

Federation of Cumbria Commoners

Affiliated with Lancashire & Northumberland

Newsletter Summer 2016



Looking Forward,

Well here we are, the referendum on leaving the EU has been and gone and the decision to leave decided, which I am sure has left you all with many different emotions and opinions about what will happen in the future, especially in the next few years. I can guarantee that the Federation will be lobbying at every level, to represent commoners best interests. Earlier this month Viv, Julia and I were involved with a visit of the National Common Land Stakeholder Group to Cumbria, which involved top representatives from Defra, RPA and Natural England, plus many more. Over the two days, we talked in depth about many of the issues facing commons and commoners and it gave us the opportunity to strengthen links with all the organisations who have a stake in the future of common land. We had a very interesting visit to Ulpha common, hosted by Mark Fox who did a great job of explaining to the public servants and environmentalists what actually happens on his common, helping them to appreciate the importance of actively grazed commons to the rural economy and

environment.

I believe that which ever way you voted on the EU, the country as a whole must now look forward, move on, and be positive for future generations. We need to carve out the best deal we can on leaving Europe, and we will have to hope that rural areas and **rural people are high on Teresa May's list of priorities.**

Joe Relph (Chairman)

The work of the committee—your voice on the fell **and in national and local meetings**

As usual there has been a lot going on behind the scenes. The committee meets four times a year and we work on a range of issues. We publish the minutes of our meetings on our website, so please take a look if you want see what we do in more detail.

BPS: we sincerely hope that by the time you read this newsletter all commoners will have received their full BPS 2015 payment. Over the past few months we have been lobbying hard with the Foundation for Common Land, the NFU and others to get commoners paid. When it became clear that RPA were falling way behind in processing claims on commons we made the case bridging payments, stating that the impact of the delay in payments was causing severe hardship in many cases. Eventually the RPA agreed and by late May/ June many of you received a partial payment.

But the shambles continues. Even if you have received your full payment, the chances are that its incorrect and you have queried the payment. The RPA say that they will investigate all 2015 claim queries through what they are calling a payment reconciliation process and make any necessary adjustments and top up payments. But **as the claim statement is light on detail it's difficult for you, or your agent to check the accuracy of what you have been paid.** We have raised concerns with RPA about incorrect payments on commons and we have asked them to provide all claimants with detailed claim statements.

The RPA now say that in August they will start work on making “back payment” of Single Payment (SPS) that was underpaid on common land between 2009 and 2014. You may get an extra payment relatively soon. Rest assured we will be chasing RPA

on this as well. In addition, we are urging RPA to start processing BPS 2016 commons claims this autumn, so commoners are not the last in the queue to receive their 2016 payments.

Brexit should be an opportunity to come up with a workable farming support system that fits more readily with the diversity British farming and doesn't need to be completely overhauled every few years. We will be attending the Uplands Alliance event hosted by Defra in September to start shaping a new post Brexit a farm support system that works on commons and for hill farmers.

We want to hear your views on what such a farm support system should look like, so please get in touch with Joe Relph, or any committee member (their phone numbers are on the back page) or send an e-mail to viv@cumbriacommoners.org.uk

Existing Higher Level/ Upland Entry Level Stewardship Agreements: Your current agri-environment agreement for the common (if you have one) is a contract **usually between the members of commoners' association, yourself and the Government / Natural England (NE)**. The referendum outcome does not alter that contract. At this stage, all signatories will need to honour the agri-environment agreement until it ends and comply with all the scheme rules applicable to your agreement. However, there are provisions in the agreement for Natural England to potentially change it. They can end it early by invoking the break clause in HLS **agreements. Also there are provisions to allow NE to vary the agreement 'in line with European law or exceptional circumstances'**.

On the other hand, you and the signatories to your agreement have entered into a contract for ten years and the expectations are that you fulfil the contract. It is possible to terminate a ten year HLS agreement at 5 years, provided you comply with the requirements for doing so, set out in your HLS Handbook. If you want to terminate the contract outside the 5 year break clause you are likely to trigger penalties.

