

## **DAERA Assembly Committee – DRAFT written submission summary -11 February 2021**

**James O'Brien BL** - James is a barrister at the NI Bar. Until 2012 he practiced as a solicitor from 1990 and from 1998 in his own practice. As a Moneymore farmer he has supported independent panel hearings from the outset. He is the former Chair of the UFU Legislation Committee and acted as Junior Counsel in the UFU Judicial Review cases for the former UFU President Ian Marshall (UFU.JR1) in that February 2017 Judgment and settled the follow up case (UFU.JR2.) in mid 2018. James is the co-author of the final draft paper at Ref.C, which we believe is an important contribution to the evidence. Our email to Dr Foye -3 Feb. We hope to finalise it, having considered other inputs, prior to DAERA "Spring" consultation.

**Brian Little** - Brian was in senior roles in Bombardier Aerospace up to 1995, then H&W to 1997 before practicing as an independent consultant to 2002. He then returned to business and was involved in a "whistleblowing" case from 2007 to 2012. Since that outcome he has been helping others on specific cases on a voluntary basis. This has included the DUP/Mr Shannon MP on banking / auditing / whistleblowing matters etc. A relevant example from 2017 is the recently launched voluntary banking disputes scheme from December 2001 at Stormont [BBRS boosted by cross-party and cross-government support at pre-launch event in Stormont - BBRS \(thebbrs.org\)](#) which has parallels in relation to how to deal with historical cases. Barnwell Farms - BFL.JR5 - Michael Calvert was a late cousin. Mr Jim Shannon MP and Brian have worked since July 2020 on this case but substantially more, with Calvert's financial support for Ref C, on broader strategy and change/future.

### **Background / Reference material submitted to the DAERA Assembly Committee**

A. **NEW: DARD Assembly Committee – Hansard – 22 September 2015 – four officials on the Stage 2 Review of Decisions process, noting interactions of current Members - Chair Mr William MLA, Mr Declan McAleer MLA, Mr Edwin Poots MLA (now Minister.P6.) P1-P12**

B. **DAERA Judicial Reviews – SFP - Cases Analysis.Chronology / timeline dated 11 December 2020.Final.Version (14 Jan Member Correspondence and 11 Feb document P13-P84 :72**

C. **Final Draft Review of Decisions.Independent.Stage2.Panels.future and historic cases options James O'Brien / Brian Little paper (14 Jan: and 11 Feb P85-105) :21 pages - uplift to Ref J before or by close of consultation from DAERA in the "Spring".**

D. **Key email extracts with Observations from Deputy High Court Judge/Senior Counsel for Applicants in all 5 JRs, Mr Hugh Mercer QC, with Mr Shannon MP 14 Jan Member correspondence and 11 Feb Member correspondence document P106.**

E. **UPDATED Media / Press coverage – Irish Farmers Journal (IFJ) etc –(12 Dec article – DAERA at odds with independent panel- analysis P8/P114) and doc P11/P116 14.Jan IFJ (Challenge put to MLAs on Appeals process, Supreme Appeal Panel to replace Judicial Review, Window of opportunity for historic cases, DAERA instinct to batten down the hatches.) Farming Life,Ards Chronicle, Agriland, BBC Farmgate 11 Feb documents P107-P132**

F. **NEW Jim Shannon MP.Live case.new evidence.UFU 2017 consultation response (pages 5 to 7). JR 3 Court Order, 2019 new process excluding additional/new evidence. 11 Feb P133-142**

G. **NEW DAERA EIR / FOI responses 20/261 dated 4 December 2020 (10 pages), DAERA 20/288 dated 4 December 2020 (11 pages), 20/331 dated 4 January 2021 (3 Pages) and 3 Feb 2021 clarification re 9 open cases ex 4 Dec EIRs P168 - documents P143- 168**

H **NEW Mr Shannon MP letter to NI Comptroller and Auditor General Mr Kieran Donnelly KB in relation to DAERA Judicial Reviews – taxpayer funds and DAERA Department Board governance Enclosure 2: UFU.JR3 elimination of independent panels.DAERA.No Assembly (14 Pages)and Enclosure 3 DAERA Departmental Board Minutes- JR extracts.lessons.learned Jan 2017 to No.2020. (6 pages) 11 Feb Member Correspondence documents P169-197.**

**Primary elements in an integrated/credible solution re Stage 2 Independent panels : Past, Present and FUTURE** - James O'Brien BL / Brian Little

1. Changing the law from recommendation to final decision. The relevant law: Farm Subsidies (Review of Decisions) Regulations (Northern Ireland) 2001 1 <https://www.legislation.gov.uk/nisr/2001/391/contents/made>  
HOWEVER this alone is insufficient – what did we learn from Judicial Review Judgments/ DAERA JR cases (*noting Hansard.Ref.A*) and hence Points 2 to 5.
2. But what about legal / statutory responsibilities with change in law re panels and DAERA - past European law and future post BREXIT. Following through the engagement by Ms Clare Bailey in 28<sup>th</sup> Jan hearing. (Youtube 2.16 to 2.20)
3. The Supreme Agricultural Appeal Panel (SAAP)– why and role – historic and “legals” - DAERA compliance protection. Competence / independence. See **Ref C 21** page document and in particular Appendix 3 - pages 18 to 20.
4. Process and selection of independent panel members from January 2022 / Supreme Agricultural Appeal Panel (SAAP) – following through the engagement by Mr John Blair during 28<sup>th</sup> January hearing re Appointments and January 2022 pool etc (Youtube 2.05 to 2.11) and linkage to pts 3 and 4.
5. UFU.JR3 – Oct 2018 -enabling additional/new evidence to Stage 2 Independent panels – **Ref F** (10 pages) - undoing JR3 settlement agreement for both UFU and non UFU Members for future. Note pages 5-7 re UFU.2017. (Dr Foy/ Mr Irwin : JRs : facts/evidence on 28<sup>th</sup> Jan (Youtube 1.53-1.56)
- 6.1 Mrs Barton/ Mr McGlone questions (28<sup>th</sup> Jan - Youtube 1.56 to 2.04) :  
Historical cases - A. retro to 3 March 2017 / 5 reasons why that date selected
  - 6A. NI Assembly stood down in January 2017. Minister McIlveen – 2 March 2017
  - 6B. Ian Marshall Judicial Review (UFU.JR1) Judgment – 7 February 2017
  - 6C. EIR 20/331 – **Ref G.** above - 773 cases from 2005 – 2014 o/s as at March 2018
  - 6D. 2015 change - 810 “Active Farmers” and “Young Farmers” intro / wash through etc
  - 6E. “New process” -did Applicants consider they were refused relevant “additional/new” evidence for Stage 2 Independent panels since May 2019 when this became imposed.
- 6.2 retro back to 2005, where no Ministerial sign off or subsequent engagement. P 8 of the Stage 2 independent panel report includes Minister aspect.(**Ref F.P10**)

## **Suggestions for DAERA Assembly Committee to ask from others (and why)**

J O'Brien / Little- update ref C by end Consultation:Final Version highlighting changes–**Ref J.** and DAERA Assembly Committee to ask for and review documents index / evidence of JR3.

K. DAERA to provide further information to Committee – three examples

K1. In relation to the two EIRs (ref f) can DAERA identify from the almost 50 cases from 2015 to 4 December 2020 how many of these cases had their DAERA letters refusing to accept the Stage 2 Independent Panel recommendations (in full or part) dated on or after March 2017.

K2. The EIR 20/288 response indicate that having turned down the Stage 2 independent panel recommendations (pages 2 and 3) DAERA do not proceed to calculate the individual and cumulative costs should they have accepted same up to March 2021. While the O'Brien / Little proposal requires the eligible applicant to come forward for individual and cumulative claims in excess of £5000 and be prepared to take their case to the SAAP, if on further analysis, they still oppose the Stage 2 Independent panel's recommendations, this would at least provide an assessment of the maximum £ exposure and an easy analysis to compare names with as these Farmers step forward with Appeals. On the 11 February 2021 I will be able to provide an analysis of the experience to date from the 29 farmers (updated as at that date) who have contacted Mr Shannon MP and/or me since 21 Nov.

K3 In the Oral evidence on 28 January 2021 Mr Harvey's third question asked about Ministerial involvement in process for which Mr Foye indicated that DAERA did not have any records. (You tube 1.49 – 1.50) Mrs Barton asked (Youtube 1.58 – 2.00) about the Practice of Ministerial or judicial involvement in the other three jurisdictions. In Scotland judicial land courts while in England and Wales both still have the involvement of Ministers. When and by whom was the decision made not to involve a Minister in Northern Ireland as we know Page 8 of the Single Farm Payment Stage 2 Appeal:Independent Panel Report Form provides for "Panel recommendation to Minister." Why no Ministerial review here in NI?

L. To other stakeholders - NI ACA, NIAPA and UFU? - for 11 March evidence session

L1 What are the pros and cons of proceeding to make the Stage 2 Independent panel recommendations as final with no further Appeal. DAERA retain law. As against a role for a Supreme Agricultural Appeal Panel (SAAP) as a replacement option for a £100K+ JR.

L2 While DAERA plan to issue their Consultation in Spring 2021 do your organization have any provisional view on what we should do? Why?

L3 See Brian email 29 Jan @ 7.04 to ACA (NI), NIAPA and UFU <copied to Committee Chair>. There has been some publicity about the Barnwell Farms case and implications of Stage 2 independent panels. From approaches from your Members who have eligible clients or Members how many of those would wish to have their historic cases re-considered and in doing so if DAERA do not unilaterally set aside their initial refusal would be willing to proceed to the proposed SAAP and make their case. Could we know the numeric split in your list from those **A.** after 3 March 2017 and **B.** those before 3 March 2017 and what £ value those people consider to be the value of their cumulative claims to March 2021?



Northern Ireland  
Assembly

Committee for Agriculture and Rural  
Development

# OFFICIAL REPORT (Hansard)

Review of Decisions Process: DARD Briefing

22 September 2015

# NORTHERN IRELAND ASSEMBLY

## Committee for Agriculture and Rural Development

### Review of Decisions Process: DARD Briefing

22 September 2015

#### **Members present for all or part of the proceedings:**

Mr William Irwin (Chairperson)  
Mr Joe Byrne (Deputy Chairperson)  
Mr Sydney Anderson  
Mr Thomas Buchanan  
Mr Declan McAleer  
Mr Kieran McCarthy  
Mr Edwin Poots  
Mr Robin Swann

#### **Witnesses:**

Ms Amanda Blakley	Department of Agriculture and Rural Development
Mr Brian Lamont	Department of Agriculture and Rural Development
Ms Deirdre Murray	Department of Agriculture and Rural Development
Ms Dera Watson	Department of Agriculture and Rural Development

**The Chairperson (Mr Irwin):** From DARD, I welcome Brian Lamont from programme planning and management; Dera Watson, a grade 2 agricultural inspector from programme planning and management; Amanda Blakley, a staff officer in review of decisions; and Deirdre Murray, a staff officer in review of decisions. I ask you to take up to 10 minutes to give your presentation, after which members will ask questions.

**Mr Brian Lamont (Department of Agriculture and Rural Development):** Good afternoon, Mr Chairman and Committee. Thank you for the invitation to come along to engage on aspects of the stage 2 review of decisions process. I have overall responsibility for the unit; Dera Watson is the newly appointed head of the branch; Amanda is a case officer; and Deirdre is the policy review officer for the team.

I understand that the Committee has a number of queries and questions that it wants to put to us. Perhaps I could take five minutes to set the scene and explain broadly what the stage 2 process is. It might be helpful to emphasise that a stage 2 review of decisions process is a review of the decision as opposed to an appeal. An appeal is traditionally a legal process or proceedings by which the case or scenario is brought to a higher court for a review of the decision. The outcome of the appeal is a decision that is binding on the authority or individuals as opposed to a review of the decision, which is what this is. This is a review that is independent of the business area in DARD. The decision is reviewed. It is put to an outside independent panel. That panel makes a recommendation to DARD as opposed to making a final decision, and DARD takes account of that recommendation and all the information that is gathered throughout the review process.

There are a number of steps in the process. The first step is the receipt of the application. There is then a period when information is gathered to compile a case officer's report, which is then presented. A panel is organised, and the report is put to it. At that stage, the panel can request further information and analysis. It considers what is in the report and the further information that it has requested. There are two types of review: a written review — you are probably aware of that — and an oral review. The oral review allows an applicant to come along to the panel and present information that perhaps previously had not come to light. It allows applicants to articulate their case in a way that perhaps words could not do. They can also bring along an industry expert or someone to help them with their panel presentation.

At the end of that, the panel makes a recommendation. As I said, it is a recommendation rather than a decision, and it is not legally binding, although DARD takes account of the recommendation. It then does a policy review, whereby it looks at the events in the process from the start to the end, which is the point at which the panel has made its recommendation. It prepares the report for the head of the paying agency, which ultimately makes the decision, as opposed to the Minister. As you are probably aware, in years past, pre 2012, the Minister made the ultimate decision. Since 2012, we were subject to a formal review by PricewaterhouseCoopers. One of the recommendations that DARD implemented is that the final decision goes to the head of the paying agency. Whatever the final decision is, we put that in a letter to the applicant and send the letter out.

I will finish by highlighting some of the positives about the stage 2 review process. It is independent of DARD working areas. No one in the unit is an inspector or a professional in the particular DARD areas. We are independent of the business areas. Indeed, in June past, in preparation for the CAP reforms coming in and the cases under that reform, we extended the scheme to include all DARD schemes whereas previously it had just been area-based schemes. We are going to extend the facility to all schemes. We no longer report to the director of area-based schemes divisions. I now report to the head of the paying agency through the director of the service delivery group. That further reinforces the independence of my unit. It provides an opportunity for applicants to submit evidence that they had possibly not thought of before or has only recently come to light. It affords them the opportunity to articulate that in a manner that they are most comfortable with or for an industry expert to come along on their behalf and present that evidence.

My branch provides an inquisitive role at least and a challenging role at most. We ask what events led up to the decision, why decisions were made, where the evidence is to support them and so on. I want to emphasise one important point: all our decisions are not linked to a monetary value. A claim could come through the door whereby an applicant has lost £500. Equally, we could have a claim coming through the door whereby an applicant has lost £100,000. We do not look at the value of the claim. It has no influence on our level of analysis. Each and every case is treated on its individual merits and is given the attention to detail that it warrants.

The stage 2 review of decisions process is not cost-prohibitive to farmers or applicants. If they want a written review whereby they do not appear in front of a panel, it is £50. If they want an oral hearing and to come along to the panel, it is £100. If they win their case, DARD refunds that money to an applicant.

That is all that I have to say by way of introduction. I am happy to take questions.

**The Chairperson (Mr Irwin):** Thank you very much for your presentation. You say that, from 2012 to 2014, DARD accepted 88% of the panel's recommendations in full or in part. Do you know what percentage of those were accepted in part or in full?

**Mr Lamont:** I have the statistics here, so I will read them out to you. Between 2012 and 2014, one decision was accepted in part, 25 were not accepted, and 182 were accepted in full. That is over three years. You had submitted a freedom of information request. We tried to get that out in the post to you on Friday past, so we hope that you got it before today. We thought that it would be helpful.

**The Chairperson (Mr Irwin):** We did not get it, unless it is in the office this morning.

What are the main reasons for the Department not accepting a recommendation in full? For instance, 25 were not accepted at all.

**Mr Lamont:** I will refer to my notes. There are a number of aspects as to why we did not accept the panel recommendation. Each case is based on its individual circumstances. No two cases are the

same. There are cases that, on the face of it, appear similar but are not. We have found that, in some instances, the panel can be swayed and can show empathy to an applicant's circumstances. That perhaps clouds or influences the panel's thinking in making its final recommendation. Ultimately, whatever decision the unit or the head of the paying agency makes — you have heard this before from my DARD colleagues — it must comply with EU rules. We have no flexibility to deviate beyond the rules.

**The Chairperson (Mr Irwin):** They are, however, open to interpretation in many cases.

**Mr Lamont:** I watched the ARD Committee proceedings when you spoke to Pauline, Jason and so on, and I know that they are working on that at the moment. I understand that they are coming back to the Committee on 6 October.

**The Chairperson (Mr Irwin):** You say that the final decision is with the head of the paying agency: would it not be the case that you recommend and that he signs off what you say?

**Mr Lamont:** Yes, that is the process.

**The Chairperson (Mr Irwin):** I thought so.

**Mr Lamont:** The present head of the paying agency has a lot of experience in DARD and with applications. The head of the paying agency would not be averse to bringing the team to book if he was not assured of the recommendation that we are making. In our report, we have to justify any recommendation that we make to the head of the paying agency. We have to refer to the circumstance, evidence and rules. We have to show how the decision was reached.

**The Chairperson (Mr Irwin):** Are members of the independent panel aware of and privy to EU rules and given guidelines on them before they make decisions?

**Mr Lamont:** We prepare packs, and I mentioned the case officer report. We also prepare the supporting evidence and material. That material contains copies of legislation, policies and procedures that relate to the application.

**The Chairperson (Mr Irwin):** So the panel is aware.

**Mr Lamont:** Yes.

**The Chairperson (Mr Irwin):** Should panel members take those guidelines into consideration before making their judgements?

**Mr Lamont:** They should, and they do.

**Mr Poots:** Is it official DARD policy that you should not show empathy to individuals?

**Mr Lamont:** It is not a policy per se. The external panel can show empathy at times. The safeguard in any application is that there are scheme rules, policies and guidance. Any decision or recommendation must align with those, which militates against a decision being based on empathy.

**Mr Poots:** Perhaps DARD should take a leaf out of the book of the panels that do show some empathy to people as opposed to some of the decisions that they take. What is the usual make-up of a panel?

**Mr Lamont:** The panels comprise two individuals.

**Mr Poots:** I assume that they have a professional background. It cannot be two individuals who are just grabbed off the street.

**Mr Lamont:** We have specific selection criteria for recruiting panels. Forgive me: I will read out my notes. It is up to individuals whether they feel that they meet the qualifying criteria. They need to demonstrate that they have an understanding and interpretation of complex legislation. They need to

demonstrate that they have experience of analysing information because, as you can imagine, there is a lot of information in a number of claims. They need to demonstrate that they can communicate sufficiently, both orally and in writing, to perform the role.

At shortlisting, there are eligibility criteria. There are criteria whereby we cannot accept certain individuals because of their experience. For instance, if people have been employed by DARD in the past five years, they cannot become a panel member. If they were officials or office-bearers in farming unions in the past five years, they are not eligible to apply. If they are current members of Departments' independent panels —

**Mr Poots:** We do not really need all that. The important bit is that they need to be capable of understanding complex legislation, so clearly they are skilled in understanding or they would not be selected because they would not meet the criteria.

**Mr Lamont:** We have a myriad of people with a wide range of competencies, background knowledge and experiences.

**Mr Poots:** They are, however, skilled and able people. We are not disputing that, are we?

**Mr Lamont:** We are not disputing that.

**Mr Poots:** Right. How many decisions did the panel decide not to accept? You gave us the figures for what the panel accepted. How many cases did the panel consider over that three-year period?

**Mr Lamont:** Over the three-year period?

**Mr Poots:** Yes.

**Mr Lamont:** How many did it not accept?

**Mr Poots:** Yes.

**Mr Lamont:** It did not accept 25.

**Mr Poots:** OK. How many did it accept?

**Mr Lamont:** It accepted 182.

**Mr Poots:** I thought that it was DARD that accepted those.

**Mr Lamont:** It was.

**Mr Poots:** Yes. I am asking how many cases the panel looked at over that period.

**Mr Lamont:** Over that period, the panel looked at —

**Mr Poots:** Not the ones that —

**Mr Lamont:** It looked at 228 cases.

**Mr Poots:** I assume that it rejected cases as well. That is what I want to find out. How many cases did it reject?

**Mr Lamont:** How many cases did the panel reject?

**Mr Poots:** Yes.

**Mr Lamont:** I do not know. Do we have that? Did we gather that?



**Mr Poots:** It would have been fairly basic to have had that information.

**Ms Amanda Blakley (Department of Agriculture and Rural Development):** In 2012, there were 43 recommendations for the Department's decision not to be changed. In 2013, there were 30, and, in 2014, there were 27.

**Mr Poots:** That is close to 100.

**Mr Lamont:** Yes.

**Mr Poots:** It was not empathetic in those cases, because it crystallised it and made a decision that those 97 cases — off the top of my head — would be rejected.

**Mr Lamont:** Yes.

**Mr Poots:** In a number of cases, however, it decided that DARD was wrong and that the applicant was right, but then DARD decided that it was right and that the applicant and the panel were wrong.

**Mr Lamont:** Yes.

**Mr Poots:** Where is the natural justice?

**Mr Lamont:** Not in all cases. You started by referring to empathy. It does not necessarily follow that all cases in which DARD did not agree with the panels were based on empathy. There are other circumstances and reasons.

**Mr Poots:** Where is the natural justice? You appoint an independent body to oversee the work that you are doing. The independent body makes a decision to your benefit, so you are happy to accept that. When the panel makes a decision that is not to your benefit, you are not happy to accept its decision. So you decide that, in spite of the independent panel's views and an individual taking the time to appeal and present a case — the person came in on the day and won the arguments — DARD will still overrule the independent panel, ignore its decision and do something different. Where is the natural justice?

**Mr Lamont:** The natural justice exists in the rationale for DARD making its final decision. In the last 10 years, we ran with 88% of the panel recommendations.

**Mr Poots:** To be honest with you, I do not really care.

**Mr Lamont:** You asked where the natural justice is. We must comply with EU rules. We cannot deviate from those EU rules. Any decision —

**Mr Poots:** Does the panel not understand the rules?

**Mr Lamont:** I am not saying that the panel does not understand the rules —

**Mr Poots:** That is the only conclusion that you can arrive at.

**Mr Lamont:** I am saying that —

**Mr Poots:** That is the only conclusion that you can come to.

**Mr Lamont:** You asked where the natural justice is.

**Mr Poots:** Yes.

**Mr Lamont:** I am saying that the natural justice exists in the process that we are compelled to adopt, whereby we must adhere to the EU rules, policies and procedures that are laid down.

**Mr Poots:** When I was Environment Minister, the Planning Appeals Commission arrived at loads of decisions that I did not agree with, but I accepted them. It is the same when you take a case to a court of law or wherever. Lots of decisions are made. You could think that a certain decision is fundamentally flawed and absolutely disagree with it and say that the court got it wrong, but, unless you can appeal to a higher court, you cannot change it. However, this singular Department in the Northern Ireland Executive, as far as I am aware, is the only one that will dismiss an appeals panel case that it has lost. It will walk in and, with the stroke of a pen, say that the case does not meet the criteria. People must not have understood what they were doing. They were too empathetic to individuals, so we do not accept the panel's decision. With respect, I do not accept what you are doing as a Department. I do not accept that what you are doing is aligning closely with European legislation because the individuals who sit on the panel should be the individuals who have to take charge of the decisions that they make. If they do not get the decisions right, they should be held to account. If they are not capable of doing the job, DARD should not appoint them in the first instance. If you appoint people who are capable of understanding complex legislation, you should have the decency to accept their opinions when those opinions go against what DARD has acted on.

**Mr McAleer:** Members are appointed by DARD from a panel. Does that not raise questions about independence? DARD is effectively appointing them to itself.

**Mr Lamont:** No. When DARD looks for panel members, it advertises. Anyone can apply to become a panel member. I mentioned that there are criteria whereby you cannot become a panel member. Those criteria are there to militate against people with the wrong set of competencies being placed as panel members.

**Ms Blakley:** Even the interview panel is not made up of DARD officials alone. As far as I am aware, officials from other Departments sit in on the interview panel, so it is not DARD alone appointing them. As with all jobs, there is a competency-based interview at which they are scored against criteria. It is not DARD itself appointing or choosing people.

**Mr Lamont:** We have a wide range of skills and occupations, and people from right across the community are represented among our panel members.

**Mr McAleer:** We hear complaints about the time that reviews take. What is the average time?

**Mr Lamont:** In 2014, the average time was 576 calendar days. We accept that that is a long time and that there is room for improvement. We have made changes this year.

**Mr McAleer:** Is that for stage 2?

**Mr Lamont:** Yes, that is for stage 2. Until last Christmas, the person in charge of the unit also had responsibility for other areas in DARD. I took over in January and recently appointed Dera as the dedicated person in charge of the stage 2 review unit. Last year, our staffing complement was way under par. This year, our staffing complement is back up to where it should be. Last year, as well as our complement being under par, the unit was hit with illness, and we had quite a few long-term absences. Basically, last year, the resource that DARD had at its disposal to do these cases was very much under par. I now have 60% more resource applied to it. We now have a full complement, and, this year, we have set ourselves a target of doubling last year's output.

As well as bringing the resources up to speed, we have critiqued our process. We have made quite a few significant changes to accelerate the process. We have some challenges. I have told you that each case is individual and is based on its merits. There is a lot of information gathering. That information is sought from different areas of the business, both inside and outside DARD. We might also seek additional information from an applicant, and that takes time to come in. In fact, that, coupled with our backlog, very much influences the time that it takes. We fully accept that the figure of 576 days needs to be improved, and we are working to improve it. We have put in place changes this year, but, because it is a step-by-step process, it will take a good lot of months before I am able to determine the measure of their success.

**Mr McAleer:** Surely that would be about a year and a half or thereabouts for farmers.

**Mr Lamont:** Yes.

**Mr McAleer:** That is bound to be crippling for farmers whose payments are held up while this review takes place.

**Mr Lamont:** That is one of the reasons why we want to see an improvement.

**Mr Swann:** Between 2012 and 2014, 88% of panel recommendations were accepted by the Department. You said that you do not care about the value and whether it is £500 or £100,000. What is 88% in monetary value?

**Mr Lamont:** Sorry, I do not have that information. We do care — we very much care. All of us in the unit are on the wrong side of the age of 21, and we do care. We look for opportunities to get the money out to farmers and applicants, but we are tied by the rules. I do not have the value—

**Mr Swann:** I suppose you could have worked that out. Do you have the total figure for appeals between 2012 and 2014?

**Ms Blakley:** Sometimes we do not know some of the monetary things; it depends what the issue is. Orchard House works out a lot of the financial implications, so if there were changes, we would not know how they affected the farmer. When a decision goes back, Orchard House works out the monetary value.

**Mr Lamont:** That in itself can take time. In many cases, it is not a quick 10-minute calculation.

**Mr Swann:** When you said that you did not know whether it was £500 or £100,000, you genuinely do not know.

**Ms Blakley:** Sometimes, where there is a 3% or 5% penalty, we might look into the value. Sometimes we have the paperwork on file.

**Mr Swann:** So, sometimes you look into it and sometimes you do not.

**Ms Blakley:** It depends on what they are appealing. If they are appealing an overpayment letter and requesting a review of it, we might have that on file.

**Mr Swann:** Is the two-member independent panel that was appointed aware that 12% of its decisions have been repealed by the permanent secretary?

**Mr Lamont:** We gathered the statistics that I am giving today specifically for today. So, the answer to your question is no, but we meet with all the panel members once a year and we share information like that with them.

**Mr Swann:** Is there no performance gauge for panel members? Of the 12% that were repealed by the permanent secretary — say they were made by Edwin and Sydney — would there no panel that would come back and say, "As every decision they made has been flawed, so let's not use them again"?

**Mr Lamont:** No, because you will find that the panels are not always made up of the same people. So, you could have a panel —

**Mr Swann:** Surely 12% is quite a high figure. Is there a trend? Do you not look at trends in panel member's decisions, which could then be subject to review?

**Mr Lamont:** We do not, but that is something that I will take away and look at.

**The Chairperson (Mr Irwin):** In effect, by saying that you accepted 182 cases, you are accepting that the Department gets it wrong sometimes. Is that right?

**Mr Lamont:** I need to be careful how I answer that, but mistakes —

**The Chairperson (Mr Irwin):** It would look that way to me. *[Laughter.]*

**Mr Lamont:** Things are complicated; there are a lot of aspects to the cases.

**The Chairperson (Mr Irwin):** If you accept them and previously you did not, you obviously have to accept that you were wrong in the first instance.

**Mr Lamont:** Not necessarily. If you remember, I said at the start that we have found that in the process, particularly the oral process, an applicant can come along and articulate a fact or a piece of evidence. Before we have a panel, we write out to the applicant and say, "We are giving you six weeks' notice. We are going to have a panel. Your panel will be heard at a date and time at this venue. If you have any further information, please let us have it as early as possible. We will get it to the panel and they can take account of it". One of the challenges we have is that humans being what they are means that they sometimes do not turn up with the information until an hour before the panel. So, do we get it wrong? Yes. We are not perfect. We do get it wrong, but it does not necessarily follow that any recommendations that overturn the original decision are because DARD got it wrong. There is the aspect where further information comes to light.

**The Chairperson (Mr Irwin):** Do you accept that most farmers who go to an independent review expect that the decision of the panel will be the final decision? Most farmers believe that. That is why they pay their fee to go forward to a panel.

**Mr Lamont:** I imagine that would be their target and their aim. As for their expectations, honestly, I am not in the job long enough to comment, Chair.

**Ms Blakley:** The review of decision booklet clearly sets out that it is only a recommendation, and when all panels are introducing themselves, they will say to the applicant, "This is a recommendation". At the end of the panel, it will say, "We are making this recommendation today, but it is going back to the Department, which will make the final decision". So, hopefully, it is clear, but the expectation might be different. Hopefully, it is clear to the person on the other side of the table what the panel's role is, because the panel explains it.

**The Chairperson (Mr Irwin):** I am going to ask you one final question. I have a constituent, and in the main part, his appeal was upheld but was refused by the Department. If he goes to the ombudsman, would the Department accept the ombudsman's ruling?

**Mr Lamont:** We were expecting that question. We have gathered some statistics for you. In the last 10 years, we have had 11 ombudsman's cases — excuse me one second while I get those for you. This is important. Between 2009 and 2015, there were 11 cases. Six were not pursued by the ombudsman. The ombudsman decided that there was no point in pursuing them. In three of the cases, the ombudsman ruled on maladministration, and, on that basis, DARD apologised and made a consolatory payment. We managed to get one of the cases settled before the ombudsman made a ruling. The ombudsman put it to us that it would be worthwhile engaging with the applicant and getting a settlement beforehand, and we took that. That just leaves one case, which is ongoing.

My understanding is that all Departments — certainly DARD — always run with what the ombudsman recommends.

**The Chairperson (Mr Irwin):** I would have thought that myself. I was hopeful that that was the case.

**Mr Anderson:** Have any lessons been learned on the back of that? You said that there were 11 cases. That was a question that I was going to ask about the ombudsman. There were 11 cases. Six were not carried any further, but five were agreed and a couple are still left. Does that tell us that there are issues there that need to be looked at? I know that you keep saying that we have to work to criteria and things like that, but does that say that there is a failing or that something needs to be looked at? How many member panels do we have?

**Ms Blakley:** Seventeen.

**Mr Anderson:** Is there any way that the panels are maybe not looking at those cases right in the first place? Almost 50% are in dispute and go right up to the ombudsman.

**Mr Lamont:** As I said, that is not something that we have analysed to date, but it is something that I will take away and consider. There is no evidence to suggest that that is the case.

**Mr Anderson:** I think it was you, Amanda, who said that the panel will say to the applicant, "We are recommending this", and then it goes to the Department, which says, "We are not accepting that recommendation". Then it goes to the ombudsman, who says, "We will accept it". It is being kicked back and forward. At the end of the day, the applicant is proven right — his claim is proven — and is OK at the final hurdle. There seems to be something wrong in some cases.

**Mr Lamont:** There are a couple of points worth noting. Not all cases where we do not agree with the panel end up in ombudsman reviews. You are asking this: are there are lessons to be learned? We found in a recent ombudsman's case that the ombudsman's office has changed how it deliberates on cases. In a recent case, the ombudsman recommended a certain course of action and went further to say, "We recommend that the Department look at similar cases and review its decisions on those". So, yes, lessons are learned. In addition, procedures and practices are now in place to reinforce that. Are there lessons to be learned because of mistakes? Are mistakes made? No system is perfect. Because of the wide variety of rules, the complexities of the schemes and how they can integrate with each other, there is room for error. No process or system can legislate for every scenario.

**Mr Anderson:** I am sure that not every application refused goes to the ombudsman. Not everyone would take it to that stage, so there is a possibility that some of those applicants who have not gone to that final stage are losing out, because, if they had taken it there, there would be a possibility that 50% of them could win their case. That is what concerns me. There are people sitting there, and they may have gone to the final hurdle and brought it right through, maybe even to the big one, the judicial review. I am sure that they probably do not even go there for reasons like cost and everything else. Has anybody gone to a judicial review, by the way?

**Mr Lamont:** There have been judicial reviews.

**Mr Anderson:** How did they end up?

**Mr Lamont:** Indeed, there is one judicial review ongoing. You are quite right. Judicial reviews are very expensive.

You asked about the ombudsman. One of the things we do when we write to the applicant is highlight that the ombudsman is an option for them, as is a judicial review, and we provide a contact point in DARD and a telephone number for them to phone to discuss the case and the findings. If they ask us about taking a case to the ombudsman, we openly share what information we have on the process with them. At the end of the day, taking a case to a judicial review or before the ombudsman is, I am sure you will appreciate, the individual's personal decision. We cannot —

**Mr Anderson:** I accept that it is an individual's decision, but it concerns me that there could be some applicants going through who are actually losing out. I know the procedure in place, but if it is not taken to the ombudsman or judicial review there could be people losing out. Do you not agree with that? If 50% win their case almost at the end of the day, it is quite possible that the other ones could do it as well. How many do not bring their case to the level of ombudsman or judicial review? Do we know? You talked about 11 cases ongoing.

**Mr Lamont:** There have been 11 cases in the last six years.

**Mr Anderson:** How many were there that could possibly have gone to that stage but did not?

**Mr Lamont:** How many decisions did I say we did not accept in the six years? There were 54 decisions that we did not accept in that period. Taking your argument forward, 11 of them went to the ombudsman.

**Mr Anderson:** So, that was 43. They went one way but not the other.

**Mr Lamont:** Yes, 43. How many judicial reviews did we have in that time period?

**Ms Blakley:** For applications? Let me see —

**Mr Lamont:** You are talking about somewhere in the region of 40 people who decided that they would not take a case.

**Mr Anderson:** You are talking about 40 compared with 11 that are still ongoing or that did go. I come back to the point that, given the statistics, there is a good possibility that they would have won their cases.

Getting back to the JRs, how many cases were won or lost in that period? Do you know that?

**Mr Lamont:** We had eight judicial reviews. Two cases were withdrawn. One case was dismissed at a leave hearing, and in two cases the court dismissed the application for the judicial review in favour of the Department. In two cases — sorry, I am reading from the notes; you will have to excuse me. The court ruled that two cases should be referred back to the panel to make a determination, and it said that they were not at fault. In one case, the judicial review found in favour of the Department.

**Mr Anderson:** Two were referred back — three were dismissed in various ways — two were withdrawn and one was referred back to the Department. What happened with the two that were referred back for review? Did you come down on the side of the applicant?

**Ms Blakley:** Those were referred back to the panel. It was a duplicate field case. The UFU sponsored four cases and challenged the Department on the grounds of excusal of the penalty. As far as I can remember, in two of the cases, the panel had not made a recommendation on one of the things that was not at fault. If the farmer could prove that they were not at fault, the penalty was excused. The panel had not made a recommendation on that, and the judge said that it should go back and the panel should make a recommendation. The two cases went back to the panel. It found not at fault, and the Department accepted it.

**Mr Anderson:** Thank you very much for all those statistics. I still come back to the fact that we had 40 sitting there, and I think that there were possibilities of cases.

**Ms Blakley:** The ombudsman does not change the Department's decision. It was in conversation with us, but it did not change the Department's decision on those.

**Mr Anderson:** On those?

**Ms Blakley:** On the cases. What they do is look at the procedures and say that there is maybe something in them, but they do not change the original decision.

**Mr Anderson:** OK. Thank you.

**Mr Poots:** On that, you referred on to a conciliatory payment. Was that a payment in full for the amount that was claimed in the first instance?

**Ms Blakley:** It is up to the ombudsman to say what he deems the amount to be.

**Mr Lamont:** Usually it is.

**The Chairperson (Mr Irwin):** I feel — I think this is also the feeling of the Committee — that an independent review panel should make the final decision and that that decision should be final. Once you go down the road of nitpicking what you do and do not agree with, I think it is very unfair to the farmer or to the applicant to the panel. In fairness, any farmers I have been talking to who have gone to an independent review panel understand that it makes the final decision. As you said, in some cases, that is not the final decision and the Department has overruled that. That is an issue.

**Mr Lamont:** It is, but, again, it is tied up with the EU legislation, which empowers the Department to make the final decision. Another perspective could be that, if you put in place a revised facility or process where the independent panel has the final decision, you would need to ensure that that panel has knowledge and expertise that is equal to the paying agency and has access to the professional knowledge and skills that the paying agency has access to. All that, as I am sure you will understand, adds to the cost. One of the advantages of the current process is that it is not cost prohibitive to the applicant. Whilst the point you make is valid, there are reasons why we have the process that we have.

**The Chairperson (Mr Irwin):** Do you accept the results of DNA testing?

**Mr Lamont:** There are cases where DNA results are looked at, if I recall rightly.

**Ms Blakley:** I cannot remember individual cases, but that would be for the veterinary service and whatever its policy is.

**The Chairperson (Mr Irwin):** I am aware of a case where DNA samples were taken to clarify that animals were the right animals. They were the right animals, and the Department still did not accept that.

**Mr Lamont:** I cannot discuss the case that you are talking about. It is possibly the same case that I am thinking of. It has not come as far as my desk yet, and I am aware that it is under discussion.

**Mr Poots:** I am aware of legal precedence on that. The late Lord Ballyedmond took a cattle dealer to court because he did not believe that the cattle were correct. He had them DNA tested, and the court came down on the side of Lord Ballyedmond with the DNA testing, so there is legal precedent.

**The Chairperson (Mr Irwin):** I would have thought that DNA is enough to identify cattle.

**Mr Lamont:** I do not know enough about the case, and, even if I did, I could not discuss it in an open session.

**The Chairperson (Mr Irwin):** I understand.

Thank you very much for your presentation.

**Mr Lamont:** Thank you very much for your time.

**EXHIBIT 7 D Part B Chronology/Timeline - FINAL.VERSION.....11.December.2020**  
**JUDICIAL REVIEW <JR> CASE ANALYSIS - only two JR Review Judgments for agricultural reasons / DFPs against DAERA in last 6 years. Three further JRs were settled out of court.**

13 May 2010	HRH Prince Charles visits Barnwell Farms : won UK wide 2009 RSPB Nature of Farming Award - “environmentally friendly methods”
5 Dec 11- 31 Jan 12	Pollution Incident ( <i>dirtywater?</i> ) over eight week period on Mr Ian Marshall’s farm
13 November 2012	Ian Marshall – original Stage 1 Decision – penalised for two breaches of CC rules. Reported as 55% reduction in SFPs : £50K?
20 December 2012	Ian Marshall – 2012 First Stage Appeal
March 2013	Mr Noel Lavery joins DARD as Permanent Secretary/Departmental Accounting Officer of Department of Agriculture and Rural Affairs
27 June 2013	Danske NI at DARD NI Assembly Committee –KK/WI “Margins have changed over the past few years. There is no doubt about that. etc”
5 September 2013	DAERA first stage - “intentional” is proper classification for breaches
16 October 2013	Ian Marshall – Second stage Application. Supported by UFU Chair of Legislation Committee Mr James O’Brien BL and then Junior Counsel in UFU Judicial Reviews.
2014 +	Mr Ian Marshall – UFU President 2014 -2016/ UFU Board Director to 2018/2019 session. Stage 2 Independent panel in its conclusion  “The Panel concluded that the lack of remedial action taken by Mr Marshall was partly due to the fact that NIEA failed to provide written confirmation of the non-compliance breaches or of remedial actions required after any of their inspections. Because of this the Panel concluded that Mr Marshall was not fully aware of the seriousness of the problem and failed to take reasonable care or skill and foresight and the breach should be classified as “negligent”.
14 May 2015	DARD Permanent Secretary, Mr Noel Lavery, does not accept Independent Panel 2 recommendation above in Mr Marshall case.
23 March 2016	DARD Stage 1 decision - Barnwell Farms not an “active farmer”
May 2016	Mr Noel Lavery now becomes Permanent Secretary/ DAO of DAERA (new combined dept) while Miss Michelle McIlveen MLA becomes DAERA Minister from 25 May 2016 to 26 January 2017 and then the NI Assembly dissolution for almost 3 years.



September 2016 Judicial Review (JR1) Ian Marshall -Substantive Hearing after which on 19 September Mr Marshall submitted an affidavit with further evidence. See PS.71 comments in February 2017 Judgment below.

October 2016 **Mr Brian Doherty appointed as DAERA Head of Paying Agency**

7 February 2017 JR1 Judgment:Ian Marshall <70> 2017 NIQB 17 MAG10156 Maguire J - 2016 No.031524/01 “The Court will make a declaration that the decision of the decision maker is unlawful as being the result of material mis-direction. If it is necessary for the matter to be re-decided by the respondent, there will need to be a new decision made by the Head of the Paying Agency or his delegate. <<Reconsideration-DAERA original decision upheld on 25 May 2017 –see later>> **Mr Lavery should, in the court’s opinion, not be the decision maker in respect of any further decision, given the views he has already expressed. “**

Preceded by Para 62 “Helpfully, counsel had been able to locate a recent authority of the European Court of Justice in respect of the distinction between negligence and intention in Cross-Compliance. This case, Mr Millen <DAERA Senior Counsel> argued, supported his approach as outlined above. The case was Case-396/12 Van der Ham v College Gedetuteerde Staten Zuid- Holland. It was decided on 27 February 2012.” This is relevant when one reads the DAERA Press comment (P7) after the settlement of JR2 on 28 Sept.2018 below and must question the quality of legal advice given by DSO.

This Judgment records at Para 8 “While the Court has been provided with voluminous documentation relating to the pollution incidents involved in this case, for the purpose of these public law proceedings, it will not be necessary to do more than set the scene generally. As is usual the Court has reminded itself that it is not its role to seek to revisit the merits of either the applicant’s convictions or of the Cross Compliance proceedings against him.”

While the Court’s Assessment at para 68 included “**Fourthly, the Court finds that Mr Lavery did not rigorously consider and set out in his decision what precise evidence there was for the conclusion he reached on the intention of intentionality. In other words, he failed to set out the respects in which he had concluded that the applicant had knowingly breached the SMR in question.....**

As for the test which Mr McMillen <DAERA QC> quoted from paragraph 35 of the ECJ's judgment in Van der Ham, the court considers is highly unlikely that Mr Lavery was aware of or was applying it in the course of his decision making. While it may be that this test could have been used, in fact, there was no reference to it in the decision maker's decision and no sign it was applied. The court does not accept that Mr Lavery was applying this test." <see *DAERA Press Comment later on 28 Sept 2018 at P7.*> And in PS (71) to the Judgment "After the conclusion of the oral argument in this judicial review the applicant sought leave to add to his evidence by submitting a further affidavit from him dated 19 September 2016. The court is of the view that it can determine this matter without resort to the proposed affidavit and on this basis it sees no reason to grant the leave sought or to deviate from the court's normal practice of expecting the parties to file their evidence in advance of the hearing and not after it is over."<Note *JR3 on 12 Oct 2018 –P7*>.

UFU Press Release "It is not about pollution or indeed the scale of the incident," said **UFU Chief Executive , Wesley Aston**, "**the case is whether NIEA and DARD were effectively right to ignore the views of the external independent appeal panel which considered this was a negligent rather than intentional breach and had recommended accordingly.**" <note "*orbiter dicta*" > and "We are no strangers to judicial reviews, and will no doubt do the same again in the future, if there are cases we believe have implications for our 11,500 members. They can be costly if unsuccessful but as a union our role is to defend our members against unfairness. Only through that collective strength can farmers take on the cost of legal action to defend a principle on behalf of the wider farming industry."

**"In this particular case, now that the precedent around proving intent has been established we are pleased that not only will "intent" have to be proven more robustly in future breaches of cross compliance but also that all historic cases may now have to be re-examined."**

28 Feb 2017 *Barnwell Farms Limited Stage 1 Appeal in Downpatrick attended by Mr Calvert – very ill*

2 March 2017 **NI Assembly formally dissolved (26 January 2017) and Miss McIlveen stands down as DAERA Minister**

*April 2017 Barnwell Farms Limited Stage 2 Application*

25 May 2017 Following JR1 DAERA reconsideration decides to uphold their original decision. <<How realistic is it that a DAERA official is going to make a finding to change the decision when they have their Number 1 Boss as Permanent Secretary, Noel Lavery, despite strength of court remarks noted above **“Mr Lavery should, in the court’s opinion, not be the decision maker in respect of any further decision, given the views he has already expressed. “?>>**

9 June 2017 The DAERA Permanent Secretary Mr Lavery now issues a Consultation on the Area-based Schemes Review of Decisions process on the stage 2 independent appeals process being removed with reliance on DAERA officials alone for all decision making. Available on DAERA website

In light of what follows in the Consultation responses it is noteworthy that at Point 1.2 of that issued Consultation “The consultation programme for the Review of Decisions consultation has been split into two distinct phases, informal pre consultation which has helped the Department to achieve the Ministers objective; and a consultation on the proposed new process, contained in this document to obtain views and fully understand impacts and the mitigating actions that may be appropriate. The results of this consultation will be analysed and collated in the final document to be published in Summer 2017, prior to implementation of the new process for the 2017 scheme year. <2017 error? see Mr Lavery below on 26 January 2018>

And continues in 1.2.1. where it records “The Department undertook a pre-consultation exercise to obtain exercise and evidence to inform our thinking about the impacts which may be caused by the proposed change to the Decisions process. The exercise was undertaken with Agricultural Consultants Association Northern Ireland (ACANI), Ulster Farmers Union (UFU) and the Northern Ireland Agricultural producers Association (NIAPA) as main stakeholders and representatives of those most likely to be impacted by the proposed changes.” Those three responses to the consultation are published in January 2018 and available on the DAERA website.

Elsewhere noting in para 4.5 “It is not enough to state that the Departments’ decision is incorrect. It is for the farmer to demonstrate how the initial decision is incorrect. It is important that they provide as much information and evidence as possible with the application.”

And in Para 6.6 “the Department has undertaken some work to analyse the overall impact of the External Panel. An analysis of 100 Stage 2 decisions issued show that in 83% of cases, the Department’s final position was unaffected by the input of the Panel. In a

further 7% of cases, the changes applied as a result of the Panel’s deliberations did not result in any significant material benefit for the applicants. Therefore only 10% of the Stage 2 reviews (2.5% of all Review of Decisions applications) or under 0.03% of annual area based claimants, derive benefit from access to an External Panel.” In the DAERA Annual Report and Accounts for 2017/2018 at note 19 it includes this “Based on a broad assessment of potential entitlements these businesses would be due payment if found eligible, the Department that there are approximately 173 cases with a potential due of £2.3m however as the majority are review cases and based on an average rate of 10% for successful reviews this liability is more likely to be £230K. As this is a scheme that is fully funded by the European Union, the amount due to farmers will be fully recouped by the Department from the European Union.” In 2016/2017 DAERA reported approximately 361 cases with a potential total amount due of £3.1m at 10% liability likely to be £0.3m while in 2015/2016 DARD reported approximately 700 cases with a potential due amount of £2m. Unpaid Single Farm Payments – The Department had assessed a number of cases from 2005 – 2014 in respect of Single Farm Payment for which no payment has ever been made. There are a variety of reasons why a claim may not have been paid:... The Department is seeking additional resource to assign to working on these historic Single Farm Payment cases with the aim to finalise them prior to BREXIT. However, at this stage it is not possible for the Department to estimate the payments that could result annually from these historic claims until each cases is assessed.

