

## **ACA (NI) Submission for the DAERA Assembly Committee Hearing - 11 March 2021 on Independent Panel for Review of Decisions on Area-based Schemes**

I have re-attached the ACA (NI) submission to the DAERA 2017 Consultation, and our comments would be endorsed again now.

I think it is important from an ACA (NI) point of view that we highlight the whole process of RODs -

- Jason Foy stated on the 28 January 2021 that DAERA must ensure that claimants of the various schemes adhere to the rules and the legislation. When farmers are appealing a DAERA decision they will receive a large file of all the EU regulations which nobody outside the Department has seen. Therefore, this looks one sided, as the interpretation of the law and regulations resides with DAERA!

We have an aging farmer population who don't know or understand all this legal jargon. It is so complicated and needs to be easier explained.

In the only £100K judicial review challenges on 5 cases as James O'Brien and Brian Little said in their analysis/evidence a month ago DAERA had no Judgments in their favour . Two they lost and in three others they had to settle.

- DAERA interprets the EU and National rules and regulations, apply them and if the farmer is not adhering or obeying these rules, DAERA make a decision, and then the business is breached and financially penalised. The farmer can appeal to Stage 1 which DAERA checks and makes their decision. If it is a rejection the farmer can then go to Stage 2 appeal and present a better case with perhaps additional evidence and information. No additional information can be provided to the panel. The panel sits and looks at the case with all the information that DAERA has provided. As one panel member said at a panel interview – We are here to ensure that DAERA has correctly administered the rules and the legislation. This is all very well but the panel should be deciding if the farm business is right or wrong.
- Farmers who have lost their Stage 1 appeal feel that DAERA staff protect one another, and all agree with the original decision.
- The main appeals that ACA (NI) are involved with are for Active Farmer status (usual for someone with under 10 ha), for farmers who have failed to TB test in the required time or claiming ineligible land for BPS.
- There is no consultation between the case officers and the business appealing the decision.

- DAERA want all the evidence in paper format – usually invoices, receipts, bank statements and photographs . I have said on many occasions that if a Department official went out and visited the farm it would save time and money and the picture may be a lot different.
- No empathy by the Department, they are wanting to satisfy their work to auditors!
- Who are the 'technical' people looking at the appeal? What are their qualifications? Are they interpreting the rules and legislation correctly or are they 'gold plating' them?
- In the case where an active farmer is appealing being turned down , DAERA wants to see all 3 elements - decision making power, benefits and financial risks, and all must be fulfilled.

They don't elaborate in what they actually mean by these 3 elements and I don't think this definition is used in other regions (I may be wrong)

As well as looking at the Stage 2 Independent Panel I feel this would be an opportune time to look at how the whole ROD process is conducted. Also, I feel that the penalty should match the crime rather than a % which if DAERA decides is intentional can be very severe.

Many farmers who have had the panel's recommendation overturned by DAERA, have the opportunity to go to a Judicial Review or to the Ombudsman.

The issues associated with going to a judicial review have been very well documented recently in the IFJ and on the radio, but I feel that many farmers could not afford the cost of a Judicial Review. Many are also too scared that if they win the Judicial Review and DAERA are criticised they will receive further cross-compliance inspections.

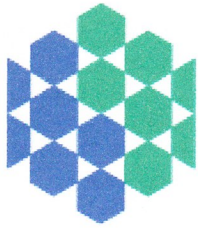
All this is very stressful and from a mental health point of view a simpler and less expensive process should be considered.

There is the suggestion of setting up a Supreme Agricultural Appeal Panel (SAAP), with top agricultural law experienced QCs. I would recommend that this is seriously looked at as we move forward in the wider ROD consultation.

David Rankin

Chairman ACA (NI)

Form



Department of

# Agriculture, Environment and Rural Affairs

[www.daera-ni.gov.uk](http://www.daera-ni.gov.uk)

## CONSULTATION ON PROPOSED CHANGES TO

### DAERA AREA BASED SCHEMES REVIEW OF DECISIONS PROCESS 2017

## Response Form

|  |   |  |
|--|---|--|
| Name   | DAVID RANKIN (CHAIRMAN)   |  |
| Company / Organisation Name                                      | AGRICULTURAL CONSULTANTS ASSOCIATION (NI)   |  |
| Please describe your Company / Organisation type                 | Association of professional consultants/agents who confidentially complete DAERA forms for farm businesses. ACA (NI) members also help farmers with APHIS, Nitrates Action Programme and Phosphorus Regulations and FQAS/Red Tractor assurance. |  |
| Please indicate your preference for publication of your response | <b>Under the name / company given:</b> I consent to publication of all information in my response.  | Please tick<br><input checked="" type="checkbox"/> YES |
|  | <b>Anonymously:</b> I consent to publication of all information in my response.   | <input type="checkbox"/>                               |

**Question 1: Do you think there are other factors that you consider should be included? If so , what are they?**

Response

|            |             |
|------------|-------------|
|            | Please tick |
| <b>Yes</b> | <b>Yes</b>  |
| <b>No</b>  |             |

If yes, please state below:

Better communication between DAERA and the farm business at all stages of an inspection, or appeal but especially at the initial stages e.g. problems identified by a DAERA inspector at a land inspection.