Our understanding is that you will continue to receive agri-environment payments **until the UK's withdrawal from the EU is completed provided you comply with the rules in place.**

Countryside Stewardship: applications for this new scheme started in 2015. We know that since the referendum the Treasury has been reviewing stewardship spending and, currently, no new contracts are being entered into. The government has not indicated when a decision will be made about future stewardship funding and this leaves applicants in a difficult position on how to read the future especially if their current schemes are due to expire in the next couple of years. We know some that UELS/HLS schemes on commons will be expiring soon. We are talking to Dartmoor **Commoners' Council and other commoners' associations about this and considering** writing a joint letter to the Minister asking for an extension of the current HLS schemes on commons, until new stewardship schemes are in place.

It's too early to know what stewardship schemes will exist after the UK has left the EU. We aim to enter into discussions on what any future scheme on commons could look like. As a principle, we believe that successful schemes should be a partnership between commoners and Natural England with commoners having a say in scheme design right from the outset. They should support fell farmers carry on commoning for food production and the delivery of environmental services and public goods.

Commons Councils

We met with Claire Horton, Defra's new Commons policy lead (see next page for more information on Claire's experience) at the National Common Land Stakeholder meeting in early July to discuss how to take the Commons Council forward. But she was unable to tell us much. We will have to wait till the dust settles at Defra following the Brexit decision before we can take this forward.

And not forgetting the local ...

Lake District National Park

You may remember that we told you in our last newsletter that the LDNP was hoping to recruit a Farming officer. The job was advertised but unfortunately they were unable to recruit anybody suitable. They are now looking at alternative ways to fulfil this role.

Annual Meeting 2016

This year's AGM and Conference was held at Newton Rigg on Friday 4th March.

Around 50 people turned up. A proposal to increase the subscription fee to £20 was passed by a vote of those present.

After the AGM, members heard speakers from the NFU, Farmer Network, Environment Agency, Natural England and Eden Rivers Trust provide information on the aftermath of storm Desmond, its consequences for hill land management, views on the emerging Cumbria Flood Action Plan and examples of natural flood management techniques that could be used.

Claire Horton: Defra's new Peatlands, Uplands and Commons Policy Lead

Below is a short profile from Claire

I've recently re-joined Defra's land use team and I am really excited to take on the newly created role of Peatlands, Uplands and Commons policy lead. Combining these policy areas into one role is a really great opportunity to take a holistic view of what affects these iconic landscapes and the people living and working on them. I've already got visits planned to farms and projects in Cumbria, Dartmoor and Exmoor and I'm really looking forward to seeing some of this work first hand and learning more about some of the challenges faced. Uplands, commons and peatlands are such an important part of our national heritage and make such an important contribution to biodiversity, sustainable agriculture, and recreation, to name just a few areas.

My previous work at Defra has ranged from EU and UN negotiations, to working **closely with the Canal & River Trust to protect our nation's waterways, and I've also** spent some time at the Charity Commission working on civil society projects in Bahrain and Morocco.

I'm sure the coming years will present many challenges and opportunities, and I look forward to working together to help shape a sustainable future for these landscapes.

A Portrait of Moorhouse Commons

By Dave Smith, Chairman of Moorhouse Commoners' Association

Location

As you travel down the Eden Valley and look to the Pennines you can't fail to notice, cloud permitting, the large "golf ball" that sits on top of Great Dun Fell. This is the civil aviation authority radar facility that has been central to the control of civilian air traffic over our region for the past 3 decades or more. This iconic landmark sits in the midst of the Moorhouse Commons, a large tract of Pennine moorland stretching

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from the flanks of Cross Fell on its north west edge to High Cup Nick on its south east extent and extends to Cow Green reservoir at its north easterly edge and also encompassing the Moorhouse National Nature Reserve. The land runs from around 300m to 850m above sea level.

The terrain consists of many areas of varied character, dense heather moorland, blanket bog, peat hags, montane heath, rock and scree, limestone and acid grassland. These commons have traditionally been grazed from April to November with predominantly Swaledale sheep along with a smattering of Cheviots and in the past even some Rough Fell sheep. There has been little or no sheep grazing in winter, at least in recent times, due largely to the risk of losing sheep due to heavy snow and lately to restrictions under stewardship schemes. A large area of the common is managed for grouse shooting.

