



## Scottish Land Commission

Assessment of the progress made since  
2018 relating to the outcomes from the  
Scottish Land Commission review of  
Agents

Qualitative research  
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## Assessment of the progress made since 2018 relating to the outcomes from the Scottish Land Commission review of Agents

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# 1. Executive summary

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## 1.1 Introduction

This report summarises the key findings of research conducted by Research Resource in 2023-2024, commissioned by the Scottish Land Commission.

This research sought to understand the progress made since 2018 against recommendations made by the Tenant Farming Commissioner (TFC), following a similar 2018 review of Agents, also conducted by Research Resource.

A total of 16 in-depth interviews were carried out. Twelve interviews were carried out with Agents, defined as 'Land Agents and other professionals who act on behalf of Landlords or Tenants, such as agricultural advisors, factors, surveyors and solicitors'. A further four interviews were carried out with representative bodies to get a broader overview of the industry.

## 1.2 Summary of key findings

Organisations interviewed were generally positive about the guidance from the TFC and the progress made within the sector since 2018.

Awareness was good across all organisations and the majority had made changes to the way they operate as a result of the guidance. In just three instances, organisations said that they had not changed how they operate with specific reference to the guidance. This was because they believed, in following the Law Society of Scotland regulations, they were already adhering to the guidance.

In terms of changes made in response to the guidance, Land Agents, solicitors, lawyers and surveyors all noted that they refer to the guidance themselves and they refer others to the guidance. There was also more of a focus on interpersonal skills training, exploring mediation on order to resolve conflict, referring to the TFC in difficult situations and also measuring and monitoring staff behaviour.

The one area of the guidance where there was little evidence of specific activities being undertaken was with regard to gaining feedback on the performance of agents through questionnaires or feedback forms. However, organisations did cite that they routinely collected informal feedback from their clients and discussed how this feedback was harnessed into continuing professional development (CPD) and evaluation of staff performance.

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This was supported by the representative bodies who had also undertaken awareness raising activities relative to the guidance, were involving Bob McIntosh and Hamish Trench in seminars and conferences, and sharing best practice with members.

The general perception was that relationships in the sector are now more positive than previously as a result of the TFC guidance. This was evidenced in the fact that no agents said that they had received any complaints about their agents, nor were representative bodies aware of complaints being received against any of their members.

## 2. Introduction, background and methodology

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### 2.1 Introduction

This report summarises the key findings of research conducted by Research Resource in 2023-2024, commissioned by the Scottish Land Commission.

This research sought to understand the progress made since 2018 against recommendations made by the Tenant Farming Commissioner, following a similar 2018 review of Agents, also conducted by Research Resource.

The purpose of this research was:

- to consider whether the recommendations made in 2018 have been adopted by the industry; and
- whether representative bodies of the industry have experienced a change in behaviour of Agents.

### 2.2 Background

The Scottish Land Commission undertook a review of the operation of Agents engaged by agricultural landlords and tenants in relation to business conducted about tenanted holdings.

Between October 2017 and January 2018, Research Resource carried out a survey of 914 tenant farmers and 121 landlords/ resident factors about the operation of Agents. The survey identified that 17% of both tenant farmers and landlords were dissatisfied with the agent they were dealing with on behalf of the other party. The research highlighted particular issues with respect to consideration of both the landlord and tenant positions, consideration of the long-term sustainability of the farm, and providing as much information as is desired. Further research was undertaken in 2018 to further explore the issues raised with regard to dissatisfaction.

The research provided evidence for the Tenant Farming Commissioner (TFC) in making recommendations considered necessary to improve the operation of Agents of landlords and tenants, as required under the Land Reform (Scotland) Act 2016 (Section 36).

In the report, a number of recommendations were made by the TFC in order to promote good relations between landlords and tenants:

- Landlords and Agents should make more effort to meet regularly on a face-to-face basis.

