

9 November 2016

**GRANT PAYMENTS – PENALTIES, COMPLAINTS AND APPEALS****Purpose**

1. To update the Committee on 2016 grant claims, and subsequent penalty, appeals and complaints processes.

**Background**

2. Changes in the regulations that govern Common Agricultural Policy grant schemes have led to the introduction of an annual claim process for all area based annual payments. This brings in scope the Farm Woodland Premium Scheme, English Woodland Grant Scheme (EWGS) Woodland Management Grants and EWGS Farm Woodland Payments. One of the benefits of this process is that an annual claim provides declaration of compliance with the provisions of the agreement giving greater assurance for expenditure under the Common Agricultural Policy.
3. The EWGS terms and conditions require adherence with the regulations and the Statutory Instruments governing the Farm Woodland Premium Scheme require claims to “be made in such form and at such times as the appropriate Minister may require”. Subsequently in 2015 the Forestry Commission introduced the requirement for beneficiaries to submit an annual claim in order to receive payment.
4. The Forestry Commission follows processes laid down by the Rural Payments Agency, which are that claim and accompanying explanatory letters are sent through the Royal Mail during March/ April of each year. All claim forms are sent to the main agreement holder, which may differ from the person listed as “Primary Contact”. This is done as the main agreement holder, who is the beneficiary of the scheme, is the long term contact as opposed to agents who can and do change throughout the lifetime of the agreement. Where contact details are held, the Rural Payments Agency makes follow up calls and the Forestry Commission sends emails to chase receipt.
5. Failure to return a claim by 16 May triggers an automatic penalty of 1% per working day up until 10 June, after which a 100% penalty is incurred. Agreement holders have an opportunity to appeal against a penalty, and are able to escalate successive complaints to Director Forestry Commission England (a “stage 3 appeal”; the stage 2 appeal to Area Directors being omitted during 2016), seek arbitration through the Institute of Chartered foresters (stage 4), and finally trigger an investigation from the Parliamentary and Health Service Ombudsman.

## Discussion

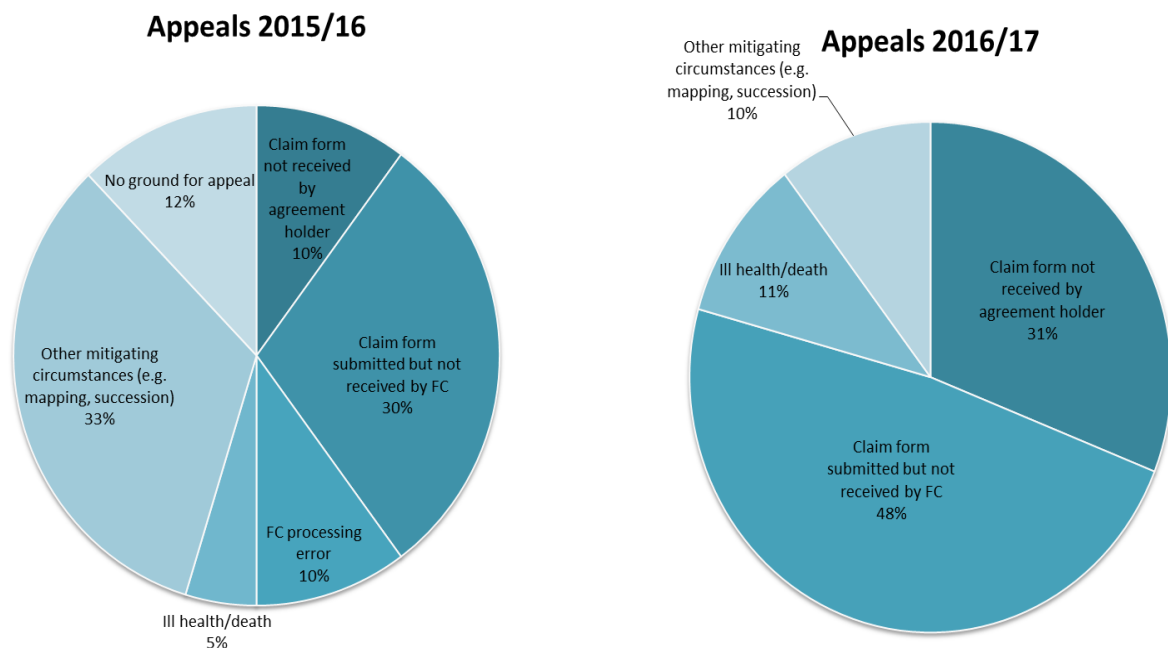
6. The statistics for the two years of the new claims process are in *Table 1*:

