

Modern Environmental Governance: Qualitative Research Data

Case Study n. 2: Ingleton North Yorkshire

1 Introduction and Methodology:

The case study comprises 3 commons in the vicinity of Ingleton, North Yorkshire. The 3 commons are:

CL 134: Ingleton Common (760 he) } Although they are two separate registered
CL 208: Clapham Common (741.82 ha) } CL units, there is no physical boundary
between them so often they are treated as
a single common and referred to as
Ingleborough Common

CL 272: Scales Moor (713.74 ha)

The common lands were selected because of their environmental importance and their historical proprietary value. They are within Yorkshire Dales National Park and Ingleborough SAC and contain various SSSIs. Historically, the grazing practice was governed by the rule of stinting (pasture rights limited by a specific number or quota), thereby presenting the principal alternative to the property rights regime of levancy and couchancy, which governed commons such as Eskdale (case study 1) and Cwmdeuddwr Common (case study 3).

The fieldwork was conducted in four principal phases:

- 1) Preliminary scoping meetings with the secretary of the common association for Ingleton common and with Lord of the Manor of Clapham common in May 2008 to construct a general picture of the local management and to identify farmers to be individually interviewed at a later stage.
- 2) Semi-structured interviews conducted in June 2008 with a sample of 12 farmers from the three commons. The questionnaire devised for stakeholders n. 1 was used and amended to include questions relevant to this case study.
- 3) A Focus Group conducted in early September 2008 with 10 farmers and other stakeholders in Ingleton Community Hall on common councils. Broad themes and key areas of discussion were written a priori to be used as prompts for conducting the focus group.
- 4) Semi-structured Interview with the past and present Natural England (Leeds office) officers responsible for the SSSI management of the case study commons was conducted in September 2008: later visits were made to the Leeds offices to access edxtesnive file material made avaiabel to the research team by Natural England.

For confidentiality issues, interviews have been coded as follows:

- Farmers having rights of common on CL 134 are referred to as **Ifarmer1**, **Ifarmer2**, **Ifarmer3**, **Ifarmer4** and **Ifarmer5**, with I standing for Ingleton

- Farmers having rights of common on CL 208 are referred to as **Cfarmer1** and **Cfarmer2**, with C standing for Clapham
- Farmers having rights of common on CL272 are referred to as **Sfarmer1** and **Sfarmer2**, with S standing for Scales Moor
- The farmer having rights of common on CL 134 and CL 208 are referred to as **ICfarmer1**, with IC standing for Ingleton and Clapham
- Farmers having rights of common on CL 134, CL 208 and CL 272 are referred to as **ICSfarmer1** and **ICSfarmer2**.

Where there is no need to specify on which common farmers have rights on, the general name “farmer” is used.

STAKEHOLDER 2: LORD OF THE MANOR FOR CLAPHAM SIDE

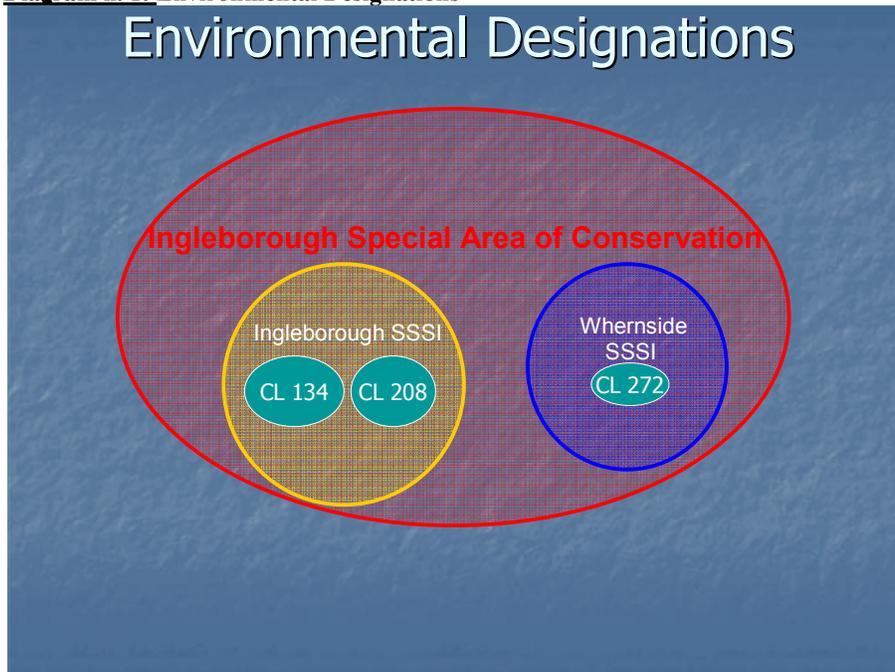
STAKEHOLDER 3: NATURAL ENGLAND OFFICERS RESPONSIBLE FOR INGLETON AREA

2 Environmental Governance

2.1 Environmental Designations

2.2.1 Sites of Special Scientific Interest

Diagram n. 1: Environmental Designations



As Diagram n. 1 shows, the case study area is comprised within the Ingleborough Special Area of Conservation. The SAC's name is Ingleborough Complex, EU Code: UK0012782. The total area is of 5769.29 ha. Among Annex I habitats that are a primary reason for the selection of the site are *juniperus communis* formations on heath and calcareous grassland and limestone pavements identified as a priority feature. Blanket bogs are identified as a priority feature but comprised within Annex I habitat that are a qualifying reason for the selection of the site. Natura 2000 data form for this site emphasise that the "diversity of interest of the limestone pavements, juniper and limestone rock habitats is dependent on there being a range of grazing intensities, from moderate to light to areas with no livestock grazing. Heavy livestock or rabbit grazing has been damaging and the Wildlife Enhancement Scheme and other forms of agrienvironmental agreement are being used, successfully, to promote appropriate management" (JNCC version 2006: 3). Although the 3 commons are affected by this European Environmental Designation, no one of the farmers thought it affecting in any way land's management.