- Agents should adhere to the principles set out in the industry guidance note on negotiation and conducting rent reviews and should apply similar principles regarding transparency and evidence in other dealings on behalf of landlords and tenants.
- Firms employing Agents should ensure that staff development programmes include training and interpersonal skills.
- Firms employing Agents should use 360-degree feedback, client satisfaction surveys and other means to obtain feedback on the way that staff are carrying out their functions and should include discussions of the behavioural aspects in staff appraisals.
- At the conclusion of meetings and discussions the Agents should ensure that there is agreement on the outcome(s) of the meeting, and on any action points arising, and should follow this up with a written record.
- The professional bodies should work with the TFC to produce a guide to professional standards, and associated complaints systems, with particular reference to the agriculture holdings sector.
- Firms employing Agents should ensure that the promotion of, and monitoring of compliance with, professional standards is given equal prominence with other performance measures.
- The professional bodies should consider whether their professional standards promote the achievement of an appropriate balance between a duty of care to the client and a duty of care to others including the reputation of the profession.
- The TFC and the Land Commission should monitor progress and repeat this exercise in five years' time.

As per the final recommendation of the review, the Scottish Land Commission appointed Research Resource to carry out research in order to monitor progress of these recommendations after five years.

## **2.3 Methodology**

A total of 16 in-depth interviews were carried out in order to assess the progress made with respect to the TFC recommendations made in 2018.

A mixture of small and large companies were contacted to participate in an interview. A total of 12 interviews were carried out with Agents, defined as 'Land Agents and other professionals who act on behalf of Landlords or Tenants, such as agricultural advisors, factors, surveyors and solicitors'. A further four interviews were carried out with representative bodies to get a broader overview of the industry. These were Scottish Agricultural Arbiters &

Valuers Association (SAAVA), Agricultural Law Association (ALA), Scottish Land and Estates (SLE) and the Scottish Tenant Farmers Association (STFA).

A broad topic guide was developed to guide the conversation and explore perceptions of the progress made in relation to the recommendations made. A copy of the topic guide used is available in appendix 1 of this report.

## **2.4 Survey analysis and reporting**

This report provides an overall analysis of the findings of the in-depth discussions. It should be noted that due to the small number of interviews and their qualitative nature, this research is not designed to be statistically robust, nor representative of the population of Agents.

## 3. Key research findings

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### 3.1 Respondent profile

A total of 12 in-depth interviews were carried out with Agents. Of these, five were with lawyers, four with solicitors, two with land Agents and one with a rural surveyor and consultant.

The smallest organisation had just one member of staff and the largest 450, although in the larger organisations there tended to be a smaller rural team who specialised in working with tenants and landlords which ranged from c. five to 24 employees. Four organisations had less than 50 employees, five had between 50 and 250 employees and the remaining three had more than 250 employees.

The majority of the solicitors and lawyers said their work was fairly evenly split between tenants and landlords, with three saying that their work was a 50:50 split between tenants and landlords, and four saying the work was 40% tenants /60% landlords. Just one solicitor said they worked more with tenants (70%) than landlords (30%) and one said that their work was weighted in favour of landlords (75%) to tenants (25%).

The two land Agents interviewed said that their work was weighted in favour of tenants with one noting 80% of work was with tenants and the other noting 90%. The surveyor noted a 50:50 split of work between tenants and landlords.

With regard to representative bodies, a total of 4 organisations were interviewed. These organisations were invited to participate to gain the views of representative bodies who would engage with members who were impacted by the Tenant Farming Commissioners guidance. They were:

- Scottish Agricultural Arbiters & Valuers Association (SAAVA), representing agricultural valuers and arbiters whose membership is typically made up of land Agents, chartered surveyors and farmers throughout Scotland.
- Agricultural Law Association (ALA), who represent the legal profession but also have a substantial number of surveyors as members.
- Scottish Land and Estates (SLE) who are the representative body for landowners in Scotland.
- Scottish Tenant Farmers Association (STFA) who represent the interests of tenant farmers.



### 3.2 General perceptions of progress made in using the guidance

When asked generally about the progress made with regard to the guidance, organisations interviewed were positive about the guidance. Awareness was good across all organisations and the majority had made changes to the way they operate as a result of the guidance.

*We use the codes of practice. I always have it on my desk.*

*The guidance is being referred to as part of my role and also referred to by other Agents too.*

Land Agents, solicitors, lawyers and surveyors all noted that they refer to the guidance themselves and they refer others to the guidance.