*Table 1: Forestry Commission annual claims statistics 2015 and 2016*

Year		2015/16	2016/17
Total number of claims sent		7,207	6,556
Number of claims with penalty imposed		1291	589
Number of appeals against penalty		152	86 <sup>i</sup>
Of which			
	Number of appeals rejected	93	57
	Number of appeals upheld	39	27
	Number no grounds for appeal	20	-
	Number to be resolved	0	2
Number of further stage 3 complaints		18	9
Of which			
	Number of complaints rejected	14 <sup>ii</sup>	7
	Number of complaints upheld	0	0
	Number of complaints TBC		2
Number of stage 4 appeals		2	0
	Number of complaints rejected	1	-
	Number of complaints upheld	0	-
	Number of complaints TBC	1	-

7. Analysis of the reasons for appeal has varied slightly between the two years (*Figure 1*), but by far the biggest reason given for not returning the claims on time relate to either having not received the claim form or having posted it but it not being received by the Forestry Commission. A number of agents have complained that sending claims to agreement holders has been an important factor.

*Figure 1. Reasons given for appeal against grant penalties 2015 and 2016*



8. Genuine cases of exceptional circumstances such as death or ill health, or where processing errors were clearly the fault of the Forestry Commission, were upheld and the penalty revoked.
9. In cases where postal issues were concerned appeals were rejected unless the agreement holder could provide proof of postage or evidence of delivery issues from Royal Mail. It is this issue that has caused the majority of the stage 3 complaints letters, with agreement holders pointing out the apparent inequity of their need to prove postage but the Forestry Commission not.
10. The number of annual claims that the Forestry Commission process will reduce year on year (subsequent claims in Countryside Stewardship will be processed by Natural England). It is, however, important that we improve claims processing if possible for agreement holders, and the appeals and complaints process has been resource intensive
11. In 2015 the claims process was centralised, through using temporary staff employed in the Bristol office. Although this relieved Hub staff of the responsibility, it did result in a number of mistakes and monitoring of responses was complex. For 2016 the Hubs have taken back the task, which has improved the accuracy but is resource intensive and inevitably competes with other demands on Hub capacity.
12. As we move into the third year of the claims process it is to be hoped that the sector will become increasingly aware and that late/non returns and subsequent penalties will further reduce. Key improvements possible include sending claims through Tracked Post and duplicates sent via email. Although claims reminders are invariably included in E-Alerts for those customers that have signed up to receive them, there is an option of carrying out a more proactive media campaign. All such options have significant resource implications.

### **Resource implications**

13. The annual claim process was instigated as a result of changes to the Rural Development Programme that were not anticipated when the structure and capacity of the Admin Hubs were designed in the wake of 2010 Spending Review restructuring proposals. The processing of 6-7000 claims, although the number will reduce each year, is a significant annual task with concomitant resource implications. Additional transitional temporary staff have therefore been employed in the Hubs. This has been made affordable, in part, by use of Technical Assistance funding, which may remain available until EU Exit.
14. Tracked mail, through Royal Mail Signed for 2nd Class would cost an additional minimum of £1.65 per item, approximately £10,000 in total.
15. With FC Communications colleagues all transferring to Defra, there will be no in-house resource to undertake proactive media campaigns. Although the Target Operating Model for the Defra Comms Group has yet to be established, the working assumption is that proactive campaigns will have to be purchased. Estimated cost would be £10k.

16. Overall affordability will be determined by the current ongoing 2017/18 business planning process.

### **Risk Assessment**

17. The application and delivery of grant penalties and associated processes are part of Forest Services Risk Register FS/5 “*Failure in RDP systems... and compliance (failure to comply with Rural Development Regulations & adherence in audit compliance for co-financing)*.” Controls include “*Defra/RPA/FC governance arrangements via Delegated Authority Agreement, Division of Responsibilities document and Section 78 Agreement*”, of which the processes described in this paper are part.

### **Communications**

18. An update on the claims, penalty and appeals process will be included in routine internal and external routine e-alerts. Options for proactive communications next year have been briefly discussed above.

19. The frustrations that some of our customers feel they have had with the new annual claims process and the degree to which some see it and the relatively rigid approach we have had to adopt in applying penalties and responding to appeals and complaints as unfair and / or unreasonable raises a reputational risk for Forestry Commission. This would be further heightened if sufficient cases led an investigation from the Parliamentary and Health Service Ombudsman.

### **Recommendations**

20. The Committee are invited to note the current position on grant claims and subsequent penalty, appeals and complaints processes, specifically the resource implications of potential procedural changes.

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**31 October 2016**

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<sup>i</sup> As of 28<sup>th</sup> October 2016. Appeals still being received

<sup>ii</sup> Records are incomplete for 2015/16 and the outcome of 4 cases is unclear