History

Moorhouse Common is the collective name for 4 individual commons (or 5 if you want to be pedantic and include the separate 20ha area that was missed off the maps **by the draughtsmen in the 1960's** namely **Red Carle (86 ha), Milburn (2,032ha), Knock (860 ha) and Dufton (4,606 ha)** which are grazed by sheep owned by the farmers in these parishes. The whole area came to be known as Moorhouse Commons when the 4 individual commons entered their first agri-environment agreement in 2003.

The original registers resulting from the Commons Registration Act 1965 show that there were 40 or more landowners with rights to graze sheep, cattle and ponies on the commons (the sheep rights refer specifically to ewes and followers or hogs), all of the rights were appurtenant to land within the parishes. The majority of these rights were actively grazed by around 35 farmers with around 10,000 sheep running the fells up until the ravages of Foot and Mouth struck the area in 2001.

Stewardship Schemes

Post Foot and Mouth Natural England approached the graziers and landowners, many of whom had lost some or all of their fell sheep, with a view to buying up grazing rights in the hope that this would facilitate the setting up of an agri-environment agreement. The fact that these commons were located in the Moorhouse National

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Nature Reserve resulted in money being made available for a rights buy-up.

A long process of negotiation then ensued with farmers thinking long and hard about whether it was in their best interests to sell some or all of their rights. These were difficult decisions but for many the turmoil of Foot and Mouth had caused them to reflect on their circumstances and a sufficient number were persuaded to sell. I think prior to Foot and Mouth Natural England would not have achieved their aim of buying enough rights.

Once the rights buy-up had been agreed negotiations for an environmental agreement could proceed, this led to a Countryside Stewardship scheme being set up in 2003 with the remaining landowners who now numbered in the region of 25 with about 15 active graziers. The scheme allowed around 5,000 sheep to graze the area which was roughly half the previous number, a small area of tree planting was also included with a view to encouraging Black Grouse. The original scheme has now been superseded by a HLS agreement that is due to last until 2023 with summer grazing numbers set at 5,033 ewes, although with 2 more active graziers than the previous scheme, a small amount of cattle grazing on Red Carle and further tree planting. But the EU referendum has created a huge degree of uncertainty. It does look like our scheme **won't change in the short term (2/3 years) but who knows after that. We will be** supporting the Federation to seek to ensure schemes/ money is kept in the hills/ commons and new England/ UK policies are better tailored with commons in mind

The end of prescriptive rights on commons?

By Samantha McAlister, Minihan McAlister Solicitors

Under the Commons Registration Act 1965, rights to graze commons had to be registered before the middle of 1970. If they were not registered then the rights were lost. However, the 1965 Act was silent on whether or not those rights could **be reacquired by 'prescription', or 'long use', if they were subsequently exercised as** of right for a period of 20 years or more. A recent court case (*Littlejohns and Littlejohns v Devon County Council and the Duchy of Cornwall* [2016]) has clarified the law and has settled the issue of whether rights of common can be acquired by prescription after 1970.

The commoner in the Littlejohns case had grazed stock on the common next to their

farm in Devon for many years, but had failed to register their rights of common before the 1970 deadline. It is established law that those rights of common were therefore extinguished under the 1965 Act. However, the commoner continued to graze stock on the common and then, in 2010, applied to the local Council to register the rights by prescription. The Council declined to register the rights, arguing that a right of common cannot be created by prescription over land already registered under the 1965 Act. The commoner applied for judicial review, arguing that, unlike the Commons Act 2006, the 1965 Act did not bar the creation of new rights of common by prescription. The High Court found for the Council in 2015 and, subsequently, the commoner appealed.

The Court of Appeal handed down their judgment in May 2016 and found (by a two to one majority) that rights of common cannot be acquired by prescription. The Court stated that, under section 13 of the 1965 Act, together with the Commons Registrations 1969, it was clear that it was not possible to register new rights of common over common land already registered under the 1965 Act as the purpose of the 1965 Act was to provide a definitive identification of common land and rights of **common. Lord Justice Lewison found that a 'straightforward reading' of section 1(2)(b) of the 1965 Act:**

"...leads to the conclusion that after 31 July 1970 no unregistered rights of common can be exercised over land which is registered as a common. If they cannot be exercised, then a person who claims to have acquired a prescriptive right of grazing over registered common land is attempting to establish a right in reliance on activity that is precluded by section 1(2)(b)."