*We are aware of the need to conduct ourselves appropriately when serving rent review notices. I'm now sending out the guidance as a matter of routine to Agents. When we start getting an instruction our practice is to send a copy of the guidance and the code of practice that relates to the instruction, that is a new thing.*

*We are very much aware of the codes of practice and make it our business to mention to clients.*

*In terms of the guidance its mainly making sure people are aware. It sets out guiding principles on how to deal with people fairly and with respect and talks about interpersonal training.*

*Since the guidance I have tried to take a more positive air and to keep the rent reviews moving in response times.*

*I think what has changed as the TFC has issued guidance and codes of practice is that they have become the go to place when we are setting out our work and looking at what we do and how we are going to do it. It is an additional compliance check.*

In just three instances there were organisations who said that they had not changed how they operate with specific reference to the guidance. However, in all instances, they were from the legal profession, and they felt that they were already behaving in a way which reflected the guidance and adhering to the Law Society of Scotland regulations.

*Without being complacent, we feel we were always doing this anyway and have continued to do so. Not necessarily on the back of recommendations but with that in mind.*

*As a law firm generally we would deal with anyone in a professional and courteous manner. Our primary duty is to our clients, coupled with any secondary duty would have to be to a court. I'm not sure how we would necessarily change our pattern of behaviour because it is part of our professional conduct anyway as we are so regulated by the Law Society and Complaints Committee and we are abiding by that anyway.*

General perceptions of both the role of the guidance and the influence of the TFC about the conduct of Agents were positive.

*Relationships have improved and the TFC has been very good at smoothing over troubled waters.*

*Our impression is that overall relationships are good between landlord and tenant. There may be points where they don't agree..... That is where the codes and guidance are good and helpful in conducting a fair rent review and I feel that Agents are looking at these more than they were previously.*

*It is having an influence in that it is providing a structure and negotiations are more timely but if there is a clear dismissal of the guidance then more action could be taken.*

*I think it is a very different working environment in agricultural holdings than I used to work in. When the TFC came in I remember being involved in one case, a really heated one where landlords, Agents and lawyers were having a go at a vulnerable tenant. I remember reaching out to the TFC and it changed the playing field of that discussion. They stood at the third side, not intervening but observing, but since that time I can't remember coming across that sort of behaviour.*

*The stuff the TFC has produced has been really helpful from all sides. From parties point of view and helping others understand the processes you go through.*

Very few respondents were negative about the role of the guidance, with two negative comments in particular about the added expense that complying with the guidance was bringing to the process of rent reviews.

*The process is becoming complicated and expensive. I sometimes feel the guidance is used to bully the rent review forward.*

From the perspective of representative bodies, again, the perception is positive both with regard to awareness of the guidance and also relationships in the sector.

*All members are very aware of the codes and guidance issues and the TFC comes to speak to members each year at the conference and we have had joint events with the TFC on matters e.g. recently on arbitration and mediation. We have done quite a lot of work with members.*

*I think generally they've improved, but that's starting from a point where they weren't a disaster anyway. I think what has improved is that issues tend to go through the TFC first, whereas before 2018 the first time you might have seen something was in the pages of the Scottish Farmer or in the press. I don't think that's helpful for anyone.*

*My impression is there has been an improvement, things are less tense than they would have been. There is certainly less tension between professional bodies that look after tenants and professional bodies that look after landlords.*

*Things are less confrontational and a big part of credit that is due to Bob and his role as TFC. You know there is an impartial person to speak to which, even the threat of that can ease the wheel a bit.*

### **3.3 Implementation of the guidance**

All but one of the Agents who took part in the research noted that they had made changes to their practice as a result of the guidance. Awareness raising, increased interpersonal skills training, generally attitudes, having conversations and the approach to resolving conflict were all mentioned.

Training and awareness raising is done across most organisations ensuring that staff are aware of the guidance.

*We ensure that all staff who are involved are aware of the guidance and the recommendations.*

*It's a continual process. People coming into the business are trained and inducted on it. We pride ourselves and put a lot of effort into making sure we keep up the standard.*

Specifically, with regard to interpersonal skills training, a number of organisations were now carrying this out, some of them doing so in house and others carrying out external training.