14 July 2017      *Mr Michael Calvert dies from cancer*

20 July 2017      BBC News reports under the headline “UFU continues court case it thought it won” where it states In February the High court found the case had been dealt with “unlawfully” by DAERA. It said those who had made the decision had been “misdirected” and a review was ordered. The UFU said that the review has now been done and the department is sticking by its original decision. It means that Mr Marshall has not been paid back the £50,000 penalty. The UFU claims the department is also disputing about £50,000 of the union’s £120,000 legal bill it was ordered to pay” “ **We are prepared to spend whatever it takes to challenge this grossly unfair decision” said UFU Chief Executive Wesley Aston.** “Despite comprehensively losing the first judicial review and seeing their decision making declared unlawful by a judge, it seems DAERA is happy to gamble again with public money”.

While DAERA concluded “As this matter is now subject to further legal review it would not be appropriate to comment further.”

UFU Policy, Technical and Communications Manager Mr James McCluggage responds to this ROD Consultation where as part of the first paragraph he writes “...the closed questions which are used in this particular consultation can only direct the answers the way DAERA want and not allow the “Public” to put their views

across. As a result we attach the covering letter to put the UFU membership base of 11,500 members, thoughts views and concerns, across, as the closed questions in the consultation do not allow us to do so.”

Consistent with most of the other public Responses in their own words the UFU go on to say “It would be fair to say that the wider farming community view of the current Stage 1 Appeals process is one of no faith. The farming community believe the process would need to be improved without fundamentally removing the Stage 2 Review of Decisions whole process. ....You mention that it is good governance to remove the stage 2 process, we believe that is not the case.”

“The UFU would also like to point out that without a panel and stage 2 process, there is no facility for an independent person/body to identify any wrongly interpreted legislation and give advice to DAERA to improve such issues in the future.”

4 August 2017 Closing Date for Respondents to DAERA Consultation (9xPublic)

January 2018

DAERA issue Synopsis of Changes to Area Based Decision Making processes - 9 Responses published

Mr Lavery decided on 26 January 2018 to replace the two-stage area-based review process of CAP decisions from 1 April 2018

Dr Denis McMahon appointed from Feb as DAERA

Permanent Secretary replacing Noel Lavery (to DETI)

14 March 2018 Woodrow JR McC10602 NIQB 59 –R/ Reserve – 2005 -out of date

16 May 2018 Granted 23 February application at Leave Hearing for Ian Marshall for further judicial review (JR2) after May 2017 “no change reconsideration.” Substantive Hearing never took place – see 28 September settlement / 12 October 2018.

28 June 2018 Granted leave for JR3 (Two stage process attempt to bring to one with sole control by DAERA). Substantive Hearing never took place.

29 August 2018 *Robert Calvert (director of BF and Michaels’ nephew) and Gillian Cheatley (UFU Technical Officer attended the hearing at Loughry College for the second stage **independent panel**.*

6 Sept 2018 Mr Hugh Mercer QC also appointed as a Deputy High Court Judge (Senior Counsel for all five Judicial Reviews: 2 Judgments.JR1.JR5>

28 Sept 2018 Ian Marshall JR2 was settled out of court after the Leave Hearing and in advance of the scheduled start of the Substantive Hearing and made public that day << *Once "Leave" for JR2 and JR3 granted did new Number 1 boss as Permanent Secretary, Dr Denis McMahon, realistically have any choice to find an "out?":advice?>>*  
DAERA Press comment *"the impugned determination was subject to a **procedural irregularity in that the applicant did not have, prior the final decision being made, an opportunity to make submissions in relation to the legal test to be applied in determining his appeal**, namely that set out in the case of Van der ham Case C-396/12 which was decided on February 27.2014. The department consented to its decision on May 25, 2017, being quashed accordingly and will now re-determine the appeal on the basis that the breach in the case was negligent rather than intentional."*

The BBC reported Mr Marshall as saying that **"he was glad the issue had been resolved and questioned the amount of public money spent on the case."**

The UFU Report in 2019 shows that some £263K was spent from UFU funds on the Ian Marshall cases while only £71,882 of legal costs were recovered in 2017 for JR1 and £68,152 of legal costs in 2019 for JR2.

12 October 2018 **DAERA and UFU reached an agreement on JR3 <1842098.P70.71> and the retention of the two stage process. ....UFU reports** "The High Court in Northern Ireland has approved an agreement reached between the parties. DAERA has agreed to retain the Independent Stage 2 Panel subject to the following primary conditions :

- users of the Independent Stage 2 Panel shall be charged the sum of £200.00 said fee to be subject to review by the Department within 18 months.
- **users of the Independent Stage 2 Panel shall be entitled to introduce new evidence only if exceptional circumstances or force majeure are established.**
- the final decision on any individual case shall remain with DAERA.

Both UFU and DAERA have welcomed the positive engagement which has led to the resolution of the case. DAERA will move quickly to engage with stakeholders to confirm acceptance of the revised approach and, subject to the outcome of this process, apply it to all review applications received from April 2018. "

**The UFU report in April 2019 states that some £108,336 in legal costs was spent from UFU funds on legal costs and all were accepted by UFU CEO Mr Aston in that settlement. Mr Shannon**

MP established on 16 October 2020 that the DAERA legal costs for JR3 were £10,654 (split between both Counsel of £4,387 and the DSO of £6,267) as it did not go a Substantive Hearing. UFU Counsel paid their Brief fee pre commencement? The relevant law <https://www.legislation.gov.uk/nisr/2001/391/contents/made>

- 3 October 2018 *Stage 2 Appeal Independent Panel Report Form received showing the following recommendation to the head of Paying Agency .....  
“The panel recommends that the Department’s decision in this case should be changed as the panel is satisfied that there is sufficient evidence that Barnwell Farms is an active farm”.*
- 5 February 2019 *Head of DAERA Paying Agency, Mr Brian Doherty refuses to accept Stage 2 Panel recommendation as an “active farmer”*
- 18 February 2019 *Mr McCluggage at UFU refers Barnwell case to McKees for opinion*
- 16 April 2019 *Barnwell Farms Letter with Judicial Review Preaction Protocol sent by McKees to DAERA’s Dr McMahan*

25 April 2019 *UFU AGM includes* **Page 14 UFU Judicial Reviews**

#### **UFU win series of judicial reviews against DAERA**

Between 2016 and 2018 the UFU initiated judicial review proceedings against the Department of Agriculture, Environment and Rural Affairs on three issues. The cases related to incidences when farmers were being treated unfairly and were taken on the basis that results would have a positive impact for all in the farming community.

##### **Judicial Review 1**

In January 2016 the High Court decided to allow UFU application for judicial review against action taken in respect of cross-compliance breaches by the Northern Ireland Environment Agency (NIEA) and the Department of Agriculture, Environment and Rural Affairs (DAERA). This original case had been taken on a test basis by the UFU for its members. The aim was to establish guidelines for the definition of ‘intent’ in relation to CAP direct support cross compliance breaches and involved Co Armagh farmer, and former UFU president, Ian Marshall. While the case was taken on behalf of one farmer, the UFU’s role in seeking a judicial review was to protect the wider industry from harsh treatment for minor mistakes.

The case concerned whether NIEA and DAERA were right not to follow the views of the independent external appeal panel, which considered Mr Marshall’s breach to be negligent rather than intentional and had recommended accordingly. NIEA/DAERA had considered the breach to be intentional and imposed a much higher financial penalty than if negligence had been found, thereby disallowing just over £46,000 of the associated individual CAP payment, over two years. In February 2017, the original decision by DAERA was found to be ‘unlawful’ and the UFU were awarded costs in their favour. As part of the court ruling, DAERA was instructed to review Mr Marshall’s case. However, despite the UFU’s win, DAERA confirmed that it stood by its original decision. The case cost the UFU £141,891. To date, DAERA has covered £71,882 of the UFU’s costs. However, the department continues to dispute the remainder of the cost, which relates to the specialist barrister the UFU employed. Currently, the UFU is considering going through the court’s taxation process to reclaim the outstanding costs. <<Final UFU deficit = £70,009>>

## Judicial Review 2

The UFU decided to support a second judicial review related to our first. To challenge DAERA for upholding its original decision on Mr Marshall's cross compliance case despite the court unequivocally ruling in the UFU's favour in the first judicial review. In May 2018, leave was granted to apply for a second judicial review. In September 2018, the case was settled with DAERA out of court. DAERA quashed its decision on Mr Marshall's case and agreed to pay monies owed and also cover the UFU's reasonable costs. The UFU considered the win a victory for all farmers and demonstrated the collective strength of the organisation. The case was taken as a matter of principle. The UFU's role is to defend members against unfairness and in seeking and supporting this judicial review, like the first, the organisation aimed to protect the wider industry from harsh treatment for minor mistakes. This case cost the UFU £122,019. To date DAERA have offered the UFU approximately £48,000 of this cost and the UFU is presently considering its position on the recovery of the additional costs. <<Final UFU deficit = £53,907>> The total UFU legal costs expenditure on the Marshall case JR1 + JR2 was c £264K with a recovery of £140K leaving a deficit in UFU funds of some £124K. Mr Shannon MP established on 16 October 2020 that the total DAERA legal costs for Marshall JR1+JR2 cases were £60,294(2Counsel £34,147:DSO£26,147).

*3 May 2019 Barnwell Farms file Application for Judicial Review (BFL .JR5)*

16 October 2019 £51,536.70 sum accounted for in DAERA settlement of AFF.JR4

*24 October 2019 Barnwell Farms Leave Hearing. Keegan J granted leave on 12 November 2019 on a number of grounds, namely:*

- (i) Breach of EU law.*
- (ii) Breach of policy/legitimate expectation.*
- (iii) Irrationality.*
- (iv) Failure to state reasons.*

**11 January 2020 Mr Edwin Poots - Minister for DAERA as NI Assembly reconvenes**

29 January 2020 UFU Policy, Technical and Communications Manager James McCluggage sets out UFU Policy in an email "Spoke to Wesley this morning. At the time the UFU wanted to exclude non active farmers i.e. people who were not taking a risk in farming activities on the land and this was the UFU starting point. Effectively the UFU were supportive of DAERA in trying to minimise the chances of non-farming land owners who didn't take the risk in the land getting in to the system.....There were huge non farming landowners in the system at this time who were taking money off the farmers. Farmers got the payments on the productive commodities, however the landowners saw an opportunity primarily due to a taxation issue as they had to prove they were farming the land due to an HMRC issue."

**30 January 2020** UFU JR1 Taxation Hearing – **As at 16 October Certificate of Taxation not issued – P.25.** The Certificate of Taxation issued by the Taxing Master's office will show the amount claimed by Mr Mercer QC, the amount disallowed by the Taxing Master, and the final amount to be paid and concludes with the costs of the Taxation.



On exactly the same day Mr Mercer in Belfast : Barnwell Farm Consultation with junior, solicitor and client (by phone) **\*\*on brief\*\***

19+26 Feb 2020

Barnwell Farms Substantive Judicial Review hearing

13 March 2020

DAERA approved Barnwell Farms Limited application for the Environmental Farming Scheme (FS) Wider Level Agreement from 1 January 2020 to 31 December 2024 – includes “active farmer”.

25 March 2020

Keegan J delivered judgment on the 25<sup>th</sup> March 2020 whereby in light of all arguments, she accepted the applicant’s argument made as regards reasons. Para 39 *“In this case the issue is not the failure to give any reasons but the fact that the reasons do not engage with the core issues raised by the applicant and determined by the independent panel. There is a particular obligation to provide proper reasons under EU law. **However, more fundamentally, there is an obligation to explain why the Independent Panel analysis is not followed.** A proper analysis would provide clarity and certainty as to whether this type of farming enterprise may qualify.*

In Para 40 re Evidentiary Proof *“The Independent Panel considered the applicant’s evidence sufficient because it accepted that there are other methods of assessing yields in the context of this type of farming. This may or may not be correct however the decision maker also fails to engage with this issue in any meaningful way.”*

Finally Judge Keegan concluded at para 41 that *“**This inadequacy also infects the rationality of the decision as I cannot be sure that the core issues have been properly addressed. These are both valid grounds for quashing this decision** however pursuant to Order 53 rule 9(4) I consider that the proper course is to remit the matter to the decision maker with a direction to reconsider it and reach a decision in accordance with the ruling of the court. Obviously, the revised reasoning will inform the rationality of the ultimate decision. I will hear from the parties in relation to the issue of costs.”*

<ref KEE11217 2020 NIQB 28>

31 March 2020

DAERA Annual Report and Accounts for 2019.2020 published to NI Assembly on 5 November 2020 at page 134 states

“Based on each farm businesses main entitlement award and their claimed areas these businesses could be due payment if found eligible, in the region of £964K. However, given the historic success percentage of determining eligibility under the various outstanding groups, this liability is more likely to be £666K” <70%> 2018/2019 reported £2.7m/£1.3m <48%> and report concludes “As this is a scheme that is fully funded by the EU, the amount due to farmers may be fully recoupable by the Department from the EU.”

14/27 May 2020

*Keegan J, upon delivery of judgment by the Honourable Court on Wednesday 25<sup>th</sup> March 2020, ordered*

- (a) *The matter shall be remitted back to the Respondent*
- (b) *The Respondent shall reconsider the impugned decision and reach a decision in accordance with the ruling of the Court*
- (c) *The Respondent shall pay the Applicant's reasonable costs to be taxed in default of agreement*
- (d) *Either party shall have liberty to apply*

28 May 2020

<https://essexcourt.com/court-grants-judicial-review-of-northern-irish-decision/>

*Essex Court Chambers website and case reference*

## **Court grants judicial review of Northern Irish decision**      28 May, 2020

By an Order of 27 May 2020, Mrs Justice Keegan sitting in the High Court in Belfast overturned a decision of the Department of Agriculture, Environment and Rural Affairs in Northern Ireland in *Barnwell Farms Limited, Re Judicial Review* [2020] NIQB 28 and remitted it to the Department. The Department operated a two-stage appeals process for administrative decisions with stage one being internal and stage two being an external process of hearing by external appointees as an independent panel, frequently with technical expertise. On an issue which involved technical judgment, but where the Department had declined to follow the findings of the Independent Panel, the Court held that EU law required that reasons be given so that the affected individual can determine whether there are grounds for challenging the interference with their rights.

In the case before the Court, the failure of the Department to engage with the core issues raised by the Applicant and the Independent Panel was fatal to the legality of the decision. The Panel had drawn a distinction of principle (based on the precise agricultural business which needed to be considered in application of the statutory test) which dictated the relevant evidence to be taken into account.

**The Department had rejected the distinction without explanation and the Court held that it was under an obligation to “explain why the Independent Panel analysis [was] not followed”. Accordingly the decision was unlawful both on grounds of inadequate reasons and also rationality/Wednesbury unreasonableness as the Court could not assess whether the core issues had been addressed. [Read the full Judgment here.](#) BFL.JR5 [Hugh Mercer QC](#) (who is also a member of the Bar of Northern Ireland) led Fionnuala Connolly BL (Bar of NI) for the successful applicant, instructed by Andrea McCann of McKees solicitors, Belfast. Also a Deputy High Judge in England since 2018**

6 April 2020

*Vi Calvert meets Jim Shannon MP in Spar Carrowdore. They discuss her Judicial Review case and recent judgment which seems to push it back to DAERA again.*

*Vi expressed her worry about the unfolding impact of legal costs on the cashflow of the farm and the reduction in income from ancillary sources such as the holiday cottages and fishing on the farm due to COVID 19 crisis.*

*Although the independent panel overturned the initial decision and this was about an “active farmer” test case the UFU CEO was not prepared to fund any part of the legal costs. UFU’s Senior Technical Officer Gillian Cheatley did assist and attended the court hearings with Robert Calvert. Vi’s solicitor, Charles Stewart was dismayed. Jim advises to come and see him at his surgery when she wishes.*

12 June 2020

*Final Submission to DAERA including Paragraph 2. “Subsequent to the delivery of the judgment, the parties agreed that the Applicant shall provide further evidence and submissions to DAERA prior to the remaking of its fresh decision. Further to that agreement and the Order of the Court made on 27 May 2020, the purpose of this note is to set out the submissions relied on by Barnwell Farms. “ <c.80% of 9 page document has to be “clarificatory/new evidence?”>*

16 June 2020

*Following the Final submission Vi rings constituency office and is invited to bring in her files so they can make summary for a brief.*

25 June 2020

*Vi Calvert leaves extensive files in Ards Constituency office with Jim’s Parliamentary aide Naomi Armstrong Cotter.*

- 5 July 2020 *Draft brief to review returned to Vi Calvert and Robert Calvert.*
- 19<sup>th</sup> July *Discussion with Brian Little and share brief on 20th. Arranged constituency surgery meeting with Vi, Robert, Brian, Jim and Naomi for Friday 24<sup>th</sup> afternoon.*
- 24<sup>th</sup> July *DAERA advise delay of one week in decision. Had a very productive meeting with Jim Shannon MP, Naomi, Brian, Robert, Vi.*  
*Some changes to brief over weekend - pages 2 – 4) and*
- 28 /29 July *Mr Shannon MP sends to Minister Poots and spoke to him on Wednesday 29<sup>th</sup> July.*
- 31 July 2020** **Following the Final Submission on 12 June 2020 a letter was received from Mr. Brian Doherty, Head of DAERA Paying Agency which included ...**  
**“The technical assessment recommended that, in light of the additional evidence submitted, the Panel’s recommendation should be accepted and the original decision should be changed. I have accepted this recommendation. **Barnwell Farms Ltd will be considered as having met the active farmer requirements for 2015.**”**
- 4 August 2020 Barnwell Farms Senior and Junior Counsel Fionnuala Connolly BL write in relation to the “discounted” legal costs of some £85,125  
“It is also abundantly clear that the Respondent <DAERA> could have made an offer of settlement (reconsideration of the impugned decision) at a much earlier stage and in doing so could have saved costs. It is not for the opponent’s counsel <DAERA/DSO> effectively to finance (through proposed arbitrary reductions of legal fees after the event) a failure to take a more realistic line on settlement as was done in the previous cases on related issues involving the same solicitors <AFF.JR4>. In effect this cases appears to have been run as a test case seeking the Court’s endorsement of the Department’s decision-making process rather than trying to achieve an alternative resolution.”
- 2 September 2020** **Written apology from Dr McMahon to Mrs Calvert - “I know you will understand that as officials we have a duty to ensure regularity, propriety and value for money when making decisions in relation to taxpayers’ money. We have therefore focussed on these principles in coming to decisions. We are also very conscious of the challenges**

which Mrs Calvert has faced and recognise that our communication processes have not helped in that regard. I would like to take this opportunity to apologise to Mrs Calvert for any problems that this has caused her.”

5 September 2020

*In a joint email from Mrs Calvert and Mr Shannon MP replying to his letter they drew attention to*

*(a) “We would suggest that you also should focus on doing what is fair, reasonable and ethically right.”..... “But this is not, and never has been, about the purely legal perspective and we believe and continue to believe that , whilst the apology from Dr McMahon and Mr Doherty are very welcome, they don’t compensate in the only way they can for the impact on our farm and on me. This is an ethical and fairness matter, not legal.”*

*(b) “My solicitors wrote to you personally on 16 April 2019 with their Preaction protocol letter (Attachment 1) and despite that you proceeded with legal action and a Judicial review, That didn’t protect the UK taxpayer and meant that it has been a further two years before we could properly restock the farm. Just a reminder of our recent statutory accounts (Attachment 2). “We have only now been able to afford to buy 20 cattle. ” <<Exhibit 2A/Page18>>*

*(c) “For completeness Mr Shannon MP and I drafted the below text to Mr Doherty and Mr Brown before he left our meeting this morning so that it can be included to them in an email shortly , as It seems DAERA/DSO have overlooked or not considered some £16K in the Final Submission costs.”*

*This seems to be at odds with the relevance of the letter from Mr Doherty on 31 July 2020 where he refers to “The technical assessment recommended that, **in light of the additional evidence submitted**, the Panel’s recommendation should be accepted and the original decision should be changed.” This, of course is relevant as the QC in the Ian Marshall cases JR1 and JR2 -*

7 Feb 2017 Judgment Preceded by Para 62 “Helpfully, counsel had been able to locate a recent authority of the European Court of Justice in respect of the distinction between negligence and intention in Cross-Compliance. This case, Mr Millen <DAERA Senior Counsel> argued, supported his approach as outlined above. The case was Case-396/12 Van der Ham v College Gedetuteerde Staten Zuid- Holland. It was decided on 27 February 2012.” This is relevant when one read the DAERA Press comment after the settlement on JR2 on 28 September 2018 below.

28 September 2018 DAERA Press comment “the impugned determination was subject to a procedural irregularity in that the applicant did not have, prior the final decision being made, an opportunity to make submissions in relation to the legal test to be applied in determining his appeal, namely that set out in the case of Van der ham Case C-396/12 which was decided on February 27.2014. The department consented to its decision on May 25, 2017, being quashed accordingly and will now re-determine the appeal on the basis that the breach in the case was negligent rather than intentional.”

7 September 2020

*Mr Shannon MP sent a further email in which he*

- (a) drew attention to the Consultation in which DAERA were seeking to remove the Stage 2 Independent appeal process.*
- (b) “Furthermore, as I said in prior correspondence, I remembered that during our research my Parliamentary aide Naomi looked at the published DAERA Departmental Board minutes since the Judgment was handed down. At that time the April and May 2020 meetings had been published. As of this morning the June 2020 agenda and minutes have been added and we have just read them and there is no mention of the Judicial Review or any Lessons learned process or actions for DAERA.*
- (c) “I didn’t think it appropriate to suggest to Vi that we added in our joint email on Saturday but I can say in my final remark here that I think it is quite wrong that the late Michael Calvert was fighting terminal cancer for the last two years of his life, with his wife Vi nursing him, and then she being left to fight their case with nephew Robert Calvert after succeeding at the Independent panel report in October 2018. Then having to introduce her personal monies in to the farm account to pay lawyers to fight her case to win. Most “active farmers” would not have had the monies for lawyers and the determination to do so.*

10 September 2020

*Mr Shannon MP advises Dr McMahon by email “..each Permanent Secretary and Departmental Accounting Officer has delegated authority for ex gratia payments of up to £100,000. That authority for you in DAERA is provided in DAO (DFP) 06/12 (DF1/12/21/31.312120) at page 11 Box 14 – revised 28 July 2016 – in which it records that you can personally approve up to £100,000.”*

21 September 2020 Dr McMahon (a) "Thankyou for your correspondence dated 10 September requesting an increased ex gratia payment of (should be to) £20,000 to Mrs Calvert. I have considered the issues that have been raised very carefully, and appreciate the very difficult circumstances which Mrs Calvert has experience during the course of this process." and (b) You correctly point out that as Permanent Secretary and Accounting Officer I have delegated authority to authorise ex gratia payments. This does not mean, however, that I can make decisions without a very clear and objective basis. Such payments must be made in accordance with Managing Public Money Northern Ireland (MPMNI) and ensure regularity, propriety and value for money. This is to ensure fairness, equal treatment and the protection of taxpayers' money. Mrs Calvert has received the Direct Payments to which she is entitled, with an ex gratia payment for compound interest at the Bank of England plus 1%. This is consistent with payments made by the Department in **previous Judicial Review case** and represents the maximum used in previous cases.

Mr Shannon MP established in October 2020 that the DAERA legal costs for the Barnwell Farms Judicial Review (BFL.JR5) was circa £20K of which £6435 was for Counsel Mr Philip McAteer BL.

2 October 2020 Wesley Aston / UFU, Ian Marshall and Dr McMahon / Mr Doherty invited by Mr Shannon MP to consider any factual corrections or omissions in the Chronology/timeline and draft cases version.

7 October 2020 Vi email to Ian Marshall included "In the electronic emails to you and the paper documentation you received last Friday afternoon at your home I included a document which we have labelled Exhibit 7D Part B and Mr Shannon's staff wondered whether you had any factual errors or omissions in the 7 page document including the case comparisons for similarities and differences, which she could pass on to the independent three person panel reviewing this matter for Mr Shannon MP. They are scheduled to complete their analysis by Friday 16<sup>th</sup> October." **No Feedback**

8 October 2020 Mr Shannon MP parliamentary aide Naomi in an email to the UFU, Mr Aston and Mr McCluggage, asked whether there were any factual corrections or omissions which I should provide to the Independent Panel as they complete their work and provide their final report to Mr Shannon on Friday 16<sup>th</sup> October. *No feedback as at 16 October 2020*

*Mr Shannon MP parliamentary aide Naomi included in an email to Dr McMahon and Mr Doherty "In my email below I wrote "(you may comment on anything missing or indeed complete Page 7, if you wish)". Did you have any factual errors or omissions on Pages 1 to 6 which I should provide to the Independent Panel for their consideration as they complete their work. " No factual errors or omissions feedback - DAERA.*

*Reply "You make reference to an "independent panel" established by Mr Shannon. As this is not recognised as part of any Departmental process or requirement to deal with such matters, it would not be appropriate for the Department to comment on the document you reference. "*

11 October 2020 James O.Brien and Victor Chestnutt copied on an email which included the latest Exhibit 7D Pages 1 to 75

16 October 2020 Pack of information sent to Addressee only UFU President / Chairman of the UFU Board Mr Victor Chestnutt at UFU HQ in Belfast which includes this Exhibit 7D Part B Rev.2.document from pages 1 to 22 with further invitation for UFU comments on factual errors or omissions.

19 October 2020 Pack of information sent Track and Trace to UFU President / Chairman of the UFU Board Mr Victor Chestnutt at Home farm in Bushmills which includes this Exhibit 7D Part B Rev.2.document from pages 1 to 22 with further invitation for UFU comments on factual errors or omissions. Pack now includes additional information from DAERA on UFU Judicial review legal costs and comparative UFU legal costs which became available at 4 pm on 16 October 2020.



**Balance Sheet**  
**31 March 2020**

	2020		2019	
	£	£	£	£
<b>FIXED ASSETS</b>		870,139		876,146
<b>CURRENT ASSETS</b>	54,891		61,770	
<b>CREDITORS</b>	<i>UI CALVERT - BOV IN DIRECTOR LEADS</i>			
Amounts falling due within one year	(45,801)		(4,079)	
<b>NET CURRENT ASSETS</b>		→ 9,090 ←		57,691
<b>TOTAL ASSETS LESS CURRENT LIABILITIES</b>		879,229	→ LOSSES ←	933,837
<b>CAPITAL AND RESERVES</b>		879,229		933,837

**NOTES TO THE FINANCIAL STATEMENTS**

**1. STATUTORY INFORMATION**

Barnwell Farms Limited is a private company, limited by shares, registered in Northern Ireland. The company's registered number and registered office address are as below:

**Registered number:** NI030671  
**Registered office:** 169A Upper Newtownards Road  
Belfast  
BT4 3HZ

The presentation currency of the financial statements is the Pound Sterling (£).

**2. AVERAGE NUMBER OF EMPLOYEES**

The average number of employees during the year was NIL (2019 - NIL).

The company is entitled to exemption from audit under Section 477 of the Companies Act 2006 for the year ended 31 March 2020.

The members have not required the company to obtain an audit of its financial statements for the year ended 31 March 2020 in accordance with Section 476 of the Companies Act 2006.

The directors acknowledge their responsibilities for:

- (a) ensuring that the company keeps accounting records which comply with Sections 386 and 387 of the Companies Act 2006 and
- (b) preparing financial statements which give a true and fair view of the state of affairs of the company as at the end of each financial year and of its profit or loss for each financial year in accordance with the requirements of Sections 394 and 395 and which otherwise comply with the requirements of the Companies Act 2006 relating to financial statements, so far as applicable to the company.

**JR.CASE ANALYSIS - only two Judicial Review Judgments for agricultural reasons / SFPs against DAERA in last six years. Three further JRs were settled out of court.**

[Barnwell Farms Ltd's Application \(PDF 198 KB\)](#)

**BFL JR5 Barnwell Farms Limited and UFU JR1 /JR2 Exhibit 7F:Part.B..Comparisons**

1. Environmental Awards – UK Nature in Farming: 2009 and Prince Charles visit in May 2010. SFPs removed as DAERA decided not an “active farmer.” Award scheme (W) - January 2020 to December 2024 on 13 March 2020
2. Stage 2 Independent panel — with UFU Gillian Cheatley. Panel recommended DAERA overturn their Stage 1 Decision. Head of Payments Mr Doherty overruled.
3. Mr Michael Calvert – cancer dies July 2017: nephew and widow take over farming.
4. Single Farm payments denied of £86K: 2015 -2019 and £4077 ex gratia payment Dr McMahon re Interest. Once decision overturned £86K for SFO 2015 to 2019 received in August 2020
5. DAERA 31 July 2020 letter asserts original decision overturned on basis of new evidence???
6. Had legal “marked” invoices totalling £100K: £22,417 requested as part contribution from UFU Board: “Leave” part and Final Submission. Invoices sent with supporting paperwork to be transferred to Stewarts solicitors to assist, in part, with other SAAP cases from 2015 – up to 14
7. c£200 funding ex UFU and Technical Officer – Gillian Cheatley
8. Going Concern? :2020 £30K personal funds introduced as Directors Loans by Mrs Calvert – see Statutory Accounts – Exhibit 2A on page 18. Farm losses solely result of JR legal costs paid.
9. Schedule produced showing Consequentials / Alternative profitability : Exhibit 2B . DAERA made an “apparent” interest payment of £4077 which is below the rate of inflation (ex BOE) for the same period.
10. “Zoom” or meeting offered to DAERA to discuss. Ignored by DAERA.
11. Barnwell Farms had no involvement in RHI – they are “focussed” environmental farmers
12. Personal telephone apology -19 Aug:20 mins- Mr Doherty and written apologies from Dr McMahon and Mr Doherty.
13. Prejudiced as Paul Kerr now engaged by DAERA/DSO from JR1/JR2 and Taxation outcome
14. Requested access Taxation files – Marshall denied. Made a further and final request -16.Oct.
15. Barnwell Farms Directors– two of the ordinary 11,500 UFU members. Their MP Mr James Shannon MP is also a UFU Member.

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## Payment Details

**Beneficiary Code:**

**Beneficiary Name: AGRIMAR**

**Town/ City: ARMAGH**

**Postcode: BT60**

**Year: 2018**

MEASURE DESCRIPTION	PAYMENT
Reimbursement of financial discipline	£380.19
Single payment scheme (payments made in 2016)	£43,166.20
Basic payment scheme	£20,323.76
Greening: practices beneficial for climate and environment	£9,100.43

## Companies House

Companies House does not verify the accuracy of the information filed  
(<http://resources.companieshouse.gov.uk/serviceinformation.shtml#compInfo>)

AGRIMAR

Company number **NI622039**

Date	Type	Description	View / Download
07 Aug 2015	GAZ2	<b>Final Gazette</b> dissolved via compulsory strike-off	(1 page)
17 Apr 2015	GAZ1	<b>First Gazette</b> notice for compulsory strike-off	(1 page)
17 Feb 2014	AP01	<b>Appointment</b> of Ian Marshall as a director	(3 pages)
20 Jan 2014	TM01	<b>Termination of appointment</b> of Cs Director Services Limited as a director	(2 pages)
20 Jan 2014	TM01	<b>Termination of appointment</b> of Des Palmer as a director	(2 pages)
20 Jan 2014	RESOLUTIONS	Resolutions <ul style="list-style-type: none"><li>RES13 - Transfer of shares 19/12/2013</li></ul>	(1 page)
20 Jan 2014	RESOLUTIONS	Resolutions <ul style="list-style-type: none"><li>RES13 - Transfer of shares 19/12/2013</li></ul>	(1 page)
19 Dec 2013	NEWINC	<b>Incorporation</b> Statement of capital on 2013-12-19	(22 pages)

**JR.CASE ANALYSIS - only two Judicial Review Judgments for agricultural reasons / SFPs against DAERA in last six years. Three further JRs were settled out of court.**

[https://judiciaryni.uk/sites/judiciary/files/decisions/Marshall's%20\(Ian\)%20Application.pdf](https://judiciaryni.uk/sites/judiciary/files/decisions/Marshall's%20(Ian)%20Application.pdf)

**UFU.JR1/JR2 Ian Marshall:Agrimar** *Exhibit 7F:Part.B.Comparisons*

1. SMR 5:1 /2011- Pollution incident – “intentional”/negligent? Penalty applied in reducing SFPs Environmental scheme – dissolved Marshall company Agrimar paid £7754 by DAERA in 2019
2. Stage 2 Independent panel – with Junior Counsel O’Brien (Chair of Legislation Committee appeared on Mr Marshall’s behalf. Panel recommended DAERA overturn their Stage 1 Decision. Mr Lavery -NO
3. £55K withheld : £43,166 paid to dissolved <5 August 2015> company Agrimar in 2018 (see Page 20:21) and £3K interest paid. Further £17,206 paid in 2019 to Agrimar. Oct 2020 - £??,???
4. Mr Marshall claimed in his sole email on 8 October to fellow UFU Member Mrs Vi Calvert that *“I think it's important to point out that my Judicial Reviews were taken in order to represent the wider membership and address an injustice experienced by a number of UFU members, none of whom were willing to take a case against the department in a very public court process.”* To date we are unaware of other UFU members who were given the opportunity to go to a JR with full UFU funding support...see P25-28. Cost Drawer Paul Kerr for JR1 Taxation/JR2 advice. Mr Marshall “denying” access to JR1 UFU/McKees files . Vi asked on three occasions – with final request on 16 October 2020.
5. Mr Marshall did not pay any legal costs? /UFU paid all? JR1 + JR2 legal costs - £263K - recovery of only £140K (JR1 to Taxation: McKees received all their costs)
6. JR1 and then reconsideration decision upheld DAERA now a JR2: settlement on “procedural irregularity” original decision quashed - not evidence precedent. Note JR3 UFU / DAERA Oct 2018 agreement includes • *users of the Independent Stage 2 Panel shall be entitled to introduce new evidence only if exceptional circumstances or force majeure are established. “*
7. Was there a risk to viability of Farm (Going Concern). Agrimar dissolved . Dairy in 2015: Transition to Heifers etc – Farm planning still possible with case underway ??
8. Mr Marshall was involved in RHI scheme – Dec 2016 speech. UFU provided some funds to RHANI legal case and <https://www.irishnews.com/news/2018/10/17/news/rhi-emails-farmers-union-sent-to-dup-were-leaked-to-media--1460508/> - Wesley Aston forwarded emails to former UFU /now SPAD
9. Two criminal convictions / fines for Pollution - as per February 2017 Judgment at para 3.
10. Potential Insurance Claim – Public Liability?
11. Mr Marshall – Former UFU President 2014-2016 and UFU Board Director to 2018/2019 session.



MR KEVIN BROWN / DSO  
ON 20 OCT WROTE.

PERMANENT SECRETARY / DSO BOTH SETTLED - DR DENIS MCMONAGHAN

I CONFIRM THAT THE FEES MARKED BY THE DEPARTMENT'S COUNSEL FOLLOWING THE CONCLUSION OF THE CASES WERE PAID BY THE DEPARTMENT IN FULL.

UFU JR 2

IPN MARSHALL (2)  
(NO SUBSTANTIVE HEARING / SETTLEMENT)

TAXATION? UFU/Wesley - Confused (7/9) <sup>200M</sup> <sub>Recovery</sub> <sub>Debt</sub>  
McVeas

DSO	£8,806.41	
Counsel QC TONY MCGUERAN QC	£5,880.00	FULL BRIEF
VAT	£1,176.00	
Counsel BL MR PHILIP MCATEER BL	£3,345.83	FULL BRIEF
VAT	£669.17	
Total	£19,877.41	

MCVEAS SOLICITORS

24,400?

MR HUGH MERCER QC.

8,119?

MR JAMES O'BRIEN BL  
(BRIEF FEE / NOT 2/3 COUNSEL)

£16,500 ✓

(x6.8) → UFU ACCOUNTING

£122,019

£18,032.24 (ex VAT)

(2019) RECOVERY

£68,152 [56%]

I ALSO CONFIRM THAT THEY

UFU JR 3\* (TWO STAGE DECISION CONSULTATION)  
(NO SUBSTANTIVE HEARING / SETTLEMENT)

NO TAXATION

EACH SUBMITTED A SINGLE FEE NOTE FOR THE WORK WHICH THEY DID AT THE CONCLUSION OF EACH CASE.

DSO	£6,267.23	
Counsel QC TONY MCGUERAN QC	£2,205.00	FULL BRIEF
VAT	£441.00	
Counsel BL ** MR PHILIP MCATEER BL	£2,181.67	FULL BRIEF
VAT	£436.33	
Total	£11,531.23	

MCVEAS. SOLICITORS

?

MR HUGH MERCER QC.

?

MS PUNNANA CONNOLLY BL  
(TWO THIRDS COUNSEL?)

?

(x10)

UFU ACCOUNTING

Total £108,336 [0%]

£10,653.90 (ex VAT)

RECOVERY  
(ABSORBS OWN COSTS)

0

The Departmental staff time and costs associated with the consultation for the Area-based Schemes Review of Decision process in 2017-2018 are not separately identifiable and cannot be provided. — NOTED.

Yours sincerely,



DATED  
TOTAL = £42262 + 18032 + 10654 = £70948 = £71K

UFU TOTAL = £371K

£71K / £371K = x5.2

GREGOR KERR

Head of Area-based Schemes Operational Policy Branch

\* JR3: THE RELEVANT LEGISLATION —

FARM SUBSIDIES (REVIEW OF DECISIONS) REGULATIONS (NORTHERN IRELAND) 2001

Sustainability at the heart of a living, working, active landscape valued by everyone.

If you are deaf or have a hearing difficulty you can contact the Department via the Next Generation Text Relay Service by dialling 18001 + telephone number.



\*\* PHILIP MCATEER BL - COUNSEL IN BFL JRS - JUDGMENT. KEESAN - MARCH 2020

## UK TAXPAYER

We know that **£371K UFU funds** were reduced (excluding internal staff time) by a net **£231K** (UFU.JR1+JR2 £263K + JR3 £108K - £140K), whilst Mr Shannon MP received the letter at pages 23 -24 setting out the legal costs incurred by DAERA for UFU. JR1, JR2, JR3. DAERA advised that the five Judicial Reviews direct legal costs were just under c£100K (UFU.JR1 JR2, JR3 £70,948 and JR4.AFF £3663 and JR5.BFL £19,320 to date). Then in losing 2 Judgments /3 settlement (£140k UFU reimbursement +<*Disputed items? in JR1 Taxation with “small additional balance and costs due to Mr Marshall as a result of the Taxing Master’s decision on 30 Jan 2020 – appeal? >*and their BFL.JR5 legal costs reimbursement of £62,664 – appeal?. Notably that excludes a deficit of **c£22K in legal costs which are disputed with DAERA/DSO for Barnwell Farms** – including circa £16K for a final Submission for which no money was paid, although the 9 page document on 12 June was c.80% “clarificatory” /new evidence? It arose as it became clearer at the Hearing what they needed by DAERA for a total cost (excluding their internal DAERA time/costs) and their 31 July letter stated they overturned their previous decisions based on this additional evidence.

So, in short, these five DAERA Judicial Reviews have cost the **UK taxpayer circa £300K+ , UFU members £231K+, and Barnwell Farms £22k+**. For all five judicial reviews the quality and timing of the legal advices from DSO / counsel should merit a “public” accountability review as part of that interaction with the very top DAERA officials and their decision making/governance processes for “irrational and unreasonable” decisions.

### DSO – October 2020

“With regard to your first paragraph, my recollection is that only Andrea McCann and Mr Kerr attended the Taxation hearing in the case of Ian Marshall. Usually only Applicants’ costs drawers attend Taxation hearings, with their instructing solicitors occasionally in attendance. I did not expect to see Mr Marshall at the hearing although at the time I wondered if Mr Mercer would have attended. In other cases I have dealt with involving counsels’ fees counsel themselves have attended to make submissions to the Taxing Master in defence of their fees.

I also note what you say concerning UFU and Mr Marshall and appreciate the position this puts you in. You are correct in your understanding of the nature of the Taxation hearing, that it was a Single Item Taxation of Mr Mercer’s fees and expenses only. We have been waiting since the Taxation hearing in January of this year for Mr Marshall’s solicitors to serve on DSO a copy of the Certificate of Taxation issued by the Taxing Master’s office which will show the amount claimed by Mr Mercer, the amount disallowed by the Taxing Master, and the final amount to be paid, including the costs of the Taxation. I do not understand why the Certificate has not been served the **small additional balance and costs due to Mr Marshall as a result of the Taxing Master’s decision**. The Department has no difficulty in disclosing to you what Mr Mercer claimed and the amount the Taxing Master allowed in respect of his fees in that case, but, for Data Protection reasons, the Department needs the written consent of both Mr Marshall and Mr Mercer to do so.”



*CONTINUED* ..... In response to his only email Mr Shannon MP advised Mr Marshall on 8 October 2020, “we were previously unaware, that no other UFU Members were offered or prepared to undertake a Judicial Review with the complete funding of same from UFU. This when we expect that Mr Marshall and Directors will have been conscious throughout that for Members it would seem that his position as UFU President and Board Member brought this level of support, creating what would be perhaps an unwanted perception amongst other Members who had Stage 2 Reviews with recommendation of support to the Applicant which in turn was overturned by DAERA.

Usefully though his email confirms he is used to a very public process. **”Furthermore in the DAERA factual evidence at P43-44 of the 3 SMR1 cases set out in Stage 2 independent panel for 2014-2020 they did NOT recommend overturning the Stage 1 decision.**

*26 October 2020* Mr Shannon MP wrote to UFU CEO Mr Aston writing “*Wesley - in relation to Brian’s second point on the listed five questions. Will you please reconsider whether you and the UFU will now provide the answers in the next 7 days or so while the Independent Panel report is nearing completion. As you know the UFU (Mr Chestnutt, Mr McCluggage and you) have already been invited on multiple occasions this month to submit factual corrections and omissions to the Exhibit 7D Part B document. This will also be the final opportunity to do so before the Report is completed.*

*..... So other than the UFU and its documented experience together with its statistical data, since the initial Ian Marshall case, the only source we have is the extensive information from 2014 to 2020 provided by Dr McMahon/DAERA this month. “*

On the same day Mr Shannon MP wrote to Mr Denis McMahon and Mr Doherty beginning

*“Further to my email below Mr Shannon MP has asked me to share the final draft of that report. There may be some supplementary information to include from the UFU during in the next week or so.*

*We do, however, believe it now provides a sound basis of evidence for Dr McMahon to reconsider his decision communicated in the 21 September 2020 letter.” First 25 pages here. and some extracts*

**“When Dr McMahon reconsiders the evidence in the attached 25 page final draft document perhaps the appropriate weight will be provided to fairness, equal treatment (*in particular pages 18 to 22 and the reference above to the only previous Judicial Review case*) and the use and protection of taxpayers money and of course he uniquely has the full authority and power now to “right that wrong” for Mrs Calvert. Nor have I said before is this a purely legal matter.”**

**“Perhaps the primary lesson to be learned here is for senior DAERA Management to carefully consider the evidence and rationale for key decisions before the expenditure of £300K+ in taxpayer monies for all five Judicial Reviews, whilst simultaneously seeking out fairer and cost-effective alternative solutions for some historical and future cases post BREXIT.”**

30 October 2020 *UFU JR1+JR2 , Junior Counsel Mr James O’Brien and Mr Brian Little (Voluntary Advisor to the DUP/Mr Jim Shannon MP) write the first draft of a briefing paper which together with the final version of this document .Exhibit7D Part B provides the evidence base for a new approach for up to 12 historical cases since 2015 and a future post Brexit.*

2 November 2020 One matter does arise from another reader of the first 25 pages, in relation to the UFU though, so Mr Shannon wrote to Mr Doherty

*“The basis of this question is that UFU CEO Wesley Aston was reported in the UFU Press Release on 7 February 2017 as stating “In this particular case, now that the precedent around proving intent has been established we are pleased that not only will “intent” have to be proven more robustly in future breaches of cross compliance but also that all historic cases may now have to be re-examined.”*

As you would have been in your current role and central in any such decision at that time can you please advise

(a) how many cases were re-opened for Applicants who had previously had an Independent Panel recommendation over-ruled by DAERA following its re-consideration and in which years were these cases re-opened.

(b) What eligibility criteria for their selection did DAERA (and UFU?) apply for these?

(c) What was the outcome of these further “reconsiderations”

10 November 2020 In an email from Mr Calvert to McKees Managing Partner Chris Ross and Senior Partner Leonard Edgar she concluded “Finally I attach a copy of a separate analysis prepared by Mr Shannon MP’s office, Brian and others, which you may also find of interest. McKees may wish to comment on any of it before the final version is completed on Friday 27<sup>th</sup> November 2020. Whilst that evening Mr Robert Calvert wrote “I am also interested to hear if you have any input into the 25 page chronology / timeline document attached?”

11 November 2020 Letter from Dr McMahon to Mr Shannon MP which includes

“Thankyou for the correspondence of 26 October 2020 which included a draft report. (This document pages 1 -25). As this report does not form part of the Department’s review process, it would not be appropriate for me to comment on it. For clarity, the Department’s response does not represent a position on factual accuracy, or otherwise, of the report’s contents.

You have correctly identified that, as Permanent Secretary and Accounting Officer, I have delegated authority to authorise ex gratia payments <up to £100,000>. It is worth reiterating that this does not mean I can make decisions on the use of public money without a very clear and objective basis. Such payments must be made in accordance with Managing Public Money (MPMNI) and must ensure regularity, propriety and value for money. Again this is in order to ensure fairness, equal treatment and the protection of taxpayer's money." In addition to what they are entitled too "They have also received an ex gratia payment of £4077 based on the interest the Direct Payments could have accrued had they been made in their respective years. This s based on compound interest at the Bank of England rate plus 1%, consistent with payments made by the Department in a previous Judicial Review case and represents the maximum used in previous case."

"Having considered the information available to me, I consider the payments to be fair and reasonable. There is no legislative or other justification to make any further payments, and to do so would not be consistent with Managing Public Money Northern Ireland. There does not appear to be any basis for changing my final decision on the ex gratia payment ."

13 November 2020 Mr Shannon MP included in an email to Mr Kevin Brown (DSO) "I am not sure whether your client/DAERA will have shared with you this final draft document from 26 October 2020 but in case they haven't see attached. The final version should complete by Friday 27 November 2020. " <Attaching the first 25 pages of this document>

14 November 2020 Initial publicity in the Irish Farmers Journal (IFJ) at P59-60 on the Barnwell Farms case which included **Costly battle**

"At this stage, most farmers decide to step away, as the only remaining option is a potential costly legal battle by way of a judicial review. However Barnwell Farms opted to pursue the case." and

“In particular, Judge Keegan said that there was an obligation on DAERA to explain why the independent panel was not followed. It is understood that DAERA has now made payments covering the scheme years 2015 – 2019, worth over £80,000 and also agreed to cover a proportion of the applicant’s court costs.”