One of the three judges in the Court of Appeal disagreed with the judgment, stating that section 1(2)(b) of the 1965 Act was only intended to apply to rights of common already in existence and registrable under the 1965 Act. In his view (a view which I share), it would be an anomaly for Parliament to have created a category of common land over which no future rights of common could be granted or acquired.

It is important to bear in mind that there are many reasons why rights of common may not have been registered before the 1970 deadline – registration forms were lost in the post, or simply not posted in time. Commoners have continued to graze their rights, despite the lack of registration, often with the consent of and support of the

other commoners, the landowner and any existing association. Whilst this decision settles a point of law that has caused disagreement amongst lawyers, it undermines the legality of unregistered rights and threatens to devalue upland farms where unregistered rights are relied upon.

The full judgment can be found at <http://www.bailii.org/ew/cases/EWCA/Civ/2016/446.html>

Owning Common Land

We thought our members would be interested in hearing from owners of common land, so we asked the Lake District National Park, the National Trust and the Friends of the Lake District to give us their views.

A perspective from the Lake District National Park Authority

By Martin Curry, Property Services Manager.

Cumbria has the largest concentration of common land in Britain and possibly Western Europe with many of its commons situated in the Lake District National Park. Not only are the commons a vital resource for hill-farmers, but their collective management, which has evolved over many centuries, has resulted in rural landscapes that contribute to a powerful sense of place and identity - the current bid for World Heritage Site status recognises their economic, social and environmental qualities as one of the outstanding universal values of the Lake District.

It should be no surprise therefore that the National Park Authority has a special interest in the management of commons generally - sharpened by its own role as an owner of common land. With about 9,000 hectares of total land holding, the Park Authority is a relatively small landowner and many of its 150 or so properties are also small. Significantly, however, just eight individual commons – five of which are owned (with three on long lease) make up 80% of its holding by area. We own Caldbeck (3,152 ha), Uldale (1,379), Glenridding (1,052), Barf (89), Blawith (656) and lease Torver Back (119), Torver High (539) and Torver Low (189) for the Crown Estates.

Ownership of common land is both a privilege and challenge: a privilege in that it confers upon us the ability to engage directly with farming communities that maintain some of the most characteristic landscapes in the National Park; a challenge because, unlike many other common-land owners, we do not own any of the farms

surrounding our commons and therefore we have no direct input into the farming practices of our commoners. So, whilst responsible ownership requires us to define and deliver a positive role, management is often defined by others, such as Natural England through agri-environment schemes, and delivered by active graziers.

Nonetheless, we view our ownership seriously and strive to support our commoners in the face of economic and environmental pressures and to this end we work closely with farming interests through the National Park Partnership. Current direction seeks **to release the many public benefits or 'ecosystem services' from our common land**, but in ways that support the continued viability of upland farmers. We have established Commons Executive Groups for most of our commons - a forum which for over twenty years has created opportunities for us to work closely with our commoners, helping us to understand and represent their interests.

Where appropriate, we have worked hard to help individual commons gain access to agri-environment schemes. These schemes not only regulate the level of grazing on individual commons in exchange for important income streams to graziers, but also support the delivery of ecosystem services. Six of our eight commons are designated sites for biodiversity interest and are of national or European importance for nature conservation. In addition, our Rangers and field staff deliver an important practical role through the maintenance of rights of way and the delivery of capital schemes such as tree-planting, ensuring that we remain active at the local level. Our commons are also important for their cultural history, hosting several important Scheduled Ancient Monuments.

Whilst it remains to be seen how funding will be affected by the Brexit result, we expect to take a key role in influencing plans for the future management framework of our commons. Notwithstanding the complexity, and at times difficulty of commons management, this land-owner remains proud to be connected so intimately with these upland assets.

A perspective from the National Trust

By Tom Burditt, General Manager North Lakes

The National Trust owns over 20,000 hectares of common land in the Lake District. On my patch, in North Lakes, this is centred on the Derwent and Buttermere Fells,

Langstrath and Coombe Fell, and Kinniside Common, though we also have small outliers like Longmoor Common, near Ennerdale Bridge, and Braithwaite Common which is a bit like a village green. Of course elsewhere (but not on my patch) we also own part of Helvellyn, Wasdale Common & Stockdale Moor and Eskdale Common.