*We have a partnership with Glasgow College to deliver training on soft skills like assertiveness, communication and dealing with difficult situations.*

*More training, interpersonal skills, both internally and externally. This has increased hugely since the recommendations.*

*Our values are fairness, kindness and sustainability. They reflect how we try to operate in the sector. Since then we have worked really hard at instilling these values, working from the inside out to ensure that the culture is right as opposed to impose those values. All of our decision making is done through the three tests of our values.*

*Interpersonal skills is a significant part of our training.*

In terms of positive relationships, the guidance sets the tone for positive relationships at the outset of engagement.

*It is an additional compliance check. We make reference to these fairly early in any relationship to make sure what we are doing is compliant. That is a new way of working. The solicitors will make reference to the codes of conduct, save a copy to the file, to assess what it is that we are planning to do in line with the guidance provided in the codes respectively.*

*From parties point of view and helping others understand the processes you go through.*

*We do also act with tenants who don't have any agent. If it is appropriate we do ensure that they are aware of codes of practice and guidance. If necessary, we would encourage them to seek the services of an agent who may be able to act on their behalf.*

*When we start getting an instruction our practice is to send a copy of the guidance and the code of practice that relates to the instruction, that is a new thing.*

*We send a copy of the codes of conduct at the outset of any process. Also send copies of the TFC guidance note and say 'Please remember to go through the due process that the TFC is outlining' rather than simply serving a cold notice. Make sure you have a conversation first. I think that it generally sets a good tone.*

And when it comes to resolving conflict, mediation was now being explored where it may not have been done previously.

*Exploring mediation as a solution more. This is off TFC advice and is something we wouldn't really have considered. Previously we would maybe have gone directly to the land court.*

Other changes that have been made to organisations way of working since the guidance was introduced included written records of all meetings:

*Any meeting that we have, that written record is a key mode of practice, all staff receive guidance on keeping files.*

Referring to the TFC in difficult situations:

*We all know Bob and I've got his number in my mobile where we could call up and ask for help if that is what is required. We do have a good relationship with the TFC which is advantageous to both parties.*

Measuring and monitoring staff behaviour:

*All behaviour of all staff and partners is monitored and measured.*

*We ensure all correspondence is sent in a respectful way. We try to build relationships and a rapport. We try to make it work and be on good terms to ensure that we are being collaborative.*

### **3.4 Staff development and training**

As noted, staff development and training was highlighted as one of the key things that was being done as part of implementation of the guidance. Ten out of our 12 Agents interviewed stated that they undertake training of their staff and that this has been enhanced as a result of the guidance.

It was noted by solicitors that they have professional requirements to maintain a level of continuous professional development as a requirement of the Law Society and that this was adhered to regardless, however the guidance has slightly enhanced this and provided an additional focus on interpersonal skills.

Some examples of internal training undertaken by Agents included:

- Training on having difficult conversations and developing interpersonal skills.
- How to deal with difficult clients and retain professional integrity.

- Training every month on the law. These codes of practice are part of that with the aim of improving awareness of them.
- Formal work seminars and informally through review of work and talking about the manner in which things should be pitched.
- Firm wide training on specific issues e.g. agricultural holdings where the TFC and the code of practice form part.
- General induction and agricultural team meetings deal with codes of practice and summarise how we as lawyers deal with interactions with landlords and tenants.
- Internal knowledge sharing sessions after staff members have been to external training or events.
- We are also doing more cross team training through the business. They are very much aware of the importance of preservation of relationships.
- We have a focused programme in relation to interpersonal skills and we do provide training across the firm.

There were also examples of external training and seminars where Agents sought to improve their awareness and skills. Representative bodies play an important role in providing awareness raising, training and development for Agents.

- Seminars where we've heard Bob McIntosh and Hamish Trench talking.
- ALA and SLE conferences are key fixtures in our diary.
- We are members of ALA. We get weekly updates on topical agent issues and keep up to date with what is going on.
- I'm a member of SAAVA and personally attend their training. There was a mock arbitration back in October.
- Glasgow College to deliver soft skills training that covers things like assertiveness, prioritisation, communication and dealing with difficult situations.
- There are CPD options for solicitors which include advancing their communication skills.

The two organisations who do not undertake further staff training were both much smaller organisations where the respondent was the key member of staff who engaged with tenant farmers and landlords directly and there tended not to be a staff team who would be in that role to train.

From the representative organisation perspective, there was recognition of their role in raising awareness of the TFC, its guidance and codes of practice and organisations did speak of engaging with Bob McIntosh and involving him in their conferences.