<https://www.farmersjournal.ie/daera-lose-active-farmer-court-case-583048>

16 November 2020 In response to Dr McMahon’s 11 November letter Mr Shannon MP wrote a comprehensive email .....

Dear Dr McMahon,

Both Mr Doherty and you were provided by me on the 26 October 2020 with a 25 page document for the DAERA Judicial Review chronology / history as part of the basis as to why we thought you should wish to reconsider all the evidence. Your last letter astonishingly deals with this by stating *“Thankyou for your correspondence of 26 October 2020 which included a draft report. As this report does not form part of the Department’s review process, it would not be appropriate for me to comment on it. For clarity the Department’s response does not represent a position on factual accuracy, or otherwise of the report’s contents.”* Perhaps I will leave it by stating, as a matter of record, that you both did have the invitation and opportunity to comment on factual accuracy and omissions for over three weeks.

In effect, in multiple opinions, this 26 October final draft, demonstrates that DAERA have had five judicial review cases involving you, your predecessor Mr Noel Lavery and your Head of Payments Agency Mr Brian Doherty involving Direct Farm Payments. For two of these we have publicly concerning Court Judgments in which DAERA lost and were found, amongst many other things, to have been irrational and unreasonable in their decision making processes. The other three JRs were settled, whilst you were the Permanent Secretary and Departmental Accounting Officer, and all have interesting aspects too in regard to DAERA decision making and the timing and quality of legal advice to you. For example why a EEC 2014 case quoted in UFU.JR1 by your Senior Counsel for JR1 is legally ignored by the DSO / DAERA for its straightforward legal test in UFU.JR2 when it follows, in a 28 September 2018 DAERA press comment, that DAERA have had to quash their “reconsideration” decision of 25 May 2017, as DAERA failed to provide the Applicant an opportunity to make submissions.

In your 11 November letter I don’t know why you felt it necessary to reiterate to us what sums Barnwell Farms Limited were entitled to and you eventually paid £85,628 late. Based on BOE inflation data alone over the period it would be £91,710. The only sum I am interested in here was your personal “reconsideration” decision as to the ex gratia payment of that deflationary £4,077 – 1% over the average BOE base rate of 0.5% - as being fair and reasonable in the circumstances for consequential losses/alternative profitability. I have since worked out that your personal decision is the equivalent of a £2 cup of tea per day for 5 + years for Mrs Calvert.

Setting aside that the £4077 was even deflationary, in the real world the application of a 1% interest margin over BOE base rate would only ever have been applicable to top performing companies borrowing in an age prior to the financial crisis in 2007-2008. You of course had a two year role at the Strategic Investment Board and you ought to know that changed everything. Even as Noel Lavery had just joined as Permanent Secretary in May 2013 he would have heard or read the evidence to the DARD NI Assembly Committee the following month from Mr Kevin Kingston, now CEO of Danske NI, on interest rate margins. Indeed, surely DAERA will know from its own regular research, the relevance of bank debt and relevant average interest rate margins amongst NI Farmers. Furthermore while I understand that Mr Brian Doherty is publicly proud of his “career civil servant” mantle I understand he did spend some time when he had the opportunity to interface with the real world at Invest NI re finance / commercial banks. Then, of course you may have some understanding from your doctorate in Psychology, if not empathy, with the situation in which Mrs Calvert found herself at various stages in that 7 year period to 2020

with the passing of her husband Michael on the farm in July 2017. As Mr Robert Calvert said in his recent email to you both the £4,077 sum is simply “appalling”. Whilst the supporting schedule at Exhibit 2B and the meeting they offered was ignored.”  
*And later*

“Perhaps you can tell us how many other cases may need to be corrected by applying an appropriate rationale and at what extra cost to your budget. In the interim we have noted that the NI Comptroller and Auditor General Kieran Donnelly signed off on your Financial Statements on 30 October 2020, including P134 and a liability estimate of £666K/£964K for 2015, 2016, 2017, 2018, & 2019 Direct Payments cases with eligibility decisions yet to be taken as we proceed to BREXIT.

**So, in short, lack of experience and knowledge is not a credible explanation for this below inflation £4,077 (1%) unfairness and lack of decision making rationality, well within your personal authority, and without regard to the evidence whilst not untypical of the Judge’s remarks in the two published Judgments re top DAERA officials.**

2. I have now seen, during my Friday surgery meeting, that your Wednesday letter to me was followed within two hours by an email from Mr Kevin Brown at the DSO in which he rejected the net £10K offer and stated, in response to an email the previous day from Vi Calvert in their final “non-public” effort to settle the remaining circa £22K deficit in legal costs reimbursement, “*I have considered again the offer made in respect of costs, given further advice to the Department, and my instructions are to make no further offer*”.

This offer of course included only the sum for Fionnuala Connolly BL Final Submission costs at £5,979 for which Mr Doherty in his letter of 31 July states that DAERA now accepted Barnwell Farms Limited as an active farmer from 2015 based on “**in light of the additional evidence submitted**”. **As with the 1% interest margin on Consequential Losses / Alternative Profitability I find this difficult, if not unsurprising, to reconcile with a fair, rational and reasonable decision making process for the top civil servant in DAERA . Furthermore you have had lots of time and opportunity to consider these matters carefully.**

**I conclude by shortly placing our analysis, the final report and evidence on the record. Unlike the waste in taxpayer funds and time in DAERA “Judicial” Reviews the next stage and our focus will be on an appropriate cost effective “Public” Review of all the evidence available.**

*Note : the interviews with Mr Robert Calvert and Mr Shannon MP for the IFJ on 19<sup>th</sup> then took place.*

THE SAME DAY            Following an email from Mr Shannon MP on 2 November 2020 he and Mr William Irwin MLA also wrote to Mr Doherty/Dr McMahon

“In particular this morning I draw your attention to the fact that we received no feedback in relation to access to the documentation from today, 16 November 2020. “*A copy of that JR3.Documents index in advance of access to the bundle in the week commencing Monday 16<sup>th</sup> November 2020 would be great for all of us. Thankyou.*” and

“Since that email we have had the opportunity to discuss this further with Mr William Irwin MLA and his staff and others and we ask, given that there was no NI Assembly or DAERA Assembly Committee during that almost three year period, that DAERA provide directly to his office this month....

a.            The actual DSO legal advice and any barrister legal opinion sought and/or provided to Mr Noel Lavery and DAERA prior to and during the Consultation in June / August 2017 and up to January 2018 before final decision to proceed to eliminate the independent panels in January 2018.

- b. The actual DSO legal advice and the barrister legal opinion sought and provided to Dr McMahon /DAERA from February 2018 up to and including 15 October 2018 in relation to that 2017 Consultation and throughout the subsequent Judicial Review process. What we have called UFU.JR3.”

P56.P57: The relevant law: Farm Subsidies (Review of Decisions) Regulations (Northern Ireland) 2001 <https://www.legislation.gov.uk/nisr/2001/391/contents/made>

16 November 2020 In response to a question the previous week from Mr Shannon MP the NI Bar CEO responded “*On your second point, yes, we would receive taxation decisions. The Taxing Master would also highlight any decisions that they felt warranted being brought to the attention of the Bar Council and where appropriate this would give rise to a Professional Conduct Committee investigation which the Bar Council would initiate.*”

17 November 2020 NI Assembly – Minister Edwin Poots at 12.15 – 12.30

**Bolden text our emphasis** <https://niassembly.tv/ministerial-statement-minister-of-agriculture-environment-rural-affairs/>

**Mr Irwin:** I thank the Minister for his statement and his vision for the future of agriculture. It is clear that the Minister has a wide knowledge of grassroots agriculture.

Minister, you said that you would look at cross-compliance penalties. There has been an issue in the past, of which the Minister will, I am sure, be aware, whereby penalties applied to farmers were appealed. The farmers went to an independent panel which, in some cases, adjudicated and supported the farmers, but the Department refused to agree to the independent panel's decision. What is the Minister's view on that?

**Mr Poots:** I used to find it incredibly frustrating when, having represented a constituent who, having won a case at an independent panel, received a letter from an Agriculture Minister — generally, the Agriculture Ministers were named Michelle at the time — **indicating that they were overturning the decision of the independent panel. I have made it clear to my officials that I will not be overturning the decisions of an independent panel.** Why have an independent panel look at these things, give an assessment of how the Department came to its point of view on what the individual who made the claim had done, arrive at a conclusion on the information presented, only then for a pen to be put through that decision? It is entirely inappropriate and I will not be doing that. **I have made it clear to officials that, when an independent panel makes a decision, it is the final decision.”**

19 November 2020

Further publicity in the Irish Farmers Journal (IFJ) at P61.62 on the Barnwell Farms case et al which included

<https://www.farmersjournal.ie/daera-pays-out-in-active-farmer-case-584447>

### **Wrong process**

Back in 2016, the Department confirmed that 810 applicants were rejected for not meeting active farmer requirements. It is understood that since 2015, a total of 64 active farmer cases have made it to a stage 2 Review.

Strangford MP Jim Shannon believes the independent panel is an important part of the DAERA decision making process. He said “The attempt by DAERA, whilst the NI Assembly was dissolved, to eliminate them in late 2017/2018 was quite wrong. Equally the next step in any appeal being a costly Judicial Review is the wrong process given its limitations including its inability to consider the actual farming evidence. Post BREXIT, this all needs to be properly addressed.”

“It seems quite wrong that DAERA Permanent Secretary, Dr Denis McMahon, believes that a below inflation payment of £4,077 is an appropriate interest rate. This is equivalent to a £2 single cup of tea per day since May 2015” he told the Irish Farmers Journal.

With hefty legal bills, no farm payments and no outside financial support, accounts for the business show it sustained significant financial losses. “There wasn’t the funds to invest in cattle. The farm was being driven out of active farming,” said Robert.

“It is also understood that while DAERA have covered a proportion of the Calvert family’s legal costs, there is still a shortfall of approximately £22,000.” In fact the only way to recover any further monies is to spend more money on legal costs / court hearing and enter what is known as a “Taxation” process. So to enable this to be brought to a conclusion Mrs Calvert offered to settle for less than 50% at £10,679. She received this reply from Mr Kevin Brown, Assistant Director in the DSO, within 24 hours of her offer

*“I have considered again the offer made in respect of costs, given further advice to the Department, and my instructions are to make no further offer. I await receipt of the drawn bill from your costs drawer and the notification of the date of the taxation hearing in due course.”*



21 November 2020

Farming Life article "Welcome for Poots intervention on panel"

UFU President Victor Chestnutt "Our technical team have been dealing with members who were awarded in favour of, by the independent panel at the second stage of an appeal, only for DAERA to reverse the decision. This has been incredibly frustrating and stressful for our members whose only option was to take further legal action. **However financially this was not possible for the majority**"

Mr Shannon MP - Wouldn't it have been more accurate to publish that without UFU funding, such as in the Ian Marshall case for the circa £300K referred to in the IFJ article, that NO ONE other than Barnwell Farms had proceeded to a self-funded substantive Judicial Review and that Ian Marshall was the only individual UFU funded Judicial Review. Senior Counsel across all five judicial reviews, Hugh Mercer QC, recently wrote to me *"I am grateful for your willingness as a no doubt very busy MP to assist one of your constituents. I am proud of the sparkling result which we managed to achieve both in the courtroom and also in the subsequent regulatory decision although it does seem to me plain that this was a case where DAERA should have settled by agreeing to reconsider the decision without the need for the Court to hold that their decision was irrational. For the future, that is an area where public administrations can help to diminish the risks to be taken by a business in Barnwell Farms' situation."* While in relation to independent reviews you should know that the Ian Marshall Judgment did not have this Independent panel subject as a central part, although I have since learned, from UFU.JR1 + UFU.JR2 Junior Counsel Mr James O'Brien, that Judge Maguire J did comment, albeit obiter, regarding the independent panels that "DARD should be reluctant in departing from their recommendation". Furthermore UFU CEO Wesley Aston had authorised for JR3, and the UFU reported in April 2019, that it had legal costs of £108,336 and Wesley agreed to absorb all of them in the UFU settlement. That compares with the opposite side DAERA legal costs figure of less than 10% (£10,654) for exactly the same case. Why 10 times?

The Farming Life article goes on to conclude its quote by Mr Chestnutt "We are glad that the Agriculture Minister has listened to our lobbying and is willing to uphold the final decision of an independent panel in matters going forward. **This will ensure that our members do not have to endure this unjust treatment by the Department again.** We hope the legislation change for this to happen can happen sooner rather than later."

Mr Shannon MP - Minister Poots has been in position since January 2020 and of course the Substantive Judicial Review Hearing for Barnwell Farms with enormous legal costs was in February. What lobbying did the UFU do prior to 31<sup>st</sup> July in relation to their case and other UFU Members with Mr Poots to have it stopped prior to the 28 July and revert to the independent panel? What lobbying have they done since on this and other retrospective cases, including the two "active farmer" cases still under review at DAERA? For my part I don't think it was a coincidence that Mr Poots response last Tuesday to Mr Irwin MLA in the NI Assembly just happened to coincide with the second personal article/story about the Calverts in a full page in the Farmers Journal following the foundation article the previous week.

24 November 2020 BBC Radio Ulster “Farming Matters - for 10 mins from 22 mins.  
“Farming Judicial Review causes DAERA a headache”  
<https://www.bbc.co.uk/sounds/play/m000pmvh>

Interviews with Robert Calvert and David Wright (IFJ)

26 November 2020 Further publicity in the Irish Farmers Journal (IFJ) by Northern Editor David Wright in his Northern comment at P.63  
<https://www.farmersjournal.ie/only-one-winner-in-a-judicial-review-585987>

**“Only one winner in a Judicial Review”**

where he wrote in the concluding three paragraphs

“The upshot of the Barnwell Farms case was a statement made by Minister Poots last Tuesday when he said that on his watch, the decision made by the panel will be final.”

“Looking ahead it is very difficult to see how DAERA can justify any future decision to go against this independent panel. Whether similar historic cases now come forward remains to be seen.”

**“But hopefully this is now the last case of its type. The only winners in a judicial review are the legal profession. It isn’t farmers, DAERA or the UFU, and most certainly isn’t the public purse.”**

27 November 2020 Mr Shannon MP wrote a comprehensive email, which was promptly acknowledged, to Dr McMahon and Mr Doherty

Last Saturday you may have read the final paragraph in the Farming Life article, referencing Mr William Irwin MLA “Welcome for Poots intervention on panel “, in which the UFU President is quoted as *“We are glad that the Agriculture Minister has listened to our lobbying and is willing to uphold the final decision of an independent panel in matters going forward. This will ensure that our members do not have to endure this unjust treatment by the Department again. We hope the legislation change for this to happen can happen sooner rather than later.”*

I am not sure whether you were aware but I do declare my interest here as one of the 11,500 UFU Members. On researching this further we understand that Mr Doherty advised the UFU at the time of the UFU.JR3 in 2018 that their lobbying effort to have the independent panel be the final decision could not be achieved without a change in the law and obviously there was no NI Assembly to do so since January 2017. The relevant law at the time and now being the Statutory Instrument of NI –

2001 No.391. Agriculture Farm Subsidies (Review of Decisions) Regulations (Northern Ireland) 2001 which came in to operation on 14 November 2001. Note Regulations 11 and 12.

While we recognise it was Dr McMahon's predecessor, Mr Noel Lavery who was responsible for the mid 2017 Consultation and the attempt to implement a change these Regulations without legal authority just days before he left DAERA it was of course Dr McMahon who would have received the Pre Action Protocol letter from UFU instructed solicitors, McKees., for what would become JR3.

It should have been immediately obvious that Dr McMahon with his experience would understand sufficiently the law and the dissolved Assembly status at that time so that these changes to eliminate the stage 2 independent panel from both outside these legal regulations and opposed by all Respondents to the 2017 Consultation. We fully expect Dr McMahon would have taken professional advice at the time of that Pre Action Protocol letter, and certainly when JR3 proceedings were launched and before around the June 2018 Leave Hearing.

Certainly from the disclosure to me on 16 October 2020, on his behalf, of the actual Senior Counsel costs of £2205 for JR3, Dr Tony McGleenan QC, that would point to strong advice to settle either before or around the Leave Hearing on 28 June 2020. To let the **UFU then apparently proceed to the proverbial "courtsteps" of the substantive hearing on 12 October 2018 with that Press Release** and to have their CEO, Wesley Aston have to authorise their legal costs of some £108,336 was simply quite wrong of DAERA, and perhaps the DSO. This JR3 was effectively settled in the summer between Counsel. Furthermore when one sees that the total DAERA/DSO legal costs were less than 10% of those taken from UFU Member funds to pay for that wholly unnecessary JR, it is simply appalling. While I recognise that both sides agreed to pay their own costs, in these circumstances that was unjust and inappropriate.

As you are probably aware I gave a short interview to Mr David Wright of the Irish Farmers Journal on Tuesday 17 November 2020 where he quotes me in a couple of parts on the Barnwell Farms Personal story published later that week. At the time I did promise both he, and the Farming Matters researcher last Tuesday, that I would give a more substantive interview on the public policy etc matters which in my view arise in this incoming week. That Tuesday Mr Wright stated that he planned to do an editorial on the wider points after the Calverts story but then wanted to have that longer interview with me next week. I can see he has done so as I have just read that editorial this morning and in particular note the final three paragraphs concluding

*"But hopefully this is now the last case of its type. The only winners in a judicial review are the legal profession. It isn't farmers, DAERA or the UFU, and most certainly isn't the public purse."*

You already know the views in relation to the use of £300K+ of taxpayers monies, expended on these five judicial reviews on Single Farms Payments, and whilst I recognise that what I am about to publicly call for Dr McMahon to do below will further increase the costs to the taxpayer, at least that should be the end of it. So, what I will be calling for publicly is that I have written to you, as Permanent Secretary and Departmental Accounting Officer, and asked that you make an ex gratia payment of £99,995 to the Ulster Farmers Union. That is the UFU reported legal costs of £108,336 - £10,654, as the reported DAERA

legal costs, increased by approximately that below inflation interest calculation you apply for the 2 years. As you have previously confirmed this is entirely within your ex gratia financial limit of £100K.

If you have any comments or other thoughts that I should be considering then do please let me know before my IFJ interview next Tuesday at noon.

THE SAME DAY

On the final “official” day to file a “Taxation” claim (six months after the Court Order of 27 May 2020) Managing Partner of McKees solicitors, Mr Chris Ross, writes to Mrs Vi Calvert stating “We confirm that we have not, for the reasons set out in Mr Edgars’ report which was sent to you on the 9<sup>th</sup> November 2020, pursued the issue of the Taxation of the Counsel’s fees.”

In effect this was McKees solicitors’ recommendation to Barnwell Farms Directors NOT to spend money (c£2K - £8K) and time during 2021 in further legal activity in a “Taxation” process for recovery of the £22K deficit in legal costs.

It is also credible / arguable that to do so would provide DAERA with a distraction from the substantive public policy / taxpayer funds issues.

1 December 2020

Another aspect - Email from Jim Shannon MP to UFU.

“ Dear Mr Chestnutt et al,

Following the publication of the initial Irish Farmers Journal article about the Barnwell Farms case on 14 November 2020, amongst others, Mr Shannon MP was contacted by two of his constituents from Portaferry in relation to the two stage independent panel process. In the course of providing Mr Shannon MP, and subsequently myself, their information and files they have included a March 2020 response to an FOI from DAERA which I attach here. They have agreed that I can and should provide to the UFU too.

**They are not UFU members, and have advised DAERA accordingly,** but they have become increasingly alarmed <rightly> that the actions of the UFU in 2018 in their JR3 settlement agreement with DAERA may be already and will further compromise their submissions to the Stage 2 Independent panel early next year. In particular I draw your attention to Page 2 and the “revised process.” from 2018

Can you explain why the UFU agreed to this new process and why Jim’s constituents appear to be prevented from presenting “new evidence” ? at a policy and individual case level. Indeed the UFU seem to have endorsed it in the drafting of the JR3 Court Order. They and we cannot understand why this has been done as it would seem to be against their human rights to accept that situation. As you will know

in the Barnwell Farms case too, the entire £16K of legal costs for the Final Submission (in your possession) has not been reimbursed by DAERA / DSO too while representing the majority of the £22K legal costs deficit.

**In the meantime can you explain to Jim constituents and us why the UFU agreed to this, given its “correct” outright opposition to it in the UFU / James McCluggage submission to the 2017 Consultation, and please confirm that your “agreement” with DAERA was solely made on behalf of UFU Members and not the majority of other recipients of Direct Farm Payments in Northern Ireland . “**

THE SAME DAY

Mr Shannon MP email to DAERA

“Further to your email yesterday, and Gregor’s letter dated 26<sup>th</sup> November 2020, you refer to my joint email with William Irwin MLA on Monday 16<sup>th</sup> November 2020 to Dr McMahon and Mr Doherty. After further deliberations, and the DAERA Minister Poots remarks in the Assembly the next day, can I please ask that you now furnish the relevant information to Mr Irwin MLA AND the DAERA Assembly Committee for their return in week commencing 11 January 2021 as follows ...

1. *ADDED* A copy of the Judicial Review JR3 documents index / evidence in relation to the elimination of the Independent Panels ....at Regulations 11 , 12 of the Statutory Instrument SI No 391 Agriculture.2001.

2 A. The actual DSO legal advice and any barrister legal opinion sought and/or provided to Mr Noel Lavery and DAERA prior to and during the Consultation in June / August 2017 and up to January 2018 before his final decision to proceed to eliminate the independent panels in January 2018.

B *ADDED* A copy of the Pre Action Protocol letter from the UFU instructed solicitors, McKees , to Dr McMahon in 2018.

C. The actual DSO legal advice and the barrister legal opinion sought and provided to Dr McMahon /DAERA from February 2018 up to and including 15 October 2018 in relation to that 2017 Consultation and throughout the subsequent Judicial

Review process. What we have called UFU.JR3. *We recognise that the DSO may say this item 2C is legally privileged but as the case was settled on Dr McMahon instructions, and has been closed for more than two years now, it is essential in the public interest and transparency to provide the full trail of events undertaken during Mr Lavery's tenure through to date.*

3 December 2020

Further publicity in the Irish Farmers Journal (IFJ) by Mr Wright in his article at P64.65

<https://www.farmersjournal.ie/500-000-gone-on-legal-battles-over-schemes-587599>

### **“£500,000 gone on legal battles over schemes”**

where he wrote , amongst other items,

*“As the DAERA Permanent Secretary, Dr Denis McMahon, knows from my previous correspondence, I firmly believe that on receipt of the Barnwell Farms Pre Action Protocol letter in April 2019 he should not have proceeded with that case.” said Shannon.*

However, he also maintains that Dr McMahon's predecessor, Noel Lavery, left him, with a “poisoned chalice” of Judicial Reviews by way of the second judicial review into the Marshall case, and the third legal action taken by the UFU on the review of decisions process.

### **Question marks over historic cases**

“In most instances where DAERA has not accepted the view of the independent panel at stage 2, claimants are understandably reluctant to pursue a legal battle by way of judicial review.”

However, Jim Shannon believes that the Marshall and Barnwell Farms cases set a precedent, both for similar appeals going forward and potentially for historic cases. Notably in the Assembly Chamber earlier this month Agriculture Minister Edwin Poots said that he would not be overturning future recommendations made by this panel.

***“While Dr McMahon is not obliged to do so retrospectively I would hope, indeed expect that he will sympathetically consider retrospective cases. Or at the very least be***

**prepared to promptly discuss an “historic cases policy with Minister Poots, the DAERA Assembly Committee and us.” says Shannon.**

Independent Panel

In the meantime, it is not clear how many cases there are where the independent panel ruled in favour of the claimant only for DAERA to stick to its original decision, and whether these people want their case looked at again.

## **Concluding**

**“The legal profession are the only winners in a judicial review.” said Shannon.**

4 December 2020 On 1 December we referred to an email from Jim Shannon MP to UFU. Noting in Fol AE6-20-69 dated 13 March 2020 provided by Mr Shannon constituents-

*“Please note that appeals are dealt with under the Review of Decision Process. Until 1<sup>st</sup> April 2018 the Department operated a two stage process, in which an appellant if not satisfied with the decision at Stage 1 could submit a Stage 2 request for a further review. From 1<sup>st</sup> April 2018, following a consultation period, a new process was introduced were appellants submit a Review of Decision application which was assessed by a Case Officer and if they remain dissatisfied with the decision taken they could seek for a decision reached to be reassessed by an independent panel.”*

A supplementary email was sent to UFU in relation to JR3 “new evidence/process” ...

**However** we can discern that the point we make below in my email, that we asked you to investigate and reply by next Friday 11<sup>th</sup> December, is very likely to be prejudicial to a fair hearing of their evidence and case. In the meantime Naomi and I have been doing some more research which may assist your investigation / enquiries

### **UFU.JR1 In Mr Marshall’s judgment at para PS (71)**

“After the conclusion of the oral argument in this judicial review the applicant sought leave to add to his evidence by submitting a further affidavit from him dated 19 September 2016. The court is of the view that it can determine this matter without resort to the proposed affidavit and on this basis it sees no reason to grant the leave sought or to deviate from the court’s normal practice of expecting the parties to file their evidence in advance of the hearing and not after it is over.”

**UFU.JR2. Ian Marshall again : 28 Sept 2018** In this situation we understand some of that additional JR 1 information was provided for JR2. Ian Marshall JR2 was settled out of court after the Leave Hearing, as DAERA had failed to allow the new evidence/submissions, and in advance of the scheduled start of the Substantive Hearing and made public that day .....

*DAERA Press comment “the impugned determination was subject to a **procedural irregularity in that the applicant did not have, prior the final decision being made, an opportunity to make submissions in relation to the legal test to be applied in determining his appeal**, namely that set out in the case of Van der ham Case C-396/12 which was decided on February 27.2014. The department consented to its decision on May 25, 2017, being quashed accordingly and will now re-determine the appeal on the basis that the breach in the case was negligent rather than intentional.”*

The BBC reported Mr Marshall as saying that **“he was glad the issue had been resolved and questioned the amount of public money spent on the case.”** The UFU Report in 2019 shows that some £263K was spent from UFU funds on the Ian Marshall cases while only £71,882 of legal costs were recovered in 2017 for JR1 and £68,152 of legal costs in 2019 for JR2.

### UFU.JR3 Court Order attachment 3

In this Court Order it would seem that new UFU.McKees.Junior Counsel Ms Fionnuala Connolly drafted it to accept, presumably on instruction of Ms Andrea McCann and UFU CEO Wesley Aston that “ (b) users of the Independent stage 2 Panel shall be entitled to introduce new evidence if either exceptional circumstances or force majeure is , or both are , established. “ What was this included in any settlement given prior UFU. JR experience and anecdotal evidence from other prior independent panel cases. JR3 was the attempt at an unlawful elimination of the Stage 2 Independent panels by DAERA, for which we know that the DAERA Assembly Committee will shortly receive a copy of the JR3 documents index and bundle which they had presented for the substantive hearing on the 12 October 2020 from DAERA Permanent Secretary, Denis McMahon.

AFF.JR4 - settled for a Fermanagh farmer. Relevance of new evidence/ submission unknown.

**BFL.JR5** - 31 July 2020 Following the Final Submission on 12 June 2020 a letter was received from Mr. Brian Doherty, Head of DAERA Paying Agency which included ...”*The technical assessment recommended that, in light of the additional evidence submitted, the Panel’s recommendation should be accepted and the original decision should be changed. I have accepted this recommendation. Barnwell Farms Ltd will be considered as having met the active farmer requirements for 2015.*”

5 December 2020 As you may have read at Page 3 on 7 February 2017 the UFU Press Release “It is not about pollution or indeed the scale of the incident,” said UFU Chief Executive, Wesley Aston, “the case is whether NIEA and DARD were effectively right to ignore the views of the external independent appeal panel which considered this was a negligent rather than intentional breach and had recommended accordingly.” and “We are no strangers to judicial reviews, and will no doubt do the same again in the future, if there are cases we believe have implications for our 11,500 members. They can be costly if unsuccessful but as a union our role is to defend our members against unfairness. Only through that collective strength can farmers take on the cost of legal action to defend a principle on behalf of the wider farming industry.” **“In this particular case, now that the precedent around proving intent has been established we are pleased that not only will “intent” have to be proven more robustly in future breaches of cross compliance but also that all historic cases may now have to be re-examined.”**

Given this UFU reference to historic cases being re-examined in 2017, and Mr Shannon MP comments to the IFJ on retrospective reviews, DAERA were asked what actually happened. Their reply was “The Department did not retrospectively review cases following the judgment in this Judicial Review <on 7 February 2017>. However, the department can confirm that detailed lessons learned from the case were developed and disseminated following the Judgment, and officials have applied the findings to the consideration of cases since.” The Analysis on SMR cases at the independent panel from 2015 at Page 44 show that since the Judgment DAERA record only 2 similar cases (SMR1) which went to an independent panel in 2019. In both cases the independent panel did not recommend that the Stage 1 decision be overturned so DAERA did not have to re- consider these at all.

8 December 2020 BBC Radio Ulster “Farmgate” - for 4 minutes – D Rankin/B Little.

<https://www.bbc.co.uk/programmes/b007cpz4>



10 December 2020 Further publicity in the Irish Farmers Journal (IFJ) by Northern Editor Mr David Wright in his article at P66-67

<https://www.farmersjournal.ie/daera-at-odds-with-independent-panel-588991>

**“DAERA at odds with independent panel”** where he wrote, amongst other items,

In around 40% of cases that made it to Stage 2 of the review of decisions process for area-based schemes, an independent panel ruled either partially or fully in favour of the applicant, analysis of the relevant data shows.” ....since 2014-2015 nearly 300 cases have been taken to a Stage 2 review.

In total, there were 30 instances since 2015 when the panel fully upheld a review, only for DAERA officials to not accept that recommendation, and stick with its original decision. There are also an additional 13 cases where the panel partially upheld the review, but this was not accepted by DAERA, and a further six where the panel fully upheld the review, only for the Department to only partially accept these recommendations.

**Split :** In terms of the split of cases taken to Stage 2 review since 2014 -2015 , a total of 64 were disputes around “active farmers” status <P43>, 41 related to young farmer payments <P47> and 66 involved cross compliance penalties due to breaches of statutory Management rules (SMRs) <P44-46>. That leaves over 100 other cases across a wide range of issues including land eligibility, duplicate fields and the NI Countryside Management Scheme.<P48-52>

Applicants who sought a review of a decision around “active farmer” status were most likely to have their case upheld by the Independent Panel. Nearly two thirds of these were upheld at Stage 2 Review. By contrast, nearly 80% of reviews sought by young farmers’ payment were rejected by the Panel.

Commenting, Jim Shannon said that he appreciated the helpful and detailed responses to his requests provided by the Department. However he also believes that the information provides further weight to his argument that the decision to change the review process in 2018 was flawed.....in their 2017 consultation document proposing the change, DAERA partly justified dropping the independent panel on the basis that only 10% of reviews “derive benefits from access to an external panel” ....the analysis shows nearly 40%.

**Survey :** “As yet it is not clear whether claimants who had a positive outcome from the Stage 2 review , subsequently turned down by DAERA, will be looked at again. It is understood that a draft survey <P68>has been circulated to farm lobby organisations and local agricultural consultants in an attempt to establish who these people are, and whether they want to come forward. The survey also asks about “live” cases that remain unresolved going back to when area-based payments were introduced in 2005.

**SUPPLEMENTARY INFORMATION / DOCUMENTATION**

**Annex C- request 3-Stage 2 Reviews for SFP "Active Farmer" – Regulation 1307/2013 AS AT 4 DECEMBER 2020 (EIR) DAERA.**

Active Farmer Stage 2 panel cases

**1. Number of applications submitted and heard by a Stage 2 Independent Panel (2014 – 2020)**

2014	2015	2016	2017	2018	2019	2020
NIL	NIL	21	29	5	3	6

64

Total - 64

\*The breakdown above is done by date the application for Panel was received.

**2. Number of Applications upheld by Independent Panel and accepted by DAERA (2014 – 2020)**

2014	2015	2016	2017	2018	2019	2020
NIL	NIL	12*	10**	2	2***	1

27(+9) = 36  
(56%)

\*9 cases the Department agreed the review should be fully upheld. In 2 cases the Panel recommended a partial uphold of the review and Department agreed. In 1 case the Panel recommended to fully uphold the review, however the Department partially upheld.

\*\*8 cases Department agreed the review should be fully upheld. 1 case the Panel recommended to partially uphold review and Department agreed. In 1 case the Panel recommended to fully uphold the review; however the Department partially upheld.

\*\*\* In 1 case the Panel recommended to fully uphold the review; however the Department partially upheld decision.

Please note that there are 3 cases in 2020 where the Panel have recommended fully upholding the review. These cases are currently under final consideration by the Department.

MINISTER POC'S STATEMENT - 17 NOV 2020 IN NI ASSEMBLY

**3 Number of Applications upheld by Independent Panel NOT accepted by DAERA (2014 – 2020)**

2014	2015	2016	2017	2018	2019	2020
NIL	NIL	2	7	1*	NIL	NIL

(+ 3?)

AFF. J.R.L. - JUDICIAL REVIEW STATUED APPROVD 4 LEAVE → BFL, SRS BARNWELL FARMS JUDICIAL REVIEW (14%) JUDGMENT - 25 MARCH 2020, DAERA OVERTHROE THEIR ORIGINAL DECISION AND ACCEPT STAGE 2 PANEL RECOMMENDATION

\*In this case the Panel recommended a partial uphold of the review and Department did not accept this recommendation.

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€85,628 PAID AUGUST 2020 FOR 2015 - 2019.

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New Statutory Management requirements were put in place from 1 January 2015 drawn from Annex II of Council Regulation (EC) 1306/2013. These SMRs replaced the SMRs that were in place as listed in Annex II to Council Regulation 73/2009. SMR 5 was renumbered as SMR1. PROTECTION OF WATER (NEW MANAGEMENT CASE)

**Annex B- Request 2-Cross Compliance Rules by Statutory Management Requirement (SMR) AS AT 4 DECEMBER 2020**

**A.1 Panel cases submitted and heard for years 2014 – 2020 relating to SMR breaches**

	SMR	2014	2015	2016	2017	2018	2019	2020	
1. PROTECTION OF WATER	SMR1						2		2 (SEE OVERLEAF)
	SMR2								
	SMR3								
4. FOOD + FEED LAW 5. RESTRICTIONS - HUMANS	SMR4			1	11	8	10	4	34 12
	SMR5	3	6	3					
7. CATTLE ID & REGEN	SMR6								14
	SMR7	7	3		1		2	1	
	SMR8								
10. PUMP PROTECTION	SMR9								2
	SMR10	1	1						
11. PROTECTION OF CATTLE	SMR11				1	1			2
	SMR12								
	SMR13								
		11	10	4	13	9	14	5	<u>66</u>

One business had two SMR breaches in 2014 (SMR5 & 7)  
 One business had two breaches in 2018 (SMR 4 & 11)  
 One business had two SMR breaches in 2019 (SMR4 & 7)

**A.2 Number of applications upheld by Independent Panel and accepted by DAERA**

	SMR	2014	2015	2016	2017	2018	2019	2020	
4. FOOD + FEED LAW 5. RESTRICTIONS - HUMANS	SMR1								1 2
	SMR2								
	SMR3								
7. CATTLE ID & REGEN	SMR4						1		3
	SMR5	2	3*	2**					
10. PUMP PROTECTION	SMR6								1     7 (± 3 PARAGRAPHS)
	SMR7	2			1***		1		
	SMR8								
	SMR9								
	SMR10	1							
	SMR11								
SMR12									
SMR13									

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One business had two SMR breaches in 2014 (SMR5 & 7)

\*In two of these cases the Panel recommended the decision should be partially upheld and the Department accepted these recommendations.

\*\*In one case the Panel recommended the review be fully upheld however the Department partially upheld the review.

\*\*\*This case was recommended to be fully upheld however the Department partially upheld.

Please note there are 3 applications in 2019 and 2 applications in 2020 where the Panel have recommended that the review be fully upheld; these are currently still under consideration by the Department.

**A.3 Number of applications upheld by Independent Panel and NOT accepted by DAERA** 2015 - 2020 = 12 (of which 7 PARTIAL)

SMR4 FOOD related

7. CATTLE (08/2014)

SMR	2014	2015	2016	2017	2018	2019	2020
SMR1							
SMR2							
SMR3							
SMR4				5**	3***		
SMR5							
SMR6							
SMR7	1	3*					
SMR8							
SMR9							
SMR10							
SMR11							
SMR12							
SMR13							

8 (of which 6 PARTIAL)  
4 (of which 1 PARTIAL)

\*In two of these cases the Panel recommended the decision should be partially upheld and the Department did not accept these recommendations.

\*\* In four of these cases the Panel recommended the decision should be partially upheld and the Department did not accept these recommendations.

\*\*\* In one case the Panel recommended the decision should be partially upheld and the Department did not accept this recommendation.

In 2014 there were 18 Cross-Compliance Statutory Management Requirements (SMRs) in 2014. However as part of CAP Reform the Commission took the opportunity to review the scope of Cross-Compliance.

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2. Following the UFU.JR1 and UFU.JR2 (Name removed) Judicial Review Judgment on 7 February 2017 please advise how many cases were re-opened for Applicants who had previously had an Independent Panel recommendation over-ruled by DAERA following its re-consideration and in which years were these cases re-opened. What criteria was applied to select which cases for any review and then specifically where are they included, if applicable, in these tables and with what outcome?  
 Note : In our research we found this and that is the basis of this question. UFU CEO (name removed) was reported in the UFU Press Release on 7 February 2017 as stating "In this particular case, now that the precedent around proving intent has been established we are pleased that not only will "intent" have to be proven more robustly in future breaches of cross compliance but also that all historic cases may now have to be re-examined."

40 FEBRUARY 2017

**Response to 2 : Judicial Reviews**

The Department did not retrospectively review cases following the judgment in this Judicial Review. However, the Department can confirm that detailed lessons learned from the case were developed and disseminated following the judgment, and officials have applied the findings to the consideration of cases since.

**Response to 3 : Value of claims**

The Department does not calculate or hold information on the initial value of a claim that a business could potentially be awarded. Once a claim is validated, the amount due is calculated through the payment system, based on the completion of various validations and checks for potential penalties. We cannot manipulate or reverse engineer the system to provide these figures.

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However, where a breach has resulted in a penalty debt being raised against the business, we do hold that information. The values of these cross-compliance penalties are listed below.

SMR7's

Year	£1 - £5000	£5001 - £10,000	£10,001 - £25,000	£25,001 - £50,000	£50,001 +
2014	1				
2015	3				

SMR4's

Year	£1 - £5000	£5001 - £10,000	£10,001 - £25,000	£25,001 - £50,000	£50,001 +
2017	5				
2018	1		2		

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4. It has been brought to our attention from a Farming Life article on 4 August 2018 that we failed in our initial September request to get an analysis from 2015 to 2020 in relation to the Young Farmers scheme. Can you please regard this as new Annex D and provide

4 DECEMBER  
2020

**D1. Number of Applications submitted and heard by the independent Panel.**

**D2. Number of Applications upheld by Independent Panel and accepted by DAERA.**

**D3. Number of Applications upheld by Independent Panel NOT accepted by DAERA**

Having provided the information at D3 can you then proceed to provide the £ values table similar to my request at Point 3.

**Response to 4 : Young Farmer Cases – Panels**

**D1: Number of applications submitted and heard by a Stage 2 Independent Panel (2015 – 2020)**

2015	2016	2017	2018	2019	2020
NIL	14	22	1	1	3

41

Total – 41

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\*The breakdown above is done by date the application for Panel was received.

**D2: Number of Applications upheld by Independent Panel and accepted by DAERA (2015 – 2020)**

2015	2016	2017	2018	2019	2020
NIL	2	2	NIL	NIL	NIL

Total - 4

4  
(10%)

**D3: Number of Applications upheld by Independent Panel NOT accepted by DAERA (2015 – 2020)**

2015	2016	2017	2018	2019	2020
NIL	1	4	NIL	NIL	NIL

Total – 5

5  
(12%)

Unfortunately we are unable to provide the monetary value for the claims listed at No.D3 above, as the Department does not readily hold this information. The Department does not calculate or hold information on the initial value of a claim that a business could potentially be awarded. Once a claim is validated, the amount due is calculated through the payment system, based on the completion of various validations and checks for potential penalties. We cannot manipulate or reverse engineer the system to provide these figures.

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OTHER STAGE 2 INDEPENDENT PANEL CASES.

Having provided the information at E3 can you then proceed to provide the £ values table similar to my request at Point 3. 4 DECEMBER 2020

Response to 5 : Active Farmer Cases + SMR CASES + YOUNG FARMERS EXCLUDED.

E1. Breakdown of remaining cases that had submitted to Independent Panel 2015-2020 = 123 CASES

Category	2015	2016	2017	2018	2019	2020	
Over-declaration	16	5	1		1		23
Inspection letter CR2			1				1
Debt Recovery	5	3	2				10
New Entrant		2					2
Below Minimum Area		1					1
No 2013 claim submitted		1	1				2
Eligibility conditions for BPS not met		1	6				7
Overpayment			1	3	3		7
Entitlement statement			7				7
Offset			1		1		2
Separateness				1	5		6
Payment letter				2			2
Late claim after June closing date	1		1				2
Business Change			1				1
Regional Reserve		1					1
Duplicate field penalty		5					5
Greening Payment		1					1
Business Development Group		1					1
CSMS				3			3
Farm Woodland			1		1		2
ANC Overpayment				1			1
ANC/LFACA Stocking Density	3	2	1		1		7
ANC - Not eligible					1		1
Determined land area	1						1
NICMS	6	2	1	3			12
Confiscation of Entitlements					2		2
Underpayment					1		1
GAEC6*	2						2
GAEC7**			1	1			2
Inspection refusal			1				1
Obvious error		1					1
<b>CARRIED FORWARD</b>	<b>34</b>	<b>26</b>	<b>27</b>	<b>14</b>	<b>16</b>	<b>0</b>	<b>117+6</b>

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Payment on additional land		1					
LFACA Forage Penalty		1					
LFACA Duplicate field	1						
LFACA Over-declaration	1	1					
LFACA late claim		1					

TOTAL 36 30 27 14 16 0

1  
1  
1  
2  
1  

---

123

\*GAEC6: Maintenance of Soil Organic Matter Level through Appropriate Practices Including Ban on Burning Arable Stubble, Except for Plant Health Reasons

\*\*GAEC7: Retention of Landscape features

**E2. Number of Applications upheld by Independent Panel and accepted by DAERA**

2015 - 2020 = 25 (of which 13 PARTIAL UNDERWAY)

2015

Category	Number
Over Declaration	6*
NICMS	2**
Debt Recovery	1***
GAEC6	1****
LFACA Over Declaration	1

of which  
11 (10 PARTIAL)

Total - 11

\*In 5 cases the Panel recommended the decision to be partially upheld and the Department accepted this recommendation.

\*\*In one case the Panel recommended the decision to be partially upheld and the Department accepted this recommendation

\*\*\* In this case the Panel recommended the decision to be partially upheld and the Department accepted this recommendation

\*\*\*\* In this case the Panel recommended the decision to be partially upheld and the Department accepted this recommendation

2016

Category	Number
Over Declaration	1

Total - 1

In this case the Panel recommended a partial change to the original decision which the Department accepted.

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2017

Category	Number
Business Change	1
Late Claim after June closing date	1
Overpayment*	1

3 (1 PARTIAL) of which

Total – 3

\*In this case the Panel recommended to fully uphold the decision however the Department only agreed to partially uphold the original decision.

2018

Category	Number
NICMS*	1
ANC Overpayment*	1
Separateness	1
Inspection refusal	1

4 (2 PARTIAL) of which

Total – 4

\* In these cases the Panel recommended a partial change to the original decision which the Department accepted.

2019

Category	Number
Separateness	4
Confiscation of entitlements*	1
Stocking density	1

6 (1 U/W) of which

Total – 6

\*In this case the Panel have recommended that this decision should be upheld. It is currently still under consideration by the Department

2020

NIL

**E3 Number of Applications upheld by Independent Panel and NOT accepted by DAERA**

2015 - 2020 = 16 (of which 4 PARTIAL)

2015

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Category	Number
Over Declaration *	5
Debt Recovery	1
Determined land area**	1

of which  
7 (3  
Partial  
Recommendation)

**Total – 7**

\*In two cases the recommended that the original decision be partially upheld. The Department did not accept the recommendation.

\*\*In this case the Panel recommended the original decision be partially upheld. The Department did not accept the recommendation.

2016

Category	Number
LFACA Stocking density	1
Obvious error	1
Debt recovery	2

4

**Total – 4**

2017

Category	Number
NICMS	1

1

**Total - 1**

2018

Category	Number
Notification of payment letter	1
Overpayment*	1
CSMS*	1

of which  
3 (2  
Partial  
Recommendation)

**Total - 3**

\*In these cases Panel recommended that the original decision be partially overturned. The Department did not accept the recommendation.

2019

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Category	Number
Underpayment*	1

**Total - 1**

\*The Panel recommended that the original decision be fully overturned. The Department did not accept this recommendation

2020

NIL

Unfortunately due to the nature of some decisions reviewed, the Department is unable to provide the monetary value of these claims listed at point E3 above. The Department does not calculate or hold information on the initial value of a claim that a business could potentially be awarded. Once a claim is validated, the amount due is calculated through the payment system, based on the completion of various validations and checks for potential penalties. We cannot manipulate or reverse engineer the system to provide these figures.

However, where a debt or overpayment has been raised as a result of a decision, the Department can provide these figures.

Please see below details of value of cases that the Department can provide:

Year	£1 - £5000	£5,001 - £10,000	£10,001 - £15,000	£15,001 - £20,000	£20,001 - £25,000	£25,001 - £50,000	£50,001 +
2015	1						
2016		1		1			
2017	1						
2018	2	1					
2019	1						

2015

**1 Debt Recovery: £1 - £5000**

2016

**2 Debt Recovery: 1 case £5001 - £10000  
1 case £15001 - £20000**

2017

**1 NICMS: £1- £5000**

2018

**1 Notification of payment letter: £1 - £5000  
1 Overpayment: £5001 - £10000  
1 CSMS: £1 - £5000**

2019

**1 Underpayment: £1 - £5000**

2020

NIL

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## DAERA Annual Report and Accounts -2019 / 2020 published 5 Nov to NI Assembly

DAERA Annual Report and Accounts 4/15/2020

### **Pillar 1 Payments**

Page 140.  
Paying

An EU 'Letter of Findings' of 21 January 2020, following an EU Entitlements Audit in October 2019, included four observations of deficiencies in key controls in three areas. The findings engaged a provisional flat rate EU disallowance flat rate correction of 10% on the EAGF (Pillar 1 payments) fund.

Successful discussions with the Commission, including during a bi-lateral meeting on 18 June, has reduced the flat rate correction to 5% and limited it to Young Farmer/New Entrant scheme payments.

