyone develop that argument?

**Jim Hume (South Scotland) (LD):** On the potential for an absolute right to buy, you said that, in your view, that might be of benefit within a generation as there would be tenants who would be able to purchase their land. If I understood you correctly, however, you would be concerned that thereafter there would be no land to get at a

reasonable value—that is, through a tenancy—so it would be almost impossible for someone to start from scratch, as people do when they get a tenancy.

**Phil Thomas:** It would certainly be very difficult. The cost of buying the land would be an extremely high barrier for people who wanted to get into farming.

We can only surmise what would happen if there were an absolute right to buy, but it is reasonable to assume that a significant number of tenant farmers would buy. Not everyone would do so; some tenants would see the financial benefits of a tenanted system, and a proportion would be happy about having a tenancy. Those people would not want to buy. However, there would be movement in the direction of buying land. The people who had bought the land would not lease it out, because they could be caught out by the same right-to-buy provisions that had enabled them to buy the land in the first place.

Therefore, there would be a change in the pattern of land ownership. There is no question of that. It would be pretty much a single-generation change, and then there would be further barriers to entry. That is my personal view.

This is a wider discussion, but other devices have been discussed, such as a limit on the scale of ownership of land, which is a technique that has been used in some countries. The difficulty in that regard is that, whatever figure we take for such a limit, we must second-guess how the business of farming will develop. When I started to work in the agricultural sector it was possible to make a good living out of about 50 cows. There is not a 50-cow farm in the whole of the United Kingdom that would not struggle now.

**The Convener:** Are you talking about dairy farming?

**Phil Thomas:** Yes. Because of the nature of the industry as it is consolidated, further consolidation is almost bound to take place in farming.

**Jim Hume:** It is difficult to see how a prospective new entrant, such as a good young graduate of the SRUC—Scotland's rural college—could start off if they could not get access to tenanted land.

**Phil Thomas:** It is always difficult for new entrants. I will be realistic. I regularly had this discussion with students, and I always said, "You know, not every student who comes out of an engineering faculty assumes that they will immediately go and own a car factory." There are particular expectations in agriculture, which do not necessarily translate across other industry sectors.

However, there is something quite fundamental—quite visceral, even—about a

farmer owning or tenancing their land. The patch of land that the farmer sits on becomes very important to them. That is a constant, I think.

**Graeme Dey (Angus South) (SNP):** I have been a member of the committee for two years and I still consider myself to be very much a layman on the subject, but my experience has left me with a distinct feeling that farming talks the talk on new entrants but refuses to walk the walk. Let us be honest. To what extent do landowners use the spectre of right to buy as a convenient excuse for not renting land? An absolute right to buy is a pretty remote possibility, because even the tenanted sector is not in favour of such an approach.

**Phil Thomas:** I can respond to that only anecdotally. When the 2003 act was going through the Parliament, I did a piece of research that involved going round talking to a lot of landowners and tenant farmers. I tell this anecdote often. One tenant farmer, who was located near the airport at Inverness, spent the first 20 minutes of the interview telling me what a rotten individual his landlord was and the second 20 minutes telling me how he would never have got into farming had he not been able to strike a deal with his landlord and build up his farm from there. He had built up a pretty big farm by that time. People's experiences condition how they react.

We have got into a difficulty with new entrants because, for many years, when farms have become vacant, rather than rent them as they stand, the pattern has been for estates to consolidate them to make a bigger unit that they feel is more viable for somebody to run as a business. I give the Crown Estate as an example of that, but it is typical of many big estates. In reality, we have had a pattern of fewer tenant opportunities becoming available. We could rightly argue that we might want to reverse that. However, we would have to realise that the problem in doing that reverse engineering and pushing that back might be that we end up with a lot of farms that are not really viable. It is a difficult balance to strike.

**The Convener:** We will proceed on the path of trying to establish what the TFF is doing. Jayne Baxter is next.

**Jayne Baxter (Mid Scotland and Fife) (Lab):** Do you have any comments on whether the rent review process works better when both the tenant and the landlord have professional representation? Is there a need for tenants to get help with the cost of obtaining that advice?

**Phil Thomas:** Again, I will—to an extent—give a personal view and not necessarily a TFF view. The factual situation across the industry is that most landlords use professional support and many



tenants do not. Tenants complain—we have certainly had this discussion in the TFF—that there has to be a system that has teeth, as they say, in the rent review process. We had a fairly long discussion—as can be seen in the minutes, which are on the internet—in which I challenged those round the table and said that they seemed to be describing a situation in which it would be better for both sides to be represented by professionals. In that case, there would be teeth, because the professional bodies have things such as appeals and disciplinary systems in place.

However, there was a strong view that, to move to completely professionalised assistance in rent review was going a step too far and that there is a need to maintain the situation in which tenants or landlords can represent themselves or use a friend or colleague or somebody in whom they have confidence as being knowledgeable. However, it is much more difficult to put teeth into that system. Across the piece, therefore, the TFF's view was that, where professional advice is available, the tenant and/or landlord should have the choice of using it or not. There are plenty of examples of tenants and landlords getting together round the table to agree a rent without any problem at all and with no professional help. However, there are other instances in which there are professionals on both sides, and there is a complete spectrum in between.

**The Convener:** Jim Hume has some questions on the guidance and code of conduct for rent reviews.

**Jim Hume:** I have a couple of questions, although Mr Thomas has perhaps gone into the issues already. On the code of conduct for rent reviews, the annex to the TFF clerk's notes states that the completion date for the code is outside the TFF's control, which seems a bit odd.

**Phil Thomas:** I can explain that, because it is a misunderstanding.

**Jim Hume:** Okay—that is good.

**Phil Thomas:** The first draft of the code of conduct is complete. The best way to describe it is as a complete practitioner's guide. The document is now at its second draft stage and it will be published in September. The Royal Institution of Chartered Surveyors and the Scottish Agricultural Arbiters and Valuers Association will then take the document and embed it in their professional standards. The difficulty is that that process will take time. The RICS is an international organisation and it will need to make a specific sub-clause to deal with Scotland, as the code will not necessarily apply elsewhere. We are not in control of the timing of that process, although those professional organisations have expressed a willingness to move in the direction that we

would like. We do not yet have the document on which that move will be based, but it will be published in September, and then we will move on. That is the explanation of the note that you have.

10:30

**Jim Hume:** That is useful. Thanks.

I think that you said in response to Jayne Baxter's question that the TFF does not believe that those who conduct rent reviews should be professionally registered in some way. Is that correct?

**Phil Thomas:** I make it absolutely clear that the TFF position has been that it should be a matter of choice. The TFF is not against anyone using professional representation, but the view is that it should not be mandatory.