*At the annual conference the TFC speaks and went over the review of Agents and goes over codes of practice.*

*One of our training courses for practitioners is a 3-day course on agricultural tenancies and within that we weave in the guidance and code of practice as we cover topic areas we link back to TFC guidance.*

*We've invited Bob Mackintosh to come along and to speak at that and to hold a workshop on the whole rent review side of things.*

Publication of information and sharing this is a key role of representative organisations:

*We share with Members any communication that we received from the TFC.*

*We regularly update members on the codes of practice and new ones being issued.*

*I think part of what we do is to publicise the information and the guidance that comes out of the TFC. So we've tried to do that just through all the various methods that we have and we hold a land managers training day every year.*

*Essentially awareness from us. You know that the guides and the codes are there, we publish in a newsletter, out three times a year. Generally speaking, if there's a new code or something comes along from TFC, we'll certainly feature it in the newsletter, or may well include it in the mailing.*

Representative organisations also spoke of holding specific training which seek to help Agents understand the codes of practice and how they may be applied.

*We held a mock rent arbitration back in November again to help inform our memberships.*

### **3.5 Gaining feedback**

Agents' responses to gaining feedback were slightly more varied with organisations stating that they do not proactively seek feedback in a formal way through questionnaires or feedback forms sent to clients, however, there was clear evidence from Agents that feedback is received in a more

anecdotal way and that this is considered, and if required, acted on through training, reflection and evaluation.

Examples of how feedback or learning points are taken on board included internal meetings, staff appraisals and CPD sessions:

*If there were any issues it would be picked up at staff 6-monthly appraisals.*

*We do, if there was a real learning point from a transaction, have a CPD session. We did one recently on succession planning where we look at what we can learn and share with other staff.*

*We have internal feedback loops where we have a mop up meeting to reflect on what has happened and things that could have been done better, if at all.*

*We have regular team meetings and also secondary meetings which are agricultural focused. Partners remain involved in relationships. Any meetings discuss issues raised, performance reviews capture any feedback.*

*We do get feedback anecdotally. I'm always keen to get anecdotal feedback and help us understand what is going on anecdotally through informal discussion. This is fed to line managers so that they are aware of informal feedback and feeds into the appraisal process.*

*We carry out staff appraisals across the whole organisation. We don't go out to clients or third parties and carry out research with them in relation to how staff have interacted with them.*

*We do a yearly performance review within the business and each lawyer has a yearly review against smart objectives and measurable competencies.*

### **3.6 Promotion and monitoring compliance with professional standards**

All Agents noted that they do adhere to professional standards with the Law Society of Scotland being the main organisation noted by lawyers and solicitors. Other organisations to whom Agents were affiliated were the Royal Institution of Chartered Surveyors (RICS), SAAVA, STFA and the Institute of Auctioneers and Appraisers. One organisation also noted that they are ISO9001 accredited and are externally audited against this.



In terms of the Law Society, there was believed to be many cross overs between this and the guidance. These were noted in terms of CPD expectations, standards of conduct and ethics, record keeping and obligation to the people served. It was noted that due to the professional standards under which solicitors work that the guidance just enhances what is already being done:

*Solicitors are under very strict obligations re how we approach people and circumstances. The overarching regulation is already on us and the best practice note enhances what I would like to think the legal industry was already doing.*

Despite the cross over between the requirements of the Law Society and the TFC guidance, it was believed that the guidance is a positive addition to the sector.

*It is good it codified as not every profession has the same strict obligations as we do in the Law Society of Scotland. Not everyone is affiliated with SAAVA or RICS.*

Just one conflict was highlighted between the guidance and the Law Society. It was noted that for those abiding by the Law Society Code of Conduct, their professional standards would always take primary prominence in the way that they operate and that they would not do anything that may jeopardise their professional standards. It was noted that one of the recommendation states that they must take equal prominence, however, several respondents did mention that they felt that their professional standards would have to take primary prominence.

*As a lawyer our priority is to our client and if we are faced in a scenario where there is a dilemma between client interest and following the guidance, this would become primary ahead of following suggested guidance.*

*There is a conflict in the TFC guidance point 2 – “never ask an agent to do anything which would conflict with their professional standards” but item 7 says equal prominence. We are always trained to adhere to professional standards. The guidance is just a guidance.*

### 3.7 Complaints

None of the Agents interviewed stated that they had received any complaints about any of their Agents, nor have they made any formal complaints about other Agents.

