



Hamish Lean, Head of Rural Property and Business, explores how to manage and resolve common disagreements between farmers and contractors.

This article will look at ways of managing and resolving disputes in contract farming agreements that might arise between the farmer and the contractor. The use of contract farming agreements - a commercial agreement for the provision of services between a farmer and the contractor - is relatively widespread in Scotland, both in an arable and livestock context.

The goal of the contract farming agreement is that the farmer retains control of the farming operations and retains his or her status as an active farmer, participating in the financial risk of the farming operations under the farming contract, but the farming operations themselves are carried out by the contractor.

Trust and goodwill

In my experience, a successful contract farming agreement involves a high degree of trust and goodwill between the farmer and the contractor. Without that trust and goodwill, exemplified by good behaviour from both parties, no matter how well drawn up the contract farming agreement is, the relationship tends to end unhappily.

Contract farming agreements can go badly wrong. I was once involved in a case where the contractor attempted to argue that a series of contract farming agreements were not what they purported to be and that they were designed to hide the true relationship between the parties, which was that of landlord and tenant. The original arrangement had begun before the introduction of fixed duration tenancies by the Agricultural Holdings (Scotland) Act 2003 and therefore had the contractor been successful it would have established a fully secure agricultural tenancy in its favour.

Ultimately, that attempt failed, not least of all because of the difficulty in persuading a Court that a contracting agreement was actually a sham, i.e. a conscious effort by both parties to hide the true nature of the relationship. The evidence to support such an argument was lacking in

that particular case and, in fact, in any case would be very difficult to establish.

Of course, the risks of such a challenge now are very much reduced because, even if successful, which would be very unlikely in all circumstances, what the contractor would obtain at best would be a fixed duration tenancy that the farmer would be able to bring to an end at a definite date in the future. The greater risk, from the farmer's point of view, is losing the status of an active farmer, with potentially adverse consequences for agricultural support payments and in relation to taxation.

Common grounds for disputes

However, where disputes arise, it will be in the day-to-day workings of the contract itself. That might be how a contractor is fulfilling its responsibilities and its husbandry of the land or it might be in respect of the accounting aspects of the contracting farming arrangements. If the farmer has to reimburse the contractor for inputs, is the farmer doing so timeously? If the farmer is operating a number 2 account to pay inputs and to receive sales income, is that properly funded and are suppliers being paid on time? Are the accounting arrangements at the end of each contracting year being dealt with efficiently and are the parties satisfied that the net divisible surplus is being calculated fairly, and is it being paid on time to the contractor?

As is apparent, there are a number of areas where parties can fall out. It is in the interests of both parties therefore that a well-drawn up contract farming agreement has a clause that allows either the farmer or the contractor to bring the contract to an end because of bad behaviour by the other party to the contract. Ideally, such provisions should clearly identify what behaviour on the part of the farmer or contractor will justify the other side bringing the contract to an end and it should also contain clear



provisions with regard to how a final account between the parties is achieved.

In the absence of a clause to that effect, it will be much more difficult for the aggrieved party to extricate themselves from the contract farming arrangement itself. The next issue to resolve is what happens if the parties are in disagreement about how the contract farming agreement should be interpreted. It might not be something as dramatic as bad behaviour that would justify one party bringing the agreement to an end, but there may be a genuine disagreement between farmer and contractor about the particular interpretation of a clause in the contract farming agreement – perhaps about the calculation of the divisible surplus, for example.

The solution to such problems is to have a contract farming agreement that is crystal clear in all respects but, of course, in the real world it is perfectly possible for parties to have genuine disagreements about the interpretation of particular clauses. The question then is how do they resolve those differences and disagreements?

The importance of the arbitration clause

Most contract farming agreements will contain an arbitration clause and this is extremely important. In the absence of a clause referring a dispute to arbitration, if the parties fail to agree how to resolve something themselves, the alternative would be to resolve matters in the Courts.

A well-drawn arbitration clause will provide that the parties, if they are in dispute and cannot agree about how

to interpret any particular part of the contract farming agreement, or indeed if the agreement should be brought to an end because of alleged fault on the part of one party or the other, that they can refer the dispute to an arbiter to be mutually chosen between them. If they can't agree on the appointment of a suitable arbiter, then there should be a mechanism within the arbitration clause that allows one or both of the parties to apply to an external body for the appointment of an arbiter. I often see, for example, a clause providing for an arbiter to be appointed by the Chairman of the time of the Royal Institute of Chartered Surveyors in Scotland, or something similar.

In summary, a contract farming agreement is simply a commercial contract for the provision of services by the contractor to the farmer. The secret of its success will depend on the level of trust and goodwill between the farmer and the contractor. The possibility of disputes arising can never be ruled out but the contract farming agreement should be clear cut and easily understood in respect of its provisions to reduce the scope of disagreement. Finally, the contract farming agreement should contain a robust clause allowing the parties to have their disputes, should any arise, resolved by arbitration in the event that they can't agree a solution themselves.

If you have questions about this or another related matter, please get in touch with [Hamish Lean](#), Head of Rural Property and Business, or your usual Shepherd and Wedderburn contact.

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