In regards to SSSIs, the number of farmers whose grazing is affected is as follow:

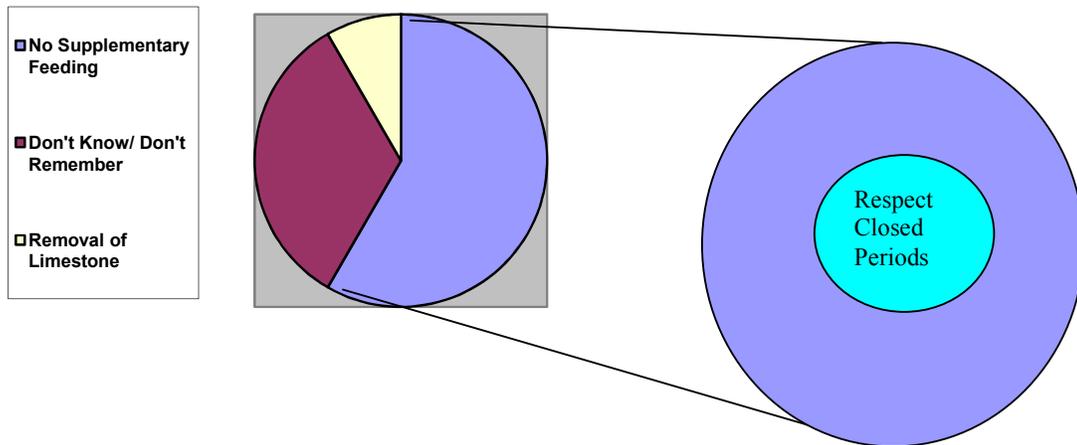
- Ingleborough SSSI: 8 farmers
- Whernside SSSI: 2 farmers
- Ingleborough+Whernside: 2 farmers

The two SSSIs are Ingleborough (5230 ha) and Whernside (2600.1ha), the former comprising both CL208 and CL134, while the latter CL 272. They have been (re)notified under Section 28 of the Wildlife and Countryside Act 1981 as amended. Ingleborough was first notified in 1955 and revised in 1986, while Scales Moor in 1958, then extended in 1969 and 1996 and revised in 1986.

Although Ingleborough consists of a plateau while Scales Moor of a ridge, the two sites present many similarities. Both are karst areas, characterised by limestone pavements mainly produced under glacial conditions (Scales Moor is actually one of the most extensive unbroken, horizontal limestone pavement in Britain). The two SSSIs also support similar vegetation, such as blanket mires, calcareous grassland, dwarf shrub heath and sub-montane acid grassland. According to Natural England's assessments both sites are in unfavourable recovering conditions.

1) Principal restriction imposed by SSSIs' notification according to farmers:

Chart n. 1



As shown in Chart n. 1, only 1 farmer believed that the removal of limestone pavements was the main restriction imposed by SSSIs notification, 4 of the farmers did not know or did not remember, while the majority (7 farmers) believed it to be a restriction against supplementary feeding. Interestingly, 2 of the 7 farmers who claimed supplementary feeding to be the principal restriction also argued that the other principal restriction was the respect of “closed periods”¹, i.e. the months of November and April where the commons should be kept free of stock. However, the closed periods were introduced by the commoners associations as a response to DEFRA’s request to take measures against overgrazing and are not part of the OLD’s lists. Besides, two farmers interviewed admitted to infringe the requirement of the OLDS in practice by supplementary feeding their sheep on the common.

¹ Here I am referring to the closed period clause affecting Ingleborough Common. Scales Moor association regulates the grazing in a similar way. However, there is an important difference concerning their origins : while the “closed periods” clause of Ingleborough Common was born out of a need to reduce grazing pressure as required by DEFRA, the closed periods clause of Scales Moor is a customary rule, present in minutes book and dating back to the end of the 18th century (Interview with SFarmer2: 2008)

Natural England lists of operations likely to damage the special interest (OLDs) of both Whernside and Ingleborough sites are reported below to clarify the difference with the farmers' knowledge of restrictions.

2) Natural England lists of OLDs.

Both Natural England lists of OLDs for the two SSSIs include 28 activities requiring consultation with Natural England before being carried out, the majority of which are anyhow already prohibited under common law. In fact, a right of common is a *profit à prendre* grass (with the mouth of the sheep or cattle), peat, turf and the like from the land of the lord of the manor. Therefore, all the OLDs that prohibit cultivation or the introduction of mowing or the release into the site of materials or animals could be omitted given their illegal status under the definition of common right. Those operations likely to damage the sites that are of major interest for Ingleton common land are the introduction of stock feeding and changes in stock feeding practice (n.3), the killing or removal of wild animal (n.10) and the extraction of minerals, including peat, shingle, sand and gravel, topsoil, subsoil, lime, limestone pavement and spoil (n.20).

Comparing the OLDs lists with farmers' answers, a number of observations can be drawn:

1) Natural England's lists of OLDs are much more exhaustive compares to what the farmers remembered.

2) However, Natural England's lists are very general and standardized risking overlooking the distinctiveness of each site by recording very similar types of OLDs.

3) Peat is included among the minerals that cannot be extracted. Interestingly, this prescription overrules the rights of common of turbary. This is a clear instance of the national appropriation of land use rights in the name of conservation and site protection.

4) Differently, the farmers' answers show that the farmers tend to remember only the OLDs that mostly affect their daily grazing practices on the common, i.e. the restriction against supplementary feeding. This can explain also why two of the farmers identified the closed periods as a restriction imposed by the SSSI notification, thereby confusing a management rule born out of an unofficial agreement between DEFRA and the commoners associations of Ingleton and Clapham with an OLD. More will be said about this point in the data analysis. At present it is sufficient to point out that the farmers do not seem to be concerned with the *source* of restrictive rules. Whether the restriction is one imposed by Natural England or one decided following a more participatory approach is not a fundamental distinction to know; what counts is the existence of the restriction, the way it affects the grazing practice.

5) The majority of the farmers does not breach the restrictions imposed. Of the two farmers who declared to supplementary feed the sheep on the common, one was not aware of it being a restriction and the other argued that it was only in "difficult winters" that it happened.

2.2 Management Agreements

2.2.1 Sheep and Wildlife Enhancement Scheme (sWES) :

There is no agreement on Scales Moor and the only one existing on Clapham and Ingleton commons is the Sheep and Wildlife Enhancement Scheme (sWES). The sWES is an agreement targeted specifically at SSSIs enabled by s. 15 of the Countryside Act 1968. The sWES is a 5 year agreement, in this specific case covering the period from the 1st of November 2003 to the 31st of May 2009. It is an individual agreement that requires capitalised 5 years stock reduction for a specific amount of grazing rights. Together with the description of the payments and the restrictions imposed, the agreements include also a Management Plan, which describes the nature conservation importance of the land and the positive management measures to be undertaken. Only two of the farmers interviewed have a sWES agreement with Natural England, respectively Ifarmer1 and Ifarmer2. In both cases, the agreement was secured through a unilateral approach by Natural England and it will expire in 2009. Under the sWES, both the farmers had to take off the common 100 sheep each.

