

30TH MARCH – AGENT/FARM CONSULTANT UK 2017 BPS ENTITLEMENT UPDATE

Contents

1. RPA to fix transfer confirmation message problems today
2. Agent Conflict of Interest with Transfers between clients of the same firm
3. RICS Rules of Conduct
4. Links

1. RPA TO FIX TRANSFER CONFIRMATION MESSAGE PROBLEMS TODAY

As reported previously, problems have been identified with the RPA messaging system which is confirming transfers that have not taken place, including transfers where they are still showing onscreen as “pending”. We have been informed that a “fix” was put in place last night (29th March 2017) which should resolve this problem, although not for transfer applications already made. The RPA are also still working on re-confirming any transfer applications already made.

2. CONFLICT OF INTEREST WITH “INTERNAL ENTITLEMENT TRANSFERS” BETWEEN CLIENTS OF THE SAME FIRM

As we all tuck in to our clients’ BPS claims, some client claims have been completed and either a shortage or an excess of entitlements has been identified. Firms adopt different policies as to how to deal with this on behalf of clients, but probably the majority will do “internal transfers” between the firm’s own clients. The advantages in doing this are as follows:

- i) The agent/consultant has the ability to make the transfer application online for the client, as in most cases they already have been authorised on their RPA online account in order to do their BPS claim.
- ii) Little or no documentation needs to take place, as the agent is trusted by both parties.
- iii) The clients avoid the need to pay an entitlement agent a commission, as there is no need to go to the open market.
- iv) A sale or purchase can be arranged quickly, again as the agent/consultant is acting for both parties, and is trusted.
- v) The agent/consultant can quickly determine the market rate by ringing entitlement agents.

As an entitlement agent we have always been happy to help agents in this situation, knowing that towards the end of the trading period we hope agents/consultants will come back to us to handle those entitlements that they can't match up internally.

However we have noticed a trend with both bigger and smaller firms who traditionally would have carried out internal transfer themselves, now coming to us wanting us to handle all their transfers, both in and out, for their clients. The reasons we have been given for this are as follows:

- a) The entitlement market is at the best of times not a perfect market. There is no "entitlement exchange" where all transactions are recorded and publicised as with, say, the stock exchange. In practice of course individual entitlement agents buy and sell at different rates which can change hourly.
- b) There is no such thing as a "market" between two individuals, with an "internal transfer".
- c) Subsequently one or both of the agent's/consultant's clients will inevitably be compromising on price, relying explicitly on the same agent's/consultants advice.
- d) That agent's/consultant's advice will depend on the entitlement agents they ring.
- e) It is difficult for agents and consultants to keep up to date with the type of complications involved with entitlement transfers, compared with entitlement agents who are doing them all the time, and who also provide comprehensive contracts covering what happens when things go wrong.
- f) Whilst internal transfers may seem to save time and paperwork, the agent/consultant still needs, under RICS guidelines at least, to write to both clients forewarning them of the direct conflict of interest and ensure that both clients understand the implications and have confirmed they are happy for the agent to represent both parties in negotiating/setting the price between them.
- g) Apart from always leaving an inevitable query as to whether the correct price was paid or received without going into the open market, if a problem does arise it is the perfect recipe for losing a client.

We are now seeing agents/consultants who handle BPS claims not only wanting to avoid any suggestion of conflict of interest, but also the complications involved with dealing with the online transfer system, which the RPA to date have still not got working properly for the third year running, and who recognise they do not have the type of contacts at the RPA that a specialist entitlement agent has to resolve any queries quickly. By steering a client to the open market, the agent/consultant passes responsibility for this to the entitlement agent, together with any problems that might arise subsequently between the clients, relating to the transfer. We have noticed that agents/consultants now appreciate how fickle the entitlement market can be, with prices in the morning sometimes being considerably less or more than prices in the afternoon, and how difficult it is subsequently agreeing a price which is so volatile between two clients. It only takes a big buyer or seller coming to the market at any one time to dramatically shift prices or relevant breaking news having a similar effect on prices.

Landlord/outgoing & incoming tenant transfers

A similar problem arises between landlords and outgoing or incoming tenants, although both parties tend to have their own agents negotiating a transfer price for them. We have noticed, however, that the agents or individuals involved in such transfers, having agreed a price between the parties, are then subsequently more and more often asking us to process the transfer on their behalf, as if it was a sale on the open market. This gains the benefit of us spotting potential problems before they occur, dealing with the RPA, and most importantly issuing up-to-date contracts covering all situations, in case something should go wrong. It also, certainly with individuals (which may involve less than convivial relationship between landlords and outgoing tenants) resolves the problem as to when the purchase monies should be handed to the transferor. Do you transfer the monies before the application is made to the RPA, or after the transfer has been confirmed in writing by the RPA? As entitlement agents we collect the money in advance and hold it on a stakeholder account subject to the sale contract which details exactly when and how the monies should be paid out, and what happens if there is a problem with the transfer.

An example of when things can go wrong

To illustrate this we recently had a situation where the RPA sent us written notification that a transfer could not be processed. Of course the advantage with the online system is that written confirmations can be sent out within a matter of hours, but likewise, with the problems the RPA continue to have with their system, notifications can be received relatively quickly to confirm that the application has been rejected.