The Department continue to engage with the Commission, and work is ongoing to provide further data to them by 6 October 2020, that it is anticipated will reduce this figure even further. At this stage the final disallowance figure cannot be quantified resulting in a contingent liability.

### **2015, 2016, 2017, 2018 & 2019 Direct Payments cases with eligibility decisions yet to be taken**

The Department has not provided for or accrued any amounts in respect of the 2015, 2016, 2017, 2018 & 2019 Direct Payment for applications that have not yet been deemed eligible. The Department does not yet have sufficient information to reliably estimate what the liability in these cases will be. These comprise of outstanding Review of Decision cases and businesses that are still to have their eligibility determined. Based on each farm businesses main entitlement value award and their claimed areas these businesses could be due payment if found to be eligible, in the region of £964k. However, given the historic success percentage of determining eligibility under the various outstanding groups, this liability is more likely to be £666k. As this is a scheme that is fully funded by the EU, the amount due to farmers may be fully recoupable by the Department from the EU.

### **Legacy Agri-environment Agreements**

The Department has a number of Legacy Agri-environmental Agreement claims. Some of these claims have progressed and will be paid in 2020-21. Other claims are still being assessed and it is expected that the total value of claims outstanding will not exceed £600k

### **Backdated Holiday Pay**

The Department has a contingent liability related to the backdated holiday pay. A provision has been provided for based on the DoF calculated amounts due for pay and employers national insurance. However, there are still very significant elements of uncertainty especially over the pension liabilities as there has been no agreed way of dealing with the pension element of the settlement which could be a significant part of the costs. There are other uncertainties about the estimates due to the lack of accessible data for years previous to 2011, the issue has yet to be negotiated with unions, there is no agreement

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### 18.1 Litigation and Other

Provisions above relate to compensation and associated legal costs relating to personal injury claims by employees and the public as well as commercial legal claims.

### 19 Contingent liabilities disclosed under IAS 37

*The Department and its agencies have the following quantifiable contingent liabilities:*

#### **European Agricultural Fund - Potential Disallowance for 2013, 2014, 2015, 2016**

In previous Financial Years, the financial statements have included disallowance accruals in respect of area aids on the basis that the Commission have identified control weaknesses during previous audits. Under the relevant regulations, this gave the Commission the right to apply disallowance in subsequent years until it was satisfied that the control weaknesses had been addressed. In May 2018, the Commission issued its findings of the 2017 EAF which did not refer to the 2013, 2014, 2015 or 2016 years. The lack of reference to these years and the advice received from the UK CoBody has led to fundamental uncertainty regarding both the timing and amount of any such liability. Consequently, the accrual of £23.1m for the 2013 and 2014 years which was removed from the 2016-17 financial statements and the £26.4m for 2015 and 2016 which has been removed from the 2017-18 financial statements. The Commission could still audit the 2013, 2014, 2015 and 2016 scheme years and apply a financial correction however that possibility is considered remote.

#### **2015, 2016 & 2017 Area Aids cases not yet processed**

The Department has not provided for or accrued any amounts in respect of the 2015, 2016 & 2017 Area Aids schemes for applications that have not yet been deemed eligible. The Department does not yet have sufficient information to reliably estimate what the liability in these cases will be. Based on a broad assessment of potential entitlements these businesses would be due payment if found to be eligible, the Department estimates that there are approximately 173 cases with a potential total amount due of £2.3m however as the majority are review cases and based on the average rate of 10% for successful reviews this liability is more likely to be £230k. As this is a scheme that is fully funded by the European Union, the amount due to farmers will be fully recouped by the Department from the European Union.

#### **Legacy Agri-environment Agreements**

The Department has a number of Legacy Agri-environment Agreements, for which, while the Agreements are no longer live, claims for payment of grant could still be submitted. There are a variety of reasons why these claims have not been submitted, including for example unresolved probate cases where it has not been possible to submit a claim.

These claims if received have an EU and a National element. While the total value will not exceed £440K, it is not possible for the Department to estimate the value of the claims that might still arise or their timing.

**The Department has entered into the following unquantifiable contingent liabilities.**

#### Unpaid Single Farm Payment applications

The Department had assessed a number of cases from 2005 to 2014 in respect of Single Farm Payment for which no payment has ever been made. There are a variety of reasons why a claim may not have been paid; for example, cases subject to appeal or incorrect details being provided which prevented the payment from processing. The Department is seeking additional resource to assign to working on these historic Single Farm Payment cases with the aim to finalise them prior to Brexit. However, at this stage it is not possible for the Department to estimate the payments that could result annually from these historic claims until each case is assessed. However, it is likely that as these cases are worked through further payments will be released. As these payments are received from The European Union, they have a nil impact on the Department's financial outturn.

#### Legal Cases

The Department has a small number of legal cases which have not sufficiently progressed for further disclosure to be made.

#### Holiday Pay

There are a number of strategic litigation cases that have been lodged in relation to holiday pay for Northern Ireland Civil Service employees. Given the nature of these cases and stage of the proceedings it is not possible to determine the outcome or to quantify any potential financial impact.

#### UK leaving the EU

The Department has disclosed an unquantifiable contingent liability, further information is provided in the Assembly Accountability Disclosures.

#### 20 Related-party transactions

The Department of Agriculture Environment and Rural Affairs is the parent Department of the Forest Service Agency, the Northern Ireland Environment Agency (NIEA) and sponsors the Agri Food and Biosciences Institute (AFBI); Agricultural Wages Board (AWB) for NI; Livestock and Meat Commission (LMC) for NI; NI Fishery Harbour Authority (NIFHA); and the Loughs Agency of the Foyle, Carlingford and Irish Lights Commission. These bodies are regarded as related parties with which the Department has had various transactions during the year.

# Extracts from legislation – Farm subsidies etc

Farm Subsidies (Review of Decisions) Regulations (Northern Ireland...

https://www.legislation.gov.uk/nisr/2001/391/contents/made

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## Farm Subsidies (Review of Decisions) Regulations (Northern Ireland) 2001

[Northern Ireland Statutory Rules](#) [2001 No. 391](#) [Table of contents](#)

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### **Powers of persons appointed**

12.—(1) Where an application is made under regulation 11, the Department shall appoint such persons as it considers appropriate to review the decision and provide those persons with a copy of—

- (a) the application;
  - (b) the decisions under regulations 7 and 10; and
  - (c) any document or note of evidence produced or taken in relation to the earlier reviews by the Department.
- (2) The persons appointed under this regulation shall review the decision and may—
- (a) consider any document or other evidence produced by the applicant or the Department (whether or not that document or evidence was available at the time of taking the decision under regulation 7 or 10);
  - (b) invite the applicant and the Department to provide such further information relevant to the review as the persons appointed consider appropriate; and
  - (c) give the applicant and the Department an opportunity to give evidence and to make representations in person or through a representative.
- (3) Following their review of the matter the persons appointed shall report to the Department—
- (a) their findings in fact on the matter; and
  - (b) their recommendations as to the determination of the application having regard to the law applicable to the facts.
- (4) Having considered the matters reported to it under paragraph (3) the Department may—
- (a) confirm its decision;
  - (b) amend or alter its decision in any respect which it considers appropriate; or
  - (c) revoke its decision in its entirety and substitute a new decision.
- (5) In coming to its decision in accordance with paragraph (4) the Department shall have regard to the findings and recommendations reported to it by the persons appointed under this regulation but is not bound to follow all or any part of such findings or recommendations.
- (6) The Department shall give its decision under this regulation as soon as practicable in writing and where it does not adopt the findings and recommendations reported to it shall set out—
- (a) the relevant facts upon which its decision is based;
  - (b) the reasons for its decision;
  - (c) its reasons for not following in whole or in part the findings or recommendations of the persons appointed; and
  - (d) the effect of its decision on the payment or non-payment of subsidy.
- (7) Where the Department decides in accordance with paragraph (4)(b) or (c), the fee referred to in regulation 11(3) shall be refunded to the applicant.
- (8) The Department may make such payment, by way of fee or reimbursement of expenses, to any of such persons appointed under paragraph (1), as appears to it to be appropriate.

### **Notification of decisions**

13.—(1) A decision under regulation 7, 10 or 12 shall be notified to the applicant as soon as practicable after it is made by recorded delivery post to the address shown on the application for review.

(2) In the case of a decision under regulation 12, the findings and recommendations of the persons appointed shall be notified along with the decision.



## **Westminster - Direct Payments to Farmers (Legislative Continuity) Bill**

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*These Explanatory Notes relate to the Direct Payments to Farmers (Legislative Continuity) Bill as brought from the*


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# IRISH FARMERS JOURNAL



**IRISH COUNTRY LIVING**

## A STROKE OF GENIUS

Sarah Lennon's journey from showjumper to artist



Alistair Barclay from Dunloy, John Heggarty from Ballymoney and Denis Taylor from Coleraine check out the pens at the Burnview and Crewe-lands Suffolks sale of in-lamb females in Maghera, Co Derry this week. \ Houston Green

**DAERA lose active farmer court case**

NEWS >>> 7

# DAERA lose active farmer court case

DAVID WRIGHT  
NORTHERN EDITOR  
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A Co Down farm business that decided to challenge DAERA on a decision to exclude it from the Basic Payment Scheme (BPS) in 2015 has won its case and had payments reimbursed and costs awarded, the *Irish Farmers Journal* understands.

The case involved the late Michael Calvert from Barnwell Farms in Greyabbey, who submitted a Single Application Form (SAF) in 2015 to establish entitlements on 72.9ha of land.

Operating an arable and beef farming operation, Mr Calvert was well known in the area, having been named the UK's most wildlife-friendly farmer in the annual Nature of Farming Awards in 2009.

However, in 2013 he suffered a back injury and was forced to sell his cattle, so by 2015 was mainly growing grass for sale (by cutting or grazing) to other farmers.

He was initially excluded from the scheme after DAERA queried whether he met active farmer requirements, and asked him to provide more



Some of the land was being used to grow grass for sale to other farmers

evidence. In 2016, the applicant was interviewed by Department officials, and while they accepted that he was undertaking some farming activity, they concluded it was not evident that he had decision-

making powers on all of the land claimed on the 2015 SAF. Mr Calvert applied for a Stage 1 review of that decision in April 2016, and supplied further information and evidence later that year. However, the

Stage 1 review panel concluded that the decision should not be changed, citing concerns around how grass yields had been estimated when sold to local farmers. It took until August 2018

for the case to get to a Stage 2 review by an independent panel, and by that stage Mr Calvert had passed away, and was being represented by his nephew, Robert Calvert, who had also taken on the running of the farm.

This independent panel hearing was attended by Robert Calvert, along with UFU technical officer Gillian Cheatley, who had prepared and lodged a report to the panel in support of the applicant's case.

The independent panel found in favour of the applicant, concluding that there was sufficient evidence that Barnwell Farms is an active farm.

However, the final decision still rests with DAERA's Head of Paying Agency, and as has happened in other cases that have been taken to Stage 2 review, the Department decided not to accept the independent panel's recommendation.

## Costly battle

At that stage, most farmers decide to step away, as the only remaining option is a potentially costly legal battle by way of a judicial review.

However, Barnwell Farms

opted to pursue the case.

Delivering her judgement, High Court Judge Mrs Justice Keegan found in favour of the applicant, directing the Department to reconsider its decision to exclude the farm business from the BPS scheme.

In her consideration, Justice Keegan made clear that the onus is on a claimant to provide the necessary evidence to DAERA to prove that they are actively farming, and ultimately the Department does have a large measure of discretion when determining these issues.

But crucially, she highlighted the decision by DAERA to go against the recommendation of the independent panel, which had been informed by the technical expertise provided by Ms Cheatley. In particular, Justice Keegan said that there was an obligation on DAERA to explain why the analysis of the independent panel was not followed.

It is understood that DAERA has now made payments covering the scheme years 2015 to 2019, worth over £80,000, and also agreed to cover a proportion of the applicant's court costs.

# DAERA pays out in active farmer case

Barnwell Farms have received direct payments in full going back to 2015

**DAVID WRIGHT**  
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A Co Down farm business that won a judicial review against DAERA has now received full direct payments going back to 2015, but remains in dispute with the Department around other costs related to the case.

As revealed in last week's edition (dated 14 November), Barnwell Farms in Greyabbey took the case after top officials in DAERA decided to go against the recommendation of an independent panel at a Stage 2 review.

The case centred on a decision to exclude the original claimant, Mr Michael Calvert, from the scheme in 2015 under active farmer rules.

He had suffered a back injury in 2013 which forced him to sell his cattle, so when the new CAP system became operational in 2015 he was mainly growing grass for sale.

Having been excluded, he



With no direct payments, and significant legal costs, Barnwell Farms was unable to buy cattle

## Poots won't be going against a review panel

NI Agriculture Minister Edwin Poots has told his DAERA officials that during his tenure in office he will not be going against the view of an independent panel at Stage 2 review.

Answering questions in the Stormont Assembly chamber on Tuesday, the minister was asked by his DUP colleague Wil-



**DAERA  
Minister  
Edwin  
Poots**

liam Irwin for his view on cases where the Department has gone against the recommendation of

sought a Stage 1 review (by DAERA officials) in 2016, which proved unsuccessful. However, at Stage 2 review the independent panel found in favour of Barnwell Farms. By then, Mr Calvert had passed away, with the running of the farm taken on by his nephew, Robert Calvert.

While the Calvert family assumed the case was now resolved, DAERA decided not to accept the decision of the independent panel. A judicial review followed, and in the High Court, Judge Mrs Justice Keegan found in favour of Barnwell Farms.

Speaking to the *Irish Farmers Journal*, Robert Calvert explained that the family had been determined to fight on, partly in memory of his un-

with no direct payments, and significant legal costs, Barnwell Farms was unable to buy cattle



The late Michael Calvert from Barnwell Farms.

cle. "Even when he was very ill I remember him telling us to leave no stone unturned, as they were basically calling him a liar. He saw it as an abuse of power," he said.

With hefty legal bills, no farm payments and no outside financial support, accounts for the business show it sustained significant financial losses.

"There wasn't the funds to invest in cattle. The farm was being driven out of active farming," said Robert.

He confirmed that payments have now been made in full for the years 2015 to 2019 (totalling £85,628), and in addition, 2020 payments have been received.

However, after five years of emotional and financial stress

on his family and especially his aunt, they remain unhappy with an ex-gratia payment from DAERA.

That payment is to cover consequential losses such as lost interest on payments, and comes to £4,077. It is based on compound interest at the Bank of England rate, plus 1%. A further £500 was also paid to cover "miscommunication" in the case.

Barnwell Farms argue that interest rates paid by farmers on overdrafts and loans have probably been closer to 7% in recent years, so a more reasonable ex-gratia payment would be £20,000.

It is also understood that while DAERA have covered a

proportion of the Calvert family's legal costs, there is still a shortfall of approximately £22,000.

#### Below inflation

The family has been supported throughout by Strangford MP Jim Shannon, who argues that the ex-gratia payment made by DAERA is unacceptable.

"It seems quite wrong that DAERA Permanent Secretary Dr Denis McMahon believes that a below-inflation payment of £4,077 is an appropriate interest rate.

"This is equivalent to a £2 single cup of tea per day since May 2015," he told the *Irish Farmers Journal*.

the recommendation of this panel.

#### Frustration

In reply, Minister Poots outlined his own frustration when he had supported a constituent at Stage 2 review, only for the claimant to receive a letter signed off by the minister at the time saying that DAERA was not accepting the independent panel's view.

"I have made it clear to my officials that I will not be overturning the decisions of an independent panel. When an independent panel makes a decision, it is the final decision," he said.

## Question marks over the review process

The Barnwell Farms case is not the first time that a claimant of farm direct payments has ended up in the High Court after DAERA went against the view of an independent panel at Stage 2 review.

In a high-profile case that dated back to a pollution incident in late 2011, the UFU funded a judicial review brought by former president Ian Marshall. He had a 55% penalty applied to his single farm payment due to an intentional breach of cross-compliance rules.

However, Marshall argued that it was a negligent breach, so the penalty should have been between

1% and 5%. An independent panel at Stage 2 review found in his favour, and recommended the penalty be changed.

But DAERA decided not to take that advice, and continued to apply the intentional penalty.

In February 2017, a High Court judge ruled that the original DAERA decision-making process was "unlawful", and told the Department to review the case. After doing that, DAERA decided that its original decision was correct.

The UFU then sought a second judicial review, although this was eventually dropped when DAERA finally accepted the view of the independent panel.

Total legal fees in the Marshall

case are thought to have run to over £300,000.

#### Changes proposed

In the meantime, DAERA was making changes to its review of decisions process for area-based schemes. Citing the length of time it was taking to reach final decisions, in April 2018 it introduced a new arrangement, dropping the independent panel, leaving a single stage review by a case officer from the Department.

That prompted another legal challenge by the UFU by way of a judicial review.

Both sides settled out of court later that year, agreeing that the Stage 2 independent panel should

be retained, but with some conditions attached. Those included that users of the panel are charged an increased fee of £200 (a fee due to be reviewed) and that the final decision on an individual case rests with the Department.

So it remains the situation that the only option for a claimant unhappy after a Stage 2 review is to seek a judicial review through the High Court or, if the applicant believes procedures have not been followed correctly, to take the case to the NI Public Services Ombudsman.

#### Wrong process

Strangford MP Jim Shannon believes the independent panel is an

important part of the DAERA decision making process.

He said: "The attempt by DAERA, whilst the NI Assembly was dissolved, to eliminate them in late 2017/2018 was quite wrong. Equally, the next step in any appeal being a costly judicial review is the wrong process given its limitations, including its inability to consider the actual farming evidence. Post-Brexit, this all needs to be properly addressed."

Back in 2016, the Department confirmed that 810 applicants were rejected for not meeting active farmer requirements. It is understood that since 2015, a total of 64 active farmer cases have made it to a Stage 2 review.

# Northern Comment

**David Wright**  
dwright@farmersjournal.ie



## Only one winner in a judicial review

Since area based schemes were first introduced in 2005 the Department has had a two stage review of decisions process in place for applicants who believe that officials have made a wrong decision in their individual case.

It should be noted that there is no requirement in

EU law for DAERA to have this in place - it is something that all parts of the UK have done as part of promoting good governance.

To be fair to the Department, the vast majority of farmers are treated fairly, and never have any need to seek a review. But in a small number of cases, there are examples where farmers feel

very aggrieved by the length of time the review process takes, and ultimately the final decision made.

That is most acute when an independent panel at Stage 2 makes a recommendation in favour of the applicant, only for a senior DAERA official to decide to stick to their original decision.

### Only option

At the end of any review process, the only option left is a judicial review of the case in the High Court. That could easily cost an individual farmer £100,000. But there is no guarantee of a win, and even if you do, no guarantee that all your costs will be paid. Most people walk away at this point.

However, there are now two cases where an applicant has successfully challenged by way of a judicial review after DAERA did not accept the view of the inde-

pendent panel. The first, the UFU funded Ian Marshall case was over cross compliance penalties relating to a pollution incident. The second, the Barnwell Farms case highlighted over the last two weeks, related to an active farmer ruling.

The upshot of the Barnwell Farms case was a statement made by Minister Edwin Poots last Tuesday when he said that on his watch, the decision made by the panel will be final.

Looking ahead it is very difficult to see how DAERA can justify any future decision to go against this independent panel. Whether similar historic cases now come forward remains to be seen.

But hopefully this is now the last case of its type. The only winners in a judicial review are the legal profession. It isn't farmers, DAERA or the UFU, and most certainly isn't the public purse.

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# IRISH FARMERS JOURNAL

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Half a million pounds spent on legal battles

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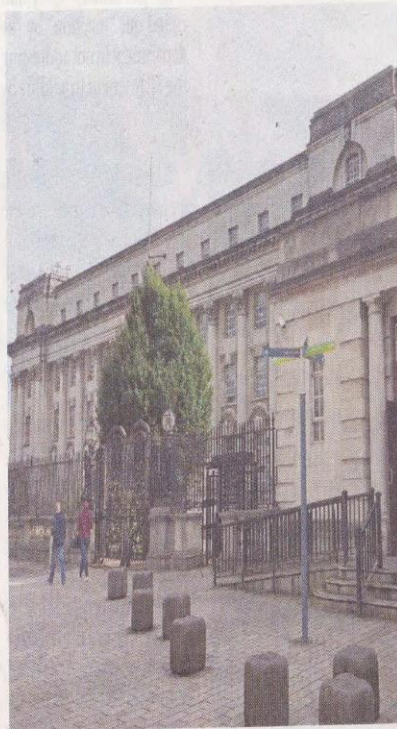
## Half a million gone on legal battles

**DAVID WRIGHT**  
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dwright@farmersjournal.ie

Five legal cases related to area-based schemes, which ended up contested by way of a judicial review, had associated legal costs of well over £500,000 the *Irish Farmers Journal* can confirm.

The information has been obtained by Strangford MP Jim Shannon, working on behalf of his constituent, Barnwell Farms. The Greyabbey farm business recently won an active farmer case against DAERA (see page 7 of edition dated 14 November 2020).

Three of the other four cases were taken by the Ulster Farmers Union (UFU), with the first two being judicial reviews brought on behalf of its former president, Ian Marshall,



The High Court in Belfast.

### Question marks over historic cases

In most instances where DAERA has not accepted the view of the independent panel at Stage 2, claimants are understandably reluctant to pursue a legal battle by way of judicial review.

However, Jim Shannon believes that the Marshall and Barnwell Farms cases set a precedent, both for similar appeals going forward and potentially for historic cases.

Notably in the Assembly chamber earlier this month, Agriculture Minister Edwin Poots said that he would not be overturning future recommendations made by

this panel.

"While Dr McMahon is not obliged to do so retrospectively I would hope, indeed expect, that he will sympathetically consider retrospective cases. Or at the very least, be prepared to promptly discuss an 'historic cases' policy with Minister Poots, the DAERA Assembly and us," said Shannon.

#### Independent panel

In the meantime, it is not clear how many cases there are where the independent panel ruled in favour of the claimant only for DAERA to

stick to its original decision, and whether these people want their case looked at again.

#### NIAPA

Welcoming the statement made by Minister Poots, Jim Carmichael from the NI Agricultural Producers' Association (NIAPA) said that his organisation has always held the view that the decision of the independent panel should be final. "If someone feels hard done by and would like their case looked at again, they can get in touch with us and we will talk to them," he said.

claimant. Despite that the Da-

Noel Laverty left him with a

On that basis, he questions

aged to recover around

brought on behalf of its former president, Ian Marshall, and related to a pollution incident on his Markethill farm.

The third judicial review was a legal challenge by the UFU into a decision by DAERA to change its review of decisions process for area based schemes. That leaves an "active farmer" case taken by a Fermanagh business that was settled before getting to a substantive hearing.

"The costs of a judicial review are totally outrageous. These five cases have cost the taxpayer over £300,000, the UFU over £230,000 and my constituent, Barnwell Farms over £22,000," Jim Shannon told the *Irish Farmers Journal*.

He questions whether any of these cases should have ended up in the High Court. In the Ian Marshall and Barnwell Farms cases, in both instances an independent panel at Stage 2 review had ruled in favour of the

### The High Court in Belfast.

claimant. Despite that, the Department did not accept that advice, and stuck to its original decision. Ian Marshall had significant penalties applied to his Single Farm Payment. In the Barnwell Farms case, it was excluded from the Basic Payment Scheme from 2015 under active farmer rules.

Both won their case in the High Court, although Marshall had to go back a second time before the Department agreed to accept the view of the independent panel.

"As the DAERA Permanent Secretary, Dr Denis McMahon knows from my previous correspondence, I firmly believe that on receipt of the Barnwell Farms pre-action protocol letter in April 2019, he should not have proceeded with that case," said Shannon.

However, he also maintains that McMahon's predecessor,

Noel Lavery, left him with a "poisoned chalice" by way of the second judicial review into the Marshall case, and the third legal action taken by the UFU on the review of decisions process.

That third judicial review challenged a decision by DAERA to remove the Stage 2 independent panel from the review of decisions process. The Department and the UFU settled outside court, agreeing that the independent panel would be retained, but the final decision in any dispute rested with DAERA.

However, Shannon maintains that DAERA was wrong to have made the initial change to the review of decisions process given that it was at a time when the Assembly was dissolved. In addition, farm lobby groups responding to a consultation in 2017 opposed the change.

On that basis, he questions why officials apparently allowed the matter to proceed to the steps of the High Court.

In the end, both sides agreed to cover their own legal costs. However, Shannon has now established that DAERA legal costs came to just over £10,000, but the UFU managed to run up a legal bill of around £108,000. He has called on McMahon to make an ex gratia payment to the UFU of £99,950 for what he believes was an "unlawful elimination of the independent panel" and a "wholly unnecessary challenge".

### Paid out

Across the three cases taken by the UFU, it paid out £371,000 of legal costs, compared to an equivalent figure of just under £71,000 for DAERA.

Despite the UFU effective-



Strangford DUP MP Jim Shannon.

ly winning the Marshall cases, the Department only covered a proportion of opposition costs, disputing the amount the union spent on specialist barristers.

To date, the UFU has man-

aged to recover around £140,000 of its costs from DAERA in the Marshall cases.

That leaves an overall deficit across all three judicial reviews of £231,000. It is understood that the UFU is pursuing an appeal of the costs awarded in the first judicial review case, where arrears of around £70,000 remain.

In the two other judicial reviews, Shannon has established that DAERA legal costs in the Fermanagh case were £3,663, and in that brought by Barnwell Farms, the costs came to £19,320. However, the total legal fees for the Calvert family (Barnwell Farms) came to £85,125. Of this, DAERA has reimbursed £62,664, leaving a deficit of around £22,000, which is still in dispute.

"The legal profession are the only winners in a judicial review," said Shannon.



# DAERA at odds with independent panel

DAVID WRIGHT

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In around 40% of cases that made it to Stage 2 of the review of decisions process for area-based schemes, an independent panel ruled either partially or fully in favour of the applicant, analysis of relevant data shows.

The figures, obtained by Strangford MP Jim Shannon by way of a series of freedom of information requests, show that since 2014-2015, nearly 300 cases have been taken to a Stage 2 review.

Of these, 182 instances the independent panel agreed with the arguments presented (either in writing or orally) by a claimant and recommended that the review be upheld in full. In a further 29 cases the panel concluded that the review be partially upheld.

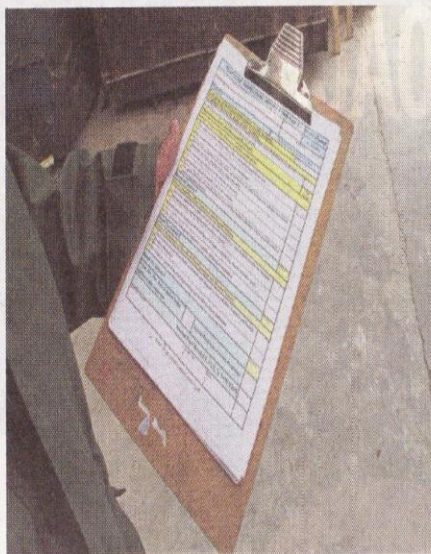
However, in the review of decisions process, the final decision has historically rested with DAERA. Our analysis shows that in over one-third of these cases the Department did not accept the view of the independent panel.

In total, there were 30 instances since 2015 when the panel fully upheld a review, only for DAERA officials to not accept that recommendation, and stick with its original decision. There are also an additional 13 cases where the panel partially upheld the review, but this was not accepted by DAERA, and a further six where the panel fully upheld the review, only for the Department to only partially accept these recommendations.

Given the recent judgement in the judicial review taken by the Co Down-based Barnwell Farms, Jim Shannon believes that there is an argument to look again at these cases, and in particular those where the Department rejected the view of the independent panel.

As reported in the edition dated 14 November, Barnwell Farms sought a judicial review after finding itself in this situation. In her judgement, Justice Keegan ruled in favour of Barnwell Farms, stating that there was an obligation on the Department to explain why the analysis of this panel was not followed.

Only last month, Agricul-



A significant number of cases taken to Stage 2 review relate to penalties applied to direct farm payments as a result of a breach of cross compliance rules

ture Minister Edwin Poots told MLAs at Stormont that he will not be going against the view of the independent panel.

The information obtained from DAERA shows that there are currently nine recent instances where the panel has ruled in favour of the applicant, that are still "under final consideration" by the Department.

## Split

In terms of the split of cases taken to Stage 2 review since

2014-2015, a total of 64 were disputes around "active farmer" status, 41 related to young farmer payments and 66 involved cross-compliance penalties due to breaches of statutory management rules (SMRs).

That leaves over 100 other cases across a wide range of issues including land eligibility, duplicate fields and the NI Countryside Management Scheme.

Applicants who sought a review of a decision around "active farmer" status were

most likely to have their case upheld by the Independent Panel. Nearly two-thirds of these were upheld at Stage 2 review. By contrast, nearly 80% of reviews sought relating to the young farmers' payment, were rejected by the panel.

## Consultation

Commenting, Jim Shannon said that he appreciated the helpful and detailed responses to his requests provided by the Department.

However, he also believes that the information provides further weight to his argument that the decision to change the review process in 2018 was flawed.

In that change, DAERA decided to drop the Stage 2 review, which prompted a legal challenge by the UFU. In the end, the UFU and DAERA settled out of court, agreeing that the panel should be retained, but with some conditions attached. It was a legal challenge that cost the UFU over £100,000.

But in their 2017 consultation document proposing the change, DAERA partly justified dropping the independent

panel on the basis that only 10% of reviews "derive benefit from access to an external panel".

The analysis of the data obtained by Shannon highlights that around 20% of cases taken to Stage 2 were fully or partially upheld by the panel, and either accepted in full, or in part, by the Department. If we add in those cases that were upheld (in part or in full) by the panel, but rejected by DAERA, this figure rises to nearly 40%.

## Survey

As yet it is not clear whether claimants who had a positive outcome from the Stage 2 review, subsequently turned down by DAERA, will be looked at again.

It is understood that a draft survey has been circulated by Jim Shannon's team to farm lobby organisations and local agricultural consultants in an attempt to establish who these people are, and whether they want to come forward. The survey also asks about "live" cases that remain unresolved going back to when area based payments were first introduced in 2005.

## Survey

1. Do you have a recommendation in your favour from a second stage independent panel to DAERA for which you are still awaiting a DAERA decision as to whether they accept it?
2. Did you have a second stage independent panel decision between 2015 - 2020 and subsequently received a letter from DAERA which did not accept that independent panel decision and upheld their original stage 1 DAERA decision?
3. In the DAERA report and Accounts for 2018 the current Permanent Secretary and Accounting Officer, Dr Denis McMahon, records under Unpaid Single Farm payment applications that “The Department had assessed a number of cases from 2005 to 2014 in respect of Single Farm payment for which no payment has ever been made. .... The Department is seeking additional resource to assign to working on these historic Single Farm Payment cases with the aim to finalise them prior to Brexit.” Do you have a “live case” acknowledged by DAERA as still outstanding for that 2005 to 2014?

### 2005 – 2014 information : Further EIC acknowledged by DAERA in letter dated 9 December 2020

**From:** SHANNON, Jim

**Sent:** 7 December 2020

**To:** DAERA ASD FOI

**Subject:** Response for information request

Dear XXXXXXXXXXXXXXX

Thanks for meeting our requirement so that Mr Shannon MP could review your corrected document and new information before departing for Westminster this morning.

All the information you have provided is what we required and note that you are unable to provide the £ values information, without other analysis work, as this would not normally be carried out.

Another element of Jim’s weekend review was in looking through the published DAERA Annual Reports and Accounts for the last five years. As a result he has a further EIR request. In the DAERA report and Accounts for 2018 at P157 the current Permanent Secretary and Accounting Officer, Dr Denis McMahon, records under Unpaid Single Farm

payment applications that *“The Department had assessed a number of cases from 2005 to 2014 in respect of Single Farm payment for which no payment has ever been made. .... The Department is seeking additional resource to assign to working on these historic Single Farm Payment cases with the aim to finalise them prior to Brexit.”*

- A. Can you please advise how many of the 2005 -2014 cases were outstanding as at the end of March 2018 , March 2019, March 2020 and December 2020. Please set out for each year and the nature of those remaining for the “live query” as per previous EIR categories.
- B. How many of these “live cases”, as at March 2017, have an Independent panel recommendation to overturn the Stage 1 decision.
- C. What is the timescale agreed with the EEC re completion and funding of these cases up to 31 December 2020
- D How many equivalent manpower resources within DAERA are allocated to address the closure of these cases and the target date for doing so.

We think you may find at least some of the information in the audit working files prepared for the NI Audit Commission at the end of each financial year.

**POST SCRIPT - 11 December 2020** In response to a number of queries the situation in relation to these two Judgments at the UFU remains the same as set out as part of the analysis at Pages 19 and 22.

7. c£200 funding ex UFU and Technical Officer – Gillian Cheatley – support

4. Former President and UFU Director Mr Ian Marshall did not pay any legal costs? / UFU paid all? JR1 + JR2 legal costs - £263K - recovery of only £140K

## Presidents' Update - county webinar series

UFU president Victor Chestnutt and deputy presidents David Brown and William Irvine update members on the work of the UFU and answer questions live. Click on your county event below to book your place.

[Tuesday 15th Dec – Co Londonderry](#)

[Thursday 17th Dec - Co Down](#)

All meetings will start at 7.30pm sharp via zoom. You will receive your joining details on the day of the event

1... 7 February 2017 UFU Press Release “It is not about pollution or indeed the scale of the incident,” said **UFU Chief Executive , Wesley Aston**, “**the case is whether NIEA and DARD were effectively right to ignore the views of the external independent appeal panel which considered this was a negligent rather than intentional breach and had recommended accordingly.**” *<noting “orbiter dicta” to the seven reasons in the Judgment>* while in late September 2020 he advised Mr Shannon MP that in the Barnwell Farms case “the case details were very specific and were not applicable to the UFU’s wider membership.”

2... While for the UFU.JR3 challenge to the elimination of the second stage independent panels the **UFU Junior Counsel, Fionnuala Connolly BL**, drafted this Court Order with the UFU’s Mr Aston and **McKees Solicitors Partner Andrea McCann.....**



IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
QUEENS BENCH DIVISION (JUDICIAL REVIEW)

BEFORE THE HONOURABLE MR JUSTICE MCCLOSKEY

on Friday the 12th day of October 2018

IN THE MATTER OF AN APPLICATION BY ULSTER FARMERS UNION FOR  
JUDICIAL REVIEW

UPON HEARING Counsel on behalf of the Applicant and Counsel on behalf of the Respondent and upon the grant of leave to apply for judicial review by the Honourable Mr Justice McCloskey on 28 June 2018 in respect of grounds (3) (a), (b) and (d) of the Amended Order 53 Statement dated 17 May 2018,

AND UPON application made to this Court by Counsel on behalf of Ulster Farmers' Union (hereinafter "the Applicant") for Judicial Review of a decision of the Department of Agriculture Environment and Rural Affairs (hereinafter "the Respondent"),

AND UPON the said application being listed for hearing on 12 October 2018,

AND UPON HEARING Counsel on behalf of the Applicant and Counsel on behalf of the Respondent confirming agreement between the parties and consenting to this Order in the following terms:

The Respondent shall retain the Independent Stage 2 Panel appeal subject to the following conditions:

- (a) users of the Independent Stage 2 Panel shall be charged the sum of £ 200.00 said fee to be subject to review by the Department within 18 months;
- (b) users of the Independent Stage 2 Panel shall be entitled to introduce new evidence if either exceptional circumstances or force majeure is, or both are, established;
- (c) the final decision on *any* individual case shall remain with the Respondent;

JROFOL

CO9651884

18/042098

- (d) the Applicant shall engage with other interested stakeholders to encourage their support for this new agreed process;
- (e) an agreed statement from the Applicant and the Respondent promoting this aforementioned proposal in a positive manner shall issue on 12 October 2018.

IT IS ORDERED as follows:

- (a) the application for Judicial Review is dismissed;
- (b) there shall be no order as to costs inter-partes;
- (c) both parties shall have liberty to apply.

Martyn Corbett  
Proper Officer

Time Occupied: 12 October 2018 5 mins  
Filed Date 29 October 2018

JROFOL

The UFU report in April 2019 states that some £108,336 in legal costs was spent from UFU funds on legal costs and all were accepted by UFU CEO Mr Aston in that settlement. Mr Shannon MP established on 16 October 2020 that the DAERA legal costs for JR3 were £10,654 (split between both Counsel of £4,387 and the DSO of £6,267) as it did not go a Substantive Hearing. UFU Counsel paid their Brief fee pre commencement? The relevant law <https://www.legislation.gov.uk/nisr/2001/391/contents/made>. Mr Shannon MP (P38-39) and Mr William Irwin MLA asked that specific JR3 information be provided to the DAERA Assembly Committee for their in the New Year.

3... With the £263K+ UFU funded UFU President and Director Ian Marshall JR1/JR2 case , Mr Aston asserted that **“In this particular case, now that the precedent around proving intent has been established we are pleased that not only will “intent” have to be proven more robustly in future breaches of cross compliance but also that all historic cases may now have to be re-examined.”**

while on 4 December 2020, given that UFU reference above to historic cases being re-examined in 2017 alongside Mr Shannon MP comments to the Irish Farmers Journal (P64) that week on retrospective reviews,

***“While Dr McMahon is not obliged to do so retrospectively I would hope, indeed expect that he will sympathetically consider retrospective cases. Or at the very least be prepared to promptly discuss an “historic cases policy with Minster Poots, the DAERA Assembly Committee and us.” says Shannon.***

DAERA were asked what actually happened after 2017.....on Friday 4 December 2020 they advised Mr Shannon MP that “The Department did not retrospectively review cases following the judgment in this Judicial Review <on 7 February 2017>. However, the department can confirm that detailed lessons learned from the case were developed and disseminated following the Judgment, and officials have applied the findings to the consideration of cases since.”

We note that the Analysis on SMR cases at the independent panel from 2015 at Page 44 show that since the Judgment DAERA record only 2 similar cases (SMR1) which went to an independent panel in 2019. In both cases the independent panel did not recommend that the Stage 1 decision be overturned so DAERA did not have to re- consider these at all.

**While Mr Shannon MP and the Barnwell Farms Directors continue work to support others re Panels.etc:no financial support has been forthcoming from UFU CEO Mr Aston/Board.**

**UFU Solicitors McKees** were taken off the record for the Barnwell Farms case on 5 August 2020. Following information from the Law Society on 19 August a formal complaint was made to McKees Partner, Leonard Edgar. Two meetings on 2 September and 1 October together with extensive documentation have been provided. The Barnwell Farms Directors are copied on a six page report to the four other McKees Partners on 9 November while the Directors have since pointed to detailed information in their complaint which was not addressed in the report. Mr Shannon MP has had some useful exchanges with the NI Bar.

**DAERA Permanent Secretary and Departmental Accounting Officer Dr Denis McMahon** below inflation interest ex gratia payment for the Barnwell Farms (£4077) and UFU/Ian Marshall (c£3000) JR Judgments continues to be unjustified. Other MLAs are pursuing the policy/rationale for the two JR cases, not least more than 5 years +.

It is both unfortunate and disappointing that DAERA/DSO rejected the Barnwell Farms Directors offer last month to split the difference in that legal costs deficit of circa £22k by accepting a final payment to close of £10,679.

We look forward to a constructive engagement with Dr McMahon et al for the future Independent Panel (s) process post BREXIT and in addressing the potential reservoir of 49 retrospective cases from 2015 to date with an appropriate solution with Minister Poots, the DAERA Assembly Committee and the original three 2017 Pre Consultation stakeholders i.e. the NI Agricultural Producers Association (NIAPA), the Agricultural Consultants Association – Northern Ireland (ACA-NI) and, hopefully, Ulster Farmers Union (UFU) Policy, Technical and Communication Manager, Mr McCluggage.

## Introduction - Review of Decisions (Area-based schemes) “Independent Stage 2 Panels” paper

### Final Draft - 15 December 2020

This document has been prepared for the purposes of supporting proposals to DAERA, the DAERA Assembly Committee and NI Assembly MLAs to consider current and future procedures to provide a remedy to farmers with disputes where appeals have been recommended by the independent appeals panel but subsequently refused by DAERA. Furthermore to consider future law options and, perhaps, historic cases.

In compiling it we have drawn on statistics from DEFRA, DAERA and the Government of Scotland Directorate of Agriculture.

This document deals with the numbers of cases where this unsatisfactory situation has occurred and looks at the numbers likely to be involved in the future. It considers the existing legal redress namely judicial review and details its limitations.

Finally the document puts forward generic options available to our NI Lawmakers and the benefits of these.

In October 2020 DAERA paid over £275m in Direct Farm payments to more than 23,172 (97%) “Active Farmers”. It is likely that about half of these are Ulster Farmers Union (UFU) members whilst some may be common with the other 4,500 Member-based organisation, the NI Agricultural Producers Association (NIAPA).

Where farmers believe they have not been treated fairly, there is a two stage Review of Decisions process. The appeals procedure was established as part of promoting good governance across relevant UK government Departments. As a result, a farmer dissatisfied with a decision related to any area based scheme can appeal, and if not successful at the first stage, can access an independent panel at Stage 2, for which the farmer will pay a fee.

Based on DAERA EIR information in October 2020 there have been almost 300 Panels heard from April 2015 to date. The minority were Written Panel assessments while there 186+ Oral Panel assessments. DAERA Income from applicant fees was almost £34K with refunds of about £8K. The Panel expenses and staff costs for the whole period under the old process and new process (from first application on 19 June 2019) totalled less than £150K. So for those applications the net cost was an **average of circa £550** for each stage 2 Application to be heard. (£150K – £26K). Applicant fees under the new process, agreed with the UFU in the UFU.JR3 settlement in September 2018, were increased to £200. This may change again in the future.



In the DAERA 2017 **Consultation on Proposed Changes to DAERA Area Based Schemes review of Decisions process 2017, led by Permanent Secretary and Departmental Accounting Officer Mr Lavery**, within days of that May 2017 decision to uphold their original decision against Mr Marshall in UFU.JR1, DAERA published the following at Para 6.6 of that Consultation “the Department has undertaken some work to analyse the overall impact of the External Panel. An analysis of 100 Stage 2 Decisions *<Consultation does not state over what period or its statistical selection process>*, issued show that in 83% of cases, the Department’s final position was unaffected by the input of the Panel. In a further 7% of cases, the changes applied as a result of panel’s deliberations did not result in any significant material benefit for the applicants. **Therefore only 10% of the Stage 2 reviews (2.5% of all Review of Decision Applications) or under 0.03% of annual area based claimants, derive benefit from access to an External Panel.**”

Five days before Mr Lavery left DAERA, for the Department of the Economy in February 2018, he authorised the elimination of the Stage 2 Independent Panel for 2018 SFP Applications. This was challenged by the UFU.JR3 and the current DAERA Permanent Secretary and Departmental Accounting Officer, Dr Denis McMahon eventually agreed to settle in the summer of 2018, retaining the two stage process with the independent panel whilst doubling the fee.

We have been provided with the Northern Ireland statistics ex DAERA for the period 2015 – 2020, but English statistics for overall panel results indicate approximately one third of appeals are successful with an approximate 50% success rate in Scotland.

Recently Mr Shannon MP and a voluntary advisor to the DUP, Brian Little circulated an underpinning evidence 72 page document entitled **DAERA Judicial Reviews – DFP – chronology/timeline dated 11 December 2020**. Included within it from pages 43 to 52 is the Stage 2 Independent Panel information from 2015 to 2020 for various categories. A further EIR/FoI is underway for response by late December for the number of “live cases” remaining open for 2005 to 2014 as per the 2018 DAERA Annual Report P157.

<https://www.farmersjournal.ie/daera-at-odds-with-independent-panel-588991>

**(P66)** “**DAERA at odds with independent panel**” where Northern Editor David Wright wrote on 12 December 2020 , amongst other items, from this DAERA information

“In around 40% of cases that made it to Stage 2 of review of decisions process for area- based schemes, an independent panel ruled either partially or fully in favour of the applicant, analysis of relevant data shows.

The figures, obtained by Strangford MP Jim Shannon by way of a series of freedom of information requests, show that since 2014-2015, nearly 300 cases have been to a stage 2 independent panel review.

However, in the review of decisions process, the final decision has historically rested with DAERA. Our analysis shows that in over one third of these cases the Department did not accept the view of the independent panel.

**In total, there were 30 instances since 2015 when the panel fully upheld a review, only for DAERA officials to not accept that recommendation, and stick with its original decision. There are also an additional 13 cases where the panel partially upheld the review, but this was not accepted by DAERA, and a further six where the panel fully upheld the review, only for the Department to only partially accept these recommendations. < The “Almost 50 --- 30 + 13 + 6 or around 20% of the total Stage 2 cases>**

Given the recent judgment in the judicial review taken by the Co Down – based Barnwell Farms , Jim Shannon believes that there is an argument to look again at these cases , and in particular those where the Department rejected the view of the independent panel.

As reported in the edition dated 14 November 2020, Barnwell Farms sought a judicial review after finding itself in this situation. In her judgment Justice Keegan ruled in favour of Barnwell Farms, stating that there was an obligation on the Department to explain why the analysis of this panel was not followed.

**But in their 2017 consultation document proposing the change, DAERA partly justified dropping the independent panel on the basis that only 10% of reviews “derive benefit from access to an independent panel.”**

The analysis of the data obtained by Shannon highlights that around 20% of cases taken to Stage 2 were fully or partially upheld by the panel, and either accepted in full or in part by the Department. **If we add in those cases that were upheld (in part or in full) by the panel, but rejected by DAERA, this figure rises to nearly 40%.”**

While the NI Assembly was dissolved former **Chair and current Member of the NI Assembly DAERA Committee, Newry & Armagh DUP Assemblyman William Irwin MLA**, was reported in Farming Life in August 2018 as saying he was concerned by the response of DAERA officials to a Stage 2 Review of Decisions Application Panel Hearing on a 2016 Young Farmer's Payment Scheme/Regional Reserve application. **Mr Irwin attended the Panel hearing in support of one young farmer and said that despite the panel recommending the decision be changed, the department rejected the view of the panel members;**

something Mr Irwin said “rubbed the work and authority of the panel”. He concluded: “The only option now open to the young farmer is a Judicial Review, which would cost many thousands of pounds and sadly is not a realistic next step for the young person concerned. In other parts of the United Kingdom Departmental staff seem much more willing to act with a more strategic outlook, which is primarily about agri-food sector success rather than the current trend within DAERA to erect barriers to growth and as in this case, prevent young farmers from progressing in farming. That attitude needs to change and the Department needs to take on board Panel decisions and implement recommendations. I have requested a meeting with the DAERA Permanent Secretary to put these matters directly to officials and ensure farmers concerns are heard.” From the DAERA information we know his constituent is likely one of four in the time period.