Together with the sheep reduction clause, the sWES also contains the closed period clause. None of the other farmers interviewed has entered a management agreement for the common land they have rights on.

Farmers Perceptions:

Both Ifarmer1 and Ifarmer2 argued that the SWES has been financially beneficial. Although both the farmers have increased the grazing density in their inbye land, because they are feeding sheep supplementary there, the increment in number is not perceived as problematic. Nevertheless, both the farmers argued that once the agreement expires, if the Environmental Stewardship does not offer interesting economical recompenses, they will consider increasing the number of sheep on the common up to their full entitlement as stated in the Register.

Natural England Data and Perceptions:

According to Natural England data, there are in total 8 sWES agreements on Ingleborough Common covering around 880 rights, while none on Scales Moor. The Management Plan annexed to each sWES well illustrates Natural England's perceptions and objectives. The Management Plan describes the special interest of the land, the management objectives to achieve 'favourable conditions' on the land and states the steps necessary to achieve positive management. The focus is on the importance and preservation of limestone pavement, the limestone grass that occurs among the fragmented limestone pavements to the west of the common and the mosaic of acid grassland and mire habitats that extend in the remaining parts of the common. Among the management objectives figure three main types of habitats: limestone pavement, limestone grassland and blanket bog. Natural England gives precise description of what it is considered 'favourable condition' of the land. The 'favourability' of the land is assessed purely on scientific grounds. For example, the approximate percentages in which plant species should be present are stated as well as the types of species. In relation to blanket bog, it is stated that bog mosses should be abundant and, in line with the SSSIs' OLDs, that no active extraction of peat should happen, thereby implicitly renovating the prohibition to exercise the right of common of turbarry. Finally, under the heading of 'positive management' a series of clauses appear. The most important clause clearly regards grazing regimes, stating that the rights subject to the sWES agreement will not be exercised during the life of the

agreement and cannot be sold or leased and that the closed periods should be respected (from the 5th of November to the 5th of December and from the 1st of March to the 1st of April each year, no grazing should take place). There are also clauses prohibiting foddering on the moor unless severe weather occurs, which can jeopardise animal welfare. Other prohibitions relate to the application of fertilisers, pesticides, drainage works and burning. Neither shooting rights nor the control of pest species are restricted by the agreement.

A several number of observation and questions can be drawn in relation to this section of the management plan of the sWES:

- 1) The management clauses of the sWES duplicate some of the OLDs stated for the SSSI and the enforcement powers are in the hands of Natural England. Interestingly, however, they are termed as “positive management” in the sWES agreement while they operate as restrictive, negative management mechanisms in SSSIs notification by figuring as OLDs.
- 2) Given that rights of common are solely *profits à prendre*, it does not seem necessary to state that foddering on the common is prohibited under the management agreement and especially to pay farmers not to do it. However, an explanation could be that this is done to enable Natural England, as the body responsible for the correct enforcement of the management agreement, to take legal action in case this prohibition is contravened. If, instead, the prohibition would not figure in the management agreement, only the landowner could take action against an infringement of *profits à prendre*. Given that the landowner is more likely to be reluctant, especially in this case study (given its absentee status on CL 272 and CL 134), Natural England’s powers complement the landowner rights, ensuring a correct enforcement of prohibited operations.
- 3) As we have noticed for the OLDs, the clauses of the management plan override the entitlements offered by the rights of common, not only grazing rights but also turbary rights (forbidding peat extraction). If from a legal pluralist point of view, this shows the supremacy of the economic management sphere over the common law of rights of common, from a practical point of view, given the minimal extraction of peat, this clause does not have repercussions on farmers’ agricultural activities.
- 4) More generally, to what extent can the management clauses be considered ‘positive’ measures if they are restrictive in nature?

The Management Plan also discusses compliance monitoring: Natural England and Rural Payment Agency will carry out inspections of the land in accordance with clause 4 of the sWES Conditions 2003 and the farmer, if requested, should assist in gathering the stock. It is important to point out that, although the agreements were introduced to tackle the problem of overgrazing, they did not constitute the only means to achieve sustainable grazing levels as demonstrated by their paucity compared to the other case studies. In fact, Natural England had purchased rights in gross both on Ingleborough and Scales Moor without exercising them in order to reduce grazing pressures on the common (see both the ‘Sustainable Management’ and the ‘Rights of Common’ sections for further details on Natural England’s strategy).

Despite these measures, Natural England has argued that there are still outstanding nature conservation management issues because the preferential grazing of particular sward types has occurred, namely the calcareous and the Agrostis/Fescue grassland communities (Environmental Cross Compliance Vegetation Assessment 2003 and Natural England officers interviewed Sept 2008). In a 2004 briefing of Ingleborough commoners meeting, Natural England’s responsible for the Ingleton area proposed to resolve the problem by pursuing a management agreement in 2005 for both the associations, including the possibility of paying for shepherding in order to keep the stock away from the limestone pavement. Natural England’s view today has remained consistent with that expressed in the 2004 briefing paper since the signing of a unified management agreement (this time the HLS) , which could include a shepherding agreement, is the current aim to achieve sustainable management.

2.2.2 Prospective Higher Level Stewardship:

At the time of conducting the fieldwork, none of the commons of the case study was under an HLS agreement.

According to the DEFRA’s HLS handbook (DEFRA 2005: 10), common land is eligible given the important habitats and wildlife it generally hosts. The HLS is a fairly new agro-environment scheme and is the most demanding elements of the Environmental Stewardship scheme. In fact, the HLS aims at delivering environmental benefits in areas of high priority for their significant environmental interest and it demands more complex types of land management. The two other

elements of the Environmental Stewardship, Entry or Organic Entry Level Stewardship (ELS or OELS) are prerequisites of HLS and tend to be combined with it into a single agreement, which will contain a mixture of ELS or OELS and HLS management options. The HLS management options should attempt to achieve one or more of the five primary objectives of the scheme, namely 1) wildlife conservation, 2) maintenance and enhancement of landscape quality and character, 3) natural resource protection, 4) protection of the historic environment and 5) promotion of public access and understanding of the countryside². These objectives are then broken down into regional requirements. Within each region, Natural England has individuated target areas and themes. The former are priority areas for the delivery of HLS while the latter focus on significant features outside the target areas where HLS will also be important. The case study is comprised within the Yorkshire Dales Target Area, whose specific objectives are the following:

<ul style="list-style-type: none"> • Maintain/Restore/Create important areas of the following habitats: heather moorland, moorland mosaics, limestone pavement, limestone grassland and species rich hay meadows; wetlands; ancient and native woodlands, wood pasture, scrub and mixed woodland (the latter specifically where they are known to support red squirrel)
<ul style="list-style-type: none"> • Provide habitat for the following range-restricted farmland birds: Wet Grassland/ Inbye Birds: Provision of nesting habitats and summer food where three or more the following wet grassland species breed – lapwing, snipe, redshank, curlew, yellow wagtail or (with strong supporting evidence) the holding is known to support an important regional breeding populations for any of these species AND/OR Rare Birds: wherever priority sites for any of the following individual species occur – black grouse or twite
<ul style="list-style-type: none"> • Positive management of visible and below ground archaeological and historic features that are assessed as a priority in the region such as the prehistoric sites, strip lynchet fields
<ul style="list-style-type: none"> • Maintain or restore historic buildings that are assessed as a priority in the region
<ul style="list-style-type: none"> • Implement land management practices and capital works to minimise soil erosion and run off from land at risk of generating diffuse pollution
<ul style="list-style-type: none"> • Create new permissive access where there is identified demand or need in order to link people with places, enhance existing networks and/or provide opportunity to improve people’s understanding of the farmed environment through educational access
<ul style="list-style-type: none"> • Restore traditional field barns and associated boundaries (stone walls) where they are a dominant feature of the landscape
<ul style="list-style-type: none"> • Protect and restore degraded blanket bog and other habitats on deep peat soils to reduce losses of carbon from nationally important carbon stores. <p>http://www.naturalengland.org.uk/planning/grants-funding/es/hls/targeting/docs/Yorkshire_Dales.pdf (Natural England Website, searched December 2008)</p>

Each HLS agreement is bound to last for ten years, with a withdrawal clause at the end of the 5th year. In the specific case of common land, the agreement needs to be

² It could be argued that since the CROW Act 2000, the 5th objective of the HLS is already fulfilled on common land.

negotiated between Natural England and a legal person representing all the farmers with rights of common. As the fieldwork data below show, this is perceived as a problematic requirement by both Natural England and the farmers, given the difficulties of reaching the unanimity to sign the agreement and of assuring everyone's compliance with it (especially that of Clapham commoners). In case the common does not enter into HLS, each individual farmer can enter his non-common land into the agreement, provided that the farmer does not increase the level of stock on common land.

2.2.3 Defra and Natural England's discourses:

Principal issues in relation to HLS

Table n.1

Topic or Aim	Problem	Proposed Solution
Ecological Restoration	Over grazing in localised areas of the Common causing environmental deterioration Some of Clapham farmers not respecting the second closed period (from March to April)	HLS agreement requiring seasonal shifting of sheep to more suitable grazing areas and the respect of close periods -mixed grazing as ideal
Negotiation of HLS	-Farmers' difficulty to reach unanimity to sign the agreement. -While Ingleton common is a Limited Company, Clapham common is internally fragmented and it lacks a cohesive (or statutory) common association	-Need of a single legal body with whom negotiating the agreement. -A Common Council comprising both Ingleton and Clapham commons could fulfil this function.
Implementation of HLS and Liability	Difficulty in sharing the responsibility of implementation and especially issue of Inactive graziers: farmers not represented by the signatory to the agreement could compromise the delivery of the management options by deciding to exercise previously dormant rights	-Common Council's binding rules could assist in preventing "free riders" behaviour. -An internal agreement between rights holders and owners is a contemplated option in the HLS handbook to foster shared responsibility. Nevertheless, in the event disputes arise between

	of common	rights holders and owners, Natural England wishes to remain neutral.
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Farmers' discourses:

***Perceived* potential advantages and potential disadvantages of HLS or “If there is money in it, I may do it” (from transcript of Cfarmer interview: June 2008)**

Table n. 2

Potential Advantages ■

Potential Disadvantages ■

F a r m e r s	Issues	Potential Financial Gain	Environmental Effects: Undergrazing	Unanimity clause=there should be a single HLS application for the whole common, hence farmers agreement is a prerogative	Vagueness of presentation by Natural England due to systemic closure	Short Time Horizon of Farmers
	Ifarmer1					
	I farmer2					
	Ifarmer3					
	Ifarmer4					
	Ifarmer5					
	Cfarmer1					
	Cfarmer2					
	ICfarmer1					
	ICSfarmer1					
	ICSfarmer2					
	Sfarmer1					
	Sfarmer2					

The above tables schematically represent the core views of both farmers and public bodies. If the farmers are primarily assessing the HLS in financial terms, Natural

England officials are preoccupied with the environmental restoration of the common land. This view is hidden behind the structure of the discourse in the HLS handbook, where centrality is assigned to the economic gains and the potential of disputes between farmers is expressively mentioned in the section relating to common land. However, this divisive line of opinions is not a simple mirror of the classic clash between the economic and the environmental fields. In fact, the discourses of the two groups of stakeholders sometimes converge.

For example, what the two groups of stakeholders shared was a similar environmental understanding of the commons. Natural England officials aim at tackling with the HLS not the problem of overgrazing but of localised grazing, where some areas tend to be overgrazed, others undergrazed. Similarly, some of the farmers mentioned that, more than overgrazing, the commons had in the past suffered too intense grazing in localised areas in certain periods of time and almost no grazing in others so a further reduction of stock numbers under the HLS would not be environmentally beneficial since the commons could risk being undergrazed. The timing of stock's movement was therefore seen as problematic for the environment both by the farmers and Natural England, while overgrazing was not an issue for both parties. However, it is important to note that the farmers guessed that the proposed HLS agreement was a response to overgrazing concerns by Natural England. This explains their opposition to the HLS in terms of environmental consequences (column two of table n. 2) and it is itself explained by the last issue in table 2, i.e the perceived vagueness of Natural England's presentation of the agreement to the farmers. Therefore, despite the similarity of opinions, the lack of cultural and communicative cohesiveness within these lands does not permit mutual understanding between the two groups

In relation to the geographical coverage of the HLS, Natural England officials argued in the interview that a single HLS covering both Clapham and Ingleton commons was essential to overcome eventual problems associated with Clapham common's institutional disorganisation. In fact, if Ingleton common does not constitute a problem because of its status as a limited company, following the Lord of the manor's decision to confer to the commoners association the power of attorney, Clapham common does since the existing Commoners Association is neither well functioning, nor statutory. Nevertheless, at least in this specific case, this is only part of the whole

problem since the issue, more than being about the existence of a common without a community and a functioning institution, is about its production as such by history and by public bodies' requirements of a specific type of legality. In fact, the type of management agreements farmers have experienced contributes to explaining their perplexity about the unanimity that the HLS requires. The only type of management agreement on these commons has been the SWES, i.e. an individual agreement negotiated between individual farmers and Natural England.