Our level of involvement in the commons does vary considerably, and it takes many different forms. Our role becomes most apparent when changes are proposed, **because these tend to require land owners' consent, and also more formal communications with third parties.**

The sorts of work that we are dealing with on a weekly basis revolve around the Fix the Fells work programme repairing the footpaths that cross the commons – this is a project hosted by the National Trust and delivered by our rangers alongside an army of skilled volunteers. The other good example would be the woodland exclosures **paid for under the Higher Level schemes. Even where we don't have sole responsibility for putting up and maintaining the fencing, our rangers will be talking to graziers and chairmen about making the work as effective and ecologically beneficial as possible.**

The impacts of Storm Desmond did come as a bit of a jolt because the landslides reminded us that the mountains themselves, the soil, gravel, becks and trees do come with landowner responsibilities that fall to us to resolve! Then there are the little things too, that become more apparent on the ungrazed commons like within Braithwaite village, where we have to give consent for track repairs or Broadband exchanges, or wayleaves. Or at Lanthwaite where we are involved in archaeological surveys prior to a neighbour putting in pipes under the common associated with a new small-scale hydro-electric scheme. We are hoping to get more involved with ecological monitoring; there is the licensing of fellpacks or long distance fell runs; the occasional request by TV or film companies; the need for signage or helping to control illegal motorbikes. And there is the role we play in conserving the built heritage associated with common land – gems such as Monks Bridge over the Calder on the boundary of Kinniside, or Force Crag Mine.

Its certainly uncertain times for us all, with Brexit and the future of subsidies all up for debate. The Trust will be playing an active role trying to influence the government to create a system that is more outcomes focused and delivering more for the natural

environment, while helping sustain the farming infrastructure associated with the commons. The recent Common Cause Project that we are partners on has reminded us all of the sheer range of things that we expect our commons to deliver; and by and large they succeed. That is a joy when watching the sun set over Causey Pike or out on a Sunday afternoon walk around Castle Crag with the kids, but also does feel like a huge responsibility to maintain this landscape. Above all else the majority of our farms are just so inextricably linked to the commons and the specialised, rare skills required to manage them. This is something that comes into sharpest focus when we need to **re-let one of them...**

A perspective from Friends of the Lake District who own Little Asby Common

By Jan Darrel, Policy Officer

Friends of the Lake District (FLD) are a landscape charity covering the whole of Cumbria and we are the proud owners of Little Asby Common. Throughout our 82 year existence we have championed common land issues and have registered a significant amount of common land in Cumbria. We purchased Little Asby Common, in 2003. The common is 464 ha in size and is internationally significant, being a Special Area of Conservation, a SSSI and has extensive areas of limestone pavement. It has only one of three marl tarns in the north of England, Sunbiggin Tarn which used to have the largest colony of black headed gulls in England and is a popular site for bird watchers. There are nine active graziers a couple of non- graziers.

FLD bought the common because of its huge landscape quality and the opportunity it gave us to help manage a common in practice – putting our policy into practice. From the outset we have had enormous respect for the commoners, and recognised that to achieve anything we had to work together. We began by getting all the commoners together for a pie and pea supper, the first time they had all met as a group. We visited each commoner individually to get to know them. They were initially very suspicious about a landscape charity owning their common!

Twelve years on, we have a positive working relationship and meet up at least annually. We have listened to the views of the commoners and any changes in management have been discussed with the commoners. When the option of entering the common into Higher Level Stewardship came up, we were supportive, but said

that the commoners should only sign up if there was a positive impact on their business. Natural England wanted to introduce cows to the common and the commoners were not keen. So, we took them to Ingleborough to see how farmers over there were grazing cows on limestone pavement. After that four commoners agreed to graze cows on the common and now say it is the best decision they made. FLD do not take any money from the HLS, we believe it should go to those actively managing the common, even though we do contribute to its management. We act as Secretariat to the Commoners Association.

We regularly show case the common to the public or agencies such as Defra. We believe that it is part of our role to explain the significance of commoning. We hold a monthly dry stone walling work party on or adjacent to the common, to maintain the limestone walls. We had our annual walling competition on the boundary walls in May.