**Jim Hume:** That is clear. How would compliance with a voluntary code be monitored or enforced?

**Phil Thomas:** The position would be straightforward for those who use professional guidance. In a situation in which someone was doing something that was contrary to the code, it would be possible to go to the professional body concerned and the usual professional body mechanisms would fall in.

I think that there is a difficulty in relation to those who are not professionally qualified, and I can tell you where the discussion on that has got to. My concern is twofold. First, I am concerned that someone who advises a colleague, another farmer or whoever might not realise that they could put themselves in a position of liability. The view of TFF members was that that is unlikely to be an issue.

The mechanism that I think will emerge—this was the TFF's view; we will have to discuss the matter with the Scottish Land Court in due course—is that, if a dispute arises in a situation in which the advice is not given by a professionally registered person and the case goes to the Land Court, it will be up to the Land Court to ask whether the code of good practice guidelines has been contravened in any way. Therefore, the resolution of any dispute that arises will be affected. That is the sort of policing mechanism that is envisaged, but it is not written down or scripted in a step-by-step way. The process is open to an element of interpretation.

There is the difficulty that most people feel that the decision about whether to be professionally represented must be down to the individuals concerned. The feeling around the TFF table was that the landlord or tenant should be able to choose whether to be professionally represented.

**Jim Hume:** Thank you.

**Alex Fergusson:** That brings us neatly to the subject of dispute resolution, which I would like to explore further. We have all been made aware that, in the event that a dispute goes to the Land Court, it could end up being a lengthy and expensive business for whichever side loses. I think that the rent review group suggested that a case management procedure should be looked at. Will you expand on how that is being progressed?

**Phil Thomas:** There are three points that I should make. The first is that, in July, the TFF will publish a guidance paper on the resolution of disputes, and this month—in June—SAAVA will launch its short-route arbitration system, which should help to resolve some disputes. Those two things are positive developments.

As far as the case management arrangements are concerned, the situation has become increasingly interesting. On not just rents but a number of other issues, the discussion in the TFF has ended up at a point at which it is felt that, if there were a dispute, it would be taken to the Land Court, which would be an expensive route to go down.

The view that is emerging is that it would be helpful if the Land Court could find a way within its terms of reference to facilitate solutions effectively. We had an initial meeting with the Land Court, at which it made it clear that it would be willing to be as helpful as it could be under the terms within which it can operate. Those terms are fairly clearly laid down and are, by and large, legal terms. The intention is that shortly—within the next few weeks—I will have a list of things that have come out of all the discussions that will all fall under the category of asking whether the Land Court could be helpful. I would then like to go to the Land Court and say, “These are the things that have come out of the discussions; which things can the Land Court help with?”

For example, some relatively minor disputes about fixing a rent might come down to the value of the rent going in one direction or the other. In such cases, it would probably be extremely helpful if the Land Court said to the parties, “Rather than taking a long case through the Land Court, why don’t you go to arbitration, as a short-form arbitration system is available?” That is the sort of solution that might well come out of this.

There are some other issues. For example, there are some tensions in diversification when, for example, a tenant wants to do something that might conflict with what the landlord wants to do. Some tenants feel that, in those circumstances, landlords delay approval by asking questions, thereby drawing the process out. The landlord’s view is often that they ask the questions but they

only get partial answers and they are not enough for them to make a decision.

There is a legal resolution to that—the parties can go to the Land Court. Relatively few ever do, because they are concerned about the ultimate cost, not of the Land Court itself but of all the legal support that individuals choose to have when they go to it. In those cases, it would be helpful if the Land Court could facilitate the process by saying, “That stance is unreasonable, but we might consider this stance to be good if the case comes to the Land Court.”

**Alex Fergusson:** So that is a work in progress, and there will be some results for us to consider in the relatively near future.

**Phil Thomas:** It is a work in progress. It would be optimistic to think that we will resolve all the issues by the end of the summer, but if we can resolve some of them, that will be real progress.

**Alex Fergusson:** Thank you for that. You mentioned the word “arbitration”, and I would like to touch on that. The rent review group also recommended alternative dispute resolution procedures by looking at a system of arbitration and expert determination. Will you expand on where that is going?

**Phil Thomas:** The arbitration system to which the rent review group referred will be launched in June. From memory, the last date was 14 June, but the launch will take place this month. A dialogue was being held with the cabinet secretary’s office to see whether there is an appropriate event that the launch can be put alongside. That bit is moving forward.

On the development of that arbitration system, when SAAVA’s legal experts looked at it, they said that it was best to do the process of arbitration and expert advice in two stages, so once the arbitration system is up and going, the expert advice system will follow immediately afterwards, effectively on the same model. I guess that that will happen in September or October this year.

**Alex Fergusson:** I round off with a short question. When we took evidence from the rent review group, it finished by saying that it felt that a lot of its recommendations would remove the fear factor that exists in some cases during the rent review process. It said that, if the fear factor was removed, it would remove the grounds for an awful lot of disputes, which would presumably prevent a lot of cases from going to any form of arbitration. Does the TFF broadly agree with that?

**Phil Thomas:** Most people round the TFF table would agree with that. The rent review group made its case well.

The practitioner’s guide will cover cases in which there are different views. When a rent is

fixed, there is always a debate about the degree to which it should reflect the market rates and the degree to which it should reflect the financial productivity of the farm. There are two extremes. Some people say that market values should be ignored and the farm's activity should be considered instead. Other people say that that approach creates a situation in which, if someone is not running a productive business, others must carry that person's inefficiency through their landowning business, and therefore how the rent is fixed should move in the other direction.

Logically, there must be a balance. The practitioner's guide will tease out the detail of that balance much more effectively. I hope that it will make the position so transparent that everybody will be able to see exactly what is being taken into account at all stages. That will not mean that there will never be a dispute, but I think that there will be fewer.

**Alex Fergusson:** Thank you for that.

**Roderick Campbell:** Before I pick up on a couple of points in Mr Thomas's evidence, I refer to my entry in the register of interests as a member of the Faculty of Advocates.

On the discussions with the Land Court, the thrust of Lord Gill's review of civil justice, which forms part of the Government's making justice work programme, is to reduce, where possible, the number of court hearings, and particularly the number of hearings at which oral evidence is required. It might be worth taking on board in discussions with the Land Court what could be done to reduce the number of oral hearings and to simplify the procedure.

Arbitration comes in many forms and it is not necessarily cheaper than a full court hearing. Specific forms are required that take on board the need to keep the expense of the process under review. Otherwise, it is often the case—although not necessarily in tenancy disputes—that the costs of arbitration are as high as the costs of formal court hearings.

**Phil Thomas:** I agree. That is an argument in favour of what is referred to as expert determination. In many cases, rather than going through an arbitration process, two parties who are in slight disagreement will opt to get an expert in to look at the matter and they will stick to the view that the expert provides.