Moreover, to this historical inexperience of collective forms of agreements it shall be added Natural England's preference to negotiate the HLS with a statutory body, hence its insistence on the creation of a Commons Council covering both sides of Ingleborough. Negotiating the HLS with a statutory Commons Council would also be reassuring for Natural England when dealing with enforcement issues. In fact, a Commons Council could pass a binding rule that could prevent inactive graziers from upsetting the management regime instituted under the HLS as well as fostering shared responsibility. On the contrary, the farmers interviewed gave a more short term understanding of the HLS, not discussing the problems that could arise once the scheme was running.

Another recurring theme of the farmers' discourse about the HLS and the farming more generally was their short time horizon perceived as a hindrance for planning future management with the HLS. Farmers perceived their time horizon as short because of the lack of interest of future generations in continuing the farming practice and because financially farming has become not viable without diversification. The lack of generational solidarity is then to be attributed to the decreasing farm profitability according to the farmers but whatever its reason, it clearly plays an important role in some of the farmers' antagonism towards the possibility of signing a ten-year HLS agreement.

The sketchy tabular representation of peoples' opinions on the HLS necessarily obfuscates singular opinions. One issue missing from the table is about the factual matrix of Scales Moor. Sfarmer2 expressed concerns about the role of the Lord of the manor in the HLS, asking whether his signature was essential in the agreement and his presence necessary for the establishment of a Commons Council. If so, Scales

Moor will be prevented from entering the scheme or establishing a Commons Council given that their Lord of the manor is absent and unknown. Scales Moor could also be penalised given Natural England being both a right holder and the body responsible for distributing payments to the rights holders. The double identity of Natural England as an environmental regulator and as a right holder is discussed further in the following section about rights of common.

3 Impact of the Single Farm Payment

All the farmers receive single farm payments, under the Council Regulation (EC) No 1782/2003. The single farm payment (SFP) was introduced with the Common Agricultural Policy reform of 2003 to further dismantle the productivist logic that had characterised the CAP since the Second World War. In England the decoupling reforms have used the ‘dynamic hybrid’ model, a combination of historical payments and flat rate area payment. Nevertheless, the attempt is to base the SFP solely on flat rate area payments by 2012 (Franks 2007). The flat rate area payments permits to differentiate between three types of land: moorland, seriously disadvantaged outside the moorland line and seriously disadvantaged inside the moorland line. Common land is generally comprised within severely disadvantaged areas. Farmers who claim the SFP are required to adhere to a number of cross-compliance requirements. Given the obligation to comply with cross-compliance requirements and the decoupling ethos which underpins it, the SFP is important in stimulating to farm the land in an environmentally friendly way. The weight it has however on the farming of common land in our case studies differ. In relation to Ingleton, the influence of the SFP was more felt at a cultural level than at a practical agricultural one. Farmers invoked the cross-compliance legal domestic requirement to keep the land in Good Agricultural and Environmental Conditions (GAEC) to explain their perception and attachment towards the common land’s environment. The GAEC was perceived more as a *value* to govern their practices on the common land, than as a required practice itself.

To the interviewer objection that SFP calculations may be unfair on common land given the dilution of payments due to the number of inactive graziers, the farmers on Ingleton very seldom agreed. On the contrary, they pointed out that every person who

hold rights of common should be entitled to receive a payment. This was justified on two grounds: on the one hand, it was argued that retired graziers fall within the category of the inactive graziers and therefore it is unjust to exclude them; on the other it was pointed out that the *ownership* of the right of common meant a guarantee to claim payments. This view clearly stems from the tradition of stinting present in Ingleton. The numerical expression of rights of commons has built an understanding of property rights as commodities and personal entitlements, more than a relational understanding of rights of common, which link their existence to the dominant land, typical of levancy and couchancy commons. As will be reported below, this opinion is also visible in the farmers' unwelcoming of the 2006 clause prohibiting the severance of rights from the land to which they belong.

4 Sustainability – Perceptions and Attitudes

Farmers' perspectives

“If the sheep come off well, then the common is sustainable” (ICFarmer1 2008)

Historically, the ecological sustainability we know of today was inherent in the stinting system. Apparently a fixed numerical limitation, the stint was a rather flexible mechanism, varying its size through time, probably to accommodate the contemporary environmental status of the common responding to different stocking pressures. For example, in 1828 Newby court verdict recorded that a farmer had left 4 sheepgaits ‘old stints’ or 3 sheepgaits ‘new stints’ on Sulber. Not only the changing size of the stint reflects a pragmatic preoccupation with ecological sustainability but also the determination of stints according to the breed of the sheep, which reflected the different grazing impact of the animals. For example in the stinting agreement for scales moor in 1842, 1 cattlegate was equal to 5 black faced Scotch sheep or 4 white faced lowland sheep (Winchester and Straughton 2008:7-8). However, the historians note that in the past ecological sustainability was often a subordinate of social sustainability so that controversies centred on the fair distribution of resources, invoking customs to justify particular use rights of soil, stone and turbarry. Grazing was seldom a contentious issue for the achievement of social sustainability (Winchester and Straughton 2008: 16-17).

When asked what is sustainability today, the farmers offered different explanations. Their principal meter of judgment was the well-being of the sheep. Differently from Natural England's pure scientific lenses, the majority of farmers, instead of concentrating on habitat assessments and biodiversity on the common, argued that the production of a good stock is an essential variable for the definition sustainability. This widely disseminated insight was sometimes coupled with an economic and social vision of the grazing, which permitted a vision towards the future: price and profitability of the stock were perceived as co-determinant elements of sustainability. In fact, static or falling profitability could lead to undergrazing, which in turn could bring not merely an environmental degradation but also a social one, the abandonment of the common and of the farming activities by younger generations. An increase in the price of lamb produced was considered essential to provide the material basis for social continuity of the younger generations.

