



Northern Ireland
Assembly

Committee for Agriculture and Rural
Development

OFFICIAL REPORT (Hansard)

Inquiry into Better Regulation: Northern
Ireland Agricultural Producers Association

29 September 2015

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Members present for all or part of the proceedings:

Mr William Irwin (Chairperson)
Mr Joe Byrne (Deputy Chairperson)
Mr Thomas Buchanan
Mrs Jo-Anne Dobson
Mr Declan McAleer
Mr Kieran McCarthy
Mr Oliver McMullan
Mr Ian Milne
Mr Edwin Poots
Mr Robin Swann

Witnesses:

Mr Jim Carmichael	Northern Ireland Agricultural Producers Association
Mr Michael Clarke	Northern Ireland Agricultural Producers Association

The Chairperson (Mr Irwin): I welcome Michael Clarke, chairman, and Jim Carmichael, development officer, of the Northern Ireland Agricultural Producers Association (NIAPA). You are very welcome. We ask you to take up to 10 minutes to give us your presentation, and then we will ask some questions.

Mr Michael Clarke (Northern Ireland Agricultural Producers Association): I will kick off. We listened to the submission by the Ulster Farmers' Union (UFU), and we concur with a lot of the things that they said. There is a lack of communication re the regulations, which are put out willy-nilly. We feel that there should be more personal communication between DARD and the farmers.

I am old enough to remember when you were glad to see a DARD man coming because he would extend things to your advantage. Now you are almost afraid to see him coming. Maybe he has the same fear of somebody above him and so is afraid of making the same mistake. Small errors are compounded the further on they go. There is a fear among farmers that they could lose a small amount or all of their money; they do not know until they have it in the bank.

Even with retrospective inspections, looking back over years, there does not seem to be any statute of limitations, if that is the proper term. You could be caught out by something that happened maybe 10 years ago, or you could make some clerical mistake — something simple — that you did not even know you had made.

Now, we accept that there have to be regulations; everybody accepts that. However, inadvertent errors — small ones — will occur at times, and I think that the penalties are sometimes not

commensurate with the mistake. You could lose a small amount of money or your whole single farm payment.

As well as that, it can affect your business. If a farmer makes a major mistake, maybe through no fault of their own or not through any fraud, it could effectively put them out of business. They could lose their whole single farm payment for one year. At a minimum, that would affect their cash flow so much that it would almost put them out of business.

Jim deals with this on a more front-line basis through appeals, and I am sure that he will fill you in on it a lot more.

Mr Jim Carmichael (Northern Ireland Agricultural Producers Association): We gave a brief presentation on paper to you to outline the headline points. There is anecdotal evidence for most of those from the feedback that we got. You will see that — I do not think that we mention the Macrory principles — we mention the Hampton principles. We looked back to see what happened five years ago. As you know, this was all discussed with the previous Minister, there was a paper and an advisory panel on regulation and red tape was set up. So, we looked back to see what changes, if any, were made from that and what we should learn from them. From looking back at that, some things came to mind. Mickey already said that regulations are necessary, but one of the things that we found when we talked about advice is that it says somewhere that regulations should provide authoritative, accessible advice easily. I note that the people from the UFU or somebody from the panel mentioned plain English.

I will tell you about one of the things that we are finding. We are involved day and daily with farmers. You talked there about penalties and the appeals process. We had occasion, two weeks ago, to discuss the appeals process with DARD. I noted your comments in the paper in the past week. From other work that we do, we know that the rural development programme, as presented at the minute from here to Brussels, has the same system in it. In the stage 2 process, the panel can make only a recommendation. Maybe it is time for the Committee to look at that, because the same process is still in the programme that we are now starting to implement. We have had cases in which the panel made a recommendation for the appellant. There are one or two current live cases that we are questioning, whereby medical evidence was submitted, but a layperson can override a panel's decision that was based on medical evidence. We have asked for the medical qualification of the person who made that decision and why it was made

Some decisions are made because precedents have been set, even though we are told that there are no precedents with such appeals, so there should be no fear. If you are fit to go back after presenting and gathering evidence, and the balance of evidence clearly states that the appeal should be upheld, the case then goes to a single person. That person used to be the Minister, but it has now changed. From what I read, I believe that it will change again in the not too distant future.

Proportionality with penalties is another issue. If you go to court for a crime, a judge or jury will find you guilty, and there will be parameters for a sentence. If you have an infringement or infraction on legislation, whether European, original or whatever, percentage penalties will apply. Perhaps there is an opinion that a bigger financial penalty will, for want of a better word, teach you manners — I am using a colloquial term — but that is not really the case.