I see both those approaches operating. In many cases, to be frank, the differences between landlord and tenant may not be all that great. Sometimes, people are in dispute over relatively small amounts of money. The danger is that, once people adopt a particular position, they go down the Land Court route, which can be long and, as a consequence, expensive.

**The Convener:** We move on to the process for setting rents.

**Richard Lyle (Central Scotland) (SNP):** Good morning, Mr Thomas. A few moments ago, you used the phrase "smoke and mirrors". To set the context for my question, I note that the process for setting rents has been described as being a dark art. Witnesses have expressed their wish that the process be more transparent, explainable and understandable. Specific issues have been raised about short limited and limited duration tenancies, and how to account for the fact that some rents may be higher because, as you said, farmers are prepared to pay more rent to consolidate their holdings for land that is adjacent to land that they already farm. The scarcity of lets was also raised, but that matter has been covered.

How can the rent-setting process be made more transparent and understandable? How can the TFF help so that there are no dark arts or smoke and mirrors in the process?

10:45

**Phil Thomas:** I make it absolutely clear that the comments about a dark art and smoke and mirrors did not come from me; I was simply reporting some people's opinion. I think that, if you had members of the profession round the table, they would explain in great detail the great care with which these things are done and that every factor is taken into account.

Unless the process is absolutely transparent, there is always the possibility that someone will feel that it does not reflect what they see as the truth of the situation. The practitioner's guide process is designed to tease out how one factor might be weighted against another and what the process would depend on. There has been a lot of discussion and debate about the matter because one of the Land Court's findings—I cannot remember which one it was—effectively tried to set out the list of things that need to be taken into account, with market value at the top. Although the list was intended to help, in reality it was probably not that helpful as it appeared to move market value into pole position in determinations. Indeed, some tenants would argue that the current rent reviews have been affected by that suggestion and that market value has been put up front. Of course, there are also many landowners who would highlight particular cases where that is clearly not happening.

The issue is under debate and the practitioner's guide will have to set out in specific terms that, although all these things have to be taken into account, it is a matter of balance. As the draft is still being prepared, I am not sure how the way in which one is balanced against the other will be

articulated, but that needs to be done. Some of these things are difficult to judge and, indeed, will require professional judgments. For example, there might be a marriage value in bringing pieces of land together—for example, a farmer might want to bring the holding next to his into conjunction to make a single business—and the obvious advantages in such a move will push the market rent up. All those factors must be carefully balanced and I hope that the document will do exactly that.

**Claudia Beamish (South Scotland) (Lab):**

Other members will have questions about the issue that Mr Lyle has raised, but can you clarify how rents are set in the English system and say whether any elements of that approach should be adopted in Scotland? There has been discussion about whether the rents in Scotland are higher or lower. The STFA believes, as a result of its research, that rents are higher here, but I am aware of other views on the matter. Can you give us the tenant farming forum's perspective?

**Phil Thomas:** Although the guidance document that has been in place in England for a number of years lists the factors that need to be taken into account, it deliberately makes it clear that there is no particular pecking order to them. All it says is that the factors need to be taken into account. As no guidance document has been produced in Scotland, it has been left open to the profession, landlords and tenants to find their way through the issue, and it will be helpful to have a document that articulates in some detail what is required.

On the question of relative rents north and south of the border, the comparison is difficult to make, because we are not comparing like with like. Indeed, that is part of the problem. Some pieces of work show—or at least claim—that rents in England are slightly lower, while other pieces of work claim that there is really no difference. I could not give you a definitive view on that. It is a difficult thing to judge because of the issue of comparing like with like. My guess would be that if we compared an area such as Cumbria with an area such as Cheshire, we would find big differences. Within England, there will be significant differences.

**Claudia Beamish:** I want to pursue the broader issues. To return to the issue about comparing England and Scotland, I think that you highlighted that a balance between all the factors has to be taken into account. However, I am somewhat concerned to hear you say at this stage that you are not quite sure how that will come out. Surely that would have come out of a recommendation from the tenant farming forum.

To broaden the question out even further, according to the STFA, some disappointment has been expressed that the rent review working group

has missed an opportunity by not carrying out enough research. I appreciate that funding is always an issue for all of us, whatever we are doing, but is some of the research perhaps a bit too anecdotal to use as the basis for the future approach? You are saying that the balance does not seem to be sorted yet.

**Phil Thomas:** I think that there are two questions there. The first is whether I can spell out exactly how the process will work. The answer is no, because the development of the document has been put out to a professional group. The document that that group produces will have to be approved through the TFF. There will be discussion on the detail—we will tease that out. The document will be there and the process will be there. However, if you are asking whether I know what the outcome will be, I cannot give you an answer at this stage, because things are not at that point.

In relation to the research, there are genuine difficulties. This is not an easy research area because almost every farm tenancy will have its own particular characteristics. In a market situation, what people are prepared to pay for a tenancy will vary with their particular business. It is no different from renting a flat in the centre of Edinburgh. For some people, location will be more important than it is for others. Such people will be prepared to pay more for the location. The same is true in a business context, for example, if we are talking about renting farms. It is not easy to research.

It might be helpful to add that there has been a lot of debate—again, coming out of the rent review working group—about the notion of a listing of rents. At the moment, a number of organisations, including professional bodies and groups such as the NFU and the STFA, have their own little databases that they use. The rent review group came up with the idea that a voluntary national database would be extremely helpful. However, although everybody round the TFF table agreed that that would be a good idea, we got into the practical difficulties of doing it. If data enters a database that has anything at all to do with Government, in effect, we run into data protection issues, some of which are almost insuperable.

If one organisation took charge of the database and managed it for everybody, there would be elements of distrust among the other organisations. If we decided to have an entirely independent body to do it, we would run into the difficulty simply of cost. It is a relatively small batch of data and therefore the cost of dealing with it is relatively high.

We got to the stage where we had more or less decided that it is a great idea but we could not see a way of moving forward with it. However, two

things have happened in the past month. One is that in a survey of NFUS members, quite a high proportion of them said that they would be very much in favour of such a database, so there is strong support for it on the ground. The survey would have included landlords and tenants, which is helpful. Secondly, we have suddenly realised that the Land and Buildings Transaction Tax (Scotland) Bill is coming through and will require some type of registration of rents. Therefore, some of the information might become available out of another process. We are going back to re-examine that.

**Claudia Beamish:** I understand that there will be further questions about that, but I will briefly take you back to the rents themselves rather than the register. Is there any concern about the decision that was made in the Moonzie case in relation to rents? Although we always want to avoid further legislation if we can, the STFA has suggested that an amendment to section 13 of the Agricultural Holdings (Scotland) Act 1991 could allow proper account to be taken of productive capacity and earning potential, and that if a case went to the Land Court, it would be possible that one of the parties would pull back. Will you comment on that from the tenant farming forum's perspective?

