



Declan McAleer MLA
Chairperson, Committee for Agriculture, Environment
and Rural Affairs

Minister Poots
Department of Agriculture, Environment and
Rural Affairs
Dundonald House,
Ballymiscaw,
Belfast, BT4 3SB

25 March 2021

Dear Minister Poots

Independent Panel for the Review of Decisions process

1. I am writing on behalf of the Agriculture, Environment and Rural Affairs Committee in connection with the Independent Panel for the Review of Decisions process. For some time, Members and stakeholders have raised concerns in relation to this process. Following oral evidence from DAERA officials on 28 January 2021, the Committee agreed to carry out policy scrutiny on the matter.
2. During February and March 2021, the Committee received oral and written evidence from key stakeholders namely the UFU, NIAPA, ACA (NI), Farmers for Action, NI Farm Groups and from Mr Brian Little and Mr James O'Brien. The Committee also commissioned a research paper on the issue. Further details of the policy scrutiny carried out can be found at Annex A.

3. The Committee considered the responses at its meeting on 18 March 2021 and recommends that:
 - The information provided to appellants during the appeals process, including at Independent Panel stage, should be reviewed to ensure it is more accessible, easily understood and has less legal jargon;
 - New evidence ought to be admissible at the Independent Panel stage and the evidence in formats other than in written format ought to be admissible
 - The decision of the Independent Panel ought to be final and historical cases where this has not happened should be re-considered;
 - There should be more support for the mental health and well-being of appellants throughout the appeals process. DAERA should engage with community and voluntary organisations such as Rural Support and health services such as GPs and sign-post appellants to these services, recognising that the appeals process can be very stressful and can have a major impact on mental health.

4. The Committee is concerned that, on a point of law, the only way to challenge DAERA's decision not to accept the recommendation of the Independent Panel is by Judicial Review. This can be both prohibitively expensive and very stressful. The Committee welcomes the announcement that legislation will be brought forward to give decision making powers to the Independent Panel as this could negate the need for Judicial Review. In the absence of such legislation, an alternative review mechanism has been proposed by stakeholders i.e. A Supreme Agricultural Appeal Panel (SAAP). The Committee is currently considering these proposals. It requests that you provide your thoughts on this SAAP including the viability of the

proposed review mechanism and any legal implications, before coming to its own view on this proposal.

5. The Committee notes the letter from the DALO dated 11 March 2021 indicating that, until the required legislation is in place, he will take the final decision in reviews heard by the independent Panel.
6. Looking to the future, the Committee would like further information on proposals for the recruitment and selection of the Independent Panel outlined by DAERA officials in the oral evidence on 28 January 2021. The Committee recommends that the recruitment and appointment process be underpinned by the principles of full accountability, openness and transparency.
7. The Committee are also keen to hear whether the current Review of Decisions process is likely to continue in its current form as DAERA develops and delivers a new agricultural policy; what consideration is being given to ensuring that the Review of Decisions process is fit for purpose in the years ahead and whether the Review of Decisions process likely to apply to all programmes/schemes within the new agricultural policy.

Yours Sincerely



Declan McAleer

INDEPENDENT PANEL FOR REVIEW OF DECISIONS

Consideration of responses

Background

1. DAERA offers a range of grant and subsidy schemes to support the agricultural sector including area-based schemes. Applicants to area-based schemes have the right to request a review if they consider that the decision regarding their application is incorrect, known as the Review of Decisions (RoD) process. Stage 2 of this process is by way of an Independent Panel. Members and stakeholders have raised a number of concerns in relation to this process and particularly in relation to the Independent Panel.
2. At its meeting on 28 January 2021, the Agriculture, Environment and Rural Affairs Committee received an oral briefing from DAERA on the Review of Decisions process.
<http://data.niassembly.gov.uk/HansardXml/committee-25105.pdf>
3. At the meeting, Members raised a number of concerns including:
 - The fact that Independent Panel decisions are not legally binding;
 - The prohibitive costs of Judicial Review;
 - Timescales including cases where a decision has not yet been made by the Department following a Panel recommendation;
 - Governance and accountability including in relation to the recruitment, selection, appointments and remuneration of the Panel;

- Legislative considerations such as the implications of EU Exit;
 - Comparisons with other jurisdictions; and,
 - The treatment of historical cases.
4. The Committee agreed to carry out policy scrutiny on the matter and to invite key stakeholders to provide evidence in relation to this.

Approach taken

5. Invitations were issued to a number of key stakeholders to provide oral or written evidence. The Committee held two oral evidence sessions with:
- Brian Little and James O'Brien on 11 February 2021
<http://data.niassembly.gov.uk/HansardXml/committee-25329.pdf>
 - NIAPA and ACA (NI) on 11 March 2021
<http://data.niassembly.gov.uk/HansardXml/committee-25696.pdf>
6. In addition to the written and oral evidence from the above, the Committee also received written submissions from the UFU, Farmers for Action, NI Farm Groups as well as representations from other stakeholders.
- <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/agriculture-environment-and-rural-affairs/policy--scrutiny/independent-panel-for-review-of-decisions/>
7. The Committee also commissioned the Assembly's Research and Information Service (RaISe) to prepare a briefing paper to provide an overview of the actual appeal/review of decisions processes operating across the UK and Ireland, as they relate to CAP payments; identify

and compare areas open to appeal/review of decision, the projected and actual timeframe for completion, statistics on the issues reviewed/appealed (where available) and to assess of the training provided to individuals on independent appeal/review panels where applicable. A copy of the report can be found here:

<http://www.niassembly.gov.uk/globalassets/committee-blocks/agriculture-environment-and-rural-affairs/2017---2022/raise-paper---comparison-of-cap-review-of-decisions-and-appeals-procedures---uk-and-republic-of-ireland-upd---copy.pdf>

8. The Committee considered the evidence at its meeting on 18 March 2021.

Key issues identified by stakeholders

Handling of appeals

9. ACA (NI) have raised concerns that:
 - The RoD process appears one sided as appellants are given a large file of EU regulations which is complicated and contains legal jargon which an aging farmer population may not understand – this needs to be easier explained.
 - 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.
 - Who are the ‘technical’ people looking at the appeal and what are their qualifications?
 - 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 but DAERA don’t explain what they mean by these 3 elements.

- ACA (NI) have suggested that there is a sense that DAERA staff protect one another and all agree with the original decision at Stage 1 (Case Officer Review).
10. NIAPA state that they have always been of the opinion that cases could be resolved at a much earlier stage by direct dialogue as it seems that administrative staff are involved in a tick box exercise and indeed have at times questioned the competence of technical staff who present opinions based on standard figures. Farming is for the majority not an exact science yet the policy seems to be that if producers' results do not meet the standards set down on paper then they will be rejected.

Treatment of appellants

11. ACA (NI) expressed concern that there is no consultation between the case officers and the business appealing the decision.
12. ACA (NI), NIAPA, Farmers for Action and NI Farm Groups have raised concerns regarding the 'lack of empathy' for appellants.

Evidence

13. Mr Little and Mr O'Brien suggest Enabling additional/new evidence to Stage 2 Independent panels.
14. ACA (NI) have stated that DAERA want all the evidence in paper format – a farm visit would save time and money and may paint a different picture.

The decision-making powers of the Independent Panel

15. All of the stakeholders felt that the law should be changed so that the decision of the Panel is final rather than a recommendation.

16. The UFU have indicated that they continue to lobby to ensure that the recent commitment made by the DAERA Minister that he would not overturn the decisions taken by the second stage Independent Appeals Panel is delivered through legislation before the end of the year, as subsequently outlined publicly by the senior DAERA official involved in the appeals process

Judicial Reviews

17. Stakeholders raised concerns in relation to the fact that Judicial Reviews are the only way to challenge DAERA's decision not to accept the recommendation of the Independent Panel. Evidence was provided that this has a negative impact on appellant, that it is very stressful and prohibitively expensive.

Proposals for a review mechanism

18. Mr Little and Mr O'Brien have developed 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, including future law options and historic cases. These proposals include that:
 - The law be changed so that the decision of the Panel is final rather than a recommendation, although this alone is insufficient;
 - A Supreme Agricultural Appeal Panel (SAAP) be established – their proposals include the process and selection of Panel Members; and,
 - Enabling additional/new evidence to Stage 2 Independent panels.
19. In relation to the SAAP, proposals from Mr Little and Mr O'Brien include:
 - a. That the purpose of the SAAP is 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;

- b. Proposals are laid out for historic and future cases;
 - c. This appeal mechanism be 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;
 - d. A 5-member panel which 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.
 - e. The SAAP only consider cases of a value in excess of £5000 in any single year or if potentially cumulatively in future years for those categories. e. g Active and Young Farmers;
 - f. The 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; and that,
 - g. Applicants must pay fee of £1500 to have their eligible case considered by SAAP.
20. ACA (NI) have expressed the view that this suggestion should be considered.

The Ombudsman

21. NIAPA have suggested that the Ombudsman, which can only be taken on the grounds of mal administration, has a limited awarding mechanism.

Historic cases

22. The UFU have suggested that the treatment of historic cases should be considered as part of the development of this legislation for a revised process.

Impact on applicants

23. Stakeholders have provided evidence that the appeals process has had a negative impact on the health and well-being of farmers and on farm incomes.

Consideration of the evidence by the Committee

24. The Committee considered the evidence provided by stakeholders at its meeting on 18 March 2021. The Committee recommends that:
 - The information provided to appellants during the appeals process, including at Independent Panel stage, should be reviewed to ensure it is more accessible, easily understood and has less legal jargon;
 - New evidence ought to be admissible at the Independent Panel stage and the evidence in formats other than in written format ought to be admissible;
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such as Rural Support and health services such as GPs and sign-post appellants to these services, recognising that the appeals process can be very stressful and can have a major impact on mental health.

25. The Committee is concerned that, on a point of law, the only way to challenge DAERA's decision not to accept the recommendation of the Independent Panel is by Judicial Review. This can be both prohibitively expensive and very stressful. The Committee welcomes the announcement that legislation will be brought forward to give decision making powers to the Independent Panel as this could negate the need for Judicial Review. In the absence of such legislation, an alternative review mechanism has been proposed by stakeholders. The Committee is currently considering these proposals.

26. The Committee noted that the recruitment and selection of the Independent Panel is currently being considered and requests further information on proposals for the process to be used. The Committee recommends that the recruitment and appointment process be underpinned by the principles of full accountability, openness and transparency.