

BETWEEN:

MRS CHERYL ISOBEL WILLIAMS

Applicant

and

GWYNEDD COUNCIL

Respondent

REASONS FOR THE DECISION OF THE TRIBUNAL

1. This is an application by the Applicant Mrs Cheryl Isobel Williams for a Direction entitling her to a tenancy of Nant Porth Farm Holyhead Road Bangor Gwynedd ("the Holding") following the death of her husband Mr Paul Williams ("the Deceased") who died on the 9th of February 2002.
2. The legislation is to be found in the Agricultural Holdings Act 1986 ("the Act") which has effect with respect to any tenancy of an agricultural holding granted before 12th July 1984. It is undisputed that the tenancy in this case was granted by Arfon Borough Council (predecessor of the Respondent) to the Deceased under an agreement dated the 6th April 1977 - the tenancy commencing from that date.
3. There is no dispute between the parties that the tenancy in question is "a tenancy of an agricultural holding" granted before the 12th July 1984.
4. The Deceased who was the sole tenant of the Holding died leaving the Applicant, his wife, who is a surviving close relative of the Deceased within the meaning of the Act.
5. Under section 36(3) of the Act for the purposes of that section and sections 37 to 48 of the Act the expression "eligible person" means any surviving close relative of the Deceased in whose case the following conditions are satisfied:

- (a) In the 7 years ending with the date of death her only or principal source of livelihood throughout a continuous period of not less than 5 years, or two or more discontinuous periods together amounting to not less than 5 years, derived from her agricultural work on the Holding or on an agricultural unit of which the Holding forms part. and
- (b) She is not the occupier of a commercial unit of agricultural land.

There is no dispute that the Applicant is not the occupier of a commercial unit of agricultural land within the meaning of the Act.

- 6. Section 36(4) provides that in the case of a deceased tenant's wife the reference in the Act to the relative's agricultural work shall be read as a reference to agricultural work carried out by either the wife or the deceased tenant (or both of them).
- 7. There is a time limit under the Act for making an application to the Tribunal for a Direction entitling the Applicant to a tenancy of the Holding.
- 8. There is no dispute that the application to this Tribunal dated the 28th of March 2002 was made within that time limit.
- 9. The Applicant has made a further application under section 41 of the Act which provides that where the condition specified in paragraph (a) of section 36(3) of the Act though not fully satisfied is satisfied to a material extent, an applicant may apply to the Tribunal for a determination that she is to be treated as an eligible person.
- 10. The Applicant has made an application under section 41 within the applicable time limit.
- 11. Sub-section (6) of section 41 provides:-

“Without prejudice to the generality of paragraph (b) of sub-section (1) above, cases where the condition mentioned in that paragraph might be less than fully satisfied include cases where the close relative's agricultural work on the Holding fell short of providing him with his principal source of livelihood because the Holding was too small”.
- 12. The hearing took place at Seiont Manor Hotel Llanrug Caernarfon on the 27th and 28th of November 2003 and on the 17th of December 2003.

13. The Tribunal consisted of Mr W John Owen (Chairman), Mr J C Jones and Mr R Jones-Perrott.
14. There are four live issues in this application:
- (1) Does the Applicant qualify as an "eligible person" under section 36(3)(a) of the Act (this is known as "the Principal Source of Livelihood" test). We refer to it as the "Primary Test".
 - (2) If the Applicant does not qualify as an eligible person under section 36(3)(a) of the Act does she qualify under section 41 of the Act on the grounds that the condition specified in paragraph (a) of section 36(3) "though not fully satisfied, is satisfied to a material extent". We refer to this as the "Secondary Test".
 - (3) If the Tribunal are satisfied that the Applicant is a person to whom section 41 applies and it appears to the Tribunal that in all the circumstances it would be fair and reasonable for the Applicant to be able to apply under section 39 the Tribunal shall determine that she is to be treated as an eligible person for the purposes of sections 36 to 48, but shall otherwise dismiss the application.
 - (4) If the Deceased qualifies under section 36(3)(a) either fully or "to a material extent" is she a suitable person for a Direction to be made in her favour under section 39(2) of the Act.
15. The burden of proof is on the Applicant to satisfy the Tribunal that she is an eligible person within the meaning of the Act and, if so, whether she is a suitable person to become the tenant of the Holding.
16. Representations. The Applicant was represented by Mr Phillip Meade, a Chartered Surveyor, and the Respondent by Miss Marie-Claire Bleasdale of Counsel instructed by Messrs Wilsons Solicitors, Salisbury.
17. In this case the date of death of the Deceased was the 9th February 2002. Accordingly it is the period 9th February 1995 to 9th February 2002 which is the seven year period in question.
18. What does livelihood mean?
- Scammell and Densham ("S & D") 8th Edition page 251.