**Phil Thomas:** I have made the point that some people argue that the rent should be based totally on productivity, whereas others argue that it should be based totally on land value. The rent review working group took the view that the legislation does not need changing but that we need a practitioners guide.

The problem is that the difference in the productivity of individual farms of similar character, whether in beef, dairying or whatever, can be enormous, so we can get a wide spread of incomes from individual farms. That is reflective partly of the way that the businesses are run and, in some cases, partly of the business models that are pursued.

Then we get into almost philosophical debates about whether a landlord should be penalised for the decision of a tenant to run a lifestyle business, if I can put it that way. That is one part of the argument. On the other side, there is the argument about whether somebody who has a productive business should be disadvantaged because their business creates the opportunity for them to pay more rent. That would work against the tenant.

It is not easy to come down to a simplistic statement that would give the way to do it. We need to take into account the balance between the two.

**Claudia Beamish:** Like Mr Dey, I am a layperson, but everyone on the committee is trying

to look for a fair way forward. The more open and transparent it can be, the better. We must consider the extremes, such as lifestyle tenants, but we must also look at the heart of the situation.

**Phil Thomas:** I have taken the extreme for illustration. By definition, the vast majority of businesses sit somewhere in the middle. That is why we need to have as much transparency as possible.

If we adopted one extreme or the other, there would be people in farming on both sides of the debate. Some would argue that we should simply do a farm business appraisal and costing, and that would give the figure for the rent. That would clearly mean that we would never—or, at least, rarely—have a business that failed.

**The Convener:** The statistics clearly show that the bigger part of farmers' incomes comes from subsidies that the public purse provides, so surely there is a different onus on farming with regard to rents than there is on a private business such as a newsagent or cleaner. It is a different circumstance that requires the transparency that you have talked about.

11:00

**Phil Thomas:** Those arguments are, again, slightly philosophical. I will try to tease out the issues.

If we start from a public policy standpoint, which is the place that I would start from, we must consider public policy on things such as food supply, environmental management and all the usual things. We will then come to a discussion of the degree to which the land system that we have meets those requirements. That always leaves us in the position of considering land use, which is absolutely crucial and is the core issue in any country. However, we can achieve the same objectives of land use from very different business models in the way that farms operate. Therefore, although the land use issue is very much about public policy, how it is implemented is much more up for debate. That inevitably brings us to discussion of whether there is a social and community element, which is a political decision, and I could not possibly make political decisions.

**The Convener:** Okay. As Mr Dey's question has been answered, that brings us to the wider work of the TFF.

**Roderick Campbell:** I understand that the TFF is looking not just at rent review matters but at other related areas of agricultural holdings law. Can you give us an indication of what you are involved in and what discussions you are having with the Scottish Government?

**Phil Thomas:** The areas that we have been—and, in some cases, still are—looking at are fixed equipment issues and diversification issues. We have got to the point at which we can encapsulate all the views on diversification, and a guidance paper on that will be published in July. We are also looking at investment issues and waygo issues, which partly relate to investment issues.

Finally, we have just started to discuss assignations and successions. In that area, there is an element of debate about whether the current law is right. Without getting bogged down in the detail, I can say that there are differences with the different types of tenancy and part of the argument is about whether all the tenancies should be the same. Some of the debate stems from the fact that the Succession (Scotland) Act 1964 is coming up for consideration and revision—you will know more about that than I do. An element of the debate is also coming out of the kind of discussions that took place at the NFU conference the other day. Those discussions centre on whether, when somebody makes an assignation, there should be more flexibility in the way in which that can be done and whether that flexibility can be created by changing the type of lease arrangements that are in place. We have not got far enough with that discussion for me to give you chapter and verse on it.

All those elements are being discussed, as they were at the NFU meeting.

**Roderick Campbell:** That is quite a varied portfolio. You are obviously most advanced in discussions of diversification issues. Can you give us a very brief précis of what the report will say in July?

**Phil Thomas:** I can. The guidance paper will point out the potential areas of conflict. It will then deal with conflict resolution, or how we can move past those things. It will set out what the tenant should do, what the landlord should do and what they should do in cases where there is conflict. It will then focus on the specific legal opportunities that exist if there is a conflict that cannot be resolved, which both come back to the Land Court.

There is quite a lot of detail. There are some differences, for example depending on whether the diversifications involve woodland or particular types of buildings. There is some advice in there, for example in relation to developing businesses that are based on diversification further into the food sector, which often causes an issue. That is how the paper is put together. From memory, the paper is in its third draft. It is out for final comments and will be published in July.

**Jim Hume:** I have a small question regarding waygo. The issue of tenants' improvements and

forestry planting has been raised previously at the committee. Scotland's tenanted sector covers a large area. Correct me if I am wrong, but I believe that at the moment it is difficult for tenants to plant trees because they would be owned by the landlord. However, that could also be seen as a tenant's improvement. It takes about 37 years before a commercial tree can be felled, and a tenant cannot always be expected to last long enough in the tenancy to see the fruits of his labour. However, a 20-year-old planting has a value. Has the TFF looked at that situation, or will it do so?

**Phil Thomas:** We are still working on the waygo stuff—it is not finalised. You are right, though. There are some tricky issues, of which forestry is one.

There is another issue tucked away there. I will spell it out and then perhaps come back to what we could do about it. As I understand it, at present, if a tenant wants to put up a new building, for example, for whatever they are doing, and the landlord does not support that building, the tenant sometimes simply goes ahead and does it. Some tenants have the view that, if they have done it, when it comes to waygo they should simply be compensated.

There is a difficult issue there in relation to the European convention on human rights, which is that the tenant has taken a decision on something for which the landlord then has to be responsible. Legally, it becomes a difficult situation. We have been trying to establish the degree to which it might be possible to tease out those things in a way that would allow the right kind of progression. Often, the issue comes down to a judgment on whether the buildings that are available on a farm are suitable for what the farmer wants to do. That is when we get expert opinion coming in to resolve disputes. The tenant might say that a building is not suitable for modern farming, so they need to put up a different one. When we get into such areas of dispute, we think that, if an expert comes in, it would help to resolve the situation.

**The Convener:** We have a question from Graeme Dey, whom I forgot earlier.

**Graeme Dey:** That is easily done.

I would like absolute clarity on the diversification paper to which you referred, Mr Thomas. Will that include specific guidance on the appropriate levels of adjustment that should be made to rent agreements?

**Phil Thomas:** Not as it is written at the moment. I think that the position in legal terms under the 2003 act is that a diversification does not necessarily lead to a reduction in rent. For example, if a piece of land is being taken out of operation for some diversified activity, it does not

mean that the rent will come down because the tenant has less land. The size of the holding is the same.