If there is an infringement and a penalty for it, it should be a standard penalty. A lot of penalties that have been imposed, percentage-wise, are connected to the single farm payment, and it is enough to put people out of business. As we know, with the present state of the agriculture industry, cash flow is the main thing. We have heard about stage 2 penalties taking nearly two years. As a person who does stage 2 penalties — I said this to the Department the other day — by the time the stage 2 event comes around, farmers have most likely forgotten what it was that they had to say in the first place. If there is continuity, even three or six months afterwards, you can refresh your memory, but, if you go back further, the evidence might not be there, and you find that there is no continuity.

In the previous session, Ian mentioned that, when there is a lesser penalty, people are starting not to go through the process when you look at the case with them. To be quite honest, people do come to us, and we tell them that, in our opinion, they do not have a case. However, when you tell people that they have a fairly substantial case, in a lot of cases, stage 1 is a matter of form, and the case is then referred to stage 2. By the time that comes around, people have forgotten about it, and some people do not even bother to turn up for stage 2.

In the earlier evidence session, penalties on tags were mentioned. You have gone over that ground, and our position is the same as that of the Ulster Farmers' Union. There is so much variance; we have been discussing tags with other bodies from the time that new tags were introduced. We had metal tags; we had one of each; we had two of the same; we had button tags; there were different brands — we did not know what was happening. We have been through a lot of this. The tagging issue and the length of time taken if you have one tag and need to put in a second tag has been brought to the fore again. We will hear about it very shortly through the Department from Brussels. We are talking to the Department about it this week, and I do not want to go any further with that. There is a possibility that other difficulties could come to the fore.

The point is this: in our submission, we stated that a farmer's working environment is isolated. Many people are now working off farm to provide a supplementary income. In fact, it is to provide an income so that they can keep their farm business going. We have multiple inspections, with people coming round and asking the same question. If you look at the report and the recommendations from five years ago, you will see that a lot has gone through and not a lot has happened about it.

If you want to ask questions about any issue, we are willing to answer them.

The Chairperson (Mr Irwin): On the stage 2 appeal, how long does it take to get to that stage? What is the time frame?

Mr Carmichael: Without sounding cheeky: long enough to have forgotten about it. To be quite honest, it has taken 18 months or more. As I say, I had occasion two weeks ago at a meeting with senior DARD staff to bring this issue up again when we were talking about reviews. Wesley and I meet staff every two or three months, and this issue came up. Stage 2 appeals are appearing now — genuinely, we had not forgotten about them — and people are starting to go through the process again. Sometimes, at stage 2, when they do a review, they look at it and say that maybe they should have given that at stage 1. Farmers respond by saying that a lot of problems could have been solved if they had discussed them more deeply. We try to get issues resolved before stage 1. Once you start into the system, all you are doing is taking up their time, which is not really relevant, but it is there. There is also the person's time and anybody he brings in for any other reports.

You are giving information to people, and you are unsure of the ability and qualifications of those people to deal with particular situations — I am talking about health and welfare cases, where you need specialist people. If, for example, I bring in a psychologist, a psychiatrist or a medical person to give evidence — I have done that — I find it difficult when somebody queries certain things in that only people with specific training could have knowledge of in the first place. At the end, it goes through, and perhaps things are accepted, but the process is far too long and people are left sitting. Even if they are successful, the fact that they have been out of income for maybe two years is important, because their cash flow has been affected because payment has not been made. It is not a question of having to pay back; it is a question of the penalty that has already been imposed before the crime has been proven.

The Chairperson (Mr Irwin): Departmental officials were here last week, and, over a three-year period, they said that they accepted 182 review decisions. That tells me something. That tells me that they got it wrong 182 times, because, in the final analysis, they had to accept the stage 2 review decisions. One would have thought that all that should have been resolved earlier, and people should not have had to wait two years.

Mr Carmichael: Everybody is interested in getting a resolution as quickly as possible. I have to admit that sometimes, at stage 2, there might be supplementary evidence that would resolve the issue, and, by the same token, we would have further discussions in which we would suggest that a farmer meet departmental officials face to face to try to sort something out. It is not very often accepted.

The Chairperson (Mr Irwin): Your submission states:

"We have EU and national legislation which overlap and for which there may be separate regulatory bodies."

Have you any instances of that?

Mr Carmichael: It is not regulatory bodies. You touched on it, as did Crosby when he talked about farm quality assurance. We have also had instances of farm quality assurance. I have been on

appeal, and, if you are prosecuted, you lose your farm quality assurance status. I will give you a small example of a lamb that was born deformed and bent slightly. It went through life like that, finished up at a normal weight of 24 kg and went with his "peers" to a slaughter plant. It was isolated at the slaughter plant, and a vet took exception and said that the conditions under which the animal had been raised were not proper. I will not say that he said the lamb was ill-treated. The animal was 100%. It felt no pain, was there with the rest of the lambs and had a proper weight. That case took about eight months. It was adjourned two or three times before somebody saw sense. The farm and the farmer were perfect. I asked for the farm to be inspected by DARD's veterinary staff, who were fit to vouch for the farm. You get isolated cases. As I said, there are cases like that.