Last year a purchaser, who was intending to make a BPS claim themselves, decided at the last moment instead to transfer the entitlements to a tenant. They overlooked the fact that to receive entitlements you had to be an active farmer, to enable them to then pass them on to their tenant, and omitted making the active farmer declaration having also not submitted a BPS claim before. Subsequently the application to transfer entitlements to them was rejected, and their transfer to the tenant failed as well. The Purchaser was given, as set out in the sale contract, a period of time to try and sort this out with the RPA, but failed. As a result there were no arguments, as the contract allowed the Vendor to re-market the entitlements, selling them in this instance at a higher price. Our contracts allowed the Vendor to keep from the purchase monies the sale proceeds originally agreed, with the Purchaser receiving their money back (less the Vendor's extra costs) plus the higher price achieved in this instance on the re-sale. It can of course work not so well for a purchaser if the market price goes down.

If you would like a quote for the charges we make for processing an agreed transfer of entitlements between landlords, incoming tenants or outgoing tenants, or indeed in any other situation, do ring us.

Unnecessary risks with "internal" entitlement transfers

Subsequently agents/consultants carrying out internal transfers without the full protection of appropriate contracts between clients run unnecessary risks. Of course the clients end up paying more so the agents/consultants can avoid such situations of conflicts of interest, however those of

us who have been around long enough know that such situations in the long run never really pay off, and in the end clients respect and trust their agents/consultants less, not more. Paradoxically, in our experience, most complications come from the transfer of smaller sized lots of entitlements, rather than the larger ones, which are the most tempting to save a client an entitlement agent's commission in dealing within the open market. The transferee, the buyer, of course usually does not pay a commission anyway if buying from the open market.

3. NEW RICS RULES OF CONDUCT : CONFLICTS OF INTEREST

RICS Rules of Conduct set an overarching obligation on both members and RICS regulated firms at all times to: '...act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with its professional obligations.' [See RICS professional statement, global, dated March 2017](#)

4. LINKS

Web page to access: [RICS Conflict of Interest, Global Edition March 2017](#)

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UK BPS ENTITLEMENTS – USER GUIDE Townsend & Clark – The first definitive user guide available for £40 – [click here](#) for more details

LAND AGENTS VALUERS ESTATE AGENTS AUCTIONEERS ARBITRATORS QUOTA AGENTS

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farm & estate management day-to-day management & consultancy for farms, forestry, land & estates. **property agency** sale and purchase of houses & country houses, farms, land, estates, cottages, barns, smallholdings, equestrian property; lettings & management; grass & land lets; development land. **professional services** farm & rural business consultancy; Basic Payment Scheme; Stewardship schemes; landlord/tenant negotiations; diversification; rent reviews; ASTs & FBTs; partnership insurance; dispute resolution, mediation, arbitration, expert witness & advocacy; telecoms, compulsory purchase, pipeline and easement claims, & wayleaves. **renewables** anaerobic digestion; energy crops; biomass/estate heating; hydropower; income from renewables; on-shore wind & solar. **farm quota** entitlements; water abstraction licences; carbon trading, credits & emissions allowances. **planning &**

development advice & applications; agricultural need assessments; appeals; design & drawings; development & development land advice. **valuations** surveys and valuations for property, IHT, CGT & probate. **sporting** sporting agency & licences.

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VAT is payable on Entitlements traded (sold or leased) without land, unless the seller/lessor is non-VAT registered. Unless otherwise stated all the above entitlements are offered for sale/lease without land and VAT will be due on the price agreed. The entitlements listed above are offered subject to documentation/contract/submission. ● Please note we also only act on a subject to contract/documentation basis when buying or leasing Entitlements for our clients. We do not enter into oral contracts on behalf of any of our clients. Entitlements listed may include lots offered by other agents where prices quoted would include an introductory commission payable to Townsend Chartered Surveyors. ● The usage rule: farmers must use all their entitlements in a single application at least once every two years, otherwise the unused entitlements will be lost to the National Reserve. ● The 2015 BPS payment in England, including the greening value and FDM, was €244.57 (£178.85) for Non-SDA, €242.81 (£177.56) for SDA and €64.15 (£46.91) for SDA Moorland. The 2015 exchange rate was £0.73129. In 2015 the implementation of the Financial Discipline was confirmed as a reduction of 1.393041% on payments above €2,000. The 2016 implementation has not been announced (as at October 2016). The 2016 exchange rate has been set at €1 = £0.85228 (announced 30.09.16). ● The minimum claim size is five hectares. ● Entitlement transferees are subject to an Active Farmer Test, as are claimants. Therefore transferees and claimants should ensure they are eligible to transfer/claim before arranging entitlement transfers or leasing of entitlements. You do not need to be an active farmer to transfer out or lease out entitlements. ● Unless specifically instructed in writing we are unable to provide advice in respect to the Basic Payment Scheme or any other schemes under the Common Agricultural Policy of the European Union, especially how they may affect a particular vendor's or purchaser's eligibility for the Basic Payment Scheme. Any such comments or statements made by Townsend Chartered Surveyors verbally during the process of buying, selling or leasing entitlements, or otherwise cannot be relied upon unless such advice is provided in writing following receipt of written instructions for Townsend Chartered Surveyors to provide such advice. Any such oral comments or statements do not form part of our entitlement agency instructions or any transfer contracts. ● Townsend Chartered Surveyors cannot be held responsible for any quotes, prices, rates or advice given in light of any future Common Agricultural Policy reform, which is subject to approval from the European Parliament and Implementation Regulations.