On rent increases, we are looking at the whole balance of activity. However, the holding is still valued as an agricultural holding. Occasionally—or perhaps more than that—if somebody makes a diversification that is really not part of the farming activity but quite outside it, we find the tenant and landlord agreeing to take that diversification and the land area that is related to it out of the agricultural lease and deal with it on a commercial lease basis. As I understand it, that sort of arrangement already takes place sometimes. So there is a mixture. There are no numbers in the paper, but there is a reference to the legal position and what landlords and tenants need to discuss. However, there is nothing that says that, for a farm shop diversification, a certain adjustment must be made.

**Graeme Dey:** With respect, should some sort of guidance not be included in the paper? We had a stakeholder session earlier in this process at which there was good commonsense consensus around the table about what was and was not appropriate. However, we still hear stories from out there in the field—if you will forgive the expression—whereby landlords are looking for inappropriate levels of increased income in return for permitting diversifications. Is there not a role for the TFF to provide guidance?

**Phil Thomas:** All the guidance always takes the standpoint that if there is to be a long-term relationship, it must be based on appropriate and reasonable interpretation of what is going on. I could not say that there have not been cases in which what you describe has taken place. I personally do not know of any but, in the range of activities that are going on, it is almost guaranteed that there are such cases. Equally, I suspect that there will be cases in the other direction and in which a landlord has been relatively generous in terms of the rent. It is in everybody's interest for farms to be viable. If a farm is not viable as it is and the diversification will make it viable, frankly, the landlord will be as interested in that as the tenant will be.

It is difficult to deal on a point-by-point basis with every case. Frankly, I think that, to an extent, it is an advantage to have professionals involved on both sides. They can then get down to the nitty-gritty of the debate about how the final agreement will be set up financially and all the rest of it. However, there is a wide spectrum. The range and number of diversifications on farms is now enormous.

**Graeme Dey:** I presume that the TFF could offer some broad guidance on dos and don'ts, or best practice.

**Phil Thomas:** Yes. The document that has been produced is, in effect, best practice guidance. It sets out a step-by-step approach and identifies potential points of conflict. It also brings in things such as taking account of planning laws and all the rest of it, including things like food businesses, which operate under a different set of regulations. The document then sets out what to do when there is a disagreement that leads to a legal dispute and what the options are.

When we were trying to write the document, the most difficult situation that I could imagine was one that is difficult to allow for and that might, in reality, occur only very infrequently. However, an estate often has an area in which there will be tenant farmers, but it becomes difficult if the landlord and the tenant both have the same good idea for diversification at the same time. I am not clear how that would be resolved, although it would be done through discussion. However, it is difficult to resolve, and it must happen occasionally.

**Nigel Don (Angus North and Mearns) (SNP):** Good morning, Mr Thomas. I wonder whether I could pick your brains on your obvious experience over a number of years of dealing with this whole area. I will just go slightly off script with my question. I still feel as though I am the new boy on this committee, but I know that there are a large number of organisations with which you must deal that represent all the industry groups. Are there too many organisations or too few, and is it difficult to deal with Government organisations or otherwise? I am not going anywhere in particular with this; I just wonder whether you can reflect on the huge number of different people and organisations that you must work with, and on how well that works.

11:15

**Phil Thomas:** We always remember the occasions when things work very well and when they do not. For the vast majority of the time, we are somewhere between the two.

On the number of organisations, it is pretty fundamental that any industry group or group of any sort that feels that it has a particular need to come together has the democratic right to do that. That sometimes leads to more organisations than perhaps we would logically say are necessary. It would perhaps be wrong to say that the situation is ideal, but it is very difficult to force a whole group of people to simply go into one organisation and take a particular set of views. It really does not work like that in the real world.

On Government organisations, I will get on a hobby-horse that members have heard me talk about before when I have been wearing other

hats. We have a problem of relative overregulation across Scotland in a series of fields. The whys and wherefores of any particular set of circumstances can be argued over, but we have a lot of regulation and we have problems in some areas, which I have to lay at the door of Parliament. Parliament makes laws, and we occasionally find that we can find out what a particular law really means only by testing it through the courts. Where it is not entirely clear what the real impact of the law is, that leads to things going on for a number of years. That is very difficult to avoid, but it is the reality.

**Claudia Beamish:** Will you comment from the perspective of the tenant farming forum—if it has a position—or otherwise on the concerns of tenants with short limited duration tenancies and limited tenancies of that kind in the aftermath of the *Salvesen v Riddell* case? Is there any place for compensation in that area?

**Phil Thomas:** I could not comment on the legal situation because I am not qualified to do so, but I would be very surprised if the case does not have some impact. You could well be better informed than I am on this, but I understand that the Scottish Government currently has a group that is looking at the matter internally and trying to work out what the implications might be. A potentially unknown number of people were affected in some way or another. I suppose that it comes down to finding out whether those people would have a case for compensation.

That is an example of what I said about things going on for a long time. It has taken 10 years to bottom out a decision that came through Parliament and to know what it actually means in legal terms. There will be implications, but I could not guess how large they will be.

**The Convener:** We have seen a period in which the tenant farming forum's work has led to the Government making changes through secondary legislation and through the recent Agricultural Holdings (Amendment) (Scotland) Act 2012 to try to plug the gaps and make the relationships clearer. Might we expect from you some suggestion about other legislative activity or, indeed, how to avoid legislative activity?

**Phil Thomas:** The answer is yes. Since I have been the chair of the tenant farming forum, we have been involved with two pieces of legislation that have gone through Parliament, each of which has been relatively specific. The view in the TFF has been that we should identify where the problem is and then look to fix it.

Coming out of the process that we are going through—as I indicated, we have scaled up the activity very substantially—I think that you can probably expect that there will be a view—which

has been expressed already in some parts—that you should not change the law, because by doing so you might just make the situation worse. In other cases, there might be specific recommendations. I mentioned assignments and successions, which we have just started discussing. I genuinely have no view on what might come out of that, but I have been struck by the willingness on both sides to have the debate. If, as a result of that debate, we see that we could improve the situation by making some sort of change to the present arrangements, I think that both sides would go along with that.

**The Convener:** Looking at this in the round, I see two elements to where we are at just now. Many of the issues that you talk about, such as fixed equipment, diversification, investment, waygo, assignment and succession, precede the 2003 act—when the TFF was set up. They are long-running issues in farming.