I am talking about the legislative process or regulations on a farm. A farmer is regulated from Brussels and from here. There are also the multinationals, which have certain rules and regulations for their product. We are talking about quality assurance, which is a voluntary scheme, the Red Tractor scheme and add-ons for different breeds. So, regardless of what type of stock the farmer has, he is coming under not only this and that but other things that are not compulsory legislation but which he has to abide by. The only thing that will happen to him, if somebody decides that he has not met that standard, is that he will lose money. The animal will still go into the food chain. I am not speaking for any quality assurance programme, but we know that animals go off a farm, quality assured and non-quality assured. That goes out as red meat. I am not speaking against any programme. I am trying to state the pressures that farmers are under in respect of compliance with all the programmes, not just one or two.

I also mentioned DARD and the NIEA, which will now come under the same umbrella. Until now, we have had two legislative bodies and various inspections that, essentially, could overlap. Cross-compliance, for example, could overlap. One might not be sure who is responsible for certain things, such as the poaching of land. The only thing you can be sure of is that, if there is any possibility of non-compliance with legislation, the farmer suffers financially.

Mickey mentioned the single farm payment. We now have remapping with the new system, and we going to go into spatial mapping. We will talk about that next year, but anybody who is involved with it knows that there is going to be fun. I mentioned CAP reform. There was supposed to be a reduction in red tape and bureaucracy, but all that we are seeing is an increase in red tape. We have had greening, and we have had all the stuff this year. Next year, as I said, spatial mapping will come in. Next week, we will get our first look at it and our first training for next year. There will be live maps. When somebody asked you a question a while ago, I noticed that you had to make sure about the third party. We do not know from one year to the next.

We talked about online grade. When DARD introduced online, it took fax machines out of local offices. We still have people who might be in the dark ages and who use fax machines as a way of communication. If you are not online, that communication is not available. Many people do not get a lot of the press when it is online. I agree with online grade methods, providing you have good access to it.

Mr Byrne: I welcome Michael and Jim. You talk about the lack of communication and the problem with communication. I agree that, years ago, there was a general respect for the agriculture man who came round the farm. I remember a certain Mr Peter McEvoy in Castlederg, who was highly respected. Are we saying that the officials who come round today are disconnected from the farmers and that they are no longer providing a farm advisory service?

Mr Carmichael: You have given me a wee bit of lateral scope. I suppose that it is down to funding, but there is this thing about an advisory service, where collectives are the norm. You join a group, and the group is spoken to. A farmer sees the people who come to a farm as being there to look for compliance; that is primarily what they are there for. They are seen as a policing body that is looking for something that is wrong so that you will be fined. Therefore, you have less chance of great cooperation. The people who used to come to farms were called inspectors, but they came out to punch animals, to look at schemes and so on. They also gave you advice. Now we have DARD Direct, which is in the local offices, and, when you go, you will hopefully get a specific person for your situation. However, people do not regard that as the same. We have been discussing the fact that we need information in plain English, and we need the person to be willing to come to talk to you.

The answer to your question is that, while they might be helpful and, given human nature, there are different levels among all inspectors, it is not the same as before. We are told that budgets do not exist, but perhaps there is plenty of help for more intensive and innovative farming. For the person who is off farm a lot of the time and is producing a good enough quality, the help is not there to the

same extent. We are now looking at the farm improvement scheme, and you can join a discussion group this month and go forward. We have questions about people who have their business plans prepared and their banking in place. Their preferred pathway might be through a group, but, surely to goodness, there should be an opportunity for those people, given that there is a farm improvement scheme, to go forward with their proposals.

Mr Byrne: Jim, your submission mentions a parallel inspection process with DARD and the NIEA. You also refer to local government. How does local government get involved?

Mr Carmichael: It gets involved with environmental aspects. You know that that is the one area where local government comes in, and councils have their own environmental officers who might also come out. There is a tie-in.

Mr Byrne: They are also adding to the complications.

Mr Carmichael: A lot of bodies are doing the same thing. Some people say that, if a farmer is cross-compliant, as every farmer is expected to be, unless he is proven to be in breach, why would that in itself — we are talking about third-party certification — not entitle him to anything that is there because he has not breached anything?

Mr Byrne: You referred to farmers sending animals to the slaughterhouse. Very often, an inspection results in an animal being accepted for slaughter but a farmer suffering a penalty. You used the example of a sheep that was different from the rest.

