

# Federation of Cumbria Commoners

Affiliated with Lancashire & Northumberland

## Newsletter Spring/ Summer 2012



Photo: taken on Allendale and Hexhamshire commons

## Looking Forward

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Fellow Commoners,

Another lambing time will have come and gone by the time this newsletter reaches you, I hope it has been successful. We have certainly had rather more to contend with in the way of poor weather than last year, and spring grass growth looks like it's going to be late - here on the East Fellside at least. Whether we can expect another year of acceptable returns in the livestock sector may depend on how the current turmoil in the Eurozone affects things.

The Federation has had another busy year with work still ongoing towards the establishment of a Commons Council for Cumbria.

The vast majority of our work has again involved the representation of commoner's views in a number of meetings for example with government ministers, DEFRA, Natural England, Lake District National Park, RSPB, United Utilities and others who seek to influence the management of our commons.

The Federation has accepted an invitation to join the newly announced Rural and Farming Network group for Cumbria and North Lancashire. This along with other regional groups has been set up to allow regular direct access to government through their respective chairs. I hope that we will be able to use this avenue to make representation on commons issues directly to our ministers.

You may have read in the press or be otherwise aware of the fact that the RSPB has taken on the tenancy of Naddle farm and also will shortly take on the tenancy of the neighbouring Swindale farm. These two farms come with a large number of fell rights and although the RSPB assures everyone that it wishes to see the farms continue as viable units, the Federation hopes to influence them to keep a substantial number of sheep on the common as any significant reduction in numbers will have a knock on effect on neighbouring commons potentially making their management more difficult.

Your Federation will continue to put forward the views of commoners and please don't hesitate to contact myself or other members of committee if you have commoning issues you would like to discuss. I also appeal to anyone who would like to become more involved to make themselves known to us as we are always in need of potential new committee members.

Dave Smith (Chairman)

## Shared gathering: matching young commoners with experienced graziers

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**Young commoners** – would you like to have a go at gathering another fell this summer to gain experience and find out what happens on other fells? We'll try to find you a fell where you can take part in a gather.

**Commoners** - do you have enough labour to gather your fell? Do you want to give young people the opportunity to gain experience and help you at the same time? We'll match you with a keen, motivated young commoner.

If you like the idea here's what you do: register your interest with Viv Lewis (our administrator) either by phone 01931 713335 or e-mail

[viv@cumbriacommoners.org.uk](mailto:viv@cumbriacommoners.org.uk)

Give Viv your name and contact details and what you are looking for and we'll take it from there and try to find a match for you.

## Profile of Allendale and Hexhamshire commons

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*This article has been written by two of our members from Northumberland, Nicholas Howard, of High Studdon, Allendale and Robert Philipson of Broadgates, Sinderhope*

Allendale and Hexhamshire commons are located south of Hexham, Northumberland in the north Pennines. During the 2001 foot and mouth epidemic the vast majority of the hefted flocks on the Allendale and Hexhamshire commons were culled. This left 4,800 ha of Site of Special Interest (SSSI) common land with virtually no sheep and no future. Starting in early 2002 the graziers began to re-introduce hefted flocks under a 5-year phased restocking programme. This was part of a wildlife enhancement scheme funded by English Nature and agreed by 19 active graziers and the 2 landowners. The agreement allowed for a maximum of 80% of the pre foot and mouth stocking rate on the common, along with other changes in management practices to ensure that the moorland returned to its pristine condition. The graziers agreed to changing feeding practices. They no longer use tractors, ring feeders or silage on the common. Now they use ATV vehicles, feed small bales of hay with some supplementary feeding in bad weather. The moorland management undertaken by

the shooting estates has also changed. They agreed a heather burning plan with English Nature, together with grip blocking in certain locations. This was to raise the water level and reduce peat erosion. There was also a tree planting programme with native tree species planted in some of the gullies to encourage black grouse. The trees were double staked and sheep guarded but left unfenced.

Following the success of this 5-year programme English Nature felt that to continue the good progress made, the commons should be entered into a Higher Level Stewardship (HLS) agreement. After discussion with all parties an agreement was reached and commenced in May 2006.