While in the NI Assembly on Tuesday 17<sup>th</sup> November 2020 Mr William Irwin MLA went on to ask DAERA Minister Mr Edwin Poots MLA ..... extract from Hansard *(bolden our emphasis)*  
<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2020/11/17&docID=315841>

**I have a number of pieces of legislation that I intend to bring forward, but I do not think that I can achieve an agriculture Act in the proposed lifetime of the current Assembly.**

**Mr Irwin:** I thank the Minister for his statement and his vision for the future of agriculture. It is clear that the Minister has a wide knowledge of grassroots agriculture. Minister, you said that you would look at cross-compliance penalties. There has been an issue in the past, of which the Minister will, I am sure, be aware, whereby penalties applied to farmers were appealed. **The farmers went to an independent panel which, in some cases, adjudicated and supported the farmers, but the Department refused to agree to the independent panel's decision. What is the Minister's view on that?**

**Mr Poots:** I used to find it incredibly frustrating when, having represented a constituent who, having won a case at an independent panel, received a letter from an Agriculture Minister — generally, the Agriculture Ministers were named Michelle at the time — indicating that they were overturning the decision of the independent panel. **I have made it clear to my officials that I will not be overturning the decisions of an independent panel.** Why have an independent panel look at these things, give an assessment of how the Department came to its point of view on what the individual who made the claim had done, arrive at a conclusion on the information presented, only then for a pen to be put through that decision?

**It is entirely inappropriate and I will not be doing that. I have made it clear to officials that, when an independent panel makes a decision, it is the final decision.”**

So currently an unfavourable decision from DAERA following a favourable panel recommendation for these cases left the applicant with no further remedy other than by way of judicial review (JR). 3 went to JR. UFU funded £263K for their former President Mr Marshall at UFU JR1 and JR2 at which Mr O’Brien BL was Junior Counsel to Senior Counsel Mr Mercer QC. Monies for legal costs totalling in excess of £100k have been expended in the only two cases which went to a full Hearing and Judgment. Additionally Mr Marshall’s case began in December 2011/January 2012 but it was 5+ years later before it reached its Judicial Review Judgment on 7 February 2017 and eventually a final settlement on 28 September 2018. For Barnwell Farms it too was 5+ years, from May 2015 to 31 July 2020.

This takes no account of the non –recoverable time or cash deployed, which for Barnwell Farms Director Robert Calvert his diaries record some 104 hours including 42 hours in legal consultations and court. Furthermore the DAERA Permanent Secretary, Dr McMahon, takes no realistic account of proper consequential losses / alternative profitability which would have taken place in that almost 6 year period – a below inflation sum of only £4077. This against the background that for Barnwell Farms the company would have been no longer a going concern / bankrupt in 2020 without the introduction of £30K in Director Loans from the widowed shareholder.

This is more than the initial sums due under Single Farm Payments and well beyond the financial and time affordability of farmers and natural justice. Based on DAERA information, we can see there was a one–off re-payment in a reduced penalty in his SFPs to Mr Marshall of £46,133. In the case of Barnwell Farms Limited a retrospective SFP payment for 2015 – 2019 of £85,628 was paid in late August 2020.

In those five Agricultural Judicial Reviews re DFP from 2015 to date, DAERA have lost 2 and settled the remainder (UFU.JR2; UFU.JR3; AFF.JR4). Common in those two “losing” Judgments (UFU.JR1 and BFL.JR5) are criticism of the DAERA / personal decision making and rationale / approach / reasons of their top civil servants ...

For example in Ian Marshall - UFU JR1 – 7 February 2017

[https://judiciaryni.uk/sites/judiciary/files/decisions/Marshall's%20\(Ian\)%20Application.pdf](https://judiciaryni.uk/sites/judiciary/files/decisions/Marshall's%20(Ian)%20Application.pdf)

**“The Court will make a declaration that the decision of the decision maker is unlawful as being the result of material mis-direction.** If it is necessary for the matter to be re-decided by the respondent, there will need to be a new decision made by the Head of the Paying Agency <Mr Doherty – Reconsideration –DAERA original decision upheld on 25 May 2017 – see later> or his delegate. Mr Lavery should, in the court’s opinion, not be the decision maker in respect of any further decision, given the views he has already expressed.”

Whilst the Court’s assessment at para 68 included “Fourthly, the Court finds that Mr Lavery did not rigorously consider and set out in his decision what precise evidence there was for the conclusion he reached on the intention of intentionality. In other words, he failed to set out the respects in which he had concluded that the applicant had knowingly breached the SMR in question.....”

Judge Maguire J also commented albeit obiter **regarding the independent panels that DARD “should be reluctant in departing from their recommendation”** after it had written in its conclusion in 2014 **“The Panel concluded that the lack of remedial action taken by Mr Marshall was partly due to the fact that NIEA failed to provide written confirmation of the non-compliance breaches or of remedial actions required after any of their inspections. Because of this the Panel concluded that Mr Marshall was not fully aware of the seriousness of the problem and failed to take reasonable care or skill and foresight and the breach should be classified as “negligent”**.

Similarly in the other full Judicial Review case of Barnwell Farms Limited , whilst Mr Doherty Head of the Paying Agency had read the independent panel recommendation on 3 October 2018 , **“The panel recommends that the Department’s decision in this case should be changed as the panel is satisfied that there is sufficient evidence that Barnwell Farms is an active farm”** and then the BFLJR5 Judicial Review [Read the full Judgment here](#). on 25 March 2020....

At Para 39 “In this case the issue is not the failure to give any reasons but the fact that the reasons do not engage with the core issues raised by the applicant and determined by the independent panel. There is a particular obligation to provide proper reasons under EU law. However, **more fundamentally, there is an obligation to explain why the Independent Panel analysis is not followed.** A proper analysis would provide clarity and certainty as to whether this type of farming enterprise may qualify.”

Whilst Judge Keegan concluded at para 41 that “This inadequacy also infects the rationality of the decision as I cannot be sure that the core issues have been properly addressed. These are both valid grounds for quashing this decision however pursuant to Order 53 rule 9(4) I consider that the proper course is to remit the matter to the decision maker with a direction to reconsider it and reach a decision in accordance with the ruling of the court. Obviously, the revised reasoning will inform the rationality of the ultimate decision. I will hear from the parties in relation to the issue of costs.”

From a legal perspective the question arises, as in the Ian Marshall JR1 case why the Court found that Mr Lavery, as the DAERA Permanent Secretary and decision maker, found his decision making to be troubling in multiple respects. For example, in all likelihood Mr Lavery viewed the matter as one in respect of which the onus of proof was on Mr Marshall to demonstrate that he did not act intentionally, which was tantamount to applying a strict liability approach when such an approach, it is common case, was both inappropriate and forbidden. Again then in the Barnwell Farms case, in terms of the substantive challenge, the essential difficulty was that DAERA appeared to have made fundamental errors in the application of EU law in applying too stringent a test to the evidence required to adduce to prove that Barnwell Farms Limited satisfied the ‘active farmer’ test. The Court held that DAERA/Mr Doherty as the decision maker was also under an obligation to “explain why the Independent Panel analysis <was> not followed”. Accordingly Mr Doherty’s decision was both unlawful both on grounds of inadequate reasons and also rationality/Wednesbury unreasonableness as the Court could not assess whether the core issues had been addressed by DAERA.

In relation to TAXPAYER monies, Mr Shannon MP has recently obtained other information from DAERA, and made available to various stakeholders, which shows that these Judicial Review cases **have cost in excess of £300K+ in legal costs to taxpayers**. As a result he recently wrote to the DAERA Permanent Secretary Dr Denis McMahon, highlighting a number of issues amongst which they included, “Perhaps the primary lesson to be learned here is for senior DAERA Management to carefully consider the evidence and rationale for key decisions before the expenditure of £300K+ in taxpayer monies for all five Judicial Reviews, **whilst simultaneously seeking out fairer and cost-effective alternative solutions for some historical and future cases post BREXIT.**”

IFJ.3Dec

**“500,000 gone on legal battles over schemes”**

***“The costs of a judicial review are totally outrageous. These five cases have cost the taxpayer over £300,000, the UFU over £230,000 and my constituent Barnwell Farms, over £22,000”*** Jim Shannon told the Irish Farmers Journal.

DAERA Judicial Reviews – SFP - Chronology/timeline -11 December 2020 - Exhibit 7D.Part.B. P25. ....So, in short, these five DAERA Judicial Reviews have cost the **UK taxpayer circa £300K+, UFU members £231K+, and Barnwell Farms £22k+**. For all five judicial reviews the quality and timing of the legal advices from DSO / counsel should merit a “public” accountability review as part of that interaction with the very top DAERA officials and their decision making/governance processes for “irrational and unreasonable” decisions.

**UFU and Barnwell Farms Senior Counsel Hugh Mercer QC on Essex Chambers website on Barnwell Farms**

***“In the case before the Court, the failure of the Department to engage with the core issues raised by the Applicant and the Independent Panel was fatal to the legality of the decision.*** The Panel had drawn a distinction of principle (based on the precise agricultural business which needed to be considered in application of the statutory test) which dictated the relevant evidence to be taken into account.

The Department had rejected the distinction without explanation and the Court held that it was under an obligation to “explain why the Independent Panel analysis [was] not followed”. Accordingly the decision was unlawful both on grounds of inadequate reasons and also rationality/Wednesbury unreasonableness as the Court could not assess whether the core issues had been addressed.”

IFJ:21.Nov : **Wrong process** – Strangford MP Jim Shannon MP believes the **independent panel** is an important part of the DAERA decision-making process. He said ***“The attempt by DAERA whilst the NI Assembly was dissolved to eliminate them in late 2017/2018 was quite wrong. Equally the next step in any appeal being a costly judicial review is the wrong process given its limitations, including its inability to consider the actual farming evidence. Post-Brexit, this all needs to be properly addressed.”***

Frustration : Mr Edwin Poots in NI Assembly <Tuesday 17 November 2020> “I have made it clear to my officials that I will not be overturning the decisions of an independent panel. **When an independent panel makes a decision, it is the final decision.**” he said.

Given the expertise of Panel members and the scrutiny they have engaged in prior to making their recommendation, such an outcome may be regarded as not especially satisfactory in light of the aims of the appeals procedure.

The panel recommendation is communicated to the applicant at the time it is sent by the panel to DAERA. Undoubtedly the scenarios where it is in the applicant's favour, but subsequently not followed by DAERA, give rise to considerable upset and frustration on the applicant's part.

The relevant law: Farm Subsidies (Review of Decisions) Regulations (Northern Ireland) **Appendix 1** 2001 <https://www.legislation.gov.uk/nisr/2001/391/contents/made>

Irish Farmers Journal (IFJ) - 3 December 2020 - **Question marks over historic cases** (P64)

"In most instances where DAERA has not accepted the view of the independent panel at stage 2, claimants are understandably reluctant to pursue a legal battle by way of judicial review."

However, Jim Shannon believes that the Marshall and Barnwell Farms cases set a precedent, both for similar appeals going forward and potentially for historic cases. Notably in the Assembly Chamber earlier this month Agriculture Minister Edwin Poots said that he would not be overturning future recommendations made by this panel.

*"While Dr McMahon is not obliged to do so retrospectively I would hope, indeed expect that he will sympathetically consider retrospective cases. Or at the very least be prepared to promptly discuss an historic cases policy with Minister Poots, the DAERA Assembly Committee and us." says Shannon.*

Independent Panel

In the meantime, it is not clear how many cases there are where the independent panel ruled in favour of the claimant only for DAERA to stick to its original decision, and whether these people want their case looked at again.

**Survey :** "As yet it is not clear whether claimants who had a positive outcome from the Stage 2 review , subsequently turned down by DAERA, will be looked at again. It is understood that a draft survey has been circulated to farm lobby organisations and local agricultural consultants in an attempt to establish who these people are, and whether they want to come forward. The survey also asks about "live" cases that remain unresolved going back to when area-based payments were introduced in 2005.

**The judicial review process has several drawbacks:**

1 It is prohibitively expensive if lost the applicant would be responsible for both their own and DAERA's costs. Costs are likely to be in the tens of thousands £ for the losing party.

For this route to be even worth considering on a cost/ benefit analysis the lost subsidy involved would need to be substantial.



2 Legal grounds for a successful challenge are quite restricted. The grounds are set out in Council for the Civil Service Unions v Minister for the Civil Service where Diplock J stated that the role of the courts in judicial review was to:

- [i] Oversee the application of the law by ensuring that all and only relevant matters are taken into account in making a decision
- [ii] Ensure that fair procedures are followed and
- [iii] Ensure that the decision made is rational and reasonable in all the circumstances

For example for a decision to be held to be unreasonable it must, following the principle laid down in Associated Provincial Picture House Ltd v Wednesbury Corporation, be: So unreasonable that no reasonable person acting reasonably could have made it.

3 The judicial review court is not an appellate court in the sense it cannot substitute its own view for that of the decision maker. Its function is solely to ensure the decision maker has followed the correct legal principles in arriving at their decision.

4 The judicial review court does not rehear the evidence which was presented to the decision maker. It is not concerned with drawing a conclusion from the evidence only with ensuring that the decision maker applied the correct legal principles and did not act unreasonably. The judicial review will also only be concerned with the evidence in front of the decision maker and will not hear new evidence except in very limited circumstances such as where one party has failed to disclose relevant material

So if it decides the correct legal principles have been followed by the decision maker then it cannot substitute its own decision for that of the decision maker even if it feels it would have reached a different decision.

5 The remedies available on judicial review are discretionary so a court may refuse to grant relief if it found misconduct on the applicant's part

6. Often the time taken for a Judicial Review can be lengthy and of course this system forces applicants into a situation in which they are unfamiliar/naïve. This may discourage them further from seeking justice and lead them in to further concerns about the risks of cost recovery and worse if they lose their JR case.

From the above it is clear that the appeals process, as presently constituted, has the potential to leave applicants with no means of redress from a DAERA decision which is contrary to the panel recommendation other than a prohibitively expensive and potentially unsatisfactory judicial review.

### So what generic range of options exist for our NI politicians/MLAs and our democracy.

#### Options – future

1. DAERA Minister Poots and NI Assembly MLAs could leave the legislation unchanged. The relevant law: Farm Subsidies (Review of Decisions) Regulations (Northern Ireland) - [see Appendix 1 2001](#) <https://www.legislation.gov.uk/nisr/2001/391/contents/made>.
2. Our NI Lawmakers could change the legislation to make the decision of the independent panel final so that DAERA do not have to expend further resource and time in any reconsideration decisions. It would seem inappropriate to try again to eliminate the independent two stage panel from the evidence.
3. Our NI Assembly could allow DAERA to make a reconsideration decision in the context of understanding that a further Appeal process for the Applicant would be available (what we have called a Supreme Agricultural Panel – SAAP) which we describe some of the suggested element below. There is clearly a need for a mechanism to address this situation if chosen and an appellate panel which addressed the actual farming evidence would deal with this issue. Supreme Agricultural Appeal Panel (SAAP) ..... eligibility
  - A. Stage 2 independent panel recommendation – not accepted by DAERA in full or part
  - B. Quantum of claim - greater than £5,000 per year
  - C. £1500 fee for Applicant – not refundable and support for case presentation and collation and up to 4 hour attendance at SAAP for a further £1500. While the applicant and DAERA may choose to have some legal representation it is essential that there be a compulsory involvement of the Applicant and AN Other and up to two of those from DAERA who have made the “not accepted by DAERA” decision.
  - D. SAAP – a five Member SAAP which would schedule to meet on a six monthly basis (or so) and consider say up to six cases in a three day period. Final binding decision from SAAP within 90 days of Hearing.
  - E. Any “new evidence” is permitted from either a party for up to 30 days prior to papers being sent to SAAP 30 days in advance of oral hearing.

[This developed in draft terms at Appendix 3 at pages 18 -19.](#)

The current bar on new evidence as implemented following the agreed settlement in JR3 is a serious flaw in the current process. It is unprecedented in any other judicial venue. Further such a blanket ban on new evidence is in all probability a breach of an applicant's right under Article 6 of the ECHR to a fair trial. This is particularly so where applicants will often have not sought legal or professional advice before making submissions at stage 1 and will only do so when preparing a stage 2 appeal.

### Historic Cases

In total, there were 30 instances since 2015 when the panel fully upheld a review, only for DAERA officials to not accept that recommendation, and stick with its original decision. There are also an additional 13 cases where the panel partially upheld the review, but this was not accepted by DAERA, and a further six where the panel fully upheld the review, only for the Department to only partially accept these recommendations.

Give the recent judgment in the judicial review taken by the Co Down – based Barnwell Farms, Jim Shannon believes that there is an argument to look again at these cases, and in particular those where the Department rejected the view of the independent panel. < The “Almost 50 --- 30 + 13 + 6>

### Options

1. The law cannot operate retrospectively so one choice is do nothing for legacy cases.
2. Another choice is for the politicians to decide on a “voluntary basis” to award

(a) the outcome of the independent panel to be applied retrospectively from those that are “eligible” and come forward, in response to the media coverage through the farm lobby groups. We have called this those who come forward from the potential “almost 50” reservoir. With or without interest?

(b) the outcome of the independent panel to be applied retrospectively from the “almost 50 “ reservoir cases from the DAERA records, subject to any cross checking of “others”. Admin error. With or without interest.

3. Another choice would be for the politicians to decide on a voluntary basis that any cases from the “DAERA almost 50” which DAERA do not still accept the decision of the independent panel and wish to challenge that Applicant should have the choice of going to the SAAP. Priority being given to the 30 cases where the independent panel recommendation in full was not accepted by DAERA.

We hope this document is of some help to our Lawmakers in the NI Assembly for the future and past. We are both very willing to discuss and / or come and give evidence and take questions on any aspect of it.

James O'Brien BL  
Northern Ireland Bar  
15 December 2020

Brian Little  
Voluntary Advisor to DUP/Mr Shannon MP

Appendix 3 added at pages 18 – 20 re Supreme Agricultural Appeal Panel (SAAP) on 11 January 2021

Commissioned by the Barnwell Farms Directors in late October 2020.

Appendix 1 : The relevant law: Farm Subsidies (Review of Decisions) Regulations (Northern Ireland) 2001 <https://www.legislation.gov.uk/nisr/2001/391/contents/made>

Farm Subsidies (Review of Decisions) Regulations (Northern Irelan...

<https://www.legislation.gov.uk/nisr/2001/391/contents/made>

## Coronavirus

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## Farm Subsidies (Review of Decisions) Regulations (Northern Ireland) 2001

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### **Powers of persons appointed**

12.—(1) Where an application is made under regulation 11, the Department shall appoint such persons as it considers appropriate to review the decision and provide those persons with a copy of—

- (a) the application;
  - (b) the decisions under regulations 7 and 10; and
  - (c) any document or note of evidence produced or taken in relation to the earlier reviews by the Department.
- (2) The persons appointed under this regulation shall review the decision and may—
- (a) consider any document or other evidence produced by the applicant or the Department (whether or not that document or evidence was available at the time of taking the decision under regulation 7 or 10);
  - (b) invite the applicant and the Department to provide such further information relevant to the review as the persons appointed consider appropriate; and
  - (c) give the applicant and the Department an opportunity to give evidence and to make representations in person or through a representative.
- (3) Following their review of the matter the persons appointed shall report to the Department—
- (a) their findings in fact on the matter; and
  - (b) their recommendations as to the determination of the application having regard to the law applicable to the facts.
- (4) Having considered the matters reported to it under paragraph (3) the Department may—
- (a) confirm its decision;
  - (b) amend or alter its decision in any respect which it considers appropriate; or
  - (c) revoke its decision in its entirety and substitute a new decision.
- (5) In coming to its decision in accordance with paragraph (4) the Department shall have regard to the findings and recommendations reported to it by the persons appointed under this regulation but is not bound to follow all or any part of such findings or recommendations.
- (6) The Department shall give its decision under this regulation as soon as practicable in writing and where it does not adopt the findings and recommendations reported to it shall set out—
- (a) the relevant facts upon which its decision is based;
  - (b) the reasons for its decision;
  - (c) its reasons for not following in whole or in part the findings or recommendations of the persons appointed; and
  - (d) the effect of its decision on the payment or non-payment of subsidy.
- (7) Where the Department decides in accordance with paragraph (4)(b) or (c), the fee referred to in regulation 11(3) shall be refunded to the applicant.
- (8) The Department may make such payment, by way of fee or reimbursement of expenses, to any of such persons appointed under paragraph (1), as appears to it to be appropriate.

### **Notification of decisions**

13.—(1) A decision under regulation 7, 10 or 12 shall be notified to the applicant as soon as practicable after it is made by recorded delivery post to the address shown on the application for review.

(2) In the case of a decision under regulation 12, the findings and recommendations of the persons appointed shall be notified along with the decision.

<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2020/11/17&docID=315841>

**Mr Poots (The Minister of Agriculture, Environment and Rural Affairs): Thank you, Mr Deputy Speaker, for the opportunity to talk to the House about my long-term vision for agricultural support in Northern Ireland. I also intend to announce a number of simplifications and improvements that I am making to the rules that govern the direct payment scheme for the 2021 scheme year.**

Pillar 1 of the common agricultural policy (CAP) provided £293 million of direct support to Northern Ireland's farmers per annum. CAP payments have been of major importance in sustaining the industry in Northern Ireland and underpinning its competitive trading position. They have accounted for 79%, or £1.88 billion, of the cumulative total income of the Northern Ireland industry over the seven years from 2013 to 2019. In 2018, my Department undertook an engagement exercise on a potential future agricultural policy framework for Northern Ireland. In that proposed framework, officials, in conjunction with key food, farming and environmental stakeholders, identified four desired outcomes and a long-term vision for the Northern Ireland agri-food industry.

Those outcomes are: an industry that pursues increased productivity in international terms, closing the productivity gap which has been opened up with our major suppliers; an industry that is environmentally sustainable in terms of its impact on, and guardianship of, air and water quality, soil health, carbon footprint and biodiversity; an industry that displays improved resilience to external shocks, such as market volatility and extreme weather events, which are evermore frequent and to which the industry has become very exposed; and an industry which operates within an integrated, efficient, sustainable, competitive and responsive supply chain, with clear market signals and an overriding focus on high-quality food and the end consumer. A number of projects have now been established in the Department to collate evidence, identify gaps and develop policies that will help to deliver those outcomes.

In June 2020, I announced my intention to bring forward a co-designed environmental strategy, entitled the green growth strategy, on behalf of the Executive. It will align economic growth and development with the protection and enhancement of natural assets. The Northern Ireland future agricultural policy framework has been developed in line with the green growth principles and will help to deliver its objectives. I anticipate launching that new future agricultural policy framework in early 2021, and I will update the House further at that time. Today, however, I want to broadly outline my vision for future support payments.

Leaving the EU provides for an unprecedented level of regional discretion and flexibility with regard to future agricultural support in Northern Ireland. This is the most significant change in policy to affect the agricultural sector in over 40 years. It means that our policies do not have to be constrained by the EU CAP pillar 1 and pillar 2 construct. We need to move to something new that better addresses the needs of Northern Ireland agriculture. It represents a unique opportunity to develop a new dynamic for key stakeholders across the food, agriculture and environmental spectrum to work with the Northern Ireland Government to chart a new way forward with common purpose. For that to be successful, it is vital that the long-term outcomes of productivity, resilience, environmental sustainability and supply chain functionality be kept to the fore, which will demand difficult choices, compromises and strong leadership at all levels.

Those four outcomes complement and reinforce each other, and they are broadly supported by stakeholders. A healthy and sustainable environment secures long-term agricultural productive capacity and underpins resilience. Productive agriculture minimises waste and maximises resource efficiency, which underpins environmental performance and reduces exposure to market risk. Furthermore, an integrated and efficient supply chain ensures that agricultural activity is properly focused on delivering market demands, thereby minimising wasted effort, wasted resource and inefficient supply chains and reflecting broader societal demands for sustainable production methods. The primary tools available to us — science, education, incentivisation and regulation — are applicable in helping to deliver all those outcomes. My focus is now on how we can best deliver the outcomes with the tools and resources that I have at my disposal.

End of extract

**This statement by our DAERA Minister Poots is crucial as it sets out clearly that this area- based scheme is going to progressively change.**

**With that the centrality of the Independent Stage 2 Panel process and competence, and perhaps a Supreme Agricultural Appeal Panel process.**

**As one MLA stated recently to us this is also against an ageing farming population / higher demands while more experienced retirees are leaving DAERA. This must be a fair and cost effective dispute process.**

**In short Independence Panels must play a crucial role for the future, as in the past, meriting our NI legislators attention in 2021.**



**3A. SAAP Terms of Reference** - if this Option is selected for inclusion in Historic and/or Future cases

1. To provide a review mechanism for cases where DAERA have not accepted the second stage independent panel recommendation, whether in full or part, and issued a “refusal” letter to the Applicant/Claimant.
2. **Future** : Once the SAAP is active any Appeals should be made within 90 days of the dated DAERA “refusal” letter to the Claimant/Applicant. Target to have active by June 2021?

**Outstanding and Retrospective/ Historic cases:** Our politicians will also wish to consider whether any cases with decisions currently outstanding < 9 as at 4 December 2020 : EIR 20/261 and 20/288 : 7: IFJ reporting on 9 January 2021 - On enquiry, a DAERA spokesperson confirmed that seven cases remain with the Department following on from a recommendation made by this panel. “The Department is considering these cases and will issue decisions in due course” confirmed the spokesperson>, or **historically**, from the date on which former Minister Michelle McIlveen MLA left office on 2 March 2017 and then received a “refusal” letter in which DAERA did not accept a Stage 2 Independent panel recommendation, in full or part, may automatically appeal, if otherwise eligible, to DAERA /SAAP secretariat : should the Applicant wish to do so. Any appeal needs to be received by 31 March 2021? In addition to the 9 outstanding cases DAERA have provided EIR information which confirms there were almost 50 cases in the period from 2015 to 4 December 2020 date and the detail of those with DAERA “refusal” letters to Applicants from 3 March 2017 should be easily extracted.

For completeness in the period from 2005 to 2014 none of the four “live” cases as at 30 November 2020 (DAERA EIR 20/331) which remain the subject of an investigation by DAERA had an Independent Panel recommendation to overturn the Stage 1 decision as at March 2017. This being the date on which DAERA Minister McIlveen left office and the proposed date for eligibility for the historic scheme.

3. Crucially this Appeal mechanism is only available to DAERA when they are both satisfied and prepared to have their technical teams provide evidence in support of their decision not to accept the independent panel decision, including in part, providing the evidence on why the independent panel did not consider all the facts.
4. Only the SAAP can appoint an “expert”, should they choose to do so?

**3B SAAP Panel Selection and Composition**

5. A 5 member panel is suggested. Due to the limited amount of cases only 7 members need to be selected for a reservoir and appointed so that a 5 Member Panel can be available on a quarterly basis, removing the need for a large pool.
6. The SAAP should contain experts with wide ranging experience who are capable of providing a comprehensive review of the matter. The Panel reservoir should comprise grassland and an arable farmer. An agricultural consultant. A person from a public sector background and two people with a legal or arbitration background, one of whom should act as chairperson. Retired persons from DAERA etc can be considered after a two year period in retirement.

7. Creation of the SAAP to be advertised in national press and appointments be concluded through interview for a five year period. Panel Members will be expected to spend about 50% of their time at the SAAP Hearing and the remainder preparing for and subsequent to the actual Hearing. As part of their selection two MLAs from the DAERA Assembly Committee may be engaged? The target to have any SAAP selected and operational would be June 2021.

8. DAERA to provide a clerk to the SAAP as with existing panel arrangements and they will also have responsibility of ensuring that all evidence and documents bundles are provided to Panel members within the timescales set out below. This would be part of the SAAP secretariat.

### 3C SAAP Appeals Eligibility

9. As per terms of reference – future law and historic cases determination.

10. Creation of panel to be advertised in national and local press and details of time limit highlighted.

11. The SAAP will only consider where cases have a certain £ value so as to avoid panel time being taken up by cases of an insignificant £ value. We suggest £5,000 in any single year or if potentially cumulatively in future years for those categories. e. g Active and Young Farmers..

### 3D. Evidence to SAAP

12. Panel will sit on a quarterly basis for a one to three day period at a time as necessary with the aim of considering two cases per day maximum. In relation to historic cases which come forward the target will be to have had the SAAP to have received the written evidence and heard any oral submission between June 2021 and the end of March 2022, and in advance of the likely May 2022 NI Assembly elections.

13. The document bundle and papers which the prior panels had available

14. Any new evidence which could not with the exercise of reasonable diligence have been put in front of any of the previous Stage 1 or Stage 2 panels will be permitted.

15. As well as the written papers there will be an oral hearing. All the written material / bundle should be provided 30 days in advance to SAAP panel members. In all cases the applicant and DAERA should provide their evidence and documents within 42 calendar days of an accepted eligible appeal application.

16. During any Oral Hearing a maximum of three persons can appear for the Applicant or DAERA. A strong emphasis on the Applicant and DAERA technical assessment team speaking at the SAAP will be actively encouraged.

17. Any Members of the Panel may ask questions to any of the speakers giving evidence.

18 SAAP after considering the case should have opportunity to make requests for further information from the Applicant or from DAERA. The SAAP secretariat will handle this process on dictation of the requests by the panel.

19. Panel to make decision within 3 months of hearing or receipt of further information requests

### 3E SAAP Funding

20. To provide a mechanism which is at massively lower cost than a judicial review (JR) and which provides a complete review of the matter rather than one with the limitations of a judicial review as set out earlier
21. Applicant must pay fee of £1500 to have their eligible case considered by SAAP
22. Other than the £1500 per applicant any costs incurred for the Panel operation / secretariat and appointed SAAP appointed “expert” will be funded through DAERA’s central budget.
23. We understand that as of the 15 October 2020, DAERA no longer seek funding from the RPA In respect of Pillar one Payments. In 2020/2021 all Pillar one payments have been funded by the Exchequer and are 100% National Funds. This includes any remaining legacy Single Farm Payment (SFP) cases.
24. The SAAP should be paid gross. Current panels have tax deducted by DAERA at source. Can they really be viewed as independent as this can only be done under a PAYE system?
25. For any Panel Members from Great Britain any reasonable travelling and accommodation expenses will be reimbursed at cost on provision of the relevant documentation.

We hope this document is of some help to our Lawmakers in the NI Assembly for the future and past. We are both very willing to discuss and / or come and give evidence and take questions on any aspect of it.

*James O'Brien*

*Brian A Little*

James O'Brien BL  
Northern Ireland Bar  
15 December 2020

Brian Little  
Voluntary Advisor to DUP/Mr Shannon MP

Appendix 3 added at pages 18 – 19 re SAAP on 11 January 2021

Commissioned by the Barnwell Farms Directors in late October 2020.

**Senior Counsel Mr Mercer QC on DAERA Judicial Reviews (JR1:JR5)- email exchanges with Mr Shannon MP – September / October 2020 (he is also a Deputy High Court Judge)**

These fundamental problems are underpinned by the Applicants Senior Counsel, Mr Hugh Mercer QC, involved in all five judicial reviews, when he wrote recently to Jim Shannon MP *“I am grateful for your willingness as a no doubt very busy MP to assist one of your constituents. I am proud of the sparkling result which we managed to achieve both in the courtroom and also in the subsequent regulatory decision although it does seem to me plain that this was a case where DAERA should have settled by agreeing to reconsider the decision without the need for the Court to hold that their decision was irrational. For the future, that is an area where public administrations can help to diminish the risks to be taken by a business in Barnwell Farms’ situation.”*

Mr Shannon MP then asked him *“I hope you can provide some of those in support to Mr O’Brien and us, if he requests same, as we seek to assess whether or how we can move forward and your well-made and accurate point *“For the future, that is an area where public administrations can help to diminish the risks to be taken by a business in Barnwell Farms’ situation.”* We have some ideas here, particularly for the future post BREXIT in NI.”*

Mr Mercer QC replied *“With regard to the future more generally on judicial review in NI, that is principally a political question and a good part of the problem seemed in my view over the last few years to be an absence of political oversight of DAERA’s treatment of litigation where its instinct when challenged has consistently been to batten down the hatches to have a pitched battle rather than to consider with an open mind whether it is not possible to reconsider a decision which looks potentially suspect or when a citizen or business raises genuine issues with regard for example to the reasons for a decision. The reflex within DAERA has been to assume that DAERA is right. That is not always the case and in one case <<JR4.AFF>> prior to Barnwell DAERA did accept to reconsider its decision upon the receipt of new submissions. At a political level, the basis for such reconsideration in one case and not in the other is the sort of area which needs to be probed by the politicians. On that I hope that you might be able to change things in conjunction with the NI Agriculture Minister so that parties in the situation of Barnwell do not have to fight to judgment. The notion of applying ADR or mediation to public law cases is becoming more accepted outside the UK and should probably receive greater attention.”*

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**IRISH COUNTRY LIVING**

## A STROKE OF GENIUS

Sarah Lennon's journey from showjumper to artist



Alistair Barclay from Dunloy, John Heggarty from Ballymoney and Denis Taylor from Coleraine check out the pens at the Burnview and Crewe-lands Suffolks sale of in-lamb females in Maghera, Co Derry this week. \ Houston Green

## DAERA lose active farmer court case

NEWS >> 7

# DAERA lose active farmer court case

**DAVID WRIGHT**  
NORTHERN EDITOR  
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A Co Down farm business that decided to challenge DAERA on a decision to exclude it from the Basic Payment Scheme (BPS) in 2015 has won its case and had payments reimbursed and costs awarded, the *Irish Farmers Journal* understands.

The case involved the late Michael Calvert from Barnwell Farms in Greyabbey, who submitted a Single Application Form (SAF) in 2015 to establish entitlements on 72.9ha of land.

Operating an arable and beef farming operation, Mr Calvert was well known in the area, having been named the UK's most wildlife-friendly farmer in the annual Nature of Farming Awards in 2009.

However, in 2013 he suffered a back injury and was forced to sell his cattle, so by 2015 was mainly growing grass for sale (by cutting or grazing) to other farmers.

He was initially excluded from the scheme after DAERA queried whether he met active farmer requirements, and asked him to provide more



Some of the land was being used to grow grass for sale to other farmers

evidence. In 2016, the applicant was interviewed by Department officials, and while they accepted that he was undertaking some farming activity, they concluded it was not evident that he had decision-

making powers on all of the land claimed on the 2015 SAF. Mr Calvert applied for a Stage 1 review of that decision in April 2016, and supplied further information and evidence later that year. However, the

Stage 1 review panel concluded that the decision should not be changed, citing concerns around how grass yields had been estimated when sold to local farmers.

It took until August 2018

for the case to get to a Stage 2 review by an independent panel, and by that stage Mr Calvert had passed away, and was being represented by his nephew, Robert Calvert, who had also taken on the running of the farm.

This independent panel hearing was attended by Robert Calvert, along with UFU technical officer Gillian Cheatley, who had prepared and lodged a report to the panel in support of the applicant's case.

The independent panel found in favour of the applicant, concluding that there was sufficient evidence that Barnwell Farms is an active farm.

However, the final decision still rests with DAERA's Head of Paying Agency, and as has happened in other cases that have been taken to Stage 2 review, the Department decided not to accept the independent panel's recommendation.

## Costly battle

At that stage, most farmers decide to step away, as the only remaining option is a potentially costly legal battle by way of a judicial review.

However, Barnwell Farms

opted to pursue the case.

Delivering her judgement, High Court Judge Mrs Justice Keegan found in favour of the applicant, directing the Department to reconsider its decision to exclude the farm business from the BPS scheme.

In her consideration, Justice Keegan made clear that the onus is on a claimant to provide the necessary evidence to DAERA to prove that they are actively farming, and ultimately the Department does have a large measure of discretion when determining these issues.

But crucially, she highlighted the decision by DAERA to go against the recommendation of the independent panel, which had been informed by the technical expertise provided by Ms Cheatley. In particular, Justice Keegan said that there was an obligation on DAERA to explain why the analysis of the independent panel was not followed.

It is understood that DAERA has now made payments covering the scheme years 2015 to 2019, worth over £80,000, and also agreed to cover a proportion of the applicant's court costs.

# DAERA pays out in active farmer case

Barnwell Farms have received direct payments in full going back to 2015

**DAVID WRIGHT**  
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A Co Down farm business that won a judicial review against DAERA has now received full direct payments going back to 2015, but remains in dispute with the Department around other costs related to the case.

As revealed in last week's edition (dated 14 November), Barnwell Farms in Greyabbey took the case after top officials in DAERA decided to go against the recommendation of an independent panel at a Stage 2 review.

The case centred on a decision to exclude the original claimant, Mr Michael Calvert, from the scheme in 2015 under active farmer rules.

He had suffered a back injury in 2013 which forced him to sell his cattle, so when the new CAP system became operational in 2015 he was mainly growing grass for sale.

Having been excluded, he



With no direct payments, and significant legal costs, Barnwell Farms was unable to buy cattle

## Poots won't be going against a review panel

NI Agriculture Minister Edwin Poots has told his DAERA officials that during his tenure in office he will not be going against the view of an independent panel at Stage 2 review.

Answering questions in the Stormont Assembly chamber on Tuesday, the minister was asked by his DUP colleague Wil-



**DAERA  
Minister  
Edwin  
Poots**

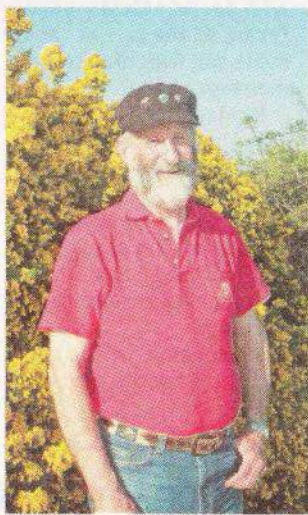
liam Irwin for his view on cases where the Department has went against the recommendation of



DAERA officials) in 2016, which proved unsuccessful. However, at Stage 2 review the independent panel found in favour of Barnwell Farms. By then, Mr Calvert had passed away, with the running of the farm taken on by his nephew, Robert Calvert.

While the Calvert family assumed the case was now resolved, DAERA decided not to accept the decision of the independent panel. A judicial review followed, and in the High Court, Judge Mrs Justice Keegan found in favour of Barnwell Farms.

Speaking to the *Irish Farmers Journal*, Robert Calvert explained that the family had been determined to fight on, partly in memory of his un-



The late Michael Calvert from Barnwell Farms.

cle. "Even when he was very ill I remember him telling us to leave no stone unturned, as they were basically calling him a liar. He saw it as an abuse of power," he said.

With hefty legal bills, no farm payments and no outside financial support, accounts for the business show it sustained significant financial losses.

"There wasn't the funds to invest in cattle. The farm was being driven out of active farming," said Robert.

He confirmed that payments have now been made in full for the years 2015 to 2019 (totalling £85,628), and in addition, 2020 payments have been received.

However, after five years of emotional and financial stress

on his family and especially his aunt, they remain unhappy with an ex-gratia payment from DAERA.

That payment is to cover consequential losses such as lost interest on payments, and comes to £4,077. It is based on compound interest at the Bank of England rate, plus 1%. A further £500 was also paid to cover "miscommunication" in the case.

Barnwell Farms argue that interest rates paid by farmers on overdrafts and loans have probably been closer to 7% in recent years, so a more reasonable ex-gratia payment would be £20,000.

It is also understood that while DAERA have covered a

proportion of the Calvert family's legal costs, there is still a shortfall of approximately £22,000.

#### Below inflation

The family has been supported throughout by Strangford MP Jim Shannon, who argues that the ex-gratia payment made by DAERA is unacceptable.

"It seems quite wrong that DAERA Permanent Secretary Dr Denis McMahon believes that a below-inflation payment of £4,077 is an appropriate interest rate.

"This is equivalent to a £2 single cup of tea per day since May 2015," he told the *Irish Farmers Journal*.

#### Frustration

In reply, Minister Poots outlined his own frustration when he had supported a constituent at Stage 2 review, only for the claimant to receive a letter signed off by the minister at the time saying that DAERA was not accepting the independent panel's view.

"I have made it clear to my officials that I will not be overturning the decisions of an independent panel. When an independent panel makes a decision, it is the final decision," he said.

## Question marks over the review process

The Barnwell Farms case is not the first time that a claimant of farm direct payments has ended up in the High Court after DAERA went against the view of an independent panel at Stage 2 review.

In a high-profile case that dated back to a pollution incident in late 2011, the UFU funded a judicial review brought by former president Ian Marshall. He had a 55% penalty applied to his single farm payment due to an intentional breach of cross-compliance rules.

However, Marshall argued that it was a negligent breach, so the penalty should have been between

1% and 5%. An independent panel at Stage 2 review found in his favour, and recommended the penalty be changed.

But DAERA decided not to take that advice, and continued to apply the intentional penalty.

In February 2017, a High Court judge ruled that the original DAERA decision-making process was "unlawful", and told the Department to review the case. After doing that, DAERA decided that its original decision was correct.

The UFU then sought a second judicial review, although this was eventually dropped when DAERA finally accepted the view of the independent panel.

Total legal fees in the Marshall

case are thought to have run to over £300,000.

#### Changes proposed

In the meantime, DAERA was making changes to its review of decisions process for area-based schemes. Citing the length of time it was taking to reach final decisions, in April 2018 it introduced a new arrangement, dropping the independent panel, leaving a single stage review by a case officer from the Department.

That prompted another legal challenge by the UFU by way of a judicial review.

Both sides settled out of court later that year, agreeing that the Stage 2 independent panel should

be retained, but with some conditions attached. Those included that users of the panel are charged an increased fee of £200 (a fee due to be reviewed) and that the final decision on an individual case rests with the Department.

So it remains the situation that the only option for a claimant unhappy after a Stage 2 review is to seek a judicial review through the High Court or, if the applicant believes procedures have not been followed correctly, to take the case to the NI Public Services Ombudsman.

#### Wrong process

Strangford MP Jim Shannon believes the independent panel is an

important part of the DAERA decision making process.

He said: "The attempt by DAERA, whilst the NI Assembly was dissolved, to eliminate them in late 2017/2018 was quite wrong. Equally, the next step in any appeal being a costly judicial review is the wrong process given its limitations, including its inability to consider the actual farming evidence. Post-Brexit, this all needs to be properly addressed."

Back in 2016, the Department confirmed that 810 applicants were rejected for not meeting active farmer requirements. It is understood that since 2015, a total of 64 active farmer cases have made it to a Stage 2 review.

## Northern Comment

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### Only one winner in a judicial review

Since area based schemes were first introduced in 2005 the Department has had a two stage review of decisions process in place for applicants who believe that officials have made a wrong decision in their individual case.

It should be noted that there is no requirement in

EU law for DAERA to have this in place - it is something that all parts of the UK have done as part of promoting good governance.

To be fair to the Department, the vast majority of farmers are treated fairly, and never have any need to seek a review. But in a small number of cases, there are examples where farmers feel

very aggrieved by the length of time the review process takes, and ultimately the final decision made.

That is most acute when an independent panel at Stage 2 makes a recommendation in favour of the applicant, only for a senior DAERA official to decide to stick to their original decision.

#### Only option

At the end of any review process, the only option left is a judicial review of the case in the High Court. That could easily cost an individual farmer £100,000. But there is no guarantee of a win, and even if you do, no guarantee that all your costs will be paid. Most people walk away at this point.

However, there are now two cases where an applicant has successfully challenged by way of a judicial review after DAERA did not accept the view of the inde-

pendent panel. The first, the UFU funded Ian Marshall case was over cross compliance penalties relating to a pollution incident. The second, the Barnwell Farms case highlighted over the last two weeks, related to an active farmer ruling.

The upshot of the Barnwell Farms case was a statement made by Minister Edwin Poots last Tuesday when he said that on his watch, the decision made by the panel will be final.

Looking ahead it is very difficult to see how DAERA can justify any future decision to go against this independent panel. Whether similar historic cases now come forward remains to be seen.

But hopefully this is now the last case of its type. The only winners in a judicial review are the legal profession. It isn't farmers, DAERA or the UFU, and most certainly isn't the public purse.

# IRISH FARMERS JOURNAL

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Half a million pounds spent on legal battles

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## Half a million gone on legal battles

**DAVID WRIGHT**  
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Five legal cases related to area-based schemes, which ended up contested by way of a judicial review, had associated legal costs of well over £500,000 the *Irish Farmers Journal* can confirm.

The information has been obtained by Strangford MP Jim Shannon, working on behalf of his constituent, Barnwell Farms. The Greyabbey farm business recently won an active farmer case against DAERA (see page 7 of edition dated 14 November 2020).

Three of the other four cases were taken by the Ulster Farmers Union (UFU), with the first two being judicial reviews brought on behalf of its former president, Ian Marshall,



The High Court in Belfast.

### Question marks over historic cases

In most instances where DAERA has not accepted the view of the independent panel at Stage 2, claimants are understandably reluctant to pursue a legal battle by way of judicial review.

However, Jim Shannon believes that the Marshall and Barnwell Farms cases set a precedent, both for similar appeals going forward and potentially for historic cases.

Notably in the Assembly chamber earlier this month, Agriculture Minister Edwin Poots said that he would not be overturning future recommendations made by

this panel.

"While Dr McMahon is not obliged to do so retrospectively I would hope, indeed expect, that he will sympathetically consider retrospective cases. Or at the very least, be prepared to promptly discuss an 'historic cases' policy with Minister Poots, the DAERA Assembly and us," said Shannon.

#### Independent panel

In the meantime, it is not clear how many cases there are where the independent panel ruled in favour of the claimant only for DAERA to

stick to its original decision, and whether these people want their case looked at again.

#### NIAPA

Welcoming the statement made by Minister Poots, Jim Carmichael from the NI Agricultural Producers' Association (NIAPA) said that his organisation has always held the view that the decision of the independent panel should be final. "If someone feels hard done by and would like their case looked at again, they can get in touch with us and we will talk to them," he said.

claimant. Despite that the De- Noel Lavery, left him with a

On that basis, he questions

aged to recover around

brought on behalf of its former president, Ian Marshall, and related to a pollution incident on his Markethill farm.

The third judicial review was a legal challenge by the UFU into a decision by DAERA to change its review of decisions process for area based schemes. That leaves an "active farmer" case taken by a Fermanagh business that was settled before getting to a substantive hearing.

"The costs of a judicial review are totally outrageous. These five cases have cost the taxpayer over £300,000, the UFU over £230,000 and my constituent, Barnwell Farms over £22,000," Jim Shannon told the *Irish Farmers Journal*.

He questions whether any of these cases should have ended up in the High Court. In the Ian Marshall and Barnwell Farms cases, in both instances an independent panel at Stage 2 review had ruled in favour of the

### The High Court in Belfast.

claimant. Despite that, the Department did not accept that advice, and stuck to its original decision. Ian Marshall had significant penalties applied to his Single Farm Payment. In the Barnwell Farms case, it was excluded from the Basic Payment Scheme from 2015 under active farmer rules.

Both won their case in the High Court, although Marshall had to go back a second time before the Department agreed to accept the view of the independent panel.

"As the DAERA Permanent Secretary, Dr Denis McMahon knows from my previous correspondence, I firmly believe that on receipt of the Barnwell Farms pre-action protocol letter in April 2019, he should not have proceeded with that case," said Shannon.

However, he also maintains that McMahon's predecessor,

Noel Lavery, left him with a "poisoned chalice" by way of the second judicial review into the Marshall case, and the third legal action taken by the UFU on the review of decisions process.

That third judicial review challenged a decision by DAERA to remove the Stage 2 independent panel from the review of decisions process. The Department and the UFU settled outside court, agreeing that the independent panel would be retained, but the final decision in any dispute rested with DAERA.

However, Shannon maintains that DAERA was wrong to have made the initial change to the review of decisions process given that it was at a time when the Assembly was dissolved. In addition, farm lobby groups responding to a consultation in 2017 opposed the change.