Mr Carmichael: I was talking about farm quality assurance and non-quality assurance. Those are two different issues. The lamb that I spoke about was regarded by the vet as unfit, so it was unfit for human consumption. Those are two different issues. That is one thing. The other thing is that, irrespective of whether you are quality assured or non-quality assured, your meat goes on the market and could finish up in the same place as anything else because, after all, when it goes onto a tray, it is red in colour.

Mr Byrne: It has been accepted as an animal for slaughter and goes into the food chain. In the meantime, however, the farmer may suffer a penalty.

Mr Carmichael: Yes, because it is not quality assured. The farm quality assurance scheme is voluntary. When the scheme originally came out, you got a bonus for being quality assured. We need to remember that. In a lot of cases now, you get a penalty for not being quality assured.

Mr McAleer: Thanks, Jim and Mickey, for the presentation. During our review, we picked up on the use of the word "gold-plating". DARD certainly has an overzealous interpretation of EU rules and regulations. Do you find that to be the case?

Mr Carmichael: I cannot give specifics, but I have been to other member states and been on quite a few farms, and I have queried them about their application of European legislation, and it would lead you to believe that we can be overzealous. As I say, I have not gone to people and definitively asked, "Is this specifically what you are allowed? Are you doing less than you should be?"

Do not get me wrong: we believe in legislation. We stated that in our submission. There has to be protection for the consumer and the farmer, because you depend on producing a quality product to get a return that will keep your business going. We are in the perfect storm with agricultural products throughout the world, which is a different issue. We look at other places and talk to other farmers about whether there could be more leniency. I am a wee bit concerned about a lot of this because I know about the discussions and the potential penalties that DARD could face for different things at different times. However, it is seen by us and by a lot of farmers that we slightly over the top.

Mr McAleer: Jim, I think that it would be useful for the Committee to hear this from you: in what particular areas can a bit of common sense be shown?

Mr Carmichael: To be quite honest, if you are in my position and out with an inspector, there needs to be common sense, without breaching regulations, so that, through a device, the opportunity is given to correct something that was minimally wrong. Do you understand what I mean?

Mr McAleer: Yes, I do.

Mr Carmichael: Should you go onto a farm and see something that is a potential breach, my opinion is that you have two choices. You can educate the farmer in best practice and help him. Your other choice is the big stick. So you say, "Right, the only way that we can correct this is through a financial penalty or some sort of penalty".

A lot of inspectors will say, "You have breached. I do not know what the breach will be. Now, if you are not working on a lot of this, you can evaluate the potential breaches yourself, going on percentages". Alternatively, an inspector could say, "It is only a very minor thing here, and we can help you sort it out. Correct it, and you can go forward. However, if it happens again — ". The difficulty with minor breaches at the start is that, if something happens again, there is an accumulative penalty. People look at the penalty system from Brussels and think of it as "three strikes and you're out".

It should be considered that a very minor breach at the start could be remedied or resolved. Ian and Crosby mentioned that some breaches happen through no fault of farmers — there are very few, if any, deliberate breaches of legislation — but things happen because people are busy. We talk about accidents on farms, which also happen because people are busy. They do not take enough care. Something has to be done, and they are short of time. Minor breaches happen because of that, but they accumulate, and it is that accumulative effect that can financially devastate a business. I think that there should be a common-sense approach.

I also think that the discussion with DARD, which was referred to, should be about communication and education. If people understood the ramifications of everything that was going to happen, there would be fewer problems. Let us face facts: if a farmer was not there — with all due respect to everybody sitting round the table — there would be no call on any of those bodies to legislate for us or to do anything else, and we would not be sitting here today. A farmer is trying, as best he can, to get a living within the confines of the legislation that is presented.

Mr M Clarke: To be fair, inspectors are probably looking over their shoulder as well. You will get one inspector who may be less fearful of making a mistake than another one, in the same way that one farmer could be less fearful of making a mistake. I can quote an example of a farmer who had an inspection, and everything was hunky-dory. Then, 14 months later, he had another inspection on exactly the same amount of ground, and he had severe penalties. There could not have been a big a difference between the two inspections. It is about getting the balance right. As I said, we have to accept that there will be a certain amount of regulation, but this is a generation issue. This has been heaped on us in recent times. I am of the age of having dealt with advisers: they helped you to fill in forms, and they put you in the right direction. We have gone from that to getting reams of regulations, papers and so on, and the perception is that the inspector has turned hostile towards you. We may not be as well acclimatised to dealing with the regulations as those who have been brought up with them. It is almost the same as the older generation and mobile phones: if you are an older person, you find it almost impossible to use it, whereas, if you grow up with a mobile phone, you can use it with your eyes closed. We are in a transition period. The problem lies, more or less, with Europe, and the stick rather than the carrot.

The Chairperson (Mr Irwin): Thank you very much for your presentation and for answering questions.