In 2011 a new HLS agreement was set up to incorporate the new Upland Entry Level Scheme (UELS). A formal commoners association was created at this time to accommodate the UELS process. The association includes all graziers and landowners and employs the services of Charles Raine, Young's Chartered Surveyors, Hexham to act as agent to liaise with Natural England and all other relevant parties. The current agreement runs until the end of 2020.

While there has been an improvement in the condition of the common with the regeneration of heather on previous feeding sites, these changes in feeding practices have their costs as well. The work load of the graziers has increased over the winter months. In previous years a ring feeder provided a central point for sheep to return to, encouraging them to stay on their own heft. Ring feeders allowed feed to be available at all times and only topped up once or twice a week as necessary whereas now the sheep have to be fed daily to achieve the same objective. As most of the farms are one-man businesses, any increase to the workload during shorter winter days has a significant impact.

On some commons winter feeding is not allowed as part of the agreement apart from in extreme weather conditions, but we feel it is an important management tool for our flocks. The ability to feed sheep as necessary throughout the winter months is crucial as during this time they wander out to the extremities of the heft but return each morning for their feed. This helps develop a homing instinct which can be seen when shepherding during the summer months and is part of the natural hefting process. Also the lack of winter feeding can create significant welfare issues.

.Although many of the current farmers have no successors, it is hoped that schemes like this will encourage young people to continue farming in the uplands. It would be nice to think we have left it in an improved condition for future generations of farmers. Environmental schemes such as ours have a significant benefit to the financial viability of upland farms and help to maintain the rural economy.

## **Rights of common**

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*From time to time we include articles on legal issues relating to common rights. The Federation would like to thank Tim Cartmell of Cartmell Shepherd, Solicitors for preparing these two articles.*

## **DANCE V SAVERY – a précis of the judgment**

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*The Commons Registration Act 1965 was not there to create rights.*

The Commons Registration Act 1965 required that all common rights had to be registered and grazing rights had to be quantified. When Mr. Dance registered cattle and sheep rights on 3 commons in Devon he knew that on two of the commons his rights were spread over the commons taken together and that they were not rights to graze the stated number on both commons. However, he argued that the effect of the 1965 legislation was to give him the right to graze the same rights on each common independently. In effect this would double the number of his rights. He lost before the High Court judge and appealed.

The Court of Appeal found (in November 2011) :

1. An entry in the register of 100 sheep entitles the owner of that right to graze up to 100 sheep on the common concerned. But registration does not give a definitive right to graze 100 sheep, it may be less.
2. That a registration without condition does not mean that previous conditions are erased by the registration under the 1965 Act. (A condition may be that grazing rights can only be exercised for certain periods of the year by custom or ancient grant from the Lord as owner of the waste). The Commons Act 2006 confirms that constraints may exist even though not stated on the register.

So the Court of Appeal ruled:

1. That if previous custom and practice was to graze the 100 sheep on the 2 commons together, then the right was a “split right”. The right could only be

exercised once, in other words, the right could be split across the two commons, but the grazier could not graze 100 sheep on each.

2. That the register does not need to mention that the right is a 'split right', nor is a reference to the other common or commons needed.
3. In the case of the two commons which had been grazed together prior to 1965 often because they were part of the same original manor the rights may therefore be split and could only be exercised once.
4. In the case of the third common which is land from a different manor the rights are separate and are not split.

Mr. Dance's lawyer argued the 1965 Act states that registration of rights is conclusive of the rights registered following the resolution of objections. However the Court of Appeal says the register entries may be conclusive but they are not definitive as to number, because another section of the 1965 Act says that the numbers registered are treated as exercisable in relation to "no more" animals than the number registered. Had the Court agreed with Mr. Dance's lawyer that the registrations on each common were conclusive in the sense that they were definitive as to number, Mr. Dance would have owned more rights than he had before 1965. His consolation was that his rights were only split over 2 commons, so he is able to continue to claim them separately on the 3<sup>rd</sup> common.

This position did not change with the passing of the Commons Act 2006. You still may need to look at past practice if your registered rights are challenged by others. One wonders whether the drafters of the 1965 Act intended that result, or whether they thought they were bringing certainty.