**Phil Thomas:** Fixed equipment is an interesting issue. I am not apportioning blame in any way and this is certainly nothing to do with me—if I can put it that way—but the view that is coming through to the TFF is that one of the major problems in that area is that farmers, tenants and landlords are not keeping proper registers of fixed equipment condition. If we could get the whole of the industry to move to keeping condition registers, it would remove an enormous amount of tension over fixed equipment, because everybody would have a clear idea in any five-year period, as it were, of exactly what the situation was. It would overcome a lot of the debates about whether a piece of equipment was in a bad condition simply because it was worn out or because it had not been maintained properly and so on. Things can be done that do not involve legislation but which would take the industry forward a long way.

**The Convener:** You have taken that on board, but you were prodded into taking a speedier approach by the cabinet secretary. You responded by saying that you had moved to monthly meetings and so on. That is all welcome and we expect some outcomes in the autumn. However, there is still the dichotomy between sorting out the sticking points to achieve some sort of stability, which seems to take forever, and considering the argument that the system needs to be much more streamlined—I will not say “simplified”, because things would not necessarily be easier—and that the TFF is not the body to do that.

**Phil Thomas:** That is an interesting philosophical point. Essentially, it poses the question whether the stakeholders in any given activity are the right people to ask about how that activity should be conducted. I would not be so bold as to take the view that they were not, because my experience is that if you do not ask



and involve the stakeholders you get into some deep and difficult water.

I cannot answer for what has happened over the longer term, because I have been involved with the TFF for only the past two and a half or three years. For a long time, the TFF struggled with some large, intractable issues, some of which came out of the 2003 act and some of which predated it by a long time.

My hope and intention for the process that we are going through now is that I will work myself out of a job in relatively few months because we will have agreed positions on everything that is needed and recommendations for any necessary changes in legislation.

That process—at least as I see it—should feed into the wider review in 2014, in which the TFF's role and function will be to put the stakeholder view, if I can put it that way. I would be very reluctant to suggest that we simply tear things up and start with a blank sheet of paper; after all, some of these things are really quite complicated.

**The Convener:** Indeed they are.

**Graeme Dey:** Of course, it is appropriate to consult stakeholders, but in return you should be able to require those stakeholders to find a way and to be able to compromise. Is the TFF not held back by the need to find a consensus instead of agreeing and proceeding on the basis of a majority view?

**Phil Thomas:** The TFF was set up to find consensus. My view is that where we find such consensus, that is just terrific but that, where there are polarised but very clear views, we should simply state that there is no consensus and that there are differences of view. In almost all the circumstances that we have come across, I have found people to be much closer together than they might think they are when they first look at a problem. At the end of the day, the relationship between landlord and tenant is supposed to benefit both sides and unless it does so, it will not really work.

**Alex Fergusson:** An additional partner in that equation is the land itself.

**Phil Thomas:** Absolutely.

**Alex Fergusson:** As you have pointed out, land use is very important and I suggest that, if we can deal with this, the land will probably be the biggest beneficiary of all. The land reform review group came in for some criticism for leaving the subject of agricultural tenancies and holdings to one side, but I thought that that was the right thing to do; in my view, it is worth going the extra mile to try to achieve consensus through a body that was set up for that very reason. If there is a possibility that all sides can agree, everyone wins.

Given the fairly short timescale that you are now talking about for reaching final conclusions on most of these issues, can you identify any areas of your work where you can say for certain that consensus will not be reached, or are you fairly positive that consensus can be reached?

**Phil Thomas:** The area where I thought there would be the greatest tensions was that of assignments and successions, and we left it to the end of the list because I wanted to build consensus in the group before we came to discuss it. However, when we had our first meeting on the matter on 10 June, I was surprised to find that there seemed to be a lot more common ground around the table than might have been envisaged by the protagonists of the different views, and I am reasonably optimistic that we will reach general agreement on pretty much everything that we have done.

I also want to make a factual comment about the land reform review group. There was consensus right across the piece in the tenant farming forum that I write to the review group to suggest that it did not move into the area of agricultural holdings, because the TFF itself was dealing with it and, helpfully, the group decided that it would not look at the issue. Since then—and disappointingly—there has been quite a bit of debate on the part of a TFF member about the land reform review group not taking a more general look at tenantry. I take that not as a specific comment about agricultural holdings but as a much more general comment about land ownership and the other issues that the convener has already referred to. I have to say that the question of the correct level of land ownership is not on the TFF agenda—it is just not what the TFF is about.

I think that that is where the comment about the land reform review group came from. There have been one or two comments in the press from Jim Hunter in particular, I think, about the right to buy. He has strong views on that.

11:30

**The Convener:** If tenants wished to have a discussion about the right to buy and land ownership in general, they would expect the land reform review group to assist. You have talked about a list of long-standing issues in tenant and landlord relationships that exist currently and have done for many decades. Obviously, the tenant farmers are frustrated by the process.

**Phil Thomas:** Let me put things very clearly. The tenant farming forum's remit is to promote a healthy farm tenanted sector in Scotland. That is its purpose. It was not set up to look at land reform in the wider sense, and it would not necessarily be

the right group to do that. That moves into a political area, which the TFF would not be in. I suspect that there will be views around the TFF table on land reform at the political level, but that is not part of the TFF's remit, which is to look specifically at a healthy tenanted sector in Scotland.

**The Convener:** If that is the case, I go back to my early questions about new entrants to farming. Has the TFF concluded its views on how to get more tenants on to the land?

**Phil Thomas:** Before I joined the TFF, it did a piece of research on new entrants, and it has engaged directly and through member organisations with a number of initiatives. One has worked for the NFU with the Crown Estate, and one has worked with the Forestry Commission. There have been a number of specific issues.

I think that we will come back to new entrants time and again, because they will remain an issue. The challenge is that, to allow new entrants in, there must be a higher level of turnover of people retiring out of the industry. The vast majority of farm land, as distinct from estate land, is farmed by owner-occupiers, whose average age is now approaching the normal retirement age in any other industry. People tend to retire late in agriculture for a variety of reasons. They may well sit on the land and contract it out so that it is farmed under contract. Therefore, they may not personally be actively involved in agriculture. The tricky bit, or the challenge, is in seeing whether a way can be introduced in the sector to encourage and allow those particular farmer-owners to release land for tenantry rather than contracting out or whatever.

**The Convener:** You said that the issue would come back time and again, and you said previously that you hoped to do yourself out of a job by coming up with a reasonable set of proposals. The prospect is that there will be a tenant farming forum long into the future.

**Phil Thomas:** The groups of people who sit around the tenant farming forum table will always want to get together to discuss common issues, one of which will be new entrants. It does not matter whether a person is a tenant or a landowner; everybody recognises that the difficulties and challenges for people getting into the industry will remain and that they are not easy to solve. The reality is that the way to solve them is to get a greater turnover of people who farm and to release land that people are farming.