On that basis, he questions why officials apparently allowed the matter to proceed to the steps of the High Court.

In the end, both sides agreed to cover their own legal costs. However, Shannon has now established that DAERA legal costs came to just over £10,000, but the UFU managed to run up a legal bill of around £108,000. He has called on McMahon to make an ex gratia payment to the UFU of £99,950 for what he believes was an "unlawful elimination of the independent panel" and a "wholly unnecessary challenge".

### Paid out

Across the three cases taken by the UFU, it paid out £371,000 of legal costs, compared to an equivalent figure of just under £71,000 for DAERA.

Despite the UFU effective-



Strangford DUP MP Jim Shannon.

ly winning the Marshall cases, the Department only covered a proportion of opposition costs, disputing the amount the union spent on specialist barristers.

To date, the UFU has man-

aged to recover around £140,000 of its costs from DAERA in the Marshall cases.

That leaves an overall deficit across all three judicial reviews of £231,000. It is understood that the UFU is pursuing an appeal of the costs awarded in the first judicial review case, where arrears of around £70,000 remain.

In the two other judicial reviews, Shannon has established that DAERA legal costs in the Fermanagh case were £3,663, and in that brought by Barnwell Farms, the costs came to £19,320. However, the total legal fees for the Calvert family (Barnwell Farms) came to £85,125. Of this, DAERA has reimbursed £62,664, leaving a deficit of around £22,000, which is still in dispute.

"The legal profession are the only winners in a judicial review," said Shannon.

# DAERA at odds with independent panel

**DAVID WRIGHT**  
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In around 40% of cases that made it to Stage 2 of the review of decisions process for area-based schemes, an independent panel ruled either partially or fully in favour of the applicant, analysis of relevant data shows.

The figures, obtained by Strangford MP Jim Shannon by way of a series of freedom of information requests, show that since 2014-2015, nearly 300 cases have been taken to a Stage 2 review.

Of these, 182 instances the independent panel agreed with the arguments presented (either in writing or orally) by a claimant and recommended that the review be upheld in full. In a further 29 cases the panel concluded that the review be partially upheld.

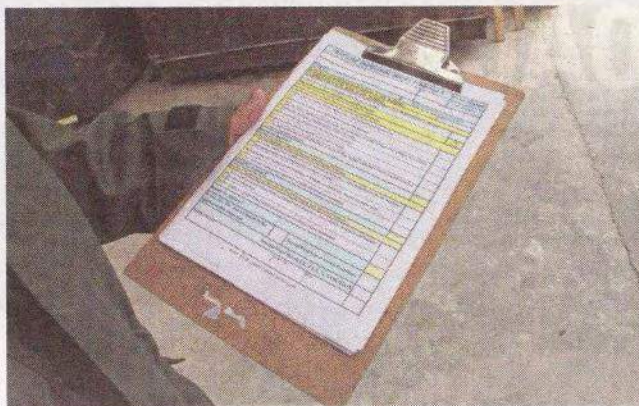
However, in the review of decisions process, the final decision has historically rested with DAERA. Our analysis shows that in over one-third of these cases the Department did not accept the view of the independent panel.

In total, there were 30 instances since 2015 when the panel fully upheld a review, only for DAERA officials to not accept that recommendation, and stick with its original decision. There are also an additional 13 cases where the panel partially upheld the review, but this was not accepted by DAERA, and a further six where the panel fully upheld the review, only for the Department to only partially accept these recommendations.

Given the recent judgement in the judicial review taken by the Co Down-based Barnwell Farms, Jim Shannon believes that there is an argument to look again at these cases, and in particular those where the Department rejected the view of the independent panel.

As reported in the edition dated 14 November, Barnwell Farms sought a judicial review after finding itself in this situation. In her judgement, Justice Keegan ruled in favour of Barnwell Farms, stating that there was an obligation on the Department to explain why the analysis of this panel was not followed.

Only last month, Agricul-



**A significant number of cases taken to Stage 2 review relate to penalties applied to direct farm payments as a result of a breach of cross compliance rules**

ture Minister Edwin Poots told MLAs at Stormont that he will not be going against the view of the independent panel.

The information obtained from DAERA shows that there are currently nine recent instances where the panel has ruled in favour of the applicant, that are still "under final consideration" by the Department.

## Split

In terms of the split of cases taken to Stage 2 review since

2014-2015, a total of 64 were disputes around "active farmer" status, 41 related to young farmer payments and 66 involved cross-compliance penalties due to breaches of statutory management rules (SMRs).

That leaves over 100 other cases across a wide range of issues including land eligibility, duplicate fields and the NI Countryside Management Scheme.

Applicants who sought a review of a decision around "active farmer" status were

most likely to have their case upheld by the Independent Panel. Nearly two-thirds of these were upheld at Stage 2 review. By contrast, nearly 80% of reviews sought relating to the young farmers' payment, were rejected by the panel.

## Consultation

Commenting, Jim Shannon said that he appreciated the helpful and detailed responses to his requests provided by the Department.

However, he also believes that the information provides further weight to his argument that the decision to change the review process in 2018 was flawed.

In that change, DAERA decided to drop the Stage 2 review, which prompted a legal challenge by the UFU. In the end, the UFU and DAERA settled out of court, agreeing that the panel should be retained, but with some conditions attached. It was a legal challenge that cost the UFU over £100,000.

But in their 2017 consultation document proposing the change, DAERA partly justified dropping the independent

panel on the basis that only 10% of reviews "derive benefit from access to an external panel".

The analysis of the data obtained by Shannon highlights that around 20% of cases taken to Stage 2 were fully or partially upheld by the panel, and either accepted in full, or in part, by the Department. If we add in those cases that were upheld (in part or in full) by the panel, but rejected by DAERA, this figure rises to nearly 40%.

## Survey

As yet it is not clear whether claimants who had a positive outcome from the Stage 2 review, subsequently turned down by DAERA, will be looked at again.

It is understood that a draft survey has been circulated by Jim Shannon's team to farm lobby organisations and local agricultural consultants in an attempt to establish who these people are, and whether they want to come forward. The survey also asks about "live" cases that remain unresolved going back to when area based payments were first introduced in 2005.

# Dispute unresolved over cost of Judicial Review

**DAVID WRIGHT**  
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Despite making an offer to settle remaining disputed costs from a recent court case, Barnwell Farms remains out to the tune of over £22,000, the *Irish Farmers Journal* understands.

Earlier in 2020, the Co Down farm business won a judicial review case taken against DAERA, after the Department went against the view of an independent panel at Stage 2 review, and excluded the farm from direct payments under active farmer rules.

In total, the case cost Barnwell Farms £85,125 in legal charges, and that was after it had managed to negotiate a discounted rate for solicitor and counsel fees. In the end, DAERA reimbursed Barnwell Farms a total of £62,664, leaving a deficit of £22,461.

An offer made by the directors of Barnwell Farms to settle for £10,679 was rejected by DAERA last month.

The Calvert family (the directors of Barnwell Farms) have raised two main concerns over the past few months. The first relates to the extent



The High Court in Belfast.

of the charges levied on them by legal representatives.

"We have made a substantial complaint to the Senior Partner of McKees solicitors of Belfast in August and anticipate a full response to our complaint in early January 2021," confirmed Robert Calvert.

The second concern relates to the precedent set in previous judicial reviews brought by the UFU.

In the two judicial reviews taken by the UFU on behalf of its former president Ian Marshall, the union spent around £263,000, and despite winning those cases, only recovered just over 50% of its costs from DAERA (approximately £140,000).

In a third judicial review in 2018, which challenged DAERA on a decision to remove the independent panel from the

Stage 2 review process, the UFU agreed to cover its own legal bill of around £108,000.

Representatives of the Calvert family have suggested that the UFU should make a case to have the costs of the Marshall judicial reviews looked at again, to reduce what they believe is prejudice in their own claim for outstanding costs.

Meanwhile, a request by Strangford MP Jim Shannon

“Shannon now has constituents coming to a Stage 2 Review worried that they cannot introduce new evidence as a result of this agreement

to DAERA for an *ex gratia* payment of £99,950 to be made to the UFU, for what he believes was a “wholly unnecessary challenge” in the third judicial review, has been declined by the DAERA permanent secretary.

As well as questioning whether this third judicial review should ever have proceeded (DAERA changed the review of decisions process at a time when Stormont was dissolved), Shannon has also raised issues about the deal reached between DAERA and the UFU.

At the time, both sides agreed to maintain the independent panel at Stage 2 review, and that new evidence could only be brought to the panel in “exceptional circumstances”.

Shannon now has constituents coming to a Stage 2 Review worried that they cannot introduce new evidence as a result of this agreement.

## 50 cases

With up to 50 cases since 2015 where the Department did not accept (in part or in full) the recommendation of the independent panel, work is ongoing to see if these cases can be looked at again.

When asked during a webinar for Co Down members last Thursday evening whether the UFU supported having these cases re-assessed, UFU president Victor Chestnutt gave a non-committal response.

However, he did welcome Minister Poots' recent statement that the view of the independent panel would be final going forward.

His deputy, David Brown also maintained that since the court case taken by the UFU on the review of decisions process in 2018, out of 29 cases taken to Stage 2, on only two occasions has the Department failed to accept the recommendations made by the independent panel.

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# IRISH FARMERS JOURNAL

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N Saturday 9 January 2021

6 NI NEWS

## Claimants still waiting on DAERA verdict

DAVID WRIGHT

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Despite a public statement by DAERA Minister Edwin Poots in mid-November 2020 when he said that he would not be overturning decisions made by an independent panel at a Stage 2 review, a number of claimants are still awaiting their case to be finalised.

As reported in the edition dated 12 December, Strangford MP Jim Shannon had established by way of a freedom of

information request that up to nine cases were still under final consideration.

In each of these, a claimant to an area-based scheme had challenged a decision by DAERA, and taken their case to an independent panel at Stage 2 of the Review of Decisions process. In these cases, the panel had recommended in favour of the claimant.

However, ultimately the final decision rests with the Department, and officials can ignore the recommendation of the Independent Panel, al-

though the clear position of Minister Poots is that this will not be happening during his tenure.

On enquiry, a DAERA spokesperson confirmed that seven cases remain with the Department following on from a recommendation made by this panel.

"The Department is considering these cases and will issue decisions in due course," confirmed the spokesperson.

In light of the recent Barnwell Farms judgement (when DAERA lost a judicial review

case after going against the recommendations of the panel) and the recent statement made by Minister Poots, Jim Shannon questions why these cases remain outstanding.

"Given the challenges currently facing all government Departments, including DAERA, I am surprised that officials are still spending any time assessing these post Stage 2 Independent Panel recommendations," he said.

### Legacy

In separate freedom of infor-

mation requests Shannon has also established that DAERA officials have been working to clear a backlog of legacy Single Farm Payment cases ahead of Brexit. These legacy cases relate to the scheme years 2005-2014.

By March 2019 there were 700 cases still considered as "live", with the vast majority because the claimant had either not submitted bank account details, or not provided Probate details.

By March 2020, only 12 cases remained, and by November

2020 this was down to four. From 15 October 2020, any remaining cases will have to be covered out of national funds, not from the EU.

There are then those cases still in dispute from 2015 onwards. The DAERA annual report and accounts for 2019/2020, published last November, notes that if these claimants are eventually deemed eligible for payments, it could cost in the region of £964,000. However, not all will be successful, so a more likely figure is around £666,000.

# IRISH FARMERS JOURNAL

## Challenge to MLAs on appeals

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## Supreme Appeal Panel to replace Judicial Review

Changing the Review of Decisions process to one where the Independent Panel at Stage 2 had the final say would be a relatively straightforward and least costly option.

However, Brian Little and James O'Brien recognise that legislators might decide they want to build in a robust mechanism to make final decisions in disputed cases.

Their alternate idea is for a Supreme Agricultural Appeal Panel (SAAP) to consider instances where the Independent Panel at Stage 2 review has recommended in favour of the claimant, only for DAERA to either not accept that recommendation in full, or in part.

Their initial proposal is that the SAAP only consider cases where the quantum of the claim is over £5,000.

The five-member panel would be made up of people from a farming and legal background, and make a final "binding decision" within 90 days of hearing a case.

The proposed cost for the applicant is £1,500, and not refundable. Both the applicant, and DAERA officials involved in making the decision at Stage 2 review would give evidence to the panel.

Unlike the current Stage 2 process where an applicant can only introduce new evidence in exceptional circumstances, the SAAP would accept new evidence from either side up to 30 days pre-hearing.

### Cost

While the £1,500 cost might be offputting for some, the cases taken by the UFU and Barnwell Farms, show that a judicial re-

view can end up costing substantially more.

Even though Barnwell Farms, and the UFU (in two cases relating to a pollution incident on the farm of former president, Ian Marshall), both won, they were not able to recover all their legal expenses.

At present, a claimant is charged £200 if they want to have their case heard by a two-member Independent Panel at Stage 2 review.

However, DAERA estimates that the actual cost of each assessment (once staff time is added in) is in the region of £600.

A five-member SAAP would inevitably cost more than a Stage 2 review, but for all parties concerned, the financial outlay would be insignificant when compared to a Judicial Review.

## Window of opportunity for historic cases

As highlighted in the *Irish Farmers Journal* dated 12 December 2020, there are up to 50 cases since 2015 where DAERA did not accept (either in full or in part) a recommendation of the Independent Panel at Stage 2 review.

In the document submitted to MLAs at Stormont, O'Brien and Little put forward options as to how these cases could be dealt with.

The first is to do nothing, as ultimately the law cannot

operate retrospectively.

Alternatively, O'Brien and Little point out that MLAs could decide to act on a voluntary basis, perhaps requesting that DAERA revisit cases and accept recommendations made by the Independent Panel.

The remaining option is to allow claimants to make their case to the newly constituted Supreme Agricultural Appeal Panel.

Either way, the onus is on

claimants to come forward before the end of March 2021, either by approaching a farm lobby organisation or local agricultural consultant.

It will also be up to MLAs to decide what the cut-off date for historic cases actually is – one suggestion is that they could look at those with a final decision made by DAERA after Stormont collapsed in early 2017 (when former Minister Michelle McIlveen left her post).

## DAERA instinct to 'batten down the hatches'

As highlighted in previous articles, Strangford MP Jim Shannon has been working behind the scenes on behalf of his constituents, the Calvert family, to try to ensure they recover costs.

He is keen that other farmers do not end up in a similar situation, and believes that comments made to him by Hugh Mercer QC, the Senior Coun-

sel in both the Barnwell Farms case, and all three UFU Judicial Reviews, are relevant.

"Mr Mercer QC described the Barnwell Farms case as a 'sparkling result' but points out that DAERA's instinct when challenged has consistently been to batten down the hatches, rather than consider, with an open mind, whether the original decision is suspect.

The reflex within DAERA has been to assume that DAERA is right, and that is not always the case," Shannon told the *Irish Farmers Journal*.

Shannon is also critical of the amount of taxpayer's money spent on Judicial Reviews by DAERA, and intends raising his concerns to the Comptroller and Auditor General in NI, Kieran Donnelly.



# Challenge put to MLAs on appeals process

**DAVID WRIGHT**  
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Changes have been proposed to the Review of Decisions process for area-based schemes that could ultimately help avoid a farmer ending up in the High Court to resolve a dispute with DAERA.

As highlighted in a series of articles over the last few weeks, farmers who are not satisfied with the outcome of the two-stage DAERA Review of Decisions process are effectively left with a Judicial Review as the remaining course of action.

But with a potential legal bill running into six figures, and no guarantee of success, (or in the event of a favourable judgement, no guarantee that all costs will be recovered), most applicants walk away at this point.

"Unless the sums of money involved are substantial, a Judicial Review is cost-prohibitive. In most cases where the Department overrules the Independent Panel at Stage 2 review, claimants are effectively left with no right of redress," local Barrister James O'Brien BL told the *Irish Farmers Journal*.

In four recent legal cases involving DAERA, which ended up at Judicial Review, legal costs came to well over £500,000. Three of these cases were brought by the UFU (the first two on behalf of former president Ian Marshall), who ended up with a net spend in the region of £230,000. The taxpayer (DAERA) had legal costs around £300,000, while



**Robert Calvert, nephew of the late Michael Calvert, with Michelle McIlveen, former DAERA minister, and Jim Shannon MP.**

Picture courtesy of the Newtownards Chronicle

in the final case, brought by the Calvert family (Barnwell Farms Ltd) it still has a shortfall of £22,000, despite obtaining a ruling in their favour.

In the Barnwell Farms case, an Independent Panel at Stage 2 review had recommended DAERA should accept the arguments put forward by the Calvert family.

However, DAERA officials decided to ignore that, and excluded Barnwell Farms from

the Basic Payment Scheme under "active farmer" rules.

In the subsequent court case, the judge, Mrs Justice Keegan, said that DAERA was obliged to explain why the analysis of the Independent Panel was not followed.

"The whole process was extremely stressful, and I know it was something similar for Ian Marshall. For us, it dragged out for over five years. We all believe there has to be a better

way," explained Robert Calvert.

Since the judgement, the family, along with Brian Little (a voluntary adviser to the DUP / Strangford MP Jim Shannon) have been working to try to recover remaining costs, and to bring change to the whole review process, to benefit NI farmers.

To achieve that change, the Barnwell Farm directors asked their solicitors to instruct James O'Brien BL, the former

chair of the UFU legislation committee, to work with Brian Little. Together they have drawn up a detailed 20-page document, sent to MLAs on the Stormont Agriculture Committee for consideration.

## Options

Three options put to the committee are:

➤ MLAs and DAERA Minister Edwin Poots decide to leave the Review of Decisions process

unchanged. That would mean the two-stage review remains in place, and irrespective of the recommendations made by an Independent Panel, the final decision rests with DAERA.

➤ MLAs could change the legislation, putting it into law that the final decision rests with the Independent Panel, not the Department.

➤ MLAs could legislate for a new five-member Supreme Agricultural Appeal Panel to have the ultimate final say when reviewing a DAERA decision.

"We believe that change is necessary so keeping the current process is not an option – a final decision maker must be independent of the Department. After that, we are open-minded. Ultimately it is a political decision," Brian Little told the *Irish Farmers Journal*.

Back in November 2020, Minister Poots informed the Stormont Assembly that he would not be going against the Independent Panel at Stage 2, so it is clear he also recognises there is a need to change the law.

Little, O'Brien and Calvert have made themselves available to provide further evidence and background on their proposals to MLAs.

"Our challenge to MLAs is to get this process considered, and potentially changed, by the end of 2021. We have previously met two members of the committee (William Irwin MLA and Harry Harvey MLA), and at the time, they gave us the confidence to pursue the issue and spend a little money on research, and this proposal," said Robert Calvert.

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# IRISH FARMERS JOURNAL

6 NI NEWS

## MLAs to probe DAERA two-stage appeal process

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Members of the Stormont Agriculture committee are due to receive a briefing from DAERA officials next Thursday 28 January on the role of the Independent Panel at Stage 2 of the current Review of Decisions process.

It follows on from a statement made by Minister Poots last November when he confirmed that he would not be going against recommendations made by the two-member panel.

Despite that, as revealed in the *Irish Farmers Journal* dated 9 January, there are seven cases still awaiting a final decision by DAERA, after the panel made a recommendation in favour of the claimant. And as reported in the edition dated 12 December 2020, there are up to 50 cases since 2015 where the Department has not accepted (in full or in part) the recommen-

dations made by this panel.

That information was revealed in a series of freedom of information requests made by Strangford MP Jim Shannon, and he has now written to the Stormont Agriculture committee suggesting that it should undertake an inquiry into the current Review of Decisions process.

In addition, as reported in last week's edition, local barrister James O'Brien BL and Brian Little, a voluntary adviser to the DUP, have put a document to the committee setting out potential options for a new process.

That would require a change to the law. O'Brien and Little suggest that MLAs could legislate that the decision of the Independent Panel is final, or as an alternative, introduce a Supreme Agricultural Appeals Panel, to adjudicate in cases where a claimant is still not satisfied with the outcome of an appeal.

Either way, the aim is to

avoid farmers being left with a costly Judicial Review as their only remaining course of action.

### Proceed

At the Agriculture committee meeting last Thursday, members indicated that they wanted to hear from DAERA officials before deciding how to proceed.

But a number of MLAs expressed frustration at the current process where DAERA officials can effectively ignore the recommendation of the panel at Stage 2 review.

"I think that is grossly wrong and unfair, and we need to look into that. Why have an Independent Panel if you don't accept the findings of it?" said DUP MLA William Irwin.

"This needs to be addressed. It wouldn't be beyond our remit to do a mini inquiry – there are options to explore in more detail," added committee chair, Sinn Féin MLA Declan McAleer.

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# IRISH FARMERS JOURNAL

## Farm lobby to put case to MLAs on appeals

**DAVID WRIGHT**  
NORTHERN EDITOR  
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The NI Agricultural Consultants' Association has written to the Stormont Agriculture committee to indicate that it would be keen to provide evidence on the Review of Decisions process for area based schemes.

It is also understood that both the NI Agricultural Producers' Association (NIAPA) and the Ulster Farmers' Union (UFU) are also likely to be called before the committee, assuming that MLAs decide to go ahead with a mini inquiry into the current review process.

That comes after Agriculture Minister Edwin Poots confirmed last November that

he would not be going against the view of the Independent Panel at Stage 2 of the current review process. Despite that, existing legislation allows DAERA officials to ignore the recommendations made by the Independent Panel, and to stick with its original decision.

As reported in the edition dated 16 January 2021, a document has been put to MLAs setting out two potential options for a new process. The first would mean that the decision of the Independent Panel is final. The second option involves the creation of a Supreme Agricultural Appeals Panel as a final arbiter in disputed cases.

### Single stage

It was only back in 2017 that DAERA proposed scrapping the two-stage process, in

favour of a single-stage approach, where the review is by a DAERA official not involved in the original decision.

That was opposed by farm lobby organisations, who have consistently argued that the decision of the Independent Panel at Stage 2 should be final.

But it is worth noting that the 2017 DAERA consultation on the proposed changes did not specifically ask for stakeholder views on the removal of the Stage 2 review.

It was a point picked up by the UFU. "The closed questions which are used in this particular consultation can only direct the answers the way DAERA want, and not allow the public to put their points of view across," noted UFU policy manager James McCluggage.

After the Department pressed ahead with the new single stage process, the UFU took a legal challenge by way of a Judicial Review. In October 2018, both sides announced that they had reached an agreement, with the Independent Stage 2 Panel retained, but with some conditions attached.

Included in those conditions were that the final decision still rested with DAERA, and also that users of the Independent Panel could not provide new evidence except in exceptional circumstances.

Those advocating for MLAs to bring forward a new process have made strong arguments outlining why both those conditions should be dropped. DAERA officials are due to give evidence to MLAs today (Thursday) on the role of the panel.

# New appeals process to be independent of DAERA

**DAVID WRIGHT**  
NORTHERN EDITOR  
dwright@farmersjournal.ie

A new Review of Decisions process for area-based schemes in NI is to be brought forward in 2021, a senior DAERA official has confirmed.

Giving evidence to the Stormont Agriculture Committee last Thursday, DAERA head of area-based schemes Dr Jason Foy told MLAs that he hopes to have legislation in place by the end of 2021 that will mean the decision made by an Independent Panel is final.

At present, farmers unhappy with a DAERA decision can appeal, with their case initially considered by Department officials at Stage 1 of the process. If the applicant remains unsatisfied, they can proceed to the Stage 2 Panel.

However, under current legislation, DAERA can choose to reject the recommendations made by the Independent Panel.

"It is a very frustrating and demoralising process and leaves many farmers wondering why go through this at all," suggested committee chair Declan McAleer. He pointed out that the remaining course of action is a potentially very costly Judicial Review of the decision in the High Court, so most farmers walk away at this point.

## Minister Poots

Last November, Agriculture Minister Edwin Poots told MLAs that he would not be going against recommendations made by the Panel, and he has now instructed officials to bring forward legislation to

change the process.

"The Independent Panel will be making the decision, and we would then be implementing whatever that decision would be," Foy told MLAs.

He said he hopes to do a process of consultation and stakeholder engagement this spring, and following that, legislation will be drafted for consideration by the committee.

In the meantime, there are some issues to work through. The first is how to deal with "live" cases. Out of 44 claimants who appealed to a Stage 2 review in the last three years, 20 had a recommendation in their favour from the Independent Panel. Of these, 11 have been accepted by DAERA, one partially accepted, leaving eight "still under consideration", explained Foy.

"I don't want the committee



The view near Dunloy in Co Antrim. In NI, direct payments have been based on the area farmed since 2005.

to form the impression that we are necessarily going to reject those – that is not the case. We consider each very carefully, and we just need to ensure that the recommendation is in keeping with the regulations that govern the schemes," responded Foy to a question from Newry and Armagh MLA William Irwin.

Mid Ulster MLA Patsy McGlone probed the DAERA official further, enquiring if these eight cases could be held back until new legislation is in place. However, Foy pointed out that other cases are likely to come

forward in 2021, so the Department will have to consider how to transition in the new regime.

"I am quite mindful of unintended consequences, and a perception of unfairness. It is something we have to think through properly and carefully," he responded.

## Historic

There are also those historic cases where the Independent Panel recommended in favour of an applicant, but this has not been upheld by DAERA. "It is an issue we are aware of, and something we will

be considering as we bring forward the legislation. It is a question we will have to resolve one way or the other, but I don't know the answer," Foy told Fermanagh and south Tyrone MLA Rosemary Barton.

One suggestion put forward is that there is an argument to look again at cases since March 2017 (when there was no Minister at DAERA).

But either way, if claimants want their cases re-assessed they should approach their farm lobby organisation or agricultural consultant in the first instance.

# IRISH FARMERS JOURNAL

## Shannon raises audit concerns

Strangford MP Jim Shannon has written to the Comptroller and Auditor General in NI, Kieran Donnelly, to suggest that he undertakes an investigation into the amount of money spent on judicial reviews.

As revealed in the edition dated 5 December 2020, five recent court cases involving DAERA ended up costing the taxpayer in the region of £300,000. In addition, three of these cases involved the UFU, and they have unrecovered costs of around £231,000, while in the fifth case involving Barnwell Farms, the Greyabbey based business still has unrecovered costs of over £22,000.

In his letter, Shannon also questions why the issues surrounding the judicial reviews do not seem to have been given much consideration by the DAERA Departmental Board, the body that manages the running of the Department.



Jim Shannon.

In a review of published minutes since January 2017, Shannon indicates that he is "astonished" that there was only one solitary reference to these court cases, and no mention of any lessons learned.

## Legal basis for future decisions

While DAERA is now working to bring forward new legislation that will make the decision of the Independent Panel final, it is important to note that those decisions must still be in keeping with existing regulations, Jason Foy told MLAs last Thursday.

It could mean that future members of the Independent Panel will have to be from a legal background. "That is something we will have to consider," he responded to a question raised by south Belfast MLA Clare Bailey.

The Green party MLA also queried why DAERA had brought in a new Review of Decisions process from 1 April 2018 that dropped the Stage 2 panel in favour of a single stage

process conducted by a DAERA official. Later in 2018 that was challenged by the UFU in a Judicial Review. Ultimately, the two-Stage process was retained.

"The review was instigated at the request of the Minister [Michelle McIlveen]. The rationale was a fairly high dissatisfaction at the length of time the process was taking," explained Foy.

However, while he claimed that the aim was to create an improved single stage review, he was clear that the decision to drop the Independent Panel was taken by officials, after Minister McIlveen had left her post, and Stormont was suspended.

## 'We get it wrong' admits DAERA official

In two recent cases brought to a Judicial Review in the High Court (the UFU on behalf of former President Ian Marshall; and Greyabbey-based Barnwell Farms), the judge ruled in favour of the claimant. Those cases left DAERA with a significant legal bill, and having to reimburse outstanding single farm payments.

"The Department has no desire to be involved in a Judicial Review process any more than an applicant farmer," Jason Foy told MLAs last week.

"I fully accept there are cases where we do get it wrong. We try to minimise the number of instances where that happens," he added.

## DAERA don't have to pay interest

Getting through the current Review of Decisions process could take a number of years. Where a significant proportion of direct payments are held back by DAERA, this has a major impact on the viability of a farm business.

In some cases, DAERA do make an *ex gratia* payment, although there is no legal re-

quirement for the Department to pay interest on payments that are refunded, Jason Foy told Strangford MLA Harry Harvey.

"The standard we have used is the same standard applied to any debts recoverable from farm businesses, which is the Bank of England base rate, plus 1%," he said.

# #Therewithyou Farming Life

SHANNON URGES STORMONT TO ACT ON FARM SUBSIDIES APPEAL PROCESS

## Call for overhaul of appeal process

BY RICHARD HALLERON  
richard@farm-link.com  
www.farminglife.com

Strangford MP Jim Shannon is calling for the Stormont Executive to amend legislation introduced in 2001, which allowed for the establishment of independent cross compliance and other 'farm subsi-

dy related' appeal panels in Northern Ireland.

The proposed amendments would serve to ensure that a Department of Agriculture, Environment and Rural Affairs (DAERA) minister, or departmental officials, could not overturn future recommendations made in favour of farmer-applicants by these panels.

According to the DUP politi-

cian, he is aware of almost 50 panel decisions having been overturned by DAERA officials while Stormont was 'in recess' from early 2017 to the end of last year.

He added: "And this may only be the tip of the iceberg. I have been dealing with a large number of complaints from farmers who are justifiably outraged at the arbitrary decisions taken by DAERA

officials, subsequent to a second stage appeal.

"I welcome the recent statement made by farm minister Edwin Poots that he is not of a mind to overturn the decisions taken by appeal panels. But what happens when he moves on?"

TURN TO PAGE 5



## FARMING LIFE

### FROM FRONT PAGE

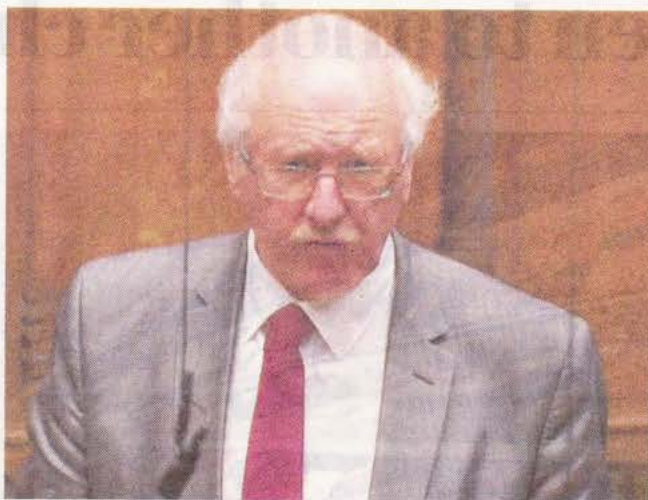
# Call for overhaul of appeal process

BY RICHARD HALLERON  
richard@farm-link.com  
www.farminglife.com

"We need the legislation amended this year to have real teeth that will prevent DAERA officials or a future Farm Minister overturning the recommendation made by an appeal panel."

Shannon has warmly welcomed the assertion by Stormont Agriculture Committee Chairman, Declan McAleer MLA, to the effect that members of that committee should formally inquire into the procedures followed by appeal panels and the action of DAERA officials to override a significant number of their recommendations.

The Strangford MP continued: "I fully support the need for a mini inquiry. It should take about three months to complete. But it does not get around the need for legisla-



Strangford MP Jim Shannon.

tion with real teeth to be introduced, where the role of appeal panels is concerned."

DUP voluntary advisor Brian Little confirmed that it should be possible to have the required legislative amendments formalised in law by the end of this year.

He added: "It's crucial that the amended legislation be enacted prior to next year's Assembly Election."

Core to the amendments being proposed by Jim Shannon is a re-configuration of the appeal panels' structure, particularly with regard to the

handling of the second stage review process.

Brian Little again: "We have put two options on the table. One is to change this legislation to have the Stage 2 independent panel decision be final and the other would be to have further third stage review handled by a five-member Supreme Agricultural Appeal Panel, where DAERA do not accept the stage 2 recommendation. The decisions arrived at by these panels would be binding: DAERA could not override them in any instance. We don't mind which. That is properly a matter for the stakeholders and our politicians/lawmakers at Stormont in 2021"

But what about the legacy cases that already exist?

Jim Shannon again: "New legislation cannot act retrospectively. So, two options are open to us. The first is to ask DAERA to formally review panel recommendations that

they previously over ruled.

"If this approach does not work, we will ask that the newly created Supreme Agricultural Appeal Panels carry out the required reviews, as soon as they have been constituted."

Brian Little added: "We are also aware that many other farmers, in addition to those already known to us, have had appeal panel recommendations overturned by DAERA officials between 2015 and 2020.

"We would like these people to come forward between now and the end of March so that their cases can be reviewed, once more, by DAERA.

"The people so affected should contact the UFU, NIA-PA or any of the agricultural consultants ACA (NI) or those in his constituency can contact Jim directly or any of their local public representatives."

Jim Shannon concluded: "Independent panels were not

a function of European law. Instead independent panels are something all parts of the UK have done as part of promoting good governance.

"English statistics for overall panel results indicate approximately one third of appeals are successful with an approximate 50% success rate in Scotland. While in Northern Ireland from 2015 to 2020 the analysis of the available data highlights that around 20% of cases taken to Stage 2 were fully or partially upheld by the panel, and either accepted in full or in part by the Department.

"If we add in those cases that were upheld (in part or in full) by the panel, but rejected by DAERA, this figure rises to nearly 40%. The legislation in Northern Ireland is a statutory instrument: the Farm Subsidies (Review of Decisions) Regulations (Northern Ireland) 2001. Our lawmakers at Stormont can change it."

## Concern at rejection of review panel decisions

**Newry & Armagh DUP Assemblyman William Irwin MLA has said he is concerned by the response of DAERA officials to a Stage 2 Review of Decisions Application Panel Hearing on a 2016 Young Farmer's Payment Scheme/Regional Reserve application.**

Farming Life Saturday, 4th August 2018 Updated Friday, 31st August 2018

Mr Irwin attended the Panel hearing in support of one young farmer and said that despite the panel recommending the decision be changed, the department rejected the view of the panel members, something Mr Irwin said “rubbished the work and authority of the panel”.

He said: “I am really concerned on this matter as the young farmer in question applied in good faith to a scheme and was conscientious about ensuring the details were correct to the point of making repeated visits to his DAERA Direct office and being assured by staff that the application was complete.

“DAERA’s official decision makers then rejected the application on the grounds that there was insufficient information on the Partnership Agreement, something that both the applicant and I at the Panel hearing strongly contested. The panel were sympathetic to the young farmer’s plight and put their recommendations back to the department, however the recommendations were flatly rejected.

“The young farmer in question feels very aggrieved by his treatment and I totally share his frustration and disappointment. However, this isn’t an isolated case and is only one example in a long line of cases whereby panel recommendations have been rejected. I ask what is the point of having a panel if when a recommendation is made, it is ignored by the department? The young farmer paid a £100 fee to go to the Panel yet sees no redress, therefore why has the young person been asked to pay this fee?

“I would also make the point that in terms of new entrants to farming and encouraging our young people to consider farming as a future, what message is the Department sending out with this type of decision making?”

He concluded: “The only option now open to the young farmer is a Judicial Review, which would cost many thousands of pounds and sadly is not a realistic next step for the young person concerned. In other parts of the United Kingdom Departmental staff seem much more willing to act with a more strategic outlook, which is primarily about agri-food sector success rather than the current trend within DEARA to erect barriers to growth and as in this case, prevent young farmers from progressing in farming. That attitude needs to change and the Department needs to take on board Panel decisions and implement recommendations. I have requested a meeting with the DAERA Permanent Secretary to put these matters directly to officials and ensure farmers concerns are heard.”



# Welcome for Poots intervention on panel

BY FARMING LIFE REPORTER  
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@FarmingLifeNI

Newry & Armagh DUP Assemblyman William Irwin MLA has welcomed an intervention by DAERA Minister Edwin Poots MLA in response to a query raised in the Assembly Chamber on Tuesday on the validity of verdicts made by Independent Panels on cross compliance penalties.

Mr Irwin said: "This is an issue that has long concerned farmers out in the industry and I have assisted a number of farmers through the appeals process and on occasions where the panel has ruled in favour of the appellant, the Department has disregarded their verdict and left

the original Departmental decision in place. This in my view makes a totally mockery of the Appeals process and leaves a very sour taste with the Appellant."

Headed: "During a Ministerial Statement to the House on Tuesday by Minister Poots, I raised this issue and asked him for his view on the Department failing to accept the verdict of an independent panel. Mr Poots was forthright in his response on this issue and made it clear that he will not be overturning the decisions of independent panels."

He continued: "This is an important step forward and a very welcome development as I know that on occasions where I have represented farmers only to see DAERA reject the view of the panel,

it has been very deflating for farmers in this situation. Indeed, farmers see this as an injustice."

He concluded: "Minister Poots' comments are welcomed and will be an assistance to farmers who progress to a panel hearing as it will give them important assurance that in an instance where the panel finds in the farmer's favour, the Department will have to abide by that decision."

The Ulster Farmers' Union (UFU) says it is pleased that Minister Poots has stated that decisions made by an independent panel will be final.

UFU president Victor Chesnutt said: "Agriculture Minister Edwin Poots' clarification during the Assembly yesterday that he would not be overturning the deci-

sions made by an independent panel, is positive news. In 2018 the UFU had no option but to progress a judicial review against DAERA to maintain the independent panel at a second stage appeal. During this process, the UFU lobbied that the independent panel's decision should be final however, we were told that this would require a legislation change and unfortunately while we maintained the second stage of the independent panel, this fell into the political vacuum with the devolved government.

"Our technical team have been dealing with members who were awarded in favour of, by the independent panel at the second stage of an appeal, only for DAERA to reverse the decision. This has

been incredibly frustrating and stressful for our members whose only option was to take further legal action. However, financially this was not possible for the majority.

"We are glad that the Agriculture Minister has listened to our lobbying and is willing to uphold the final decision of an independent panel in matters going forward. This will ensure that our members do not have to endure this unjust treatment by the Department again. We hope the legislation change for this to happen can happen sooner rather than later."

William Irwin MLA



# FARMING LIFE

## NEWS

# Irwin welcomes panel progress

**BY STAFF REPORTER**  
farminglife@jpimedia.co.uk  
www.farminglife.com

**Newry & Armagh DUP Assemblyman William Irwin MLA has welcomed discussions in the DAERA Committee at Stormont on Thursday when Department official Jason Foy acknowledged that a clear direction had been set out by the Minister to accept the verdict of independent appeal panels.**



Mr Irwin, pictured, said: "This is something that I have been raising for many months and it was a very useful discussion at committee and an important acknowledgement by Mr Foy moving this issue on towards a position whereby the independent panel is given the final say. As we know, this has not been the case to this point and indeed I have been involved in appeals on behalf of farmers whereby the positive verdict of the independent panel has been rejected by the Department, something that did not sit at all well with the farmers in these instances."

He continued: "The fact the Department has also lost at judicial reviews taken by farmers who have been unfairly penalised, is further proof of the need for the panels to be given the necessary authority to give a final decision. Judicial Reviews are an excessive cost for any farmer to engage in and this very fact obviously can put someone off from taking their case a stage further."

"The fact the direction of travel is now firmly towards giving the panels the power they should have in decisions

will be welcomed across the board and I will continue to play a full and active role in the committee along with stakeholders who have worked so hard on this matter to bring this issue to a successful conclusion."

On Twitter - @FarmingLifeNI



# Agriland.ie website— published 4 Feb 2021

## Department to seek legal changes for NI's review of decisions process



Rachel Martin  
Feb 4, 2021, 10:59am

The department cannot delegate decision-making responsibilities over schemes without legal changes, a senior civil servant has told Stormont's Agriculture Committee. It comes amid calls for an independent panel to have the final say on claims.

### Greyabbey Case

DAERA's two-stage 'review of decisions' process became the subject of controversy after a Co. Down farm owner was refused Basic Payment on the grounds the department had not deemed him an 'active farmer'.

An independent panel took the opposite stance. However, that decision was overruled by the department. The case was then taken forward for Judicial Review, where a judge then ruled in favour of the farm owner.

The independent panel was established in 2001 with the aim of providing farmers with an impartial and transparent review of scheme decisions against the framework of EU and national framework and scheme rules.

The committee heard there have been **35 cases** in the last three years where decisions made by the panel were later overturned.

Jason Foy, head of payments at DAERA, told the committee that work was underway to make changes to the review process but added that ultimate responsibility lay with the department.

“The committee will be aware that the minister has instructed that the independent panel should make the final decision in cases referred to it as opposed to a recommendation and we are currently undertaking some work to put that to effect which will require new legislation to be laid,” he said.

“It’s intended that will be brought into effect later this year.”

## **‘Not Rejected Lightly’**

Foy explained that panel recommendations were not “rejected lightly or without good reason” and provided committee members with a copy of the rationale for each of the cases where this occurred in the last three years.

“Where a farmer believes that the department’s original decision regarding a scheme has been incorrect, the process offers the opportunity for redress,” he said.

The department remains the decision-making body, and cannot delegate the decision to a third party.

“As a paying body for EU and national funds, the department has a responsibility to ensure these funds are appropriately administered and they are within the scope of the scheme’s rules and legislation.

“Where the department receives a recommendation from the independent panel, we treat it very seriously, and give it a thorough consideration at all times and in every case.

We endeavour at all times to provide to farmers a high standard of customer service including clear and effective communication with applicants in the review of decision process.

Foy Added That The Cost Of A Claim Has “Never Been A Factor” In The Department’s Decision To Reject A Panel Recommendation.

“Since the schemes are already fully-funded there is funding available to make payment against all claims deemed eligible.

“The department has only determined that panel recommendations can’t be accepted where this has been necessary,” he said.

## Pending Decisions Not Necessarily A Lost Cause

Newry and Armagh MLA William Irwin told the committee he had supported several farmers through independent panels in the past.

I was very frustrated when the department didn’t accept the findings of some those independent panels. It was very demoralising for the farmers involved.

“I had one particular farmer who just threw his hands up and said: ‘What’s the point?’ – a relatively small farmer and a young farmer actually,” Irwin said.

Irwin added he was aware of a number of cases where an independent panel had ruled in favour of the farmer. However, the department had still not made a final decision.

Responding, Foy said: “Our position up to this point, and I think might continue to be, that we need to examine the panel’s recommendations – because at this point they are still recommendations – to ensure that they are in keeping with the law as written and regulations that apply to schemes and scheme rules.

Where we have had cases go to panel in the last three years, where the panel has recommended that the decision be changed, we have accepted that as you’ll see in 11 cases, partially accepted in one case, and we have eight still under consideration.

“Because they are under consideration, I don’t want the panel to form the opinion that we will reject those recommendations – that is not the case.” “We consider each case very carefully, and we just need to ensure that the recommendation is in keeping with the rules that govern the schemes.”

DAERA

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editor@ardschronicle.co.uk • Thursday 24th December, 2020

NEWS 3

# Landmark ruling for Greyabbey farm could help other NI farmers



Robert Calvert.

### A GREYABBEY farm has won £80,000 after a High Court ruling that could benefit dozens of other farmers across Northern Ireland.

The five year battle first mounted by Michael Calvert, of Barnwell Farm, began in 2015 after he was turned down by the Department for Agriculture the Environment and Rural Affairs (DEARA) for a basic farm payment. But in a landmark judgement, the High Court has ruled that DEARA should not have rejected the findings of an independent panel which found Barnwell Farm was entitled to basic farm payments. The ruled could not help almost 50 other farmers throughout Northern Ireland to challenge past decisions made by DAERA.

The decision prompted a statement in the Assembly recently by DEARA Minister, Edwin Poots who said that 'on his watch, the decision made by the panel will be final'.

who in 2009 won a national award for the wildlife-friendly Barnwell Farm which was visited by the Prince of Wales the following year. However, Mr Calvert suffered a back injury in 2013 forcing him to sell his cattle and in 2015 he applied to DAERA for a basic farm payment in respect of his 72.9 hectare arable and beef farm. However, this was turned down by DAERA which sparked a five-year legal battle during which time Mr Calvert passed away.



The late Michael Calvert showing the Prince of Wales around his farm in 2010. B25-20-5-10

The campaign was carried on by his nephew, Robert Calvert, who took over running of the farm with Michael Calvert's widow, Vi. The Calverts eventually won their fight when the High Court ruled DAERA should not have rejected the view of an independent panel and that the farm family should be paid around £80,000 to cover the years 2015 to 2019. It was also determined that DAERA would cover a proportion of the Calvert's legal costs, an issue which has yet to be fully resolved.

"It is both unfortunate and disappointing that DAERA's head of paying agency within hours rejected our offer to split the difference by accepting a final payment of £10,679 to bring the

conclusion," Robert Calvert said. "That sum is from our total discounted legal bill of £85,125 from our and the Ulster Farmers' Union's Belfast-based solicitors." The Calvert family say they are determined to ensure their situation is not repeated with another family being left in debt leading to them suffering from unnecessary stress. Strangford MP, Jim Shannon, believes there is now an argument for DAERA to review a number of similar cases, particularly those in which they rejected the view of an independent panel. "Whether similar historic cases now come forward remains to be seen," he said.

totally outrageous', Mr Shannon questioned whether the Calverts and other similar cases should ever have ended up in the High Court. "My constituents and I now look forward to a constructive engagement with Dr Dennis McMahon, permanent secretary of DAERA and future independent panels post Brexit to address the potential reservoir of those almost 50 historic farming cases since 2015," Mr Shannon. "We would expect to find an appropriate solution to be found with Agriculture Minister Edwin Poots, the DAERA Assembly committee and the original three 2017 pre-consultation stakeholders."



Robert Calvert, nephew of the late Michael Calvert with Michelle McIlveen MLA, and Jim Shannon MP. They are beside a field of cereal crop which is bordered with planting to help native birds.

[REDACTED]

---

**Subject:**

FW: RE: RE: Contacting [REDACTED]

**From:** [REDACTED]@btinternet.com>

**Sent:** 18 January 2021 19:19

**To:** [REDACTED]

**Subject:** Fwd: RE: RE: Contacting [REDACTED]

(NOT UFU MEMBER / 2017 CONSULTANT  
2018 COURT ORDER)

Dear Jim, Brian

Firstly Jim I appreciated the opportunity to discuss our case with you earlier today and thank you for the suggestions you made.

Since then I have received an email from [REDACTED] see below. We anticipated a response along these lines and I would value both your thoughts on how best to respond to this email?

We look forward to hearing from you.

Thank you

Regards

[REDACTED]

----- Original Message -----

**From:** [REDACTED]@daera-ni.gov.uk>

**To:** [REDACTED]@btinternet.com>

**Sent:** Monday, 18 Jan, 21 At 17:05

**Subject:** RE: RE: Contacting [REDACTED]


Dear [REDACTED]

I refer to your previous email of 13 January 2021.

As stated at page 7 of the Review of Decisions procedure booklet, additional information and evidence submitted with an Independent Panel Assessment application may only be accepted if there were Exceptional Circumstances or where Force Majeure has been established which prevented you from submitting this information and evidence at Case Officer Review Stage.





\* As you are presenting additional evidence in support of your Independent Panel Assessment application, I would be grateful if you could provide your reasons as to why this additional information and evidence should be accepted under Exceptional Circumstances/Force Majeure. 