Of course there are issues from time to time such as fencing round dubs, breaches of the HLS agreement and recently RPAs re-mapping of the ineligible areas (a nightmare with the limestone pavement), but hopefully we resolve them through communication and joint working. We would like to think that the commoners are now happy with their landowner and have a grudging respect for what we have done, but that may be a step too far!

We are very concerned about the potential impact of Brexit, both in terms of future payments for the commoners but also implications for the important landscape and environment we have. We must try and ensure that the future government make a commitment to farmers and the environment to protect past investments and give us some stability.

Some thoughts about common land and reducing floods

It is commonly agreed that flooding is on the increase, while our capacity to deal with flooding is being stretched. The recently published Cumbria Flood Action Plan (see <https://www.gov.uk/government/publications/cumbria-flood-action-plan>) seeks new **ways to protect the people living in Cumbria's towns and villages vulnerable to** flooding. These include natural flood risk management techniques and more woodland creation on upland commons to slow the flow of water and reduce peak river levels.

But changing land management practices on common land is a complex task. Commoners run independent farm businesses and exercise their individual rights of common over land that is owned by someone else. Before any land management changes can be made the agreement of all parties concerned must be sought. We have learnt from recent experiences of negotiating stewardship agreements on commons that agreement is not easy to achieve and, in some cases, not forthcoming.

Over the last ten years or so, tree planting on common land has increased significantly driven by the requirements of stewardship agreements. This has had an individual and collective effect on the commoners. Some commoners are individually affected as the tree plantations are located on a part of their heft and, in effect, their rights of common have been disturbed. While all commoners are left with unanswered questions as to what happens when the 10-year agreements end and whether those holding the duties and responsibilities to maintain the tree plantations will continue to do so. Despite these misgivings many commoners have signed up to stewardship agreements on their commons. They calculated that the financial benefits outweighed the uncertainties and anyway the tree plantations were only taking up a small part of the common.

The next generation of stewardship schemes (if they exist post Brexit) on commons are highly likely to require more, and larger areas of tree planting as a contribution to natural flood management measures. We believe that these will be increasingly difficult to negotiate and reach agreement on, unless commoners rights and local sheep farming practices are taken into account and respected from the outset.

As a starter for ten, here is a list of questions hanging over from previous stewardship schemes that could do with being discussed and answered before new agreements are proposed and negotiated (and this list is not exhaustive):

- Who decides whether woodland creation is a valid flood mitigation measure on commons? What evidence will be available, who decides on the extent of planting, its form, choice of species and tree management.
- Who needs to give permission to plant the trees?
- Will the commoners directly affected by tree planting receive extra compensation?
- Who will maintain the trees for the duration of a scheme and after the scheme has ended?

- Who is responsible for the erection, maintenance, repair and renewal of the fences around a new tree plantation? Will there be future funds to pay for this?
- How long can the plantation fence stay up for?
- If the fence comes down will there be provision to compensate graziers for potential increase in workload when shepherding their sheep
- Who will own the trees and any future timber production?
- How does the tree planting affect other farm support payments on the common, will they be seen as permanent ineligible features and not receive a payment?
- Will tree planting present any disadvantages? For example: if trees are planted into heather will this increase the risk of wild fires? Does it affect open access?
- Is tree planting, in effect, enclosure by stealth?

We believe the time is right to involve commoners associations and hill farmers from the outset in planning, designing and shaping natural flood management measures that maintain hill farming and manage the landscape to slow the flow of water. We also need to hear from academics, NGOs and farmers with practical experience of **natural flood risk management techniques elsewhere. What we don't want is one-size fits-all formulaic options developed by technical experts that supposedly can work on all types of land tenure and management systems. They don't and farmers have to bear the unintended consequences at a high cost to their farm businesses.**

Farmer Network event

1st September, 3-7pm in conjunction with Newton Rigg College and Cumbria Wildlife Trust at their Eycott Hill site, near Berrier, Penrith (just up from the Sportsman pub **on the A66 towards Keswick There will be 'farm walk' providing information on the** Luing cattle and how the site is managed and a short presentation on the results of the Farmer Network farm trials on grazing cattle in the uplands.

For more details contact info@thefarmernetwork.co.uk

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