There might not be a single solution but a variety of solutions. For example, if the single farm payment is a major part of a farm's income and the farmer is sitting in a house that he has lived in most of his life and from which he might not want

to move, and he can farm the land without physically engaging himself in farming, then those elements are bound to come in. There are a variety of views on the issue. For example, somebody at my table at the NFU conference said that if the single farm payment was age limited, that would solve the problem. Well, it would, but I would not necessarily like to be the person who took the decision to do that. So, there will be different views on the issue.

**The Convener:** The major view that has not been taken into account is that, if there is more land in landowners' hands, that could be turned into new entrants' units, and it is not always a question of having to take the land from somebody who is already farming.

**Phil Thomas:** I am not sure that I am fully interpreting your statement.

**The Convener:** There are people who are farming the land as tenants or as owner-occupiers in a particular area, but there are also larger land holders or landowners who may well be farming land in hand, so it is possible that they could provide the route for new entrants. We have not got round to that discussion yet. Do you agree that that is an area that needs to be looked at?

**Phil Thomas:** I think that you have to be very careful with the figures—that is my first point.

**The Convener:** I do not have the figures.

**Phil Thomas:** One of the difficulties is that many large estates have large acreages, but a good proportion of those acreages might not be particularly good farm land.

**The Convener:** Let us cut to the chase: land is farmable. There are estates that perhaps in the past had several tenants but now have only one or two. This is an area that we have not really explored. The people coming to the plate from the landowning interest are not yet necessarily helping the new entrants by making more land available. Although they may own large areas of land, they do not necessarily have all their income coming from that land. Small estates are probably different. As we know, on shooting estates, most of the income comes from subsidy through somebody having another job and looking after it. Surely there must be land of that sort that has got to be made available or at least assessed for availability.

**Phil Thomas:** Those are political decisions, in a sense, and well outside of the TFF. However, a number of points need to be taken into account. Not all large farmers own all their land, by any means; frankly, you can have some quite large tenants in there as well. Many estates do have progressive policies on leasing and so on. So it is not a simple one-size-fits-all picture out there.

**The Convener:** I am trying to add to the picture an area that we have not addressed until now. Quite frankly, people express frustration about this issue, which as you said is going to come back time and again. It has to be addressed in the wider sense, which is why I raised it with you just now. I am just wondering whether, in fact, it is something that we could see some answers on from the TFF in this review period.

**Phil Thomas:** The TFF would certainly encourage landowners to look favourably on being able to release tenancies, because that is part of the new entrant thing. However, if we are talking about a healthy tenanted sector, the TFF has deliberately not taken a view that says, "That means there will be X number of farms." The reason for that is that you then get locked into the issue of small tenanted farms versus larger tenanted farms and the viability of one versus the other, and so on and so forth.

For me, there is a distinction. The policy issue that you have to decide on first is land use. Once, as a Government or as a nation, we have decided on land use, you then come down to, in effect, the national business model for achieving that. That is an issue for political discussion and is not where the TFF is focusing its attention.

**The Convener:** You have made those points clear; I thank you for that.

We have a further sandwich of questions from a couple of farmers and a couple of other members. I ask for brief questions and brief answers, please.

**Alex Fergusson:** Convener, I am no longer a farmer—sadly, you may think—having given it up in 1999.

In other forums, I have been made aware that, for the many people who have found a way into farming over the past decade, the biggest issue is not access to farming as such, but entitlement to support systems such as the SFP that you mentioned. As I said at the beginning, I was particularly impressed by the young man who spoke at the conference the other day. He had found his way into farming and had worked his way up. Does the TFF have any idea of the scale of the problem? Do you have any idea of how big an issue the new entrants problem is?

**Phil Thomas:** We have had some interaction with the new entrants group. We have tried to encourage new entrants to engage a bit more with the TFF, but the reality is that they are all young guys who are driving their businesses forward so, frankly, they do not wish to be too involved in the politics. As far as they are concerned, as you said, they just want equal access to the support systems, such as the single farm payment.

From the statements that were made at the NFU conference, it is apparent that if there were a level playing field they would not need or want any special provisions. They will find their way in the world, provided that they have a level playing field. I thought that that was quite an interesting reaction from them.

In terms of prospective numbers, I cannot say off the top of my head how many people would come into farming. In many cases, children of existing farmers come into farming by going back to the home farm, but they may be hidden in the system because they do not appear as the farmer but are simply included in the farm staff. Again, the transition in agriculture often takes place quite late in the day, because many farmers are reluctant to hand over to their sons. In my view, the transition often takes place rather too late—they could perhaps step back a bit earlier—but that is a personal view.

**The Convener:** Let me intervene at this point. If the TFF can provide in writing any numbers in answer to Alex Fergusson's question, that would be very helpful in guiding us.

**Claudia Beamish:** Going back to Graeme Dey's point about consensus, I want to highlight concerns that I have observed, which may or may not be correct. I hope that you will take these remarks in the helpful way in which they are meant.

In at least one instance, a group within the tenant farmers forum has continued to have concerns—about which they have been vocal—after consensus has apparently been reached. I define consensus as a feeling of togetherness or agreement. It seems that certain issues have not been resolved and that people have not reached what I would define as consensus. You said that, in cases where there was no consensus, that would be made clear because those who disagreed would be identified as not being part of the consensus. How helpful would it be if that actually happened in the future? There may be instances in which that has happened in the past, but I think that the process would be helped if that happened. I hope that you do not mind me raising that point.

**Phil Thomas:** I do not mind. I will comment on the specific issue. Agriculture is always a political—often small p political, but sometimes big P political—business. Agripolitics is often quite complex, as your colleagues around the table will tell you. The TFF has a number of member organisations. We can get a consensus around the TFF table at organisation level, but that does not necessarily mean that members of those organisations will all align with whatever consensus was reached.

11:45

There was a particular issue in relation to the rent review working group's report. At each stage, I tried to be clear with people and say, "This is what we're agreeing to. Do we have an agreement on that?" The TFF accepted the rent review working group's report. If you go back to the minutes of that TFF meeting, you will find it there.

However, in communicating to the Cabinet Secretary for Rural Affairs and the Environment, I was careful to say that, although the report had been accepted, there was a difference of view about the degree to which the rent would be set based on the productivity of the farm as against the market value of the land. In reality, that was being dealt with by one of the measures that the rent review working group recommended, so that is where we ended up. When the guidelines are issued, one or more TFF member organisations might say that it does not agree with them. If that is the case, we will have to deal with that at the time.

**Jim Hume:** I will follow up the point regarding so-called in-hand farming, in which estates from which land would traditionally have been leased keep the land. In my area, that has happened to quite an extent. Why is that happening? Is it because—as I have heard anecdotally—fear of the introduction of an absolute right to buy means that the landowner keeps the farm in-hand, so that there is no risk of a tenant exercising that right? That has an effect on new entrants.