To a certain extent then the farmers's definition of sustainability reflects the 'sustainable development' concept of the Brutland report (WCED 1987), which championed the integration between economic development and environmental protection and highlighted the need for a certain level of social well-being to be maintain in the future. Yet, though sharing all these elements, the farmers' approach, which employs sheep's health as a sustainability indicator, steps outside the anthropocentric vision of the Brutland Report. If the Brutland report was concerned primarily with the well-being of human future generations, the farmers' answers show the relationality enfolding between human and animal livelihoods, which also implies a strong set of obligations and responsibilities between people, animals and places. Given that in the past the foremost preoccupation was with social equity, is this relational understanding of society and environment part of the farming culture or a recent development, derived from a particular European policy, namely headage payments of the CAP?

DEFRA's monitoring and Natural England's view for the future

Natural England and DEFRA's vision of sustainability is premised on the assumption that the common land is a non-humanized, almost mechanical space that can be

measured and observed scientifically. The emphasis is on the preservation of certain species and habitats and their taxonomy under rigid scientific categories.

This scientific understanding of the common land is also evident in the environmental cross-compliance monitoring reports. Since 1994, Ingleborough common has been monitored in 5 out of 9 summers. The methodology follows that decided by ADAS for Environmentally Sensitive Areas grassland monitoring. Ten monitoring stands were placed on the common in 1994 and stratified by vegetations type (calcareous grassland, dry acid and wet acid grasslands). These stands were described in National Vegetation Classification (NVC) terms. The criteria investigated by the studies were grazing pressure and soil conditions. Apart from a diminution of dry and wet acid grassland's height, there has been no substantial change in NVC community over the monitoring period in any stand given that the abundant species are grazing tolerant, when compared to the NVC standard published tables, the vegetation in the common is poorer, some species are missing. The 2003 report concludes that "it is unlikely that the reduction in nutrient-suited species scores, or the increase in acid suited species scores can be directly attributed to excessively high levels of grazing" (RDS, DEFRA 2003: 12). That most stands compared unfavourably to published VNC tables is explained by historical overgrazing.

This assessment should be complemented by the grazing management assessment carried out in the winter of 1999-2000 by FRCA. It was found that that the total grazing demand on the common (865, 800kg) was more than the sustainable productivity of the vegetation (813,700kg). The annual grazing demand was determined by calculating the number of days spent grazing on the fell by each sheep and then multiplied by the average daily dry matter intake for an ewe³, according to the data given by farmers. The vegetation productivity was calculated using standard figures for the sustainable availability of each vegetation types found in published sources and classification of vegetation type from the NVC, which is in itself discussible since it is an attempt to standardise local diversity. Although this excess was only of 6%, therefore falling within the 10% margin allowed for local variation, the report argues that the grazing pressure could diminish if graziers would adhere to the measures agreed in 1994 with the Grazing Management Team, namely no supplementary feeding and respect of closed periods.

³ Given that the intake depends on the body weight, a separate calculation was made for immature replacement hogs.

Supplementary feeding on the fell has remained a problem even more recently, as a DEFRA 2004 report shows. After receiving an anonymous complaint relating to unsuitable supplementary feeding on Ingleborough, DEFRA investigated into it and found evidence of it on Cote Gill Head and Gaping Gill. It is worth remembering that the existence of supplementary feeding was also acknowledged by the graziers during the semi structured interviews. In summary, the data produced by the various cross-compliance assessments of DEFRA do not present a situation in which the common is deteriorated because of high grazing pressures. The accent is on climatic change and slow historical change, not on contemporary overstocking. DEFRA's assessments were often cited by the farmers during the semi-structured interviews as evidence of their appropriate grazing management and in order to ridicule and oppose Natural England's push for the HLS and its other means to reduce grazing pressure.

Nevertheless, Natural England management views for the future do not stand in sharp contrast with those of the farmers. The site management statements of both the SSSIs recommend ways in which the sites can be conserved and enhanced. Under the Countryside and Rights of Way Act 2000, Natural England is under a duty to notify the owners and occupiers of the SSSIs of its views about the management of the land. In order for blanket bogs to recover, light summer grazing by sheep is recommended since it can reduce the development of invasive vegetation on the blanket bog. Overgrazing should be avoided because it can lead to an increase of purple-moor grass or other grazing tolerant plants whose growth can in turn reduce the extent of important lichens and moss. Similarly, for the maintenance and the full recovery of calcareous grassland, Natural England's management statements point out the importance of active management in the form of light grazing, which, by preventing the expansion of rank grasses, allows for the maintenance of the site's biodiversity. As to the maintenance of karst and limestone pavements, Natural England states the importance of introducing cattle since they tend to avoid grazing the pavement surfaces so that the habitat remains undisturbed.

Similarly to the OLDs, the management statements are of a general and broad nature. However, these general statements were refined and contextualised by Natural England's officers during the semi-structure interview, accounting for the variations

occurring within the sites and focussing on the management regimes preferred for the common land. Although mix grazing with cattle was again mentioned as the preferred solution to maintain intact the surfaces of limestone pavements, the officers argues that it was unrealistic to propose to farmers the introduction of cattle given that the area has been traditionally only grazed by sheep. Interestingly, Natural England's team did not mention the fact that cattle were not an option because many of the farmers did not have registered rights for cattle. Once again, we see how the registers are instruments neither valuable nor functional for any of the common land stakeholders. The most appropriate solution for the full recovery of the SSSIs' units comprised within the commons was found in seasonal rotational grazing in order to allow pastures to re-grow. According to Natural England, at present the stocking levels on Ingleborough and Scales Moor are adequate; it is the *distribution* of stock that could contribute to environmental degradation. The same observation was presented by some farmers in regards to past unsustainability. For the farmers, the common in the past was only partially overgrazed because of the concentration of sheep in determined areas, given the preferential grazing of particular grassland communities. However, Natural England expressed concerns over the monitoring costs and difficulties of rotational grazing, given the inexistence of fences and therefore the need to reintroduce shepherding to assure successful rotational grazing.

5 Property Rights

5.1 Ownership

Clapham Common

The owner of Clapham common is Dr. Farrer, whose family purchased the manor in the mid-19th century from the Morley family. Dr. Farrer was interviewed individually and took part in the focus group.

Ingleton Common

At registration c.1970, the landowners of Ingleborough Common in Ingleton manor were recorded as Sir Roger Anthony Hornby, Edward Holland Martin and Viscount Ednam. However, today the Lord of the manor has given the power of attorney to the Ingleton's commoners association, which therefore has acquired the legal status of a limited company. In regards to meeting the criteria for eligibility for management

agreements such as the HLS, this legal status offers an advantage to the Commoners Association compared to the voluntary nature of the others. In fact, Natural England officers in Leeds have expressly stated that they will be satisfied to negotiate an HLS agreement with the limited company without the need for the creation of a statutory common council given its existing legal status.