"Livelihood' is a term wider in its implication than mere income and it covers not merely benefits which are measurable directly in cash terms, such as wages, but also benefits in kind. Therefore, if the Applicant has enjoyed rent and rate free living accommodation, with electricity, oil and other services paid for through the farm account and free, or subsidised, motoring, meals and the like, provided those benefits have been granted to the Applicant by reason of his agricultural work upon the subject holding then they fall to be evaluated and added to the income received by the Applicant in determining the Applicant's principal source of livelihood."

See Littlewood v. Rolfe [1981] 2 All ER 51.

19. Whose Livelihood? - See section 36 (3) (a). It is the Applicant's only or principal source of livelihood (not the Deceased's) that is to be determined.

20. "Principal" means more than 50%.

21. Some points arising:-

Benefits need not be wholly monetary provided they equate with ordinary living expenses.

Some benefits in kind such as sustenance and food will be relevant while others such as the provision of stock, animal feed and fuel must be ruled out.

22. Losses:

Welby v. Caswell - the proper test is not where the sums spent by the Applicant came from but why he had access to them. The court applied a test of "economic dependence". Was the Applicant economically dependent for his livelihood on his work on the Holding? If net profits from the business were insufficient to pay the son's drawings it was irrelevant that they were funded by increased family loans and overdraft facilities provided that they were in payment for his work on the farm. So, if the enterprise is making a loss and monies drawn are derived from savings and capital put into the business by the deceased tenant this is of no consequence as long as payments received by the Applicant are clearly in return for her agricultural work on the Holding.

23. As to the basic figures contained in Miss Bleasdale's schedules Mr Meade in his submissions appears to accept the figures themselves.

We lack full evidence as to how the Deceased spent the income which he derived from his employment other than that on the actual Holding.

24. Eventually Mr Williams became too ill and sadly had to give up his outside work.
25. In assessing what livelihood the Applicant derived from the Deceased's work other than on the Holding we also have to look at how the Deceased funded his agricultural enterprise and to see what impact (if any) his "outside earnings" made on the way in which he funded the business. This task is made very difficult by the way in which the profits or losses of the farming enterprise are to be discovered.
26. The Deceased did not employ an accountant in any of the relevant years.

Mrs Williams put in accounts to the Inland Revenue and these were supplied to the Tribunal. They are not easy to understand.

We are not able to reconcile many of the payments from the cheques drawn on the Deceased's account because of lack of detailed evidence.

Copy bank statements provided for the Deceased run from the 3rd of February 1995 to around the date of his death.

The Deceased's income from his outside employment can be seen coming in regularly starting off at £204.45 per week in 1995 and increasing gradually.

It is, however, difficult to identify the other credits paid in and the payments out and to know whether these are matters of payment for items of household consumption, payments in the nature of the farming business, or otherwise.

It is clear from looking at the bank statements that the Deceased's income from his outside employment and the income and expenditure of the farming business are all lumped together in one account.

In identifying what part of the total expenditure on the livelihood of the household was the Deceased's and what was the Applicant's, the difficulties are formidable.

27. The Tribunal takes the view that the payments by Mr Williams of his outside earnings into the only bank account which he operated are no different in principle from, for example, funding by bank overdrafts or injections of capital into the business from outside sources. In such circumstances the Applicant can be deriving her livelihood from her husband's or her agricultural work etc because without such work she would not have received the benefit of the

monies which Mr Williams drew out of his account for the benefit of the Applicant.

28. The Tribunal having considered carefully Miss Bleasdale's submissions and those of Mr Meade have concluded that the correct approach is to consider what Miss Bleasdale describes as "the Williams's family unit as a whole". The family unit for this purpose was Mr and Mrs Williams.
29. The next step is to look at all the different sources of livelihood for that family unit and to treat half of all those resources as the Applicant's source of livelihood.
30. The Tribunal, concludes that the sources of Mrs Williams's livelihood were:-
 - (a) Half the rental value of the farm house as accommodation as her share of the benefit in kind
 - (b) The Applicant's half share of payments for utilities deducted as expenses in the farming accounts
 - (c) Half of the drawings by cheque from Mr Williams's bank account, and
 - (d) Half the Applicant's earnings as a nurse.
31. When assessing the value of accommodation as "benefit in kind" Miss Bleasdale submits at paragraph 13 that the correct approach is that given by Muir Watt & Moss (14th edition) at pages 444/5:-

"Where the Applicant resides on the Holding and does so by reason of his agricultural work this will nearly always be a very major component in his livelihood. It is submitted that the valuation of this benefit should not be what was the cost to the provider of the accommodation but what was the value of it to the Applicant. In other words what would the Applicant from time to time have had to pay in order to enjoy the benefit of the accommodation? Expert evidence on this is nearly always required."

