

## **Mediation offered to agricultural tenants and landlords affected by the consequences of the Salvesen vs Riddell case.**

The Scottish Government (SG) has now finalised the details of the mediation process which it has agreed to paying for. They have confirmed that they will payment for mediation even if the outcome is unsuccessful, providing that parties acted in good faith during the mediation process.

Core Solutions have been asked to give priority to cases in groups 1, 2 and 3. If cases for groups 4 and 5 come forward, SG has indicated that they will cover the costs of mediation however the mediation processes could be modified in light of experience gained handling cases in groups 1-3.

Core is now formally inviting tenants and landlords to confirm their interest in taking part in mediation process as detailed below.

### **Claims**

If you as either the tenant or the landlord have any intention of making a compensation claim against the SG then you will need communicate this (along with the legal and factual basis for the claim) before, or at the very latest during, these Stage 1 talks (unless, of course, any such claim only becomes apparent at a later stage).

SG will then carry out a private assessment of the claim(s) before it engages in stage 2 of mediation process.

SG have indicated a desire to providing a response within 3 weeks of claims having been submitted. However while they will aim for a 3 week response time, this will to some degree be dictated by the complexity of the claim.

If the legal analysis by the SG (which will take place outwith the mediation process) suggests a risk of liability then the Stage 2 outcome could include a compensation payment from the Government. Where liability has been accepted by SG relevant legal costs will be included as part of the settlement negotiations.

### **Mediation**

Where both landlords and tenants agree to mediation the aim will be find a mutually agreed outcome between all concerned.

The first (stage 1) is an exchange of information (all relevant facts) and a 1 day meeting to clarify points of fact.

The second stage will follow after parties have had an opportunity to analyse and digest the information provide a stage 1. The main part of Stage 2 will a mediated meeting (1 day) with provision for additional days in exceptional circumstances

Mediation is known to work best where individuals are empowered with full authority to make binding decisions. With this in mind SG have made it clear that where possible, within the constraints of being a public body, they will try and facilitate this approach.

## **Costs**

SG is prepared to contribute towards the legal and other expert costs associated with the mediation process. For individual landlords and tenants a ceiling of £2.5k has been set for stage 1 and £3.0k for stage 2. If any landlord or tenant feels that this ceiling will not cover their entire reasonable costs associated with mediation, then they can ask SG to consider whether an exception is justified.

Costs will be subject to a procedure to confirm that the costs are reasonable and SG may use an independent third party to assess the reasonableness of such costs.

Costs must be limited to those associated with the mediation process itself and not, for example, include costs incurred in preparing a compensation claim against the Government.

Costs will be paid based on receipt of a full explanation for costs incurred. The process for administering the payment will require claimants to complete a signed form providing SG with bank and contact details.