When asked whether they would prefer to have an active lord of the manor, the majority of the farmers responded that, given their complicated history, they prefer the current situation. This is because it offers them more freedom of management and because re-introducing a lord of the manor today would signify bringing an extra-local decision-making voice in the management with the risk of upsetting the current local governance devised by the farmers.

Scales Moor

Scales Moor presents us with yet another ownership history. After a stinting agreement of 1810, Scales Moor's common was separated from the manorial lordship of Twistleton and Ellerbeck, although a stinting award of 1842 assigned the same lord of the manor (William Oddie) to Scales Moor (Winchester and Straughton 2008: 5). The manor's common land on Scales Moor appears to have been treated as separate. At Registration, the owners of Scales Moor were recorded as Eric Robinson Hartley and Francis Bertrand Hart Jackson. Today, however, Scales Moor has an absentee lord of the manor. According to the chairman of the Scales Moor stakeholders' association, the title passed hands and attempts to trace the current owners have showed that the title is probably now owned by a charity organisation in Africa. The ownership situation is very dissatisfactory for the Scales Moor farmers, who expressed the fear of not being able to form a common council or to enter the HLS without the consent of the lord of the manor.

5.2 Rights of Common

All the three commons are now stinted commons but it is unknown whether they have been stinted time out of mind or governed by the principle of levancy and couchancy given the ambiguous historical evidence (Winchester and Straughton 2008). Semi-structured interviews with farmers did not shed light on this particular matter, except that conducted with Ifarmer4, a retired grazier, who argued that "up to war time,

everyone was under the impression that if you had a farm in Ingleborough parish, you had rights unlimited by number on Ingleborough”, thereby implying the previous existence of rights *sans nombre*.

In relation to Scales Moor, there are written records showing the time when the common became stinted. One written agreement between the farmers was made in 1810, superseded by another grass-root agreement in 1842. With the first agreements, the farmers attempted to achieve equitable access to the common by deciding to allocate a beastgate for every shilling of Land Tax paid by each commoner. Nevertheless, given that disputes had arising over the number of animals each farmer was entitled to put on the common, the second (more formal) agreement was signed, which based stints proportions on the calculation of the overall carrying capacity of the common (800 sheep, converted in 160 stints). The value of the 160 stints was distinguished not only between types of animals (sheep, cattle and horses) but also between the breed of sheep, thereby taking into consideration the different grazing impact of each animal (Winchester and Straughton 2009: 16).

The system of allocating stints under the 1810 agreement is very interesting because it shows that the relationship between the land of the dominant tenement and the rights of common was not only a peculiarity of the levancy and couchancy system but could be found also in the stinting system since the size of an individual grazing right was dependent on the land tax paid for the dominant tenement. However, differently from levancy and couchancy, stinting offered the possibility also of detaching rights of common from the dominant tenement, since the stints were expressed in numerical terms, hence could be tradable without difficulty. This explains why the history of transfers (selling, buying, renting) is well rooted in the Ingleton case study leading to a constant redistribution of economic benefits among farmers and a perception of rights as marketable assets, as will become evident below.

As for many other upland commons, the principal common rights were rights of pasture, turbary and estovers. Today, rights of turbary and estovers are mere vestiges. As the registers show, only few of the rights holders registered rights of turbary and rights to “cut rushes” in Scales Moor and Clapham, no one in Ingleton. This is confirmed also by the semi-structured interviews with farmers: only two farmers

(Sfarmer1, Cfarmer 1) recalled their fathers cutting peat on the common in the month of June until the 1970s. Rights of pasture are the only exercised rights of common today, with sheep being the single animals grazed, although in the registers grazing rights vary in expression. In both Ingleton and Clapham registers the most common conversion rate is of 4 sheep gaits=1 cattle gait, 6 goose=1 cattle gait and 6 sheep=1 horse. Nevertheless, Ifarmer1, who has different entries in the register, has registered rights in a rather freer manner: sometimes 8 sheep=1 cow, sometimes 5 sheep=1 cow and other times 12 and $\frac{1}{2}$ sheep=1 cow. If in the register of Ingleton, this variegated rate of conversion is exceptional, in the registers of Scales Moor we find many variations being the norm. At registration, Scales Moor's stinholders agreed to simplify the 1842 agreement by concentrating on sheep and agreeing on a fixed conversion rate: 1 stint=1 black-faced sheep or $\frac{4}{5}$ ths of a white faced sheep (Winchester and Straughton 2009:21). Nevertheless, the actual variations of the register do not necessarily reflect such an agreement so that some entries have conversion rates not merely between breed of sheep but also between sheep and cattle so, for example, 1 cattle=5 black faced sheep= 4 white faced sheep. Other entries instead do not differentiate between the breed of sheep so that some rights holders are allowed to put the same amount of white sheep or black faced sheep on the common. When interviewed, farmers only spoke about gaits in general, without distinguishing between types or breeds of animals. Given that 6 out of 13 farmers do not hold a copy of the common register and have never consulted it, it can be plausible to think that they are not aware of the conversion rates registered. If at present this is not problematic when the entry distinguishes between types of animals, given that the only animal grazed is sheep; it can constitute a legal offence to undifferentially graze the same amount of blacked faced sheep or white faced sheep if the stint number varies according to the breed of sheep.

As the conversion rates differ, so do the stocking periods both in the register and in the practice. Some rights holders have registered the amount of sheep they can stock in determined periods, such as the common closed periods restrictions or, at least apparently, more individual ones. So for example in Scales Moor, two graziers registered that they can stock only $\frac{2}{3}$ of the sheep on the moor in winter. According to Sfarmer2, this was a decision of management for the whole common: all the grazing members decreed in the 1960's only to use 75% of their rights for grazing

through the winter. However, since only two registered this restriction, the RPA picked up on them reducing unjustly their SPS payment.

All knew their precise amount of rights, although not every grazier was acquainted with the register. Expressing a discontent with the out of date form of the current registers, they all agreed with the 2006 legislative proposal to have live register, essential to know the current right holders, keeping everyone up to date. The majority has appurtenant rights although more recently rights in gross have been registered. Many transfers of rights have happened on these commons, involving the large majority of the farmers interviewed but also Natural England.