Kind Regards  
[REDACTED]

From: [REDACTED]@btinternet.com]  
Sent: 14 January 2021 11:15  
To: [REDACTED]@daera-ni.gov.uk>  
Subject: CM: RE: Contacting [REDACTED]

Dear [REDACTED]

Thank you for acknowledgement of my email and associated attachments

We are happy to proceed with an online conference subject to written confirmation from you that the submission and associated documentary evidence (scanned copies or in other agreed format to be supplied) sent to you on 13 January 2021 will be made available to the independent panel.

We look forward to hearing from you.

Regards  
[REDACTED]

----- Original Message -----

From: [REDACTED]@daera-ni.gov.uk>  
To: [REDACTED]@btinternet.com>  
Sent: Thursday, 14 Jan, 21 At 09:10  
Subject: RE: Contacting [REDACTED]

Dear [REDACTED]

Many thanks for your email.

I acknowledge receipt of your email and accompanying attachments.

This evidence will now be considered under the criteria for submission to the Independent Panel. A decision will be issued to you in respect of this in due course.

The next step now is to arrange your Independent Panel Assessment. Unfortunately due to the current restrictions relating to Covid-19 we are still unable to offer face-to-face Independent Panel Assessments at this time.

I believe you had previously indicated to my colleague [REDACTED] that you would be willing to complete your Independent Panel Assessment by videoconference. Can you confirm that this is still the case?

Kind Regards  
[REDACTED]  
[REDACTED]

Department of Agriculture, Environment and Rural Affairs

Review of Decisions

Area Based Schemes Payments Branch

Orchard House

40 Foyle Street

Derry/Londonderry

BT48 6AT

Telephone : [REDACTED]



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**From:** [REDACTED]@btinternet.com]  
**Sent:** 13 January 2021 10:55  
**To:** [REDACTED]@daera-ni.gov.uk>  
**Subject:** RE: Contacting [REDACTED]

Dear [REDACTED]

Thank you for your response to my query.

[REDACTED] was in the process of arranging a stage 2 appeal in relation to our confiscation of entitlements case.

We informed [REDACTED] that we were making a submission for the Stage 2 appeal and I attach the submission and a document list of supporting evidence.

Please advise us on the next steps in the process. I have also sent the information to [REDACTED] email address.

I look forward to hearing from you.

Thank you

Regards

[REDACTED]

----- Original Message -----

**From:** [REDACTED]@daera-ni.gov.uk>  
**To:** [REDACTED]@btinternet.com>  
**Sent:** Tuesday, 12 Jan, 21 At 16:35  
**Subject:** RE: Contacting [REDACTED]

Hi [REDACTED]

Unfortunately [REDACTED] has un-expectedly had to take a few days off and at present I cannot advise when [REDACTED] will be available again.

Is there something that I can clarify or help you with?

Kind Regards

[REDACTED]

**From:** [REDACTED]@btinternet.com]

**Sent:** 12 January 2021 15:47

**To:** [REDACTED]@daera-ni.gov.uk>

**Subject:** Contacting [REDACTED]

Dear [REDACTED]

I would like to speak to [REDACTED] re our case but when I sent an email to her there was a message to contact you.

Please advise when [REDACTED] will be available ?

Thank you

Regards

[REDACTED]

[REDACTED]

Consultation on Proposed Changes to DAERA Area Based Schemes  
Review of Decisions Process 2017

— SUBMITTED AUGUST 2017

Name: James McCluggage (Policy Manager)

Company: Ulster Farmers Union

Company/Organisation type: The Ulster Farmers Union is the largest democratic voluntary organisation representing farmers and growers in Northern Ireland

We consent to publication of all information in our response

Covering Letter

The purpose of this consultation is to provide applicants with a mechanism to challenge decisions made by the Department. We as the UFU promote consultation by DAERA with various stakeholders within the Agri sector. However, the closed questions which are used in this particular consultation can only direct the answers the way DAERA want and not allow the "Public" to put their points of views across. As a result we attach the following covering letter to put the UFU membership base of 11,500 members thoughts, views and concerns across, as the closed questions in the consultation do not permit us to do so.

①

STAGE 1  
It would be fair to say that the wider farming community view of the current Stage 1 Appeals process is one of no faith. The farming community believe the process would need to be improved without fundamentally removing the Stage 2 Review of Decisions from the whole process. One of the major problems regarding the appeals process is the incorrect interpretation by the inspector at grassroots level of the EU regulation on cross compliance. Asking the department official who has already not correctly administrated the EU regulation to be self-regulatory is an unsustainable situation. As a consequence it is vital to keep an independent appeals process mechanism. You mention that it is good governance to remove the stage 2 process, we believe that is not the case.

②

It is mentioned in your consultation the backlogs that currently exist at both stages of the Review Process. However, questions would need to be asked why this is? Is there not a point that DAERA or then DARD created the rod to beat themselves with from the onset in respect to the Active Farmer debate? Surely, through the process of elimination the back log will naturally correct itself. Those Active farmers who applied first time round and were turned down will not reapply the second time. Numbers for appeal will therefore reduce automatically thus meaning numbers in back log will reduce retrospectively. Is this process then not a complete waste of time, money and effort to put a new process and team in place, when in fact the whole process will naturally fix itself with a few tweaks to the current system?

③

Furthermore, in relation to your purpose of the consultation 6.6 and the analyses by the department that has been undertaken to measure the overall impact of the External Panel. The UFU would like further information on the 100 Stage Two decisions. How was this sample selected? We as an

organisation believe the 10% of the Stage Two reviews that derived benefit from access to an external panel seems a very low figure. Additionally, you have stated this equates to 2.5% of all Review of Decisions applications. This is a questionably low figure, however this is 2.5% which would not have a received a positive outcome if the panel had not taken the case on board. Will the new robust system improve this figure? Furthermore, how much money did this 2.5% equate to? Generally, stage 2 appeals are dealing with larger sums of money.

The UFU would also like to point out that without a panel and stage 2 process, there is no facility for an independent person/body to identify any wrongly interpreted legislation and give advice to DAERA to improve such issues in the future.

There is also an issue of Equality to the proposed changes. The average age of a farmer in Northern Ireland is 59 years of age. 60% of this aged rural population in Northern Ireland have numeracy and literacy issues. These issues combined with a broadband problem in Northern Ireland fundamentally means mistakes will happen therefore farmers need as much of a chance as possible to rectify them. Furthermore, the recent 2016 DAERA EU Farm Structure Survey states that only 69% of farms have access to the internet, with 64% of farms having access to broadband.

This leads us to our next question, has an equality impact assessment been carried out on this process?

This new proposed process will require a new team of DAERA staff starting from scratch. Can DAERA guarantee that the new team will have sufficient numbers of staff, be capable and have enough experience to undertake the system with the same level of efficiency and fairness? There is a question of why you need to reinvent the wheel when there is a current process in already in place which can be fixed with a few slight adjustments.

**Question 1: Do you think there are other factors that you consider should be included? If so, what are they?**

Yes

We as the UFU believe there needs to be greater flexibility. Fair consideration must be given and one system cannot be run and be internal as it leads to the question of its independence. An independent person, paid and facilitated by DAERA is a contradictory of terms.

**Question 2: Do you agree that a single stage Review of Decisions process, outlined in Fig 1, will provide applicants with a faster review of the Departments decision? If not, please give your reasons.**

No

A faster result does not mean a fairer result..They are two very different things. Factual decisions can't rely on a single stage review of decisions process. A farmer doesn't purposefully make mistakes. We are dealing with an aged population and as humans we can all make mistakes. It will take time for these mistakes to be rectified, farmers to be trained and skill sets developed.

SEE  
IFJ  
Article  
12 Dec  
2020  
↑  
↓  
DAERA  
AT  
ODDS  
WITH  
INDEPENDENT  
PANEL

**Question 3: Do you agree that the Department should charge a nominal fee to submit an application for a Review of Decision? If not, please give your reasons.**

Maybe, it all depends on how much an application costs?

There is no independent or outside party involvement therefore farmers are not paying for anything different. Payment raises a further equality issue. Paying a fee can disadvantage those who cannot afford to pay however have grounds for a Review of Decision. You are now in the situation of a person who can afford to pay with a poor application compared to someone who can't afford to pay but have a strong case.

**Question 4: Do you believe that 42 days is sufficient time for applicants to submit their application for a Review of Decision. If not, please tell us what the maximum number of days should be and give your answer.**

No

Other jurisdictions in the UK are 60 days therefore we would like NI to be on a level playing field.

**Question 5: Do you agree that 21 days from the Case Officer requesting it, is sufficient time, to provide supporting evidence? If not, please tell us the period you would suggest is appropriate and give your reason**

No

Greater flexibility and more days needed in case further outside information is needed. For example doctors letters, solicitor's letter. Some solicitors letters required may take months not weeks. Some postal services in Northern Ireland can be poor therefore the 21 days to act on getting evidence is therefore reduced. Furthermore, 21 days whilst during lambing and calving seasons can result in a huge time constraint. As mentioned previously with 60% of the older farming population suffering from literacy and numeracy issues more time is required to allow these people to get help to get further information compiled. In question 4 it is suggested 42 days for applicants to submit their application of a review of decision. Therefore the days required to provide supporting evidence cannot be less than this.

**Question 6: Do you consider 3 months is a reasonable timeframe to receive a final decision within? If not, please tell us what you think would be a reasonable time frame and give your reasons?**

No

Can a fair decision be sought after 3 months? A quick result does not mean a fair result. Fairness is the most important factor of the appeals process. No time frame should be used to inhibit a fair and impartial result.



IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
 QUEENS BENCH DIVISION (JUDICIAL REVIEW)

BEFORE THE HONOURABLE MR JUSTICE MCCLOSKEY

on Friday the 12th day of October 2018

IN THE MATTER OF AN APPLICATION BY ULSTER FARMERS UNION FOR  
 JUDICIAL REVIEW

UPON HEARING Counsel on behalf of the Applicant and Counsel on behalf of the Respondent and upon the grant of leave to apply for judicial review by the Honourable Mr Justice McCloskey on 28 June 2018 in respect of grounds (3) (a), (b) and (d) of the Amended Order 53 Statement dated 17 May 2018,

AND UPON application made to this Court by Counsel on behalf of Ulster Farmers' Union (hereinafter "the Applicant") for Judicial Review of a decision of the Department of Agriculture Environment and Rural Affairs (hereinafter "the Respondent"),

AND UPON the said application being listed for hearing on 12 October 2018,

AND UPON HEARING Counsel on behalf of the Applicant and Counsel on behalf of the Respondent confirming agreement between the parties and consenting to this Order in the following terms:

The Respondent shall retain the Independent Stage 2 Panel appeal subject to the following conditions:

- (a) users of the Independent Stage 2 Panel shall be charged the sum of £ 200.00 said fee to be subject to review by the Department within 18 months;
- (b) users of the Independent Stage 2 Panel shall be entitled to introduce new evidence if either exceptional circumstances or force majeure is, or both are, established;
- (c) the final decision on *any* individual case shall remain with the Respondent;

- (d) the Applicant shall engage with other interested stakeholders to encourage their support for this new agreed process;
- (e) an agreed statement from the Applicant and the Respondent promoting this aforementioned proposal in a positive manner shall issue on 12 October 2018.

IT IS ORDERED as follows:

- (a) the application for Judicial Review is dismissed;
- (b) there shall be no order as to costs inter-partes;
- (c) both parties shall have liberty to apply.

  
Proper Officer

Time Occupied: 12 October 2018 5 mins

Filed Date 29 October 2018



## Notes

DAERA

2019

1. Please read the information booklet "Review of Decisions Procedure" before completing this application. (6 PAGES)
2. It is important that you act to ensure that your application has been received by the deadline as the Department will not accept your application after the date specified. **The Department will not be responsible if your application is delayed or lost in the postal system.** You may also submit your application at any local DAERA Direct office.
3. **The Department will acknowledge receipt of your application. If you do not receive an acknowledgement within 10 days of posting your application you should contact the Review of Decisions Section immediately (Tel: 0300 200 7848)** so that in the event that it has not been received by the Department you will have time to submit another form by the deadline. Proof of postage is not proof of receipt.
4. At Section 1 please provide the details of your farm business. It is important that you include your 6 digit business identification number.
5. At Section 2 you must clearly state which decision/s you wish to have an Independent Panel assess. You must insert the scheme, the date of the schemes decision letter/s and the date of the Case Officers Review of Decision letter we sent you so that we can retrieve it/them from our records.
6. If you are presenting additional evidence, it is important that you give full details of the reasons why this was not made available for Case Officer Review, and, why it should now be accepted under exceptional circumstances or Force Majeure. If you do not fulfil the requirements for exceptional circumstances or Force Majeure, the additional evidence will not be accepted and the Independent Panel Assessment will be carried out using the information available at the Case Officer Review. No additional evidence will be permitted to be presented to the Panel during the review assessment.
8. If your application is incorrectly completed it will be returned to you and this may delay the review.
9. The application must be signed at Section 4 by at least one member of the business. If the application is completed by another person on behalf of your business, please ensure that Section 5 is also completed.
10. The Department takes data protection, freedom of information and environmental issues seriously. It takes care to ensure that any personal information supplied to it is dealt with in a way which complies with the requirements of the General Data Protection Regulation and the Data Protection Act 2018. This means that any personal information you supply will be processed principally for the purpose for which it has been provided. However, the Department is under a duty to protect the public funds it administers, and to this end may use the information you have provided for this purpose. It may also share this information with other bodies responsible for the audit or administration of public funds, in order to prevent or detect fraud.
11. An Independent Panel Assessment costs £200. Please ensure that you enclose a cheque payable for the correct amount to the DAERA Corporate Account. If your application is incorrectly completed or you have not enclosed the correct fee it will be returned to you and this will delay the review.

**Section 1: DETAILS OF THE BUSINESS SUBMITTING THIS APPLICATION**

**Area-based Schemes Division  
Business Support Branch**



Mr Jim Shannon MP for Strangford.

Reply by email:  
[jim.shannon.mp@parliament.uk](mailto:jim.shannon.mp@parliament.uk)

Reference: DAERA/20-261

Information Management Team  
Ballykelly House  
111 Ballykelly Road  
Ballykelly  
Derry / Londonderry  
BT49 9HP  
Telephone: 028 774 42242

e-mail: [asd.foi@daera-ni.gov.uk](mailto:asd.foi@daera-ni.gov.uk)

Date: 04 December 2020

**Dear Mr Shannon**

**Environmental Information Regulations 2004**

I write regarding the Department's response issued to you on 22<sup>nd</sup> of October 2020 in respect of your request, DAERA/20-261. It has become apparent that some of the information provided was incorrect at time of issue and requires rectification. A revised response to the information requested is attached, Annexes A to C.

The Department apologises sincerely for the inconvenience caused. Due to the challenges caused by remote working in the context of the Covid-19 pandemic, an error was made in the provision of the original figures. This has been identified and investigated whilst undertaking the completion of your second request. The Department is now satisfied that the data is as accurate as it can be.

Please note the updated information provided in this response will be reflected in the forthcoming response to your information request reference DAERA/20-288 which will be with you today 4<sup>th</sup> December 2020.

As outlined in our original response of 22<sup>nd</sup> October 2020 your right to an internal review and complaint remains.

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<http://www.nationalarchives.gov.uk/doc/open-government-licence/open-government-licence.htm>

If you have any queries about this letter please contact the Area-based Schemes Division, Information Management Team at the above email address, quoting the reference number above in any future communications.

Yours sincerely,



**John McGrath**

**Head of Area-Based Schemes Payment Branch**

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## **Annex A – Request 1-Income and Expenditure Stage 2 Applications**

**Please note the figure of 231 provided in previous Annex A response relates to the calendar years for 2015 to 2020. The new amended figure below relates to total income of panels for financial years, as requested in your original request, from 2015 to 2020.**

**1A. Income received from Stage 2 Applications from each financial year from 2015**

**1B. £100 Application fees value refunded to Applicants where Independent Panel support the applicant and overturn DAERA Stage 1 decision for each year.**

Total number of Panels from the commencement of the 2015 financial year on 1 April 2015 – **228 (41 Written Panel assessments & 187 Oral Panel assessments). £50 fee for Written assessment, £100 fee for Oral Assessments**

Total income in 2015 financial year – **£4,100.00**

**12** Written Panel Assessments - £600.00 income (2 refunds totalling £100)

**35** Oral Panel Assessments - £3,500.00 income (9 refunds totalling £900.00)

Total income in 2016 financial year - **£8,050.00**

**17** Written Panel Assessments - £850.00 income (1 refund totalling £50)

**72** Oral Panel Assessments - £7,200.00 income (26 refunds totalling £2,600.00)

Total income in 2017 financial year – **£6,100.00**

**10** Written Panel Assessments - £500.00 income (Nil refunds)

**56** Oral Panel Assessments - £ 5,600.00 income (9 refunds totalling £900.00)

Total income in 2018 financial year – **£2,050.00**

**1** Written Panel Assessment - £50 income (Nil refunds)

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20 Oral Panel Assessments - £ 2,000.00 income (5 refunds totalling £500.00)

Total income in 2019 financial year – **£450.00**

1 Written Panel Assessment - £50 income (NIL refunds)

4 Oral Panel Assessments - £400 income (1 refund totalling £100.00)

2020 – NIL

**2.A How many Applicants have paid the £200 fee since it introduced for Stage 2 Reviews?**

**2B. £200 Application fees value refunded to Applicants where independent panel support the applicant and overturn DAERA Stage 1 decision for each year from 2018**

**(2A)** 66 applicants have paid the £200 fee since the new process was introduced. 2 of these applications were withdrawn and their £200 fee was refunded.

Please see below

April 2019 to March 2020

45 X 200 = £9000.00

This includes the 2 withdrawn applications where the Department refunded the respective £200 fees.

March 2020 to date

21 X 200 = £4200.00

**(2B)** 9 £200 Application fees were refunded to Applicants where independent panel support the applicant and overturn DAERA Stage 1 decision.

**It should be noted that the panel makes a recommendation only, which is not binding on the Department. Although the panel may sympathise with an applicant and recommend overturning a decision, the Department must then ensure that its final decision is in line with all relevant legislation and departmental processes. The panel fee is refunded to an applicant where, following recommendation by the panel, the Department accepts the review of decision in whole or in part.**

2018 - 0 refunds. (Please note that the first application was received under the new process on 19/06/2019).

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April 2019 to date - 8 refunds = £1800.00

**3. What have been the DAERA costs for operation of Stage 2 Independent panel reviews incurred for each year from 2015 to date?**

**Panel Expenses under the new process, including daily rate for panel members and travel and subsistence claimed.**

These panels commenced 1 October 2019.

April 2019 to March 2020 **£3893.30**

April 2020 to date **£4133.10** The majority of panel assessments have been conducted via video link in this period, due to Covid restrictions.

**Staff travel & subsistence for attendance at panels under the new process (including cost of trainers preparing and delivering training)**

April 2019 to March 2020 **£1201.83**

April 2020 to date **£83.60** \*

The majority of panel assessments have been conducted via video link in this period, due to Covid restrictions.

**Staff costs**

2019 - £9,000

2020 - £13,800

**Staff costs**

Approximate costs for speakers' delivery only at training in - 2015

February 2015: **£237.50**

March 2016: **£316.88**

**Panel expenses & staff costs under the old process.**

2015	2016	2017	2018	2019	2020
£28,200.00	£53,400.00	£39,600.00	£12,600.00	£3,000.00	NIL

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## Annex B- Request 2-Cross Compliance Rules by Statutory Management Requirement (SMR)

### A1 Panel cases submitted and heard for years 2014 – 2020 relating to SMR breaches

SMR	2014	2015	2016	2017	2018	2019	2020
SMR1						2	
SMR2							
SMR3							
SMR4			1	11	8	10	4
SMR5	3	6	3				
SMR6							
SMR7	7	3		1		2	1
SMR8							
SMR9							
SMR10	1	1					
SMR11				1	1		
SMR12							
SMR13							

One business had two SMR breaches in 2014 (SMR5 & 7)

One business had two breaches in 2018 (SMR 4 & 11)

One business had two SMR breaches in 2019 (SMR4 & 7)

### A2 Number of applications upheld by Independent Panel and accepted by DAERA

SMR	2014	2015	2016	2017	2018	2019	2020
SMR1							
SMR2							
SMR3							
SMR4						1	
SMR5	2	3*	2**				
SMR6							
SMR7	2			1***		1	
SMR8							
SMR9							
SMR10	1						
SMR11							
SMR12							
SMR13							

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One business had two SMR breaches in 2014 (SMR5 & 7)

\*In two of these cases the Panel recommended the decision should be partially upheld and the Department accepted these recommendations.

\*\*In one case the Panel recommended the review be fully upheld however the Department partially upheld the review.

\*\*\*This case was recommended to be fully upheld however the Department partially upheld.

Please note there are 3 applications in 2019 and 2 applications in 2020 where the Panel have recommended that the review be fully upheld; these are currently still under consideration by the Department.

### **A3 Number of applications upheld by Independent Panel and NOT accepted by DAERA**

<b>SMR</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
SMR1							
SMR2							
SMR3							
SMR4				5**	3***		
SMR5							
SMR6							
SMR7	1	3*					
SMR8							
SMR9							
SMR10							
SMR11							
SMR12							
SMR13							

\*In two of these cases the Panel recommended the decision should be partially upheld and the Department did not accept these recommendations.

\*\* In four of these cases the Panel recommended the decision should be partially upheld and the Department did not accept these recommendations.

\*\*\* In one case the Panel recommended the decision should be partially upheld and the Department did not accept this recommendation.

In 2014 there were 18 Cross-Compliance Statutory Management Requirements (SMRs) in 2014. However as part of CAP Reform the Commission took the opportunity to review the scope of Cross-Compliance.

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New Statutory Management requirements were put in place from 1 January 2015 drawn from Annex II of Council Regulation (EC) 1306/2013. These SMRs replaced the SMRs that were in place as listed in Annex II to Council Regulation 73/2009. SMR 5 was renumbered as SMR1.

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**Annex C- request 3-Stage 2 Reviews for SFP “Active Farmer” – Regulation 1307/2013**

Active Farmer Stage 2 panel cases

**1. Number of applications submitted and heard by a Stage 2 Independent Panel (2014 – 2020)**

2014	2015	2016	2017	2018	2019	2020
NIL	NIL	21	29	5	3	6

Total - **64**

\*The breakdown above is done by date the application for Panel was received.

**2. Number of Applications upheld by Independent Panel and accepted by DAERA (2014 – 2020)**

2014	2015	2016	2017	2018	2019	2020
NIL	NIL	12*	10**	2	2***	1

\*9 cases the Department agreed the review should be fully upheld. In 2 cases the Panel recommended a partial uphold of the review and Department agreed. In 1 case the Panel recommended to fully uphold the review, however the Department partially upheld.

\*\*8 cases Department agreed the review should be fully upheld. 1 case the Panel recommended to partially uphold review and Department agreed. In 1 case the Panel recommended to fully uphold the review; however the Department partially upheld.

\*\*\* In 1 case the Panel recommended to fully uphold the review; however the Department partially upheld decision.

Please note that there are 3 cases in 2020 where the Panel have recommended fully upholding the review. These cases are currently under final consideration by the Department.

**3 Number of Applications upheld by Independent Panel NOT accepted by DAERA (2014 – 2020)**

2014	2015	2016	2017	2018	2019	2020
NIL	NIL	2	7	1*	NIL	NIL

\*In this case the Panel recommended a partial uphold of the review and Department did not accept this recommendation.

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Please note that there are 3 cases in 2020 where the Panel have recommended fully upholding the review; however the Department is currently considering these cases.

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**Area-based Schemes Division  
Business Support Branch**



Mr Jim Shannon MP for Strangford.

Reply by email:  
[jim.shannon.mp@parliament.uk](mailto:jim.shannon.mp@parliament.uk)

Reference: DAERA/20-288

Information Management Team  
Ballykelly House  
111 Ballykelly Road  
Ballykelly  
Derry / Londonderry  
BT49 9HP  
Telephone: 028 774 42242

e-mail: [asd.foi@daera-ni.gov.uk](mailto:asd.foi@daera-ni.gov.uk)

Date: 04 December 2020

**Dear Mr Shannon**

**Environmental Information Regulations 2004**

Thank you for your email received by the Department on 29<sup>th</sup> October 2020 and subsequent clarification received on 05 November 2020 in which you requested the following information. A search of records has been completed and I can confirm that DAERA holds the information in relation to your request. I will address each question in the order listed in your request.

**1. At your page 8 you note “\* the breakdown above is done by date the application for Panel was received.” We assume you mean the date of the Application to the stage 2 independent panel. As a way of helping verify this conclusion we believe that the UFU Judicial Review 1 and UFU.JR2 for(Name removed) is not included in the analysis as his Stage 2 application was on 16 October 2013. Whereas JR4.AFF for Fermanagh Farmer (Name Removed) is in the “Active Farmers” recorded as the single case in 2016 and the JR5.BFL for (name removed) is one of the six cases noted in 2017. In relation to how we interpret we Annex C conclude that there were 64 Active farmer cases and that the number in which the independent panel wholly agreed with the Stage 2 decision is calculated to be 29 <64 less (25 + 2 + 8)> Are we correct?**

**Response to 1 : Panel Application Date**

Yes. This breakdown has been provided by the date of the application to the Stage 2 Independent Panel.

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Please note the Department cannot comment on any analysis. Figures originally supplied have been amended as per our rectification letter dated **04/12/20** in relation to your initial request reference DAERA/20/261.

**2. Following the UFU.JR1 and UFU.JR2 (Name removed)Judicial Review Judgment on 7 February 2017 please advise how many cases were re-opened for Applicants who had previously had an Independent Panel recommendation over-ruled by DAERA following its re-consideration and in which years were these cases re-opened. What criteria was applied to select which cases for any review and then specifically where are they included, if applicable, in these tables and with what outcome? Note : In our research we found this and that is the basis of this question. UFU CEO(name removed)was reported in the UFU Press Release on 7 February 2017 as stating *“In this particular case, now that the precedent around proving intent has been established we are pleased that not only will “intent” have to be proven more robustly in future breaches of cross compliance but also that all historic cases may now have to be re-examined.”***

### **Response to 2 : Judicial Reviews**

The Department did not retrospectively review cases following the judgment in this Judicial Review. However, the Department can confirm that detailed lessons learned from the case were developed and disseminated following the judgment, and officials have applied the findings to the consideration of cases since.

**3. Returning to the tables you provided for SMR at page 7.Annex.B.A3 and Active farmers at page 8.Annex.C.3 can you please provide an analysis of the annual £ value for each of the five SMR4 claims.**

**If you do not wish to disclose the exact values with a anonymous application numbering can you please set these out in a series of £ ranges, say £1 - £5000 , £5001 - £10000 , £10001 – 25000, £25,001 – 50000 and £50,001+ for each claim and whether they are recurring in multiple years. Likewise for the eight “active farmer” cases at annex C.3**

### **Response to 3 : Value of claims**

The Department does not calculate or hold information on the initial value of a claim that a business could potentially be awarded. Once a claim is validated, the amount due is calculated through the payment system, based on the completion of various validations and checks for potential penalties. We cannot manipulate or reverse engineer the system to provide these figures.

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However, where a breach has resulted in a penalty debt being raised against the business, we do hold that information. The values of these cross-compliance penalties are listed below.

SMR7's

Year	£1 - £5000	£5001 - £10,000	£10,001 - £25,000	£25,001 - £50,000	£50,001 +
2014	1				
2015	3				

SMR4's

Year	£1 - £5000	£5001 - £10,000	£10,001 - £25,000	£25,001 - £50,000	£50,001 +
2017	5				
2018	1		2		

**4. It has been brought to our attention from a Farming Life article on 4 August 2018 that we failed in our initial September request to get an analysis from 2015 to 2020 in relation to the Young Farmers scheme. Can you please regard this as new Annex D and provide**

**D1. Number of Applications submitted and heard by the independent Panel.**

**D2. Number of Applications upheld by Independent Panel and accepted by DAERA**

**D3. Number of Applications upheld by Independent Panel NOT accepted by DAERA**

**Having provided the information at D3 can you then proceed to provide the £ values table similar to my request at Point 3.**

**Response to 4 : Young Farmer Cases – Panels**

**D1: Number of applications submitted and heard by a Stage 2 Independent Panel (2015 – 2020)**

2015	2016	2017	2018	2019	2020
NIL	14	22	1	1	3

Total – 41

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\*The breakdown above is done by date the application for Panel was received.

**D2: Number of Applications upheld by Independent Panel and accepted by DAERA (2015 – 2020)**

2015	2016	2017	2018	2019	2020
NIL	2	2	NIL	NIL	NIL

Total - 4

**D3: Number of Applications upheld by Independent Panel NOT accepted by DAERA (2015 – 2020)**

2015	2016	2017	2018	2019	2020
NIL	1	4	NIL	NIL	NIL

Total – 5

Unfortunately we are unable to provide the monetary value for the claims listed at No.D3 above, as the Department does not readily hold this information. The Department does not calculate or hold information on the initial value of a claim that a business could potentially be awarded. Once a claim is validated, the amount due is calculated through the payment system, based on the completion of various validations and checks for potential penalties. We cannot manipulate or reverse engineer the system to provide these figures.

**5. Also while our focus has been on Judicial Reviews for SMR and Active Farmer cases we calculate from the information you have provided (hopefully we are correct) that of the 231 in Annex A we have accounted for 94 (30 for SMRs in Annex B and 64 for Active Farmer cases in Annex C) .Some of those remaining 137 cases will now be Young farmers at Annex D (Q4 above) . Can you please now provide a breakdown of what the other cases were for each category and similarly**

**E1. Number of Applications submitted and heard by the independent Panel.**

**E2. Number of Applications upheld by Independent Panel and accepted by DAERA**

**E3. Number of Applications upheld by Independent Panel NOT accepted by DAERA**

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Having provided the information at E3 can you then proceed to provide the £ values table similar to my request at Point 3.

**Response to 5 : Active Farmer Case**

**E1. Breakdown of remaining cases that had submitted to Independent Panel**

Category	2015	2016	2017	2018	2019	2020
Over-declaration	16	5	1		1	
Inspection letter CR2			1			
Debt Recovery	5	3	2			
New Entrant		2				
Below Minimum Area		1				
No 2013 claim submitted		1	1			
Eligibility conditions for BPS not met		1	6			
Overpayment			1	3	3	
Entitlement statement			7			
Offset			1		1	
Separateness				1	5	
Payment letter				2		
Late claim after June closing date	1		1			
Business Change			1			
Regional Reserve		1				
Duplicate field penalty		5				
Greening Payment		1				
Business Development Group		1				
CSMS				3		
Farm Woodland			1		1	
ANC Overpayment				1		
ANC/LFACA Stocking Density	3	2	1		1	
ANC – Not eligible					1	
Determined land area	1					
NICMS	6	2	1	3		
Confiscation of Entitlements					2	
Underpayment					1	
GAEC6*	2					
GAEC7**			1	1		
Inspection refusal			1			
Obvious error		1				

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Payment on additional land		1				
LFACA Forage Penalty		1				
LFACA Duplicate field	1					
LFACA Over-declaration	1	1				
LFACA late claim		1				

\*GAEC6: Maintenance of Soil Organic Matter Level through Appropriate Practices Including Ban on Burning Arable Stubble, Except for Plant Health Reasons

\*\*GAEC7: Retention of Landscape features

**E2. Number of Applications upheld by Independent Panel and accepted by DAERA**

2015

Category	Number
Over Declaration	6*
NICMS	2**
Debt Recovery	1***
GAEC6	1****
LFACA Over Declaration	1

**Total – 11**

\*In 5 cases the Panel recommended the decision to be partially upheld and the Department accepted this recommendation.

\*\*In one case the Panel recommended the decision to be partially upheld and the Department accepted this recommendation

\*\*\* In this case the Panel recommended the decision to be partially upheld and the Department accepted this recommendation

\*\*\*\* In this case the Panel recommended the decision to be partially upheld and the Department accepted this recommendation

2016

Category	Number
Over Declaration	1

**Total – 1**

In this case the Panel recommended a partial change to the original decision which the Department accepted.

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2017

Category	Number
Business Change	1
Late Claim after June closing date	1
Overpayment*	1

**Total – 3**

\*In this case the Panel recommended to fully uphold the decision however the Department only agreed to partially uphold the original decision.

2018

Category	Number
NICMS*	1
ANC Overpayment*	1
Separateness	1
Inspection refusal	1

**Total – 4**

\* In these cases the Panel recommended a partial change to the original decision which the Department accepted.

2019

Category	Number
Separateness	4
Confiscation of entitlements*	1
Stocking density	1

**Total – 6**

\*In this case the Panel have recommended that this decision should be upheld. It is currently still under consideration by the Department

2020

NIL

**E3 Number of Applications upheld by Independent Panel and NOT accepted by DAERA**

2015

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Category	Number
Over Declaration *	5
Debt Recovery	1
Determined land area**	1

**Total – 7**

\*In two cases the recommended that the original decision be partially upheld. The Department did not accept the recommendation.

\*\*In this case the Panel recommended the original decision be partially upheld. The Department did not accept the recommendation.

2016

Category	Number
LFACA Stocking density	1
Obvious error	1
Debt recovery	2

**Total – 4**

2017

Category	Number
NICMS	1

**Total - 1**

2018

Category	Number
Notification of payment letter	1
Overpayment*	1
CSMS*	1

**Total - 3**

\*In these cases Panel recommended that the original decision be partially overturned. The Department did not accept the recommendation.

2019

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Category	Number
Underpayment*	1

### Total - 1

\*The Panel recommended that the original decision be fully overturned. The Department did not accept this recommendation

### 2020

NIL

Unfortunately due to the nature of some decisions reviewed, the Department is unable to provide the monetary value of these claims listed at point E3 above. The Department does not calculate or hold information on the initial value of a claim that a business could potentially be awarded. Once a claim is validated, the amount due is calculated through the payment system, based on the completion of various validations and checks for potential penalties. We cannot manipulate or reverse engineer the system to provide these figures.

However, where a debt or overpayment has been raised as a result of a decision, the Department can provide these figures.

Please see below details of value of cases that the Department can provide:

Year	£1 - £5000	£5,001 - £10,000	£10,001 - £15,000	£15,001 - £20,000	£20,001 - £25,000	£25,001 - £50,000	£50,001 +
2015	1						
2016		1		1			
2017	1						
2018	2	1					
2019	1						

### 2015

**1 Debt Recovery:** £1 - £5000

### 2016

**2 Debt Recovery:** 1 case £5001 - £10000  
1 case £15001 - £20000

### 2017

**1 NICMS:** £1- £5000

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2018

**1 Notification of payment letter:** £1 - £5000

**1 Overpayment:** £5001 - £10000

**1 CSMS:** £1 - £5000

2019

**1 Underpayment:** £1 - £5000

Please note that in the request DAERA/20-261, for income of Independent Panels between 2015 – 2020, (Annex A of the previous EIR request) the calculations are by financial year as requested. This response has been calculated in calendar years as requested.

**6. We have attempted to provide a summary re costs etc (based on Annex A) which can be used in the public domain. This is what we have drafted to date**

**“Based on DAERA EIR information in October 2020 there has been 231 Panels heard from April 2015 to date. 45 were Written Panel assessments and 186 Oral Panel assessments. DAERA Income from applicant fees was almost £34K with refunds of about £8K. The Panel expenses and staff costs for the whole period under the old process and new process (from first application on 19 June 2019) totalled less than £150K. So for those 231 applications the net cost was an average of circa £550 for each stage 2 Application to be heard. (£150K – £26K). Applicant fees under the new process, agreed with the UFU in the UFU.JR3 settlement, were increased to £200.”**

**Does this look sufficiently accurate or are there any other aspects or information which is appropriate for us to consider / include / understand**

### **Response to 6 : Summary**

In relation to your summary the Department cannot comment on your analysis and calculations as it would not be appropriate to do so. Please note the figures quoted in your summary have been amended and are included in the rectification letter issued today. Ongoing cases and new applications will also modify the figures.

If you require any clarification, believe that any part of your request has been overlooked, misunderstood or misinterpreted, please contact the Area-based

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schemes Division Information team in the first instance to see if it is a matter that can be resolved.

If you are not satisfied in respect of information being withheld, you have the right to request a formal review by DAERA. If you wish to do so, please write to The Review Section, Department of Agriculture, Environment and Rural Affairs, Data Protection & Information Management Branch, Floor 2, Ballykelly House, 111 Ballykelly Road, Ballykelly, BT49 9HP, within two months from the date of this letter.

If after this internal review, you are still unhappy with the decision, you have the right to appeal to the Information Commissioner at Wycliffe House, Wilmslow, Cheshire, SK9 5AF, who will undertake an independent review.

The supply of information in response to a freedom of information request does not confer an automatic right to re-use the information. Under UK copyright law you can use any information supplied for the purposes of private study and non-commercial research without requiring permission. Similarly, information supplied can also be re-used for the purposes of news reporting. An exception to this is photographs.

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If you have any queries about this letter, please contact the ASD Information Management team at the above email addresses, quoting the reference number above in any future communications.

Yours sincerely,



**John Mc Grath**

**Head of Area-based Schemes Payments Branch**

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**Area-based Schemes Division  
Business Support Branch**



Reference: DAERA/20-331

Mr Jim Shannon MP for Strangford.

[jim.shannon.mp@parliament.uk](mailto:jim.shannon.mp@parliament.uk)

Information Management Team  
Ballykelly House  
111 Ballykelly Road  
Ballykelly  
Derry / Londonderry  
BT49 9HP  
Telephone: 028 774 42242

e-mail: [asd.foi@daera-ni.gov.uk](mailto:asd.foi@daera-ni.gov.uk)

Date: 04 January 2021

**Dear Mr Shannon**

**Environmental Information Regulations 2004**

Thank you for your e-mail received by the Department on 07 December 2020 in which you requested the following information. A search of records has been completed and I can confirm that DAERA holds the information in relation to your request. I will address each question in the order listed in your request.

**A : Can you please advise how many of the 2005 -2014 cases were outstanding as at the end of March 2018 , March 2019, March 2020 and December 2020. Please set out for each year and the nature of those remaining for the “live query” as per previous EIR categories.**

Data has been provided on the number of claims not the number of individual businesses, included in these figures will be multiple claims from the same business.

At the end of March 2018 there was 773 outstanding legacy cases for the 2005 – 2014 Scheme years.

At the end of March 2019 there was 700 outstanding legacy cases for the 2005 – 2014 Scheme years.

At the end of March 2020 there was 12 outstanding legacy cases for the 2005 – 2014 Scheme years.

At the end of November 2020 there are 4 outstanding legacy cases for the 2005 – 2014 scheme years.

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<b>Year Ending</b>	<b>March 2018</b>	<b>March 2019</b>	<b>March 2020</b>	<b>November 2020</b>
Total number of claims	773	700	12	4
Claims which Bank Account details have not provided by Business	373	335	0	0
Claims in which Probate details have not been provided by the Business	342	325	6	0
Claims which have not been resolved by the business regarding land, inheritance and matrimonial issues	54	36	2	0
Ongoing investigation	4	4	4	4

**B: How many of these “live cases”, as at March 2017, have an Independent panel recommendation to overturn the Stage 1 decision.**

None of these lives cases had an Independent Panel Recommendation to overturn the Stage 1 decision as at March 2017.

**C: What is the timescale agreed with the EEC re completion and funding or these cases up to 31 December 2020.**

As of the 15 October 2020, the Department no longer seek funding from the RPA In respect of Pillar one Payments.

In this current financial year all Pillar one payments have been funded by the Exchequer and are 100% National Funds. This includes any remaining legacy Single Farm Payment (SFP) cases.

**D: How many equivalent manpower resources within DAERA are allocated to address the closure of these cases and the target date for doing so.**

**We think you may find at least some of the information in the audit working files prepared for the NI Audit Commission at the end of each financial year.**

Six members of staff were assigned to complete this exercise. The target for completion of this was Mid October 2020.

If you require any clarification, believe that any part of your request has been overlooked, misunderstood or misinterpreted, please contact the Area-based Schemes Division information team in the first instance to see if it is a matter that can be resolved.

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If you are not satisfied in respect of information being withheld, you have the right to request a formal review by DAERA. If you wish to do so please write to the Review section, Department of Agriculture, Environment and Rural affairs, Data Protection & Information Management Branch, Floor 2, Ballykelly House, 111 Ballykelly Road, Ballykelly, Limavady, BT49 9HP within two months from the date of this letter.

If after this internal review you are still unhappy with the decision, you have the right to appeal to the Information Commissioner at Wycliffe House, Wilmslow, CHESHIRE, SK9 5AF, who will undertake an independent review of the Department's decision.

The supply of information in response to a freedom of information request does not confer an automatic right to re-use the information. Under UK copyright law you can use any information supplied for the purposes of private study and non-commercial research without requiring permission. Similarly information supplied can also be re-used for the purposes of news reporting. An exception to this is photographs.

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If you have any queries about this letter please contact the ASD information Management team at the above e-mail address quoting the reference number above in any future communications.

Yours sincerely,



**John McGrath**

**Head of Area-based Schemes Payments Branch**

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# IRISH FARMERS JOURNAL

IRISH FARMERS JOURNAL  
N Saturday 9 January 2021

6 NI NEWS

## Claimants still waiting on DAERA verdict

DAVID WRIGHT

NORTHERN EDITOR  
dwright@farmersjournal.ie

Despite a public statement by DAERA Minister Edwin Poots in mid-November 2020 when he said that he would not be overturning decisions made by an independent panel at a Stage 2 review, a number of claimants are still awaiting their case to be finalised.

As reported in the edition dated 12 December, Strangford MP Jim Shannon had established by way of a freedom of

information request that up to nine cases were still under final consideration.

In each of these, a claimant to an area-based scheme had challenged a decision by DAERA, and taken their case to an independent panel at Stage 2 of the Review of Decisions process. In these cases, the panel had recommended in favour of the claimant.

However, ultimately the final decision rests with the Department, and officials can ignore the recommendation of the Independent Panel, al-

though the clear position of Minister Poots is that this will not be happening during his tenure.

On enquiry, a DAERA spokesperson confirmed that seven cases remain with the Department following on from a recommendation made by this panel.

"The Department is considering these cases and will issue decisions in due course," confirmed the spokesperson.

In light of the recent Barnwell Farms judgement (when DAERA lost a judicial review

case after going against the recommendations of the panel) and the recent statement made by Minister Poots, Jim Shannon questions why these cases remain outstanding.

"Given the challenges currently facing all government Departments, including DAERA, I am surprised that officials are still spending any time assessing these post Stage 2 Independent Panel recommendations," he said.

### Legacy

In separate freedom of infor-

mation requests Shannon has also established that DAERA officials have been working to clear a backlog of legacy Single Farm Payment cases ahead of Brexit. These legacy cases relate to the scheme years 2005-2014.

By March 2019 there were 700 cases still considered as "live", with the vast majority because the claimant had either not submitted bank account details, or not provided Probate details.

By March 2020, only 12 cases remained, and by November

2020 this was down to four. From 15 October 2020, any remaining cases will have to be covered out of national funds, not from the EU.

There are then those cases still in dispute from 2015 onwards. The DAERA annual report and accounts for 2019/2020, published last November, notes that if these claimants are eventually deemed eligible for payments, it could cost in the region of £964,000. However, not all will be successful, so a more likely figure is around £666,000.

Clarification on EIR request of 4 December 2020

**EIR 20-261 (SMR's)**

<b>Category</b>	<b>Independent Panel Recommendation date</b>	<b>O/S at 4 December?</b>	<b>Is this still o/s?</b>	<b>Date decision letter issued to applicant</b>
SMR1	10/09/2020	Yes	Yes	N/A
SMR4	10/09/2020	Yes	No	Acceptance letter issued 16/12/2020
SMR4 & SMR7	02/09/2020	Yes	Yes	N/A
SMR4	07/10/2020	Yes	Yes	N/A
SMR7	22/10/2020	Yes	Yes	N/A

**EIR 20-261 (Active Farmer)**

<b>Category</b>	<b>Independent Panel Recommendation date</b>	<b>O/S at 4 December?</b>	<b>Is this still o/s?</b>	<b>Date decision letter issued to applicant</b>
Active Farmer	03/07/2020	Yes	No	Acceptance letter issued 23/12/2020
Active Farmer	07/10/2020	Yes	Yes	N/A
Active Farmer	03/11/2020	Yes	Yes	N/A

**EIR 20 – 288 (Confiscation of Entitlements)**

<b>Category</b>	<b>Independent Panel Recommendation date</b>	<b>O/S at 4 December?</b>	<b>Is this still o/s?</b>	<b>Date decision letter issued to applicant</b>
Confiscation of Entitlements	03/11/2020	Yes	Yes	N/A



**Jim Shannon MP**  
**Constituency Advice Centre**  
**34a Frances Street**  
**NEWTOWNARDS**  
**BT23 7DN**  
**Tel: 02891 827990**  
**Fax: 02891 827990**  
**[Jim.shannon1@btopenworld.com](mailto:Jim.shannon1@btopenworld.com)**

OPEN LETTER  
Northern Ireland Audit Office  
106 University Street  
Belfast BT7 1EU

2 February 2021

Dear

*Kieran,*

I hope you are safe and well.

It seems like a very long time ago since we spent some time together when I was in the NI Assembly, and of course the Public Accounts Committee through to May 2010. From that training and the careful use of taxpayer funds I continue to take an interest in your NI Audit Commission reports as they are published. As you will know my Strangford constituency party colleague Harry Harvey MLA now sits on the Public Accounts Committee, and with relevance to what follows, the DAERA Assembly Committee.

You may be aware from your Press observers that the Irish Farmers Journal in an article on 14 January 2021 concluded in a paragraph stating, *“Shannon is also critical of the amount of taxpayer’s money spent on Judicial Reviews by DAERA, and intends raising his concerns to the Comptroller and Auditor General in NI, Kieran Donnelly.”*

**1. Taxpayers monies etc - legal advice etc etc (Enclosure 1A page 25)**

Hugely expensive for Applicants to go to Judicial Review cases (circa £100K +) and to taxpayers when they lose. Wrong process and not justice /effective. The role, quality and process / intervention timelines of legal advice from DSO and Barristers to Government departments. In this case DAERA. In short, in our view, public monies at risk and unfair and unjust to Applicants.

EXHIBIT 7 D Part B Chronology/Timeline -  
FINAL.VERSION.....11.December.2020

JUDICIAL REVIEW <JR> CASE ANALYSIS - only two JR Review Judgments for agricultural reasons / DFPs against DAERA in last 6 years. Three further JRs were settled out of court.

**UK TAXPAYER**

We know that **£371K UFU funds** were reduced (excluding internal staff time) by a net **£231K** (UFU.JR1+JR2 £263K + JR3 £108K - £140K), whilst Mr Shannon MP received the letter at pages 23 -24 setting out the legal costs incurred by DAERA for UFU. JR1, JR2, JR3.

DAERA advised that the five Judicial Reviews direct legal costs were just under c£100K (UFU.JR1 JR2, JR3 £70,948 and JR4.AFF £3663 and JR5.BFL £19,320 to date). Then in losing 2 Judgments /3 settlement (£140k UFU reimbursement +<Disputed items? in JR1 Taxation with “small additional balance and costs due to Mr Marshall as a result of the Taxing Master’s decision on 30 Jan 2020 – appeal? >and their BFL.JR5 legal costs reimbursement of £62,664 – appeal?