Better communications in letters sent to farmers rather than using a standard format. DAERA needs to explain why and how they came to a decision rather than just saying for example \* 2015 Area Based Schemes – Active Farmer requirements not met.

More contact and guidance given between the Case Officer and the business or their agent.

DAERA are quick to say that the case officers are 'experts' but what really are their qualifications? Are they familiar with that aspect of farming, e.g. DAERA staff from CMB looking at active farmers appeals. Do they look at all the evidence and are they confident that the decision they have made is correct. Do they ask for additional information if they felt something was missing or would be more helpful.

How many appeals are dealt with at an office desk or behind a computer rather than going out to the farm and speaking to the farmer directly.

DAERA looking at an appeal tend to favour the original decision made by one of their colleagues. Appeals should be fair and if mistakes are made the farmer should get the benefit of doubt!

Even after Stage 2, where the panel have recommended in favour of the farmer DAERA can overturn the result. How can this represent a fair situation and highlights my point above.

**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 Department's decision? If not, please give your reasons.**

Response

|     |             |
|-----|-------------|
|     | Please tick |
| Yes | Yes         |
| No  |             |

If No, please state below:

In the format as outlined in Figure 1 we feel a faster result would satisfy both the farm business and DAERA, especially where the Case Officer has more contact with the appellant.

However the faster system must be fair and look at all the facts. With an aging farmer population they may be unsure of how to complete a Review application accurately with all the appropriate information. Therefore mistakes could be made and that will be the role of the Case Officer to 'tease' out and rectify.

On the negative side, once DAERA has made their final decision that will be it, there will be no opportunity for a second go at it! Farm businesses would still have the option of going to the Ombudsman or a Judicial Review, but the expense of this may outweigh the benefits.

**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.**

Response

|     | Please tick                 |
|-----|-----------------------------|
| Yes | <input type="checkbox"/>    |
| No  | No <input type="checkbox"/> |

If No, please state below:

The question is 'What is the benefit or reason for a fee?'

We feel that a nominal fee is not that important provide the applicant gets value for money. The present £50 or £100 fee – what is this used for?

Although some may find this difficult to pay, others would feel if their case is strong then £500 may be 'cheap'.

Under the present system Stage 1 has no fee but stage 2 has. With the proposed new system there will be no Stage 2, so why a fee?

If a business is concerned then the farmer should raise this concern. DAERA encourage farmers to 'raise a concern' and quoting from their literature "Reporting a matter promptly can reduce the potential for financial loss due to inefficiency or flawed processes or procedures". One method to raise his concern is by the appeal process, so why should a farm business have to pay for something DAERA is encouraging?

The £100 fee is symbolically sending out a message to pay up front to raise your concern!!

In other words it is not the amount but the message that it is sending out, that is negative.

**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 reason.**

Response

|     | Please tick              |
|-----|--------------------------|
| Yes | <input type="checkbox"/> |
| No  | <input type="checkbox"/> |

If No, please tell us how long applicants should be given to apply for a review of their decision and why:

Again this is a difficult one, but may be best increasing to 60 days, as is the case for other bodies with a reminder being issued after 42 days.

Farmers on the whole are not 'speedy' and if solicitor's evidence, accountant's or medical records or other relevant evidence is needed it can take time to gather up.

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**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.**

Response

|                       | Please tick                 |
|-----------------------|-----------------------------|
| <b>I agree</b>        | <input type="checkbox"/>    |
| <b>I do not agree</b> | <input type="checkbox"/> No |

If you do not agree, how long do you feel would be sufficient? Please state your reasons below:

From question 4, we feel it may favour the farm business to have a longer period, say 42 days. Submitting evidence can take time provided the Case Officer makes it clear what is required.

Again the need for better communications and working with the farm business to ensure they provide the correct and appropriate information.

Another important communication method should not just be office based. A visit to the farm could answer all the points raised (either way) and may save time.



**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 timeframe and give your reasons.**

Response

|            |             |
|------------|-------------|
|            | Please tick |
| <b>Yes</b> | <b>YES</b>  |
| <b>No</b>  |             |

If No, please indicate the timeframe most appropriate and state your reasons below:

Again this depends on the type of appeal but from DAERA's point of view, we feel 3 months is a reasonable time frame provided a fair decision has been gained.

**Thank you for taking the time to complete these questions.**