

Agricultural Tenancy Disputes – Arbitration or Expert Determination?

There are two principal types of agricultural tenancies, each of which are subject to different sets of legislative frameworks:

1. Full agricultural tenancies, which are subject to the Agricultural Holdings Act 1986 (AHA).
2. Farm business tenancies, which are subject to the Agricultural Tenancies Act 1995 (FBT).

Historically, disputes AHA Tenancies have been dealt with by the Agricultural Land Tribunal (ALT) whereas those relating to Farm Business Tenancies have been dealt with by arbitration. The ALT was regarded as being both quicker and more cost effective than arbitration.

Recognising that the majority of disputes arise from issues around rent reviews The Royal Institute of Chartered Surveyors (RICS) introduced a simplified arbitration process to deal with such disputes for both AHA and FBT. The Simplified Arbitration Service (SAS) is a relatively low-cost, quick and easy procedure, with less formality than is used (and needed) for commercial and construction disputes.

In response the Deregulation Act 2015 brought about an unregulated means of determination – Expert Determination – which involves an independent expert making a determination in accordance with the procedure written in to the tenancy agreement

Both the SAS and Expert Determination forums are not obligatory; unless they are written into the AHA or FBT. Otherwise, they require the consent of both parties. Subsequently, any determination that is made is binding.

It should be noted that Expert Determination cannot be used to resolve Notice to Quit issues in AHA Tenancies – these require resolving through either arbitration or ALT. The rationale of this is that the outcome of such a dispute may give rise to the loss of a livelihood or home for the tenant and therefore requires some degree of legislative justification and safeguarding.

There are perceived disadvantages in Expert Determination; the expert does not perform a judicial function and could (in theory) reach a decision without having considered full evidence at all; unlike an arbitrator, who fulfils a quasi-judicial function.

The pending Agriculture Bill, currently working its way through Parliament, does deal with specifically with tenancy disputes. Whereas as present only RICS can appoint arbitrators, this is set to change, presenting a broader choice for tenants and landlords, and extending the scope of the forum.

Some tenancies may predate the legislation to use expert determination – and not all new agreements incorporate the option. Therefore, having these checked prior to entering into any agreement is a sensible precaution.

Thus there are in essence three ways of approaching an agricultural dispute:

1. Expert Determination;
2. Arbitration; or
3. Tribunal application.

Agricultural tenancy disputes can be costly – both financially and practically – resulting in loss of the land; incursion of fees; and exposure to reduced income. A proactive approach is always well advised.

The use of land is central to agricultural business. It is essential that positions are properly recorded and that problems are promptly addressed and resolved.

The Agricultural Team at Butcher & Barlow can advise on both new agreements – Landlord or Tenant and in providing advice in the event of a dispute arising. The Agricultural Team works closely with the Dispute Resolution Team to ensure our clients, being Landowner or Tenant, receive the most cost effective and pragmatic advice to resolve their issues and obtain the best possible outcomes.

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