It was noted by a couple of Agents that they have had informal discussions with the TFC about the behaviour of others, and that has had a positive impact on proceedings.

*There was one where the tenant was not engaging, and I asked TFC to get involved. His presence is really useful.*

*I have informally discussed matters with Bob McIntosh.*

Moreover, it was noted that the TFC has been a successful lever in some circumstances.

*Bob has done a really good job. It has been a useful touchstone/ lever to say to someone if you can't behave here we can bring in the TFC.*

It was noted that anyone can make a complaint to the TFC who will review as an independent arbiter and that there is also the Legal Complaints Commission to whom people may complain.

The use of arbitration was also positively noted, with it being noted that this is helping smooth relations where issues may previously have ended up in the land court. Just one respondent noted a case that had gone to the land court since inception of the TFC and the guidance.

From the representative organisation perspective, again, there was recognition of the positive role that the Tenant Farming Commissioner has in respect to relationships, meaning that there is less of a need for circumstances to escalate to the place where a complaint is required.

*Things are less confrontational and a big part of credit that is due to Bob and his role as TFC. You know there is an impartial person to speak to which, even the threat of that can ease the wheel a bit.*

None of the representative organisations interviewed were aware of any complaints made against any of their members.

## Appendix 1 : Topic guide

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### **Interview questions for industry representative bodies** **Topic guide**

Good morning/ afternoon, thank you very much for taking the time to talk to me. As you will know the Tenant Farming Commissioner set out a set of recommendations after the Scottish Land Commission's review of the conduct of Agents of agricultural landlords and tenants. We have been asked to carry out a small number of in depth interviews in order to evaluate progress against the recommendations made. We are speaking to a total of 10 Agents and 5 representative bodies and will report back overall findings to the Scottish Land Commission. Everything that you say will be fed back anonymously so please feel free to speak openly and honestly. This should only take about half an hour of your time.

#### **Name**

#### **Role in the business**

#### **Percentage of work with agricultural landlords and tenants**

#### **Size of your organisation**

1. How have the codes of practice and guidance produced by the TFC impacted your members since 2018?
2. Have you been aware of changes to relationships between Landlords and Tenants since 2018? (improved, stayed the same, worsened? Why do you say this?)
3. How has your organisation supported members to achieve the recommendations set out by the TFC in 2018?
4. How many enquiries have been received regarding the conduct of Agents since 2018? How were these handled? What do you do about that? Have you ever excluded any members for that?

## Interview questions for Agents

### Topic guide

Good morning/ afternoon, thank you very much for taking the time to talk to me. As you will know the Tenant Farming Commissioner set out a set of recommendations after the Scottish Land Commission's review of the conduct of Agents of agricultural landlords and tenants. We have been asked to carry out a small number of in-depth interviews in order to evaluate progress against the recommendations made. We are speaking to a total of 10 Agents and 5 representative bodies and will report back overall findings to the Scottish Land Commission. Everything that you say will be fed back anonymously so please feel free to speak openly and honestly. This should only take about half an hour of your time.

### Name

### Role of Business: Land Agents, Solicitor, Valuer, other

### Percentage of work with agricultural Landlords and Tenants

#### Landlords

#### Tenants

### Size of Business - FTEs

1. Have you taken any steps since 2018 to adhere to the guidance?  
E.g. updated internal policies, training, attending stakeholder training, peer to peer review.
2. What steps have been implemented since 2018 to ensure Agents are adhering to industry guidance? (e.g. review of what doing and action plan in place for monitoring, professional standards – has additional work been done to make sure meeting those professional standards, evidence of training being carried out)
3. Can you evidence staff development programmes and training undertaken on interpersonal skills and other relevant topics over the past 5 years?
4. Can you evidence feedback loops regarding staff conduct and development which have been adopted over the past 5 years? (e.g. approaching individuals they have been engaged with e.g. doing short surveys to assess performance of staff in certain situations, scrutinising performance and using it to improve)

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5. How does your organisation promote and monitor compliance with professional standards?
  
6. Have you received any complaints over the past 5 years in relation to Agents behaviour? If so, how were these handled?