## **PRESCRIPTIVE RIGHTS ON COMMONS AND MARSHES: THE CURRENT CHALLENGE**

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Do you recognise this? *"Fadder forgot to register our grazing rights in 1970, but it hasn't mattered say much as we have still put our stock out on't mars, or common."*

Maybe not, but since 2005 the RPA will not have given you any single farm payment money on your unregistered rights. Now there is the possibility that you will never be able to enter your unregistered rights on the Commons register. This appears unfair and the purpose of this article is to alert you to the current situation and propose ways to seek a resolution.

Under the Commons Registration Act 1965 all rights to graze registered commons had to be registered and quantified by number before the middle of 1970, or the rights were no longer exercisable and were “lost”. What the 1965 Act did not say was whether such lost rights could be re-established by exercising them for 20 years or more after 1970. This is what lawyers call prescription: use as of right without force or stealth or payment establishes a right – whether a right of way, or a right to a water pipe, or a right to graze on another person’s land.

Parliament brought in the Commons Act 2006 and one of the provisions allows for the correction of some mistakes to the registers, including the registration of prescriptive rights. The Act was brought into force in seven pilot registration authority areas in England. Cumbria is not part of the pilot but may start in 2013 – only 7 years after the Act was heralded in 2005/6!

Devon County Council, one of the pilot County Council Registration Authorities was advised by a senior barrister that they could not accept applications to register prescriptive rights on existing commons, for complicated technical reasons. Devon County council has also said “No” to applications to register prescriptive rights on an existing common.

As a result it now appears that if you can prove that your rights were never registered in 1970 due to a County Council mistake (not fathers’) then you may be able to correct the mistake and register your rights. Otherwise your rights may be lost despite you having exercised them for over 20 years with the express or tacit agreement of fellow commoners. They remain in law un-exerciseable, even though you exercise them.

But is this barrister right? Not necessarily. And even if he is, should Parliament not correct this error as it allows the correction of other errors?

To test the barrister’s advice will require a High Court case. However, it is unlikely that any single grazier will want the risk and cost of litigation, which is probably commercially unmerited, to register “lost” rights. But a group might be able to put up the funds to decide this issue in Court.

Moreover, if there are enough members of the group then another way would be to lobby Richard Benyon MP the Under Secretary in DEFRA responsible for Commons to

correct the matter through law change. That will have a more certain outcome than litigation – after all Parliament made the law and has left it with a question mark – should not Parliament clear up the question mark?

The Federation of Cumbria Commoners is working with Tim Cartmell of Cartmell Shepherd Solicitors to look into this issue. If you exercise unregistered rights on your common or marsh then please give your name, address and phone number, the name of the common, the number of the claimed unregistered rights (in sheep or cattle) to Viv Lewis the secretary of the Federation of Cumbria Commoners (01931 713335 or [viv@cumbriacommoners.org.uk](mailto:viv@cumbriacommoners.org.uk)). If you know of other graziers who exercise unregistered rights, please make them aware of the issue and ask them to get in touch.

We need the evidence from you so we can lobby Defra on this issue.

## **A new RSPB – United Utilities land management partnership at Haweswater**

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*We asked the RSPB to tell the Federation about their plans for the farms at Naddle and Swindale. The following article has been written by Mike Fishpool, the Haweswater Development Manager, RSPB*

On 1 April, RSPB entered into an innovative new land management partnership with United Utilities on its Haweswater Estate, aimed at integrating hill farming with habitat restoration to benefit wildlife and improve drinking water quality. Haweswater is the most important source of drinking water in North West England – supplying approximately two million people. However, water quality has been deteriorating, both in terms of colour and turbidity (suspended particles). Through habitat restoration we aim to reduce (or even reverse) this trend, reducing the need for chemical treatment and reducing the costs that are passed on to the water company's customers.

RSPB has taken the tenancy of Naddle Farm - comprising approximately 500 ha (1250 acres) of enclosed farmland and woodland, with substantial common grazing rights on Bampton and Mardale Commons. We acknowledge the many years of hard work put in by the previous tenant, who was one of the best and most highly respected farmers in the area. He was a model tenant for United Utilities and worked closely



with both his landlord and RSPB to make his farm compatible with water catchment and habitat management.