Differently from the other case studies, in fact, in all the three commons of the case study, Natural England bought and rented rights of common. In Scales Moor, Natural England bought 245 rights in gross out of registered gaits, in Clapham 12 out of 274 and in Ingleton it owns 366 out of 4463. Given that the total amount of registered gaits is higher than that exercised because of the existence of inactive graziers, Natural England has both in Ingleton and in Scales Moor an important role as an (inactive) right holders. As already noted in the previous section, the purchase of gaits by Natural England had a clear management aim: it was considered to be a cost effective mechanism in order to reduce grazing pressure. Clearly then, the rights owned by Natural England are not exercised. Whether this was a successful strategy to reduce grazing pressure is hard to tell: on Ingleton, according to some farmers grazing pressure was reduced after natural England's purchase of rights helping heather to slowly regenerate, according to others Natural England had bought rights from farmers that were already inactive graziers, thereby the ecological situation did not changed. As for Scales Moor, according to Sfarmer2 a vacuum in the middle of the common was created causing sheep to move around and not remain within their heafs since Natural England had bought rights from one person grazing his stock in the middle of the moor.

The history of transfers both between the farmers and between the farmers and Natural England has had an important impact on the farmers perception of the anti-severance of rights appurtenant clause contained in the 2006 Act. When asked whether they were in favour of the anti-severance clause, many responded negatively,

arguing that rights should be seen as assets, as tradable commodities. This is explicable by two main (interweaving) factors: on the one hand there is the history of stinting that, by conceptualising rights numerically tended to create a conception of rights as detached from the inbye land, and on the other there is the complementary history of transfers that has occurred on the commons. Nevertheless, the most recent transfers of rights that have involved Natural England have constituted for some farmers a distancing from the severance “ideal”. Sfarmer2, for example, if in theory he embraced the severance cause, after having seen how Natural England’s purchased had upset the management of the common, was against it. However, the clause of the commons act 2006 only concerns rights appurtenant, prohibiting its transfer without land, thereby not affecting these particular transfers since Natural England’s purchased rights held in gross. The majority of the farmers were in favour of severing rights from the land but they argued that they should be traded only locally, not to risking external stakeholders upsetting the local management.

6 Institutions

6.1 Present Commoners Associations

At present, the three Common Land Units of the case study have three distinct commoners associations, namely Scales Moor Stakeholders Association, Clapham Graziers Association and Ingleborough Commoners Association. The eldest association is that of Scales Moor as confirmed by its minute books, which date back to 1884, although the actual association was probably established even earlier. Also Clapham Graziers Association⁴ features a relatively old birth under the name of the Ingleborough Fell Commoners Association, which comprised the commoners in the manors of Clapham and Newby, i.e the manors under the authority of the Ingleborough Estate and the Farrer’s family. The minute books date back to 1927. However not all commoners were members of the Ingleborough Fell Commoners association but the principal stakeholders were the tenants of the Estate (Straughton and Winchester 2008). On the contrary, the Ingleborough Commoners Association, which encompasses the Ingleton end of Ingleborough, is of recent origin, dating back to merely 20 years ago.

⁴ This is the name given to the association by the commoners interviewed.

Historically, a common matter of discussion of both the Ingleborough Fell Commoners and the Scales Moor stakeholders associations was the appointment of shepherds. Today the shepherding tradition is lost because of the costs to employ a shepherd, although there is the possibility of its regeneration with the HLS since some of its funding could be directed towards the employment of a shepherd. Other concerns of these post-manorial governance bodies were maintenance and repair works as well as grazing rules such as deciding the closed periods (Straughton and Winchester 2008: 14-15). In fact, if the closed periods mechanism are of recent origin in the Ingleton end⁵, Scales Moor's graziers have followed the same closed periods as written in their minute books at the end of the 19th century (10th of November to the 10th of December the common has to be kept clear). If the minute books are an important source of knowledge for the current graziers on Scales Moor, it is nevertheless true that the gathering dates, though fixed in the minute books⁶, are now flexible since, given the paucity of the active graziers, they are decided annually by oral agreement.

As for the Ingleborough Commoners Association, according to the former secretary, it was established 20 years ago, when MAFF gave permission and it acquired the status of a Limited Company, since the Lord of the Manor gave the commoners the power of attorney. The reason for the establishment, according to the present secretary, was that rumours had spread that the fell was not properly managed and that the local council could get involved to rectify the situation. Besides, because the gathering dates were set by the Clapham side only, it was decided that it would be more appropriate for those holding rights of common on Ingleton end to have the main input so the Ingleborough commoners association was created. The farmers interviewed are satisfied with the current legal status of the association, given their statutory powers as well as their autonomy from the lord of the manor, who is perceived by some as an outdated figure.

⁵ The closed periods were introduced after a request of DEFRA to diminish the grazing density on the common.

⁶ Gathering dates as recorded in the minute book are: 16th of June for hog clipping and mid-July for the older sheep, 16th of August for dipping and 10th of October for winter dipping (Sfarmer 2 2008).

Although with a different legal status as well as ownership history, Ingleborough commoners association and Clapham graziers decide the management of the common communally (this is probably a consequence of the inexistence of a physical fence between the two CL units). This is done by inviting the representative from the Clapham side to the Ingleborough commoners association AGM to set the gathering dates. Notwithstanding these common interests and practices, according to some farmers, the two commoners associations are very protective of their own identity. Those farmers that have rights of common both in Ingleton and Clapham end do not participate to the meetings of both the associations but their affiliation depends on the place of sheep gathering. If they do it on Ingleton end, then they are affiliated with the Ingleborough commoners Association and viceversa. Although this is a general rule, it is also true that the majority of farmers having rights of common on both the CL units argue that the meetings of the Ingleborough commoners association are more structured and better organised compared to those of Clapham graziers. This is probably a consequence of the legal status of the Ingleborough association and of its autonomy of decision-making from the lord of the manor.

As in the past, today the commoners associations' management is centred on the gathering dates and the repair and restoration works. The AGM serves also as a forum to discuss Natural England or DEFRA correspondence and proposals and to be updated about the lobbying works of the Yorkshire federation. Any issue requiring dialogue with or acceptance of funding from other stakeholders is first discussed between the graziers. Besides, given that the ownership of Scales Moor is a thorny issue, Scales Moor Stakeholder association has been active in resolving the question of the unknown owner; therefore it has employed a solicitor to track down the identity of the new owner.

6.2 The Future: Common Councils

See Pieraccini's document on Ingleton Focus Groups