There is also the fact that we are in the middle of the common agricultural policy reform and many landlords and tenants will be delaying changes in their businesses until the CAP has been reformed.

**Phil Thomas:** The views that I will give on that question are personal ones, not TFF ones.

Both the factors that Jim Hume identified have come into play. Undoubtedly, some landowners are concerned about the introduction of an absolute right to buy, despite the fact that it has been said that that has been parked for the time being, at least. The CAP is also a concern. At the moment, parts of the agricultural industry and the market are, in effect, not working together because farmers are holding back on decision making.

Take the beef sector, for instance, in which I have an interest, although it is not a personal interest but an academic one, if I can put it that way. Beef prices are high and processors are in difficulty because they cannot get supplies to meet market demand, but numbers of stock on farms are actually going down. That is, in part, because everybody is sitting on their hands waiting for the CAP decisions to be made before they can make their own business decisions.

The situation is not simple; it is quite complex. The right to buy will affect the views of some people and the CAP reform will also have a big impact.

**Graeme Dey:** I will take the discussion back to the TFF's role in encouraging new entrants.

Scottish Land and Estates was, 18 months back, considering providing starter units. My understanding is that it made only limited progress because it identified a problem with churn further down the line; there had to be somewhere for those who had accessed starter units to move on to so that others could be brought into the starter units.

If we accept that the starter-unit approach is the right way to go, surely that is where the TFF comes in. With the door having been opened for new entrants, the TFF should flesh out and deliver some of the ideas that you talked about earlier. Is the TFF working sufficiently well in unison on that hugely important issue?

**Phil Thomas:** Ultimately, that is a judgment for others to make, in the sense that the proof of the pudding will be in the eating.

The TFF has worked through its members, not necessarily through the organisation directly. SLE came up with some starter units and has a commitment to look for more. The NFUS has funding for a mentoring scheme, in which new entrants will have a point of contact who can advise them on the best way to get into farming.

A number of separate initiatives have taken place, but we will not solve the new entrant issue overnight; we will have to get more current, quite mature—if I can put it that way—farmers moving out of farming. That is where we need to get churn.

**The Convener:** I am sure that Phil Thomas has been used to extremely long meetings in the TFF over the years, particularly in the recent past, when there have been monthly meetings. I thank him for an extended evidence-taking session and for his evidence, which will help us in our appraisal and our questioning of the cabinet secretary.

11:51

*Meeting suspended.*

11:54

*On resuming—*

## Community Transport

**The Convener:** We move on to item 2. Jayne Baxter will give a report on the Infrastructure and Capital Investment Committee's inquiry on community transport. I refer members to paper RACCE/S4/13/22/3, which Jayne will speak to—without reading it all out.

**Jayne Baxter:** I could speak at length on the topic, but I will not do that today.

In approaching the task, I was mindful that my remit was to ensure that rural issues and perspectives were reflected in the inquiry. My report confirms the points that I made to Maureen Watt, who is the convener of the ICI Committee, that community transport and other forms of transport play an important role in rural communities. I made the points to her that it is mainly older people and people with disabilities who use community transport, that how we support people to access health, education and leisure facilities in rural communities is a challenge, and that the issue relates not only to health or older people but to the community as a whole. The convener had no difficulty with taking on board those points.

Based on experience, I have formed the view that there is scope for increased co-ordination and partnership working at local level—where it can best be organised—with local authorities and health boards. There are many examples in which information technology has been used creatively and effectively to support that. However, none of that will happen by magic or if partnerships are just left to evolve. There is scope for leadership at local government, community planning or Government level. I hope that the inquiry is used as an opportunity to provide that leadership and strategic direction.

Claudia Beamish reminded me this morning that Age Scotland has been campaigning for CT operators to have access to the concessionary fares budget. Although that campaign is on-going, I did not refer to it in my report because I was not sure what the committee's view on that would be, so I did not feel that I had a remit to comment. However, the issue is probably covered under the paragraph in my letter to Maureen Watt that refers to third sector operators looking for available funding. I am happy for us to specify the campaign, should members want to do so. I did not do that because we had not discussed the matter.

**The Convener:** Do members have any comments?

**Jim Hume:** That was the exact point that I was going to make. I have visited, thanks to Age Scotland, many community transport projects in South Scotland. The fact that community transport is often in places where public transport is not available means that there are more rural people relying on it and older people who use it do not receive any help in the form of concessionary fares. I would welcome the campaign being specified in the report or, at the very least, for the issue to be considered. The minister has responded on the matter in the past, but obviously nothing has happened.

**Jayne Baxter:** I do not disagree. I did not include the reference because we have not discussed the matter.

**Jim Hume:** Absolutely.

**The Convener:** Bearing it in mind that we will be able to review the ICI Committee's report when it is published, does anyone else have any comments?

**Alex Fergusson:** I endorse the approach. I am sure that all of us who have rural constituencies and discuss such matters with our community transport people are very aware of the campaign's call and have sympathy with it. I fully appreciate that there are major cost consequences, but I hope that the matter will be covered in the report and that Parliament will be able to discuss it.

**The Convener:** Would it be useful for us to have a meeting to consider the ICI Committee report from our perspective, so that we can make points in any debate and help to move the process forward?

**Members indicated agreement.**

**Jayne Baxter:** I am a substitute on the Health and Sport Committee. I was present when it took evidence on the inquiry. It was interesting to hear the range of opinions in the room. It was a useful session.

**Graeme Dey:** When is the report due to be published?

**Jayne Baxter:** It is to be published in June. I do not know the exact date.

**The Convener:** I believe that the report will be published at the end of next week. That gives us an opportunity to discuss the report informally, or whatever, before the debate.

**Jayne Baxter:** That would be useful.

**Graeme Dey:** We will need to look at the report relatively early in next year's work programme.

**The Convener:** That sounds good. I understand how health spending relates to the subject. I think that the way in which the national health service

contributes might well be part of the thinking of the 2020 vision for NHS. That might be another funding source under contemplation.

12:00

**Jayne Baxter:** The biggest risk to community transport is that it seen only in one box. It must be flexible and operate on a number of different fronts. That is the route to sustainability.

**The Convener:** Good. I thank Jayne for her report. It is clearly part of our job to look at the matter and we have an opportunity to take forward the issues once we see the report.

Our next meeting will be tomorrow, 20 June, when the committee has an evidence session with Janez Potočnik, the European Commissioner for the Environment. The following week, on 26 June, the committee will hold its last meeting before the summer recess, at which we will take evidence on land reform from the land reform review group's chair, Dr Alison Elliot, and agree a draft report on the Regulatory Reform (Scotland) Bill, if required. We will also discuss the committee's future work programme. We look forward to all that.

12:01

*Meeting continued in private until 12:40.*

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