Our vision for Naddle Farm is to go even further with habitat restoration/creation to increase the benefits for wildlife and water quality, while maintaining a viable sheep farming enterprise on the holding. Restoration and creation of habitats like broadleaf woodland, upland heath and blanket bog takes many years, so this will be a long term project. We aim to benefit a broad suite of upland wildlife and increase the resilience of peat and other vulnerable soils to erosion – a major cause of deteriorating water quality.

However, the lessons we learn from this project will only be relevant to the wider farming community if we maintain a viable farming system on the holding. To this end we have appointed an experienced hill farmer, Richard Postlethwaite, to manage the farming business. The next 12 months will be a period of consolidation and planning as we develop our management plan for the site. We held a public meeting at Bampton in March and a similar meeting for stakeholder groups the following week. We want to be open and inclusive about our work and we are committed to playing an active and supportive role in the ongoing communal management of Bampton and Mardale Commons.

Later this year, RSPB will also take the tenancy of Swindale Farm, which we will manage with similar objectives.

## **Lake District National Park is looking to improve its role in commons management**

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*The Federation recently met with members of staff of the Lake District National Park to discuss their role as owners of common land. We invited them to write an article for the newsletter.*

The Lake District National Park Authority currently owns or leases about 7000 hectares of common land in the National Park ranging from Blawith and Torver in the south to Glenridding, Barf, Uldale and Caldbeck commons in the north. We recognise their significance in maintaining hill-farming and the distinctive way of farming communally. Commoning is an important part of the cultural heritage of the Lake District, and as such makes a significant contribution to the case for inscription

of the Lake District as a World Heritage Site. Our commons are also important sites for wildlife and provide a range of other public benefits such as carbon storage, soil protection, water supply, and providing opportunities for access and recreation to both visitors and local communities.

As landowners, we work together with our commoners through Commons Executive Groups which are a forum to discuss matters of mutual interest. Our direct management role is primarily one of managing the recreational use of the commons, including maintaining the rights of way network, minimising the impacts of recreational events and dealing with negative impacts such as illegal off-roading. However, our management interests also include helping to deliver environmental enhancement schemes, protecting historic environment sites, and dealing with illegal encroachments onto the commons.

We are currently working with representatives from our commons and others in order to improve our role in commons management. We are keen to gain a better understanding of what the commoners want in terms of their agricultural management and their future aspirations for the common. This will in turn allow us to build a clearer picture of what we and others can do to support the sustainable management of this special quality of the national park.

For further information contact David Switzer, Park Management Ranger: email: [david.switzer@lakedistrict.gov.uk](mailto:david.switzer@lakedistrict.gov.uk) or telephone 01539 792711.

## **Bracken Control – 2012 and beyond**

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*In this article Simon Thorp, Director of The Heather Trust and Scotland's Moorland Forum and appointed Coordinator for the Bracken Control Group provides an update on the situation regarding Asulam and highlights the urgent need for users to contact their aerial spraying contractors immediately.*

The Bracken Control Group was established in 2011 to act as a focus for all bracken issues. Although the final trigger for its establishment was the ban on the main chemical control agent, Asulam, the need for a group to bring together all management and research issues relating to bracken had been recognised for some time.

The group aims to embrace all parts of the bracken control industry and provide a single point of contact for information about the impact of the ban of Asulam and other bracken control issues. The group will be spearheading the application process for emergency authorisations so that existing aerial spraying programmes can continue and new ones start.

A website ([www.brackencontrol.co.uk](http://www.brackencontrol.co.uk)) has been established and regular electronic newsletters are being produced to circulate up-to-date information. These can be viewed on the News page and there is a Sign Up option at the bottom of the e-mail to add an e-mail address to the circulation list. In addition several people have volunteered to represent the interests of their sector and act as information disseminators.

### **So where are we now?**

The current situation is bracken control by helicopter is available and aerial spraying contractors are looking for work. However, anyone wanting their services should contact their normal company as soon as possible. The authorisation process has changed this year and this is likely to introduce delays to the application process. On top of this the new regulation will not be approved until the end of May at the earliest.