Notably that excludes a deficit of **c£22K in legal costs which are disputed with DAERA/DSO for Barnwell Farms** – including circa £16K for a final Submission for which no money was paid, although the 12 page document on 12 June was c.80% “clarificatory” /new evidence? It arose as it became clearer at the Hearing what they needed by DAERA for a total cost (excluding their internal DAERA time/costs) and their 31 July letter stated they overturned their previous decisions based on this additional evidence.

So, in short, these five DAERA Judicial Reviews have cost the **UK taxpayer circa £300K+, UFU members £231K+, and Barnwell Farms £22k+**. For all five judicial reviews the quality and timing of the legal advices from DSO / counsel should merit a “public” accountability review as part of that interaction with the very top DAERA officials and their decision making/governance processes for “irrational and unreasonable” decisions. “

Illustrative case example - UFU.JR3 while NI Assembly did NOT sit

1 December 2021

Pages 38- 39 chrono

Mr Shannon MP email to DAERA

“Further to your email yesterday, and Gregor’s letter dated 26<sup>th</sup> November 2020, you refer to my joint email with William Irwin MLA on Monday 16<sup>th</sup> November 2020 to Dr McMahan and Mr Doherty. After further deliberations, and the DAERA Minister Poots remarks in the Assembly the next day, can I please ask that you now furnish the relevant information to Mr Irwin MLA AND the DAERA Assembly Committee for their return in week commencing 11 January 2021 as follows ...

1. *ADDED* A copy of the Judicial Review JR3 documents index / evidence in relation to the elimination of the Independent Panels .....at Regulations 11 , 12 of the Statutory Instrument SI No 391 Agriculture.2001.

2 A. The actual DSO legal advice and any barrister legal opinion sought and/or provided to Mr Noel Lavery and DAERA prior to and during the

Consultation in June / August 2017 and up to January 2018 before his final decision to proceed to eliminate the independent panels in January 2018.

B ADDED A copy of the Pre Action Protocol letter from the UFU instructed solicitors, McKees , to Dr McMahon in 2018.

C. The actual DSO legal advice and the barrister legal opinion sought and provided to Dr McMahon /DAERA from February 2018 up to and including 15 October 2018 in relation to that 2017 Consultation and throughout the subsequent Judicial Review process. What we have called UFU.JR3. *We recognise that the DSO may say this item 2C is legally privileged but as the case was settled on Dr McMahon instructions and has been closed for more than two years now, it is essential in the public interest and transparency to provide the full trail of events undertaken during Mr Lavery's tenure through to date.*

We know from Enclosure 1A (P.7) that the UFU spent some £108K on this JR case while DAERA spent about 10% of that including DAERA Counsel at 4% (£4400) – (P.24) of the legal costs incurred by the UFU. Please see Enclosure 2 which sets out the subsequent relevant correspondence in chronological sequence – 14 pages in relation to JR3. At Page 3 you will note that in DAERA's Application of a Public interest test they have concluded these matters are not ones which the public representatives can see.

It is worth noting, and I think appropriate that the DAERA Assembly Committee leave this item now, to the NI Audit Commission/ PAC as I recall that the NI Audit Commission do have the authority to access all the documents including the legal advice provided by DSO and the engaged Barristers.

The quality, process and timing of those legal interventions clearly drive the use of Taxpayer funds, where DAERA lose the case. The forensic investigatory nature and skills of your staff are entirely appropriate to address this thoroughly as one case example amongst the five Judicial Review cases.

If one, then turns to those cases where DAERA lost the cases and which went to a Judgment concluding their conduct and actions were unlawful - Ian Marshall (Former UFU President case - UFU.JR1) and the Judgment on 7 February 2017 and the Barnwell Farms case (BFL.JR5) with the Judgment on 25 March 2020 - a similar process of reviewing the legal advice from the DSO and engaged Barristers at EACH stage of the same process would be wholly appropriate in that investigation. Then of course there were settlements prior to a Judgment - JR3 above and JR2 Ian Marshall revisited after DAERA decided to uphold its original decision after JR1 referral for re-consideration. Note the DAERA press comment in September 2018. Likewise a review of the legal advice and timing of same as the move towards a settlement will be informative as to whether the DAERA senior officials were acting in the public interest and the use of taxpayer funds.

## **2. Governance - DAERA Minutes of Departmental Board Meeting (DB) – Non Executive members etc re legal and costs re taxpayers Judicial Reviews etc**

As part of our research, we have reviewed the published monthly Departmental Board (DB) meetings for the period from January 2017 to November 2020.

We are astonished that at these monthly meetings, which involve Independent Board Members, there is a solitary reference to any of these Judicial Reviews.



It is in the minutes on 27 June 2018 where there is the following in AOB at *“Point 10.1 Judicial Review (JR) the leave hearing for the JR on Review of Decisions is to be heard on 28 June 2018.”*

Given the emphasis given to Lessons Learned in organisations, including DAERA, the failure to discuss these at the highest level of governance is concerning. We recognise that this may be in part because those in the Board meeting may have been criticised in the Judicial Review Judgments themselves, but they and the decision-making processes are central in any realistic learning activity and subsequent direction. In private companies I would be aware that every serious Board will review any legal actions status and lessons to be learned etc from same.

Why this would not be part any public governance / DAERA processes is shocking. You will know within the NI Audit Office as to whether this is restricted to DAERA but we believe, and we hope you agree, that this should be a mandated part of any agenda particularly with Independent Members present. We recognise that there will be situations and circumstances where the pure legal advice aspects can be minuted but we know in other venues that is recorded - as discussed for a period of xx minutes.

I would like to hear the NI Audit Office view and public sector experience elsewhere.

I would encourage your staff and you to meet / ZOOM with myself and our DUP Voluntary Advisor Brian Little to provide more information and of course we will engage to assist you in any way we can in your investigation.

I have copied the NI Assembly Public Accounts Committee, Finance Committee and DAERA Assembly Committee as a matter which may be of some public interest to them. As I said at the outset Mr Harry Harvey MLA for Strangford too is on both the DAERA Assembly and PAC and is familiar with some of our research, so I have copied Harry too.

Can you please acknowledge receipt.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jim Shannon', with a long horizontal flourish extending to the right.

**Jim SHANNON MP**

**Member of Parliament**  
***Democratic Unionist Party***  
***Strangford Constituency***

Enclosures

1. 1A. DAERA Judicial Reviews chronology / timeline - 11 December 2020  
1B FYI Review of Decisions Area based schemes – co-authored paper – December 2020/January 2021 – James O’Brien BL and Brian Little  
1C Email exchanges between Mr Shannon MP and Applicants Senior Counsel Mr Hugh Mercer QC for all five Judicial Reviews – Oct/Nov
2. UFU.JR3 - chronology /legal : documents analysis – 14 Dec-21 Dec
3. Those DAERA Departmental Board minutes referencing Reviews of Decisions Consultation and Judicial Reviews – from Jan 2017 to date

4. Media Press coverage -

4A. Irish Farmers Journal (IFJ) - ten in the series,

4B. News Letter/Farming Life , - 2018 and 2020/2021

4C. Ards Chronicle – 24 December 2020,

4D. BBC Radio Ulster Farmgate (8/12 Dec : website) and 29/30 January 2021 and Farming Matters (24 November 2020 and 26 January 2021 : website).

Copy of letter and Attachments (Letter : OPEN ONLY)

*NI Assembly Public Accounts Committee,*

*NI Assembly DAERA Committee and Member Mr Harry Harvey MLA*

*NI Assembly Finance Committee*



Reference: DAERA/20-318

Mr Jim Shannon MP for Strangford.

[jim.shannon.mp@parliament.uk](mailto:jim.shannon.mp@parliament.uk)

Mr William Irwin MLA

[william.irwin@mla.niassembly.gov.uk](mailto:william.irwin@mla.niassembly.gov.uk)

Information Management Team  
Ballykelly House  
111 Ballykelly Road  
Ballykelly  
Derry / Londonderry  
BT49 9HP  
Telephone: 028 774 42242

e-mail: [asd.foi@daera-ni.gov.uk](mailto:asd.foi@daera-ni.gov.uk)

Date: 14 December 2020

**Dear Mr Shannon / Mr Irwin**

### **Environmental Information Regulations 2004**

Thank you for your correspondence addressed to Mr Brian Doherty Director of Corporate Services and Mr Denis McMahon Permanent Secretary received by the Department on 16<sup>th</sup> November 2020. Further correspondence was received on 01/12/2020 in which you added two additional requests. Details of the information requested is noted below.

- 1. A copy of the Judicial Review JR3 documents index / evidence in relation to the elimination of the Independent Panels at Regulations 11, 12 of the Statutory Instrument SI No 391 Agriculture.2001.**
- 2. The actual DSO legal advice and any barrister legal opinion sought and/or provided to Mr Noel Lavery and DAERA prior to and during the Consultation in June / August 2017 and up to January 2018 before his final decision to proceed to eliminate the independent panels in January 2018.**
- 3. A copy of the Pre Action Protocol letter from the UFU instructed solicitors, McKees, to Dr. McMahon in 2018.**
- 4. The actual DSO legal advice and the barrister legal opinion sought and provided to Dr McMahon /DAERA February 2018 up to and including 15 October 2018 in relation to that 2017 Consultation and throughout the subsequent Judicial Review process. What we have called UFU.JR3.**

I can advise that the Department holds the information requested, however it has decided not to release any of the information at this time and has applied Regulation 12(5)(b) - Course of Justice.

In these instances the Department is required to conduct a Public Interest Test and this is attached for your information.

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In the detail of your request you have asked that the information requested should be provided to the Committee. In line with normal procedures, requests from Committee should be channelled through the Clerk to the Departmental Assembly Liaison Officer, or if they come from the Chair of the Committee should go to the Minister's Private Office.

If you require any clarification, believe that any part of your request has been overlooked, misunderstood or misinterpreted, please contact me in the first instance to see if it is a matter that can be resolved.

If you are unhappy with the manner in which your request for information has been handled or the decision to release/withhold information, you have the right to request a formal review by the Department. If you wish to do so please contact the Review section either by e-mailing [daera.informationmanager@daera-ni.gov.uk](mailto:daera.informationmanager@daera-ni.gov.uk) or by post at the Department of Agriculture, Environment and Rural affairs, Data Protection & Information Management Branch, Floor 2, Ballykelly House, 111 Ballykelly Road, Ballykelly, Limavady, BT49 9HP within two months from the date of this letter.

If after such an internal review you are still unhappy with the response, you have the right to appeal to the Information Commissioner at Wycliffe House, Water Lane, Wilmslow, CHESHIRE, SK9 5AF who will undertake an independent review of the Department's decision.

Yours sincerely,



**Gregor Kerr**

**Head of Area-based Schemes Operational Policy Branch**

Enc.

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## **Public Interest Test – EIR**

**Reference Number – DAERA/20-318**

### **Requested Information**

Mr Jim Shannon MP and Mr William Irwin MLA have requested the documents bundle index and bundle relating to a Judicial Review taken against the Department. Also for a copy of DSO legal advice provided to DAERA.

### **Exemption / Exception under consideration**

Regulation 12(5)(b), the Course of Justice; - Court or Tribunal Records

### **Reasons why the public interest would favour disclosure:**

- Regulation 12(2) requires DAERA to apply a presumption in favour of disclosure;
- DAERA is committed to conducting its business in a manner that is as open and transparent as possible.

### **Reasons why the public interest would favour withholding:**

- Disclosure under EIR would circumvent existing procedural rules created specifically to address the disclosure of court records;
- Parties involved in judicial proceedings expect disclosure under those court rules and not EIR;
- Disclosure of the information requested would allow public access to privileged information, undermine confidence in the system and ultimately discourage the use of pre-action settlement as a method of resolving disputes.

### **Conclusion**

The Department has decided that, on balance, the information requested should not be disclosed. The information requested is not in the public domain and very considerable weight must be given to the established principles of access via the appropriate Court procedural rules. Disclosure via any other route would more likely than not adversely affect the course of justice. There is a very strong public interest in maintaining the exception.



**Gregor Kerr**

**Head of Area-based Scheme Operational Policy Division**

**From:** SHANNON, Jim <jim.shannon.mp@parliament.uk>  
**Sent:** 15 December 2020 09:44  
**To:** DAERA ASD FOI  
**Cc:** william.irwin@mla.niassembly.gov.uk; +Comm Agri-Env-Rural Public Email; Private Office DAERA; McMahon, Denis; Doherty, Brian; brian@fortfield.com  
**Subject:** FW: Response to request for information reference DAERA/20-318  
**Attachments:** response for Mr Jim Shannon MP and Mr William Irwin MLA DAERA 20-318.pdf; DAERA 20-318 - Public Interest Test.pdf

Dear Gregor,

I acknowledge receipt of both of your attached letters dated 14 December 2020.

Firstly we note that in relation to the details of the information requested you write “**I can advise that the Department holds the information requested**, however it has decided not to release any of the information at this time and has applied Regulation 12 (5) (B) – Course of Justice. In these instances the Department is required to conduct a Public Interest Test and this is attached for your information.” Helpfully you phoned me late last week and “reading between the lines” we anticipated that this may be what you were about to advise. What wasn’t clear, then or now, was whether Dr McMahon and/or Mr Doherty were involved in your “public interest” ruling.

You will of course know that both Mr Irwin MLA and Mr Shannon MP are both publicly elected officials in our democracy. One in the NI Assembly and also a Member of the “scrutiny” DAERA Assembly Committee, and former Chair of same, while the other the Member of Parliament for Strangford. A significant part of their role is to act in the Public interest and in the interests of their constituents. There was, when the request was made and indeed now, sound reasons why they both requested the information for UFU.JR3 be made available.

Secondly you go on to write “*In the detail of your request you have asked that the information requested should be provided to the Committee. In line with normal procedures, requests from Committee should be channelled through the Clerk to the Departmental Liaison Officer, or if they come from the Chair of the Committee should go to the Minister’s Private Office*”. Mr Irwin MLA I fully expect will address this further with DAERA Committee Chair Mr McAleer MLA and his Committee colleagues but could I suggest that, as you have all the UFU.JR3 information, can you make it all available to Mr Taylor now for safekeeping and timely availability in the Minister’s Private Office.

This is for two reasons, firstly that it is available to Minister Poots and in a timely manner the DAERA Assembly Committee in response to their probable request, and secondly in our research on this subject Mr Shannon MP and we have become alarmed at the handling of

all of the five DAERA Judicial Review cases involving Single Farm Payments. As you know we call these UFU.JR1 , UFU.JR2 , UFU.JR3 , AFF.JR4 and BFL.JR5.

In short, as you may know, these five DAERA Judicial Reviews have cost the **UK taxpayer circa £300K+ , UFU members £231K+, and Barnwell Farms £22k+.** For all five judicial reviews the quality and timing of the legal advices from DSO / counsel should merit a “public” accountability review as part of that interaction with the very top DAERA officials and their decision making/governance processes for “irrational and unreasonable” decisions. As the taxpayer monies come via the Barnett formula etc. from HMT to NI, Mr Shannon as an MP, would have a direct interest in the use and abuse of public funds in NI and the UK.

We had been in touch with the NI Audit Commission back in September, when our research was getting underway on a couple of specific queries, and we concluded last Friday that we now should take these matters forward formally, if and when these letters were received. So in anticipation of your 14 December letters Shannon MP asked me to draft a letter to Mr Kieran Donnelly KB, Comptroller and Auditor General for NI (C & AG), to ask that they now formally review all of these matters and he plans to finalise this letter so we can send to him during our Christmas recess.

Other than UFU.JR3, the subject of this specific FoI let me cite another example as to why all five JR cases merit a proper forensic evidential and legal examination. Senior Counsel for the Ian Marshall case for JR1 specifically brought the attention of Judge Maguire to a European case as being directly relevant. Despite this it would appear that the DAERA officials initially “ignored” further legal advice in the follow up UFU.JR2, as the DAERA Press Release issued on 28 September 2018 stated ...” *DAERA Press comment ““the impugned determination was subject to a **procedural irregularity in that the applicant did not have, prior the final decision being made, an opportunity to make submissions in relation to the legal test to be applied in determining his appeal, namely that set out in the case of Van der ham Case C-396/12 which was decided on February 27.2014. The department consented to its decision on May 25, 2017, being quashed accordingly and will now re-determine the appeal on the basis that the breach in the case was negligent rather than intentional.**”*

Unsurprisingly though we note here that the contemporary evidence will show that the settlements for UFU.JR2 and UFU.JR3 were reached between Counsel in early summer 2018 , well before both substantive hearings were scheduled for 28 September 2018 and 12 October 2018 respectively. Presumably when Dr McMahon realised , to use Mr Shannon’s remarks in his interview with the Irish Farmers Journal that, “However he also maintains that Dr McMahon’s predecessor, Noel Lavery left him with a “poisoned chalice” by way of the second judicial review in to the Marshall case, and the third legal action taken by the UFU on the review of decision process. Why the UFU spent what it did on legal costs is now a matter of investigation and action elsewhere.



Can you please acknowledge receipt of my email and confirm that you will provide all of the information to the Minister's Private Office so that it is available in a timely manner to both the DAERA Assembly Committee and the NI Audit Commission if and when they request same.

Gregor ,if you let me know when you have done so I will incorporate that point in the draft letter from Mr Shannon MP to Mr Kieran Donnelly KB (C+AG) too. Thankyou for you call last week too.

Many thanks and kind regards

Naomi Armstrong-Cotter - on behalf of Mr Shannon MP.

---

**From:** DAERA ASD FOI <asd.foi@daera-ni.gov.uk>

**Sent:** 14 December 2020 17:48

**To:** SHANNON, Jim <jim.shannon.mp@parliament.uk>; william.irwin@mia.niassembly.gov.uk

**Cc:** DAERA ASD FOI <asd.foi@daera-ni.gov.uk>

**Subject:** Response to request for information reference DAERA/20-318

Dear Mr Shannon and Mr Irwin,

Please find attached response to your request for information contained within correspondence to Mr Brian Doherty Director of Corporate Services, and Mr Denis McMahon Permanent Secretary on 16<sup>th</sup> November 2020.

Kind Regards

Julie Wilson

Area Based Schemes Division- Information Management Team

ASD Business Support Branch / Area Based Schemes Division (ASD) / Department of Agriculture, Environment & Rural Affairs (DAERA)

Ballykelly House, 111 Ballykelly Road, Ballykelly, Limavady, BT49 9HP

[Julie Wilson @daera-ni.gov.uk](mailto:Julie.Wilson@daera-ni.gov.uk) / Monitored email box: [ASD.foi@daera-ni.gov.uk](mailto:ASD.foi@daera-ni.gov.uk)



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**From:** SHANNON, Jim <jim.shannon.mp@parliament.uk>  
**Sent:** 16 December 2020 09:38  
**To:** McComiskey, Siobhan; McMahon, Denis  
**Cc:** Doherty, Brian; Kerr, Gregor; Vi Calvert; brian@fortfield.com; Robert Calvert; william.irwin@mla.niassembly.gov.uk  
**Subject:** RE: Letter from DAERA Permanent Secretary to Mr Jim Shannon MP - 8 December 2020.pdf

Dear Dr McMahon,

On reading the ASD FOI response from Mr Kerr on Monday evening Mr Shannon MP called me and asked that I send the comprehensive email on his behalf, on which you were copied, yesterday morning at 9.44.

Jim also asked me to forward this email below from a week ago if we had not had a reply by last night. He asks that we do please receive your reply or confirmation by his return to the office on Friday morning. Thankyou

You will recognise that the UFU may have been able to mitigate their legal costs if, as we believe happened the "settlement" of both JR2 and JR3 was agreed in principle, before the summer holidays in 2018.

Of course that would be well before any substantive preparation/time was necessary by both Counsel for the scheduled substantive Hearings in September and October 2018. That would explain, in part, why you would naturally wish to refuse to make any ex gratia payment towards the UFU legal costs for JR3 and refuse to pay any further costs for JR2. As you may know, based on the UFU accounting reporting in April 2019, there remains a £53,907 legal costs deficit for JR2. On the basis of some of our analysis of documents and assertions by McKees solicitors to the Calverts it would seem that, like the JR1 Taxation process, the majority if not all of this deficit may be in relation to Mr Hugh Mercer QC fees for JR2?

That will be a matter, which as a UFU Member Mr Shannon MP, can and will take up directly with the UFU Directors, and perhaps Mr Mercer QC, but can we please have a reply and/or confirmation by tomorrow evening re Counsel "settlement" of both JR2 and JR3 on your instruction at DAERA before the summer holidays in 2018. It certainly appears that DAERA counsel legal costs confirm same.

Kind regards

Naomi - on behalf of Mr Shannon MP

**From:** SHANNON, Jim

**Sent:** 08 December 2020 15:17

**To:** McComiskey, Siobhan <Siobhan.McComiskey@daera-ni.gov.uk>; McMahon, Denis <Denis.McMahon@daera-ni.gov.uk>

**Cc:** Doherty, Brian <Brian.Doherty@daera-ni.gov.uk>; Kerr, Gregor <Gregor.Kerr@daera-ni.gov.uk>; Vi Calvert <vi.calvert@hotmail.co.uk>; brian@fortfield.com; Robert Calvert <robert@3fatpigs.co.uk>; william.irwin@mla.niassembly.gov.uk

**Subject:** FW: Letter from DAERA Permanent Secretary to Mr Jim Shannon MP - 8 December 2020.pdf

Dictated by Mr Shannon MP and sent in his absence

Dear Dr McMahon

I note the contents of your letter. Just one point. You state that "An agreed settlement was reached in the Judicial Review to which you refer."

I hope you will notice the care with which I asked the Irish Farmers Journal in my quote to them last Tuesday and published on 5 December 2020 "On that basis he questions why officials apparently allowed the matter to proceed to the steps of the High Court."

Mr Tony McGleenan QC was Senior Counsel for both UFU.JR2 (cost £5,880) and UFU.JR3 (£2,205) and at his usual commercial rates he could not have spent any time at all in relation to preparing for substantive hearings. Indeed we doubt for UFU.JR3 whether it would even cover his time to prepare for and attend a Leave Hearing through to negotiating settlement terms with UFU Senior Counsel Mr Hugh Mercer QC {Incidentally Mr McGleenan was also my Parliamentary Aide's Professor at Queens.}

So let me ask the question in an alternate way - On what actual date (s) did the DSO / DAERA accept the settlement terms which would subsequently be publicly announced on 28 September 2018 for JR2 and on 12 October 2018 in a Court Order for JR3.

The accurate answers to which (in advance of July in our estimation) would redirect my enquiries primarily to the UFU and the costs for Mr Mercer QC and their legal team.

This shouldn't take long to establish from your records and advise me

Many thanks and kind regards

Jim Shannon MP

---

**From:** McComiskey, Siobhan <[Siobhan.McComiskey@daera-ni.gov.uk](mailto:Siobhan.McComiskey@daera-ni.gov.uk)> **On Behalf Of** McMahon, Denis

**Sent:** 08 December 2020 10:43

**To:** SHANNON, Jim <[jim.shannon.mp@parliament.uk](mailto:jim.shannon.mp@parliament.uk)>

**Cc:** Doherty, Brian <[Brian.Doherty@daera-ni.gov.uk](mailto:Brian.Doherty@daera-ni.gov.uk)>; Kerr, Gregor <[Gregor.Kerr@daera-ni.gov.uk](mailto:Gregor.Kerr@daera-ni.gov.uk)>; 'Vi Calvert' <[vi.calvert@hotmail.co.uk](mailto:vi.calvert@hotmail.co.uk)>; brian@fortfield.com; william.irwin@mla.niassembly.gov.uk; DAERA PermSec <[perm.sec@daera-ni.gov.uk](mailto:perm.sec@daera-ni.gov.uk)>

**Subject:** Letter from DAERA Permanent Secretary to Mr Jim Shannon MP - 8 December 2020.pdf

Mr Shannon MP,

Please see attached letter from Dr Denis McMahon, in response to your email dated 27 November 2020.

Please note a hard copy of this letter will not issue in the post.

Siobhan McComiskey  
PS/Dr Denis McMahon  
Permanent Secretary  
Office of the Permanent Secretary  
Department of Agriculture, Environment and Rural Affairs (DAERA)  
Room 636 Dundonald House/Second Floor Ballykelly House/First Floor Klondyke Building

Phone: 028 9052 4132 Ext: 24132



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**From the Permanent Secretary**  
Dr Denis McMahon



Department of  
**Agriculture, Environment  
and Rural Affairs**

[www.daera-ni.gov.uk](http://www.daera-ni.gov.uk)

**Our reference: SCORR-0126-2020**

Mr Jim Shannon MP

Reply by email:

[jim.shannon.mp@parliament.uk](mailto:jim.shannon.mp@parliament.uk)

Office of the Permanent Secretary  
Room 636  
Dundonald House  
Upper Newtownards Road  
Ballymiscaw  
Belfast BT4 3SB  
Telephone: 028 9052 4608  
Email: [perm.sec@daera-ni.gov.uk](mailto:perm.sec@daera-ni.gov.uk)

17 December 2020

Dear Mr Shannon MP

Thank you for your correspondence dated 8 December 2020 asking for the dates on which DSO/DAERA accepted the settlement terms which would subsequently be publicly announced on 28 September 2018 for JR2 and on 12 October 2018 in a Court Order for JR3.

The case which you refer to as JR2 involves a private individual as claimant and while it would not be appropriate for DAERA to make any comment without their agreement beyond information already in the public domain, as detailed in the agreed media statement of 28 September 2018.

On the second case, you have asked for the date on which DAERA accepted the settlement terms. Discussions continued between respective Counsel up to the date of the Court Order 12 October 2018, when the settlement was agreed.

Yours sincerely

**DR DENIS McMAHON**  
**DAERA Permanent Secretary**

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**Area-based Schemes Division  
Business Support Branch**



Department of  
**Agriculture, Environment  
and Rural Affairs**

[www.daera-ni.gov.uk](http://www.daera-ni.gov.uk)

Reference: DAERA/20-318

Mr Jim Shannon MP for Strangford.

[jim.shannon.mp@parliament.uk](mailto:jim.shannon.mp@parliament.uk)

Information Management Team  
Ballykelly House  
111 Ballykelly Road  
Ballykelly  
Derry / Londonderry  
BT49 9HP  
Telephone: 028 774 42242

e-mail: [asd.foi@daera-ni.gov.uk](mailto:asd.foi@daera-ni.gov.uk)

Date: 18 December 2020

**Dear Mr Shannon**

**Environmental Information Regulations 2004**

Thank you for your further correspondence received by the Department on 15<sup>th</sup> December 2020.

I can advise that neither Dr McMahon nor Mr Doherty were involved in the public interest test on the decision not to release the information you requested under Regulation 12(5)(b) - Course of Justice.

You have asked that we furnish the Minister's Private Office with your requested information in anticipation of a request from the AERA Committee or the Northern Ireland Audit Office. The Department has very effective and efficient procedures in place to ensure that the Minister is provided with briefing on any matters in a timely manner. As such, there is no need to forward information to the Minister's Private Office at this time.

Yours sincerely,

**Gregor Kerr**

**Head of Area-based Schemes Operational Policy Branch**

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**brian@fortfield.com**

---

**From:** McComiskey, Siobhan <Siobhan.McComiskey@daera-ni.gov.uk> on behalf of McMahon, Denis <Denis.McMahon@daera-ni.gov.uk>  
**Sent:** 21 December 2020 10:13  
**To:** SHANNON, Jim; McMahon, Denis  
**Cc:** DAERA PermSec; Doherty, Brian; Kerr, Gregor; 'Vi Calvert'; brian@fortfield.com; william.irwin@mla.niassembly.gov.uk; Robert Calvert  
**Subject:** RE: Letter from DAERA Permanent Secretary to Mr Jim Shannon, MP - in response to correspondence received on 8 December 2020.pdf

Mr Shannon MP,

Thank you - your email has been noted.

Siobhan McComiskey  
PS/Dr Denis McMahon  
Permanent Secretary  
Office of the Permanent Secretary  
Department of Agriculture, Environment and Rural Affairs (DAERA)  
Room 636 Dundonald House/Second Floor Ballykelly House/First Floor Klondyke Building

Phone: 028 9052 4132 Ext: 24132



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**From:** SHANNON, Jim [mailto:jim.shannon.mp@parliament.uk]  
**Sent:** 21 December 2020 09:33  
**To:** McMahon, Denis <Denis.McMahon@daera-ni.gov.uk>  
**Cc:** DAERA PermSec <perm.sec@daera-ni.gov.uk>; Doherty, Brian <Brian.Doherty@daera-ni.gov.uk>; Kerr, Gregor <Gregor.Kerr@daera-ni.gov.uk>; 'Vi Calvert' <vi.calvert@hotmail.co.uk>; Brian Little <brian@fortfield.com>; william.irwin@mla.niassembly.gov.uk; Robert Calvert <robert@3fatpigs.co.uk>  
**Subject:** RE: Letter from DAERA Permanent Secretary to Mr Jim Shannon, MP - in response to correspondence received on 8 December 2020.pdf

Dear Dr McMahon

Thankyou for your letter.

In relation to JR2 and Ian Marshall since my email I have been able to establish that Ian was "uncomfortable and dismayed about settling his case on the basis of what would become, publicly, a legal excuse and not fully clear his reputation" for doing so. Furthermore it was

effectively settled before the DAERA Press comment at the scheduled Hearing on 28 September 2018, without any substantial counsel time being necessary in compiling and reviewing any DAERA affidavits and any court bundle from DAERA/DSO for the main Hearing. Of course by then Noel Lavery had gone and it was now your decision.

I understand that last Thursday evening the Presidents briefing at the County Down UFU webinar responded with comments in relation to JR3 from David Brown, where it was apparent it was effectively settled in the summer or 2018 too. So while it may be technically correct that "Discussions continued between respective Counsel up to the date of the Court Order 12 October 2018", the strategic substance of the settlement and the recognition by you that it needed to be, which was the essence of my question, was in the summer of 2018. Hence, the "low" legal costs incurred by DAERA in relation to any Counsel preparation for a substantive court hearing.

I don't think there is any need to query or exchange comments any further, other than those below as a matter of record, and I have separately responded to Mr Kerr's letter dated 18 December 2020 in which he states you had no prior knowledge of the public interest test he applied to Mr Irwin MLA and my requests.

I continue to believe that the evidence, as the Irish Farmers Journal accurately reported my comments in their interview for the 3 December edition that, *"However, he also maintains that McMahan's predecessor, Noel Lavery, left with a "poisoned chalice" by way of the second judicial review in to the Marshall case, and the third legal action taken by the UFU on the review of decisions process."* You could and should, like the Barnwell Farms preaction protocol letter in April 2019, not have proceeded with the JR2 and JR3 cases, saving everyone taxpayer monies, UFU member funds and then almost driving Barnwell Farms in to bankruptcy. To fail to settle even less than half of the Barnwell Farms legal costs £22K deficit at £10,679, with Vi Calvert's offer rejected within hours last month, was, like your final below inflation offer of £4077 for consequential losses / alternative profitability, both ungrounded and continues, in my view, to be a major error in wisdom and judgment.

Jim Shannon MP

Jim Shannon MP for Strangford  
34a Frances Street  
Newtownards  
Northern Ireland  
BT23 7DN  
028 9182 7990



**From:** SHANNON, Jim

**Sent:** 17 December 2020 14:47

**To:** McMahon, Denis <[Denis.McMahon@daera-ni.gov.uk](mailto:Denis.McMahon@daera-ni.gov.uk)>

**Cc:** DAERA PermSec <[perm.sec@daera-ni.gov.uk](mailto:perm.sec@daera-ni.gov.uk)>; Doherty, Brian <[Brian.Doherty@daera-ni.gov.uk](mailto:Brian.Doherty@daera-ni.gov.uk)>; Kerr, Gregor <[Gregor.Kerr@daera-ni.gov.uk](mailto:Gregor.Kerr@daera-ni.gov.uk)>; 'Vi Calvert' <[vi.calvert@hotmail.co.uk](mailto:vi.calvert@hotmail.co.uk)>; Brian Little <[brian@fortfield.com](mailto:brian@fortfield.com)>; [william.irwin@mli.niassembly.gov.uk](mailto:william.irwin@mli.niassembly.gov.uk)

**Subject:** RE: Letter from DAERA Permanent Secretary to Mr Jim Shannon, MP - in response to correspondence received on 8 December 2020.pdf

Dear Siobhan

Just to acknowledge receipt of your email which I will pass to Mr Shannon on return to his constituency office.

Kind regards

Naomi

**From:** McComiskey, Siobhan <[Siobhan.McComiskey@daera-ni.gov.uk](mailto:Siobhan.McComiskey@daera-ni.gov.uk)> **On Behalf Of** McMahon, Denis

**Sent:** 17 December 2020 14:43

**To:** SHANNON, Jim <[jim.shannon.mp@parliament.uk](mailto:jim.shannon.mp@parliament.uk)>

**Cc:** McMahon, Denis <[Denis.McMahon@daera-ni.gov.uk](mailto:Denis.McMahon@daera-ni.gov.uk)>; DAERA PermSec <[perm.sec@daera-ni.gov.uk](mailto:perm.sec@daera-ni.gov.uk)>; Doherty, Brian <[Brian.Doherty@daera-ni.gov.uk](mailto:Brian.Doherty@daera-ni.gov.uk)>; Kerr, Gregor <[Gregor.Kerr@daera-ni.gov.uk](mailto:Gregor.Kerr@daera-ni.gov.uk)>; 'Vi Calvert' <[vi.calvert@hotmail.co.uk](mailto:vi.calvert@hotmail.co.uk)>; Brian Little <[brian@fortfield.com](mailto:brian@fortfield.com)>; [william.irwin@mli.niassembly.gov.uk](mailto:william.irwin@mli.niassembly.gov.uk)

**Subject:** Letter from DAERA Permanent Secretary to Mr Jim Shannon, MP - in response to correspondence received on 8 December 2020.pdf

Good afternoon Mr Shannon MP,

Please see attached correspondence from Dr Denis McMahon, DAERA Permanent Secretary.

Please note that a hard copy of this letter will not issue by post.

Regards.

Siobhan McComiskey

PS/Dr Denis McMahon

Permanent Secretary

Office of the Permanent Secretary

Department of Agriculture, Environment and Rural Affairs (DAERA)

Room 636 Dundonald House/Second Floor Ballykelly House/First Floor Klondyke Building

Phone: 028 9052 4132 Ext: 24132



Department of  
**Agriculture, Environment  
and Rural Affairs**  
[www.daera-ni.gov.uk](http://www.daera-ni.gov.uk)

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**MINUTES OF DEPARTMENTAL BOARD (DB) MEETING  
HELD ON WEDNESDAY 31 MAY 2017 IN ROOM 229 DUNDONALD HOUSE**

**Members:**

→ Noel Lavery	Permanent Secretary
David Small	Deputy Secretary, Environment, Marine and Fisheries Group
Robert Huey	Deputy Secretary, Veterinary Service and Animal Health Group
* Norman Fulton	Deputy Secretary, Food and Farming Group
Geraldine Fee	Director of Corporate Services
David Reid	Director of Finance
Janine Fullerton	HR Director, NICS HR
→ David Russell	Independent Board Member

**In attendance:**

Graeme Wilkinson	Director of Brexit Programme (Item 3 only)
Paul Caskie	Chief Agricultural Economist (Item 6 only)

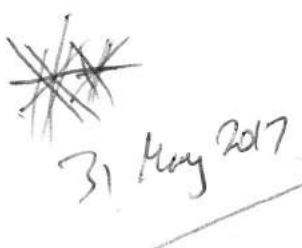
**Apologies:**

Colin Lewis	Deputy Secretary, Central Services and Rural Affairs Group
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**Minutes**

Lynda Lowe	Board Secretariat
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Item	Description	Action Owner
<b>1.0</b>	<b>Departmental Update</b>	
1.1	Noel provided an update to the Board and advised that a number of items were to be raised at the meeting for decision/to note in the absence of a Minister.  Norman provided an update on the AFBI Review, advising that the first meeting of the Project Board was on 8 June and intention was to provide a report in six months. A general discussion on AFBI quality of service followed.	
<b>2.0</b>	<b>Standing Items</b>	
<b>2.1</b>	<b>Conflict of Interest</b>	
	David Small advised that his son would continue to be employed by Outdoor Recreation for a further four months.  No other conflicts were declared.	
<b>2.2</b>	<b>Minutes and Actions Arising from DB Meeting on 26 April</b>	
	The Minutes of the April DB meeting were agreed.  The Actions Arising were cleared. DB Members noted that Paul Caskie would present the paper on LFACA Debts at the July DB meeting.	
<b>3.0</b>	<b>Brexit Update</b>	
	Graeme Wilkinson joined the meeting, presented his paper and provided a summary of his recent meetings with the BCC, DEXU and Rol and forthcoming meetings. He highlighted the Devolved	

	<b>Review of Decisions Consultation</b>	
	<p>Norman Fulton provided an overview of his paper seeking DB approval to allow a consultation on Proposed Changes to DAERA Area Based Schemes Review of Decisions Process 2017. He advised that DB approval would allow a consultation to commence and avoid undue delay with the 2017 Review of Decisions process.</p> <p>The Board agreed to the commencement of the consultation process after the General Election.</p>	
<b>4.6</b>	<b>Agri-Food Strategy Board Extension of Appointments</b>	
	<p>Norman Fulton provided the Board with background information on the nature of these non-Regulated Board appointments and the current decision on extensions to be taken jointly by the Permanent Secretary of DAERA and DfE.</p> <p>Following discussion, it was agreed that the appointments should be extended by no more than three months i.e. to the end of August 2017. This short extension would leave open decisions on the Board's future for any incoming Minister,.</p>	
<b>4.7</b>	<b>DAERA Equality Scheme</b>	
	<p>Geraldine Fee introduced her paper and advised that following approval, the Scheme would be forwarded to the Equality Commission and a Communication Plan was in place.</p> <p>Members were content to agree the publication of the Scheme, subject to some minor amendments and confirmation of the position on Consultation periods.</p>	
<b>5.0</b>	<b>CAP Reform Programme Report</b>	
5.1	<p>David Small introduced the Progress Report and Board Members discussed:</p> <p>Food Processing Grant (Agri food Processing Investment Scheme) and FBIS Co-operation Scheme: It was agreed that Ministerial approval was required before announcing the launch of these Schemes;</p> <p>FBIS Innovation and Technology Scheme: Members noted the Business Case should be with DoF in June;</p> <p>Rural Tourism and Environmental Farming Scheme: current positions noted;</p> <p>ICT: the current position was noted. Members were advised that 99.5% of Basic Payment Scheme and 100% of EFS applications were submitted on-line.</p>	
<b>6.0</b>	<b>DAERA Knowledge Framework</b>	
6.1	<p>Paul Caskie joined the meeting and provided Members with an update on the development of the DAERA Knowledge Framework.</p> <p>The Board considered the proposed responses to the</p>	

**MINUTES OF DEPARTMENTAL BOARD (DB) MEETING  
MONDAY 25 OCTOBER 2017  
CONFERENCE ROOM – 229 DUNDONALD HOUSE**

**Members:**

→ Noel Lavery	Permanent Secretary
Robert Huey	Deputy Secretary, Veterinary Service and Animal Health Group
David Small	Deputy Secretary, Environment, Marine and Fisheries Group
* Norman Fulton	Deputy Secretary, Food and Farming Group
Graeme Wilkinson	Acting Deputy Secretary, Central Services and Rural Affairs Group
Geraldine Fee	Director of Corporate Services
David Reid	Director of Finance
Janine Fullerton	Strategic Business Partner, NICS HR
→ David Russell	Independent Board Member

**Guests in attendance:**

Jill Minne	Director NICS HR (DoF) (Item 1 only)
↻ Mark Wilson	Ballykelly Relocation (Item 11 only)

**Minutes:**

Barry Yeo	Board Secretariat
Lynda Lowe	Board Secretariat

**Apologies:**

Colin Lewis	Deputy Secretary, Central Services and Rural Affairs Group (Absence due to serious illness)
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Item	Description	Action Owner
1.0	<b>Departmental Update</b>	
1.1	<p>Introduction:</p> <p>Secretary provided an update on the Department's activities. Members discussed the impact of decision making in the absence of a Minister. Secretary asked Members to consider issues currently which will require Ministerial input and implications for the Department.</p> <p>Secretary asked David Reid to provide a briefing paper for the Audit Committee and DB regarding the 2016/17 Accounts.</p> <p>Secretary updated members on the overall threat of Cyber Security and advised that DB will receive a presentation at the December meeting.</p> <p>Secretary thanked all staff for their support during Storm Ex-Ophelia and in particular the Board expressed its appreciation to Philip Brady.</p>	<p><b>All Executive Members</b></p> <p><b>David Reid</b></p>

	<ul style="list-style-type: none"> <li>Stakeholder Groups meeting;</li> <li>Meeting of Brexit Board; and</li> <li>Day 1 delivery plan</li> </ul>	
<b>5.0</b>	<b>Review of Decisions</b>	
5.1	<p>Norman Fulton provided Members with the background and rationale for the proposals as set out in his paper.</p> <p>The Board discussed his proposals, noted the consultation results, endorsed the recommendations and noted the need for clear communication with stakeholders.</p>	<p>25 Oct 247</p>
<b>6.0</b>	<b>Advisory Services Review</b>	
6.1	<p>Norman Fulton presented his progress paper to the Board, noting the guiding principles which underpinned the project. Members provided comment on the progress and rationale for change and agreed the programme was moving in the right direction.</p> <p>Secretary added that he was very pleased with the recent level of advice and collaboration provided during the North West Flooding by Departmental staff, notably Eric Long, Mark Livingstone, Tim Irwin and Colette McMaster.</p>	
<b>7.0</b>	<b>Equine Strategy</b>	
7.1	<p>Robert Huey provided an overview of his draft strategy paper and Members noted that he proposed an interim strategy to take the Department up to March 2018.</p> <p>The Board agreed to engage with external services to undertake an analysis of the value of the equine sector in NI. Members discussed a number of changes to the paper. Written comments to Robert Huey will be coordinated by Board Secretariat.</p>	<b>Board Secretariat</b>
<b>8.0</b>	<b>DAERA 2017/18 Budget Position</b>	
8.1	<p>David Reid provided an update to members on the Department's Budget position moving into the 3<sup>rd</sup> Monitoring Round.</p> <p>The Board discussed the present funding positions on Resource and Capital.</p>	
<b>9.0</b>	<b>TB Strategic Partnership Group (TBSPG)</b>	
9.1	<p>Robert Huey presented his paper to the Board and sought approval to launch the consultation and to commence recruitment for Tuberculosis Eradication Partnership (TBEP).</p> <p>He provided an update on the purpose and need to consult, the timing and the period of consultation. The Board discussed the options, agreed to proceed with the consultation and also to commence recruitment for TBEP, noting that the decision to appoint will rest with the PS in the absence of a Minister.</p>	
<b>10.0</b>	<b>ARAC Report</b>	
10.1	The Board noted the paper.	

**MINUTES OF DEPARTMENTAL BOARD (DB) MEETING  
WEDNESDAY 27 JUNE 2018  
LOUGHERMORE ROOM  
BALLYKELLY HOUSE**

**Members:**

→ Denis McMahon ← Robert Huey David Small → Brian Doherty David Reid Janine Fullerton Sharon McCue	Permanent Secretary Deputy Secretary, Veterinary Service and Animal Health Group Deputy Secretary, Environment, Marine and Fisheries Group Director of Corporate Services Director of Finance Strategic Business Partner, NICS HR Non-Executive Board Member (NEBM)
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**Apologies:**

Colin Lewis ✦ Norman Fulton J Fiona McCandless	Deputy Secretary, Central Services and Rural Affairs Group Deputy Secretary, Food and Farming Group Deputy Secretary
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**In Attendance:**

Seamus McErlean Graeme Wilkinson Jonathon McFerran Rosemary Agnew	Chief Agricultural Economist (Deputising in for Norman Fulton) Director of Brexit Programme (Item 5 only) Brexit Programme (Item 5 only) Brexit Programme (Item 5 only)
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**Secretariat:**

Barry Yeo  
Kathryn Clarke

Item	Description	Action Owner
<b>Opening</b>		
<b>1.0</b>	<b>Secretary's Opening Remarks</b>	
	Secretary welcomed everyone to the meeting and thanked Seamus McErlean who is deputising for Norman Fulton.  Secretary provided a short update on a number of key issues: I. Brexit Gateway – to be discussed later under agenda item 7; and II. Sought Board agreement on a new Departmental purpose Statement; "A Living, Working, Active, Landscape valued by everyone". The Board was content to agree.	
<b>1.1</b>	<b>Declaration Of interests</b>	
	No interests which relate to today's agenda declared.	
<b>1.2</b>	<b>Previous Minutes</b>	
	Minutes from 30 May 2018 were agreed.	
<b>1.3</b>	<b>Matters Arising &amp; Action Points</b>	
	Actions from 30 May 2018 were noted as cleared, being taken	

	The attending Brexit team updated DB Members on the outcome of the Gateway review. The Board noted the positive review findings. The Board agreed the Gateway recommendations which included contingency planning. Following discussions on contingency planning scenarios Secretary directed that a team be established, to coordinate implementation of the Gateway findings. Robert Huey to chair 1 <sup>st</sup> meeting.	<b>Robert Huey</b>
<b>6.0</b>	<b>TB Update</b>	
6.1	The Board noted the contents of the paper.	
<b>7.0</b>	<b>Equine Strategy Update</b>	
7.1	The Board noted the contents of the paper.  Following discussions the Board did not agree to endorse a CAFRE representative to attend Horse Sport Ireland (HSI) Coaching and education Advisory Council as an unpaid ex officio. Board to write to HSI on their decision.	<b>Seamus McErlean (Norman Fulton)</b>
<b>Closing Issues</b>		
<b>8.0</b>	<b>DB August Forward Agenda</b>	
8.1	Agenda for August was agreed with a minor change.	
<b>9.0</b>	<b>Internal Communication messages for Team Brief</b>	
9.1	Items agreed for inclusion in next available team brief were: 1. People (PPA/PDPs); 2. Brexit; 3. Programme for Government; and 4. DAERA June DB meeting in Ballykelly House.	
<b>10.0</b>	<b>AOB</b>	
<del>10.1</del>	<u>Judicial Review (JR):</u> The leave hearing for the JR on Review of Decisions is to be heard on 28 June 2018.  <u>G5 Promotion Competition:</u> List expected to be published on Monday 2 July.  <u>Graeme Wilkinson:</u> The Board recorded its congratulations to Graeme Wilkinson who is to move to The Executive Office on Temporary promotion to G3. The Board thanked Graeme for his hard work on the Department's Brexit Programme.  <u>Changes at Deputy Secretary level:</u> Secretary advised he will issue a note detailing organisational changes following appointment of Fiona McCandless as a DAERA Deputy Secretary.	<i>27 June 2018</i>  <b>Secretary</b>
<b>Papers for DB Members to note only</b>		
<b>11.0</b>	<b>ARAC</b>	
11.1	ARAC report 2017/18	