The message is simple:

- Asulam has been banned but stocks can be used up during 2012
- Anyone wanting to use a helicopter to spray bracken in 2012 must contact the aerial spray company now, and
- Emergency authorisations offer a route to allow aerial spraying programmes to continue from 2013 onwards.

For more information please contact The Heather Trust, Newtonrigg, Holywood, Dumfries DG2 0RA; Tel: 01387 723201; website: [www.brackencontrol.co.uk](http://www.brackencontrol.co.uk)

## **Update: Revitalising Low Becksdale, Mungrisdale**

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Newton Rigg College purchased Low Becksdale farm in 1960 as an educational resource for the benefit of the hill farming community. The farm has 170ha of inbye

land mainly boulder clay overlain by peat in many areas. It has fell rights for 540 ewes and 180 hogs on Mungrisdale and Bowscale commons. It is subject to a Lake District climate. The farm was bought to share experiences of running the hill farm openly with the farming community and others interested in hill farming. This included the publication of physical and financial information.

Readers of this newsletter will know that Askham Bryan College recently took over Newton Rigg. The new partnership has declared hill farming and land use in the uplands as a priority. Re-establishing Low Becks as a valuable asset to hill farmers and related interests in Cumbria, Yorkshire and beyond is being addressed as a priority.

The first step has been to invite a group known as the 'Upland Reference Group' drawn from the region's hill farming community to provide guidance. Their role is to advise and oversee that the core farming enterprises at Low Becks are appropriate and credible to current day hill farming practices; provide vocational education and the transfer of knowledge on hill farming and current upland land management. This advisory group, which includes Federation members, has walked the farm and considered options for the farm. They will continue this work after lambing and make their recommendations to the Governors of Newton Rigg College.

The Governors hope that the hill farming community will critically and positively engage with revitalising Low Becks and contribute their experience, wisdom and vision to ensure that the College contributes to a purposeful future in hill farming.

*Andrew Humphries, Governor of the Askham Bryan Corporation which embraces both Askham Bryan and Newton Rigg Colleges.*

***There will be a gathering to look at options for the future development of Low Becks Farm on June 14<sup>th</sup>. Please see the date for your diary section at the end of this newsletter for more details. Everyone welcome.***

## **Foundation for Common Land: Update**

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The last three months have been most exciting for the Foundation as all the hard work over the last 3 years of the shadow board, steering group and advisors has borne fruit. Our core funding from the Esmée Fairbairn Foundation has arrived, as

has the funding from the Prince's Countryside Fund for the Hill Farming Training for Conservation Professionals. Viv Lewis is in place as our Programmes Manager 2 days a week. So the focus for 2012-13 is;

- Hold regional gatherings of commoners to share information, experiences and expertise building on the good work of existing organisations such as the Federation of Cumbria Commoners.
- Share information across Great Britain through our web page [www.foundationforcommonland.org.uk](http://www.foundationforcommonland.org.uk)
- Influence civil servants, policy makers and non-governmental organisations to enhance understanding of the importance of active pastoral commoning for the provision of social, economic and environmental wellbeing
- Establish a higher media presence for pastoral commoning; an example has been the recent series on commoning on Radio 4's Farming Today.
- Establish the Hill Farming Training Courses for Conservation Professionals in Cumbria and Dartmoor.
- We now need to recruit six farmers in Cumbria to conduct the courses. Farmers will be paid to do this work and given the necessary training.

We expect to become a company limited by guarantee and a registered charity in the next few months and will then be asking organisations representing pastoral commons to formally join. Until then please go to our web page and sign our Charter to show your support, [www.foundationforcommonland.org.uk](http://www.foundationforcommonland.org.uk) The more supporters we have the more effective our work will be.

*Julia Aglionby; Chairman of the Steering Group, Foundation for Common Land*

## **RARE BREED – gathering stories of the lives of Cumbrian Upland Farmers**

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Last year we mentioned the forthcoming Rare Breed project being proposed by photographer Rob Fraser and writer Harriet Sharkey, to photograph farmers and the land and gather stories from farmers and others connected with farming. The project is now ready to go ahead, in partnership with Farmer Network (Cumbria), having secured funding through Fells & Dales and from LDNPA, Booths and Littoral Arts.

The main aim is to raise awareness of the value of farming and portray to the public – including locals and tourists – the real life that goes on in our landscape every day. Rob and Harriet would like to meet a minimum of 30 farmers, just for an hour, for a chat and some photography. If you would like to share your stories, they would be delighted to meet you.

The images and stories, and other writing putting the stories into context, will be put on a website as they are gathered, and made available to farmers and farming organisations as a resource. At the end of a year's research, there will be a touring exhibition in venues across Cumbria, which may extend beyond the county, spreading awareness about the value of farming, and the stories behind the landscape, to other parts of the UK. An educational pack will also be developed.

If you'd like to find out more, or express your interest in meeting Rob and Harriet, you can email [harriet@viveka.co.uk](mailto:harriet@viveka.co.uk) or call 015395 61804.

## **Watch the film Hefted**

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HEFTED is a fourteen minute film commissioned by Eden Arts from Cumbrian production company Dreamtime Films. It is well worth a watch.

The film is mainly based in the Howgills and Pennines and interviews farmers and local residents about hefting. It is about how people, as well as sheep, feel a sense of belonging to their landscape and are hefted too. It has some lovely archive footage from the Sedgwick family.

You can watch it on-line on the Eden Arts website see:

[www.edenarts.co.uk/portfolio/hefted](http://www.edenarts.co.uk/portfolio/hefted)

## **Cumbria Post 2013 video**

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The Foundation has been working with the University of Cumbria to create two informative and thought-provoking videos - a short version lasting 7 minutes and a longer version of 28 minutes.

Why post 2013? The European Union's Common Agricultural Policy (CAP) is due to be reformed by 2013. The CAP will respond to the new economic, social, environmental, climate-related and technological challenges facing our society. Cumbria, like the CAP, will have to change.

We showed the short video for the first time at our AGM. You can watch it by clicking on [www.cumbriapost2013.org.uk](http://www.cumbriapost2013.org.uk)

## **Common-Land.com**

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A new searchable database of all common land in England is now available on-line.

This website contains land records for nearly all parcels of registered common land in England, with additional data including location, area, extent of rights etc. The information was assembled between 1982 and 1993 as part of the biological survey of common land. You can search this database by simply typing in an area name in the search box at the top of the web page. You can search by district, parish, or county.

To find out more go to <http://common-land.com/>

## **Date for your Diary**

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**Hill Farming Matters 2012:** *A gathering to look at options for the future development of Low Becksdale Farm*

**Date: 14th June 2012**

Venue: Low Becksdale Farm & Mungrisdale Village Hall

The aim of this 2012 Hill Farming Matters event is to take a few hours out and concentrate on the options for the future development of Low Becksdale Farm.

Newton Rigg College is beginning its new life as a centre of excellence in training and learning in agriculture, and the Uplands will be in the foreground of their service to the community.

This is an opportunity to learn about what is on offer in Cumbria to encourage and sustain education in hill farming both from the College and its upland farm, Low Becksdale.

This event will be a mix of brief presentations, farm tours, and small workshops; it is aimed at the farming community and funding agencies.

## Federation of Cumbria Commoners Committee 2012

Chairman	Dave Smith	Eastern Fells	017683 61333
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<b>Committee</b>			
John Atkinson		Lakes South West	01229 885663
Ernest Coulthard		Kirkby Stephen	01768 371926
Harry Hutchinson		Howgills	01539 620635
Carl Walters		Lakes North Central	01931 713248
Duncan Ellwood		Lakes West	01946 841344
John Rowland		Lakes North	01768 779246
Joe Relph		Lakes South Central	01768 777675
Vacant		Lakes South	
Vacant		Crosby	
William Steele		Non-regional	01786 341436
John Jackson		Non-regional	01539 623238
Marianne Teasdale		Non-regional	01768 881164
Ian Gorst		Lancashire co-opted	01524 770509
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If you wish to publish anything in this newsletter, please let Viv know. All comments and contributions welcome.