32. Evidence called by the Applicant:-

The Applicant called Mr Richard Howel Thomas a Chartered Surveyor a director of a local firm of chartered surveyors and estate agents. After quoting his qualifications and relevant CV he describes the accommodation and its location and says that the likely monthly rental value of the property is a figure of £600 per month.

He goes on to say that there is a scarcity of detached bungalows available to let in Bangor and that the Applicant would have had to pay a minimum of £600 per month for a similar bungalow within a 3 mile radius and that rents were rising at the time he gave his evidence.

He says that there was demand for rented accommodation some 5 years ago before Mr Williams died when rental values were lower and he thought that the value 5 years before would have been for a figure of £400 to £450 per month.

Mr Thomas was cross examined on his evidence and accepted that the relevant period is 1995 to 2002.

He gave his estimate of the 1995 figure as being similar to the figure that he had given for 1998. When asked if he had looked into the 1995 figure he said that he had not done, but he could give his professional opinion that there would have been very little change. Despite being pressed on it he stood by his opinion based on a recent inspection and stressed the scarcity of detached bungalows in the locality. When asked about the impact of the fact that the Holding dwelling contains asbestos he said that the structure would probably be safe if there were no holes in it. He said that the market was driven by scarcity and except at the top end of the market the landlord can almost dictate the rent available. For various reasons he was not able to accept the comparables proposed by Mr Barter and stuck to the figure that he had given in his evidence.

33. Evidence called by the Respondent:-

The Respondent called Mr Timothy Bruce Barter, also a Chartered Surveyor, an associate with Carter Jonas.

After setting out his qualifications and experience he went on to describe the property and indicated that his firm was currently seeking tenants for two

properties in Penrhyn Park on the east side of Bangor in an equivalent position to that occupied by the Holding accommodation.

One of them was called Coedlys for which the rent sought was £495 per calendar month and the other called Argoed where the rent sought was £425 per calendar month.

He agreed that the value of rental property in the Bangor area had increased greatly over the 7 years prior to February 2002.

Miss Bleasdale has summarised Mr Thomas's evidence and Mr Barter's evidence very conveniently in the schedules attached to her submissions.

The Tribunal are of the view that following the quotation above from Muir Watt what we have to find is the value of the accommodation to the Applicant.

We do not consider that the council houses referred to in Mr Barter's evidence would be proper comparables in the context of the valuation of the benefit in kind to the Applicant.

We have taken the view that the "council comparables" with or without space heating are not the relevant ones. When assessing the value "to the Applicant" we should be looking at the property as it was, that is with space heating (although provided by the Deceased) and the value of comparable accommodation.

The figures are set out in the last two tables in schedule 5 of Miss Bleasdale's submissions.

The first of these two represents Mr Barter's opinion of open market rental values of comparables and the other one similar figures taken from Mr Thomas's opinion.

34. The conclusions of the Tribunal:-

We do not consider that the fact that if the comparable or comparables had been let in 1977 (the date of the tenancy agreement of the Holding) that would have created a Rent Act protected tenancy is relevant.

We have to look at the hypothetical situation in each of the 7 years ending with the death.

The differences between the two experts are greatest in the earlier years where Mr Barter has quoted actual rents for two properties.

We were impressed by Mr Thomas's wide experience in lettings in the Bangor area over the period in question.

Having inspected the Holding ourselves we take the view that although the house itself is unusual both in its lay-out and construction, the fact that it is set in such a pleasant location surrounded by its land, we are inclined to think that Mr Barter's comparables should be treated with reserve.

Mr Thomas gave confident evidence that through most of the 1990s that house in that location would have commanded a rent of £400 per calendar month rising, as he said, to £600.

We have accordingly come to the conclusion after very careful consideration of Mr Barter's evidence and Mr Thomas's evidence, and particularly in the light of our inspection of the property that it is more likely than not that Mr Thomas's figures represent the value of the property to the Applicant at the relevant times.

We respect Mr Barter's professional position and in common with Miss Bleasdale were surprised that Mr Meade thought fit to criticise him so severely. We do not associate ourselves with such criticism.

35. We now turn to our findings as to the sources of Mrs Williams's livelihood as set out above:-

(a) Half the rental value of the house:-

	<u>100%</u>	<u>50%</u>
1995/1996	£4800	£2400
1996/1997	£4800	£2400
1997/1998	£4800	£2400
1998/1999	£4800	£2400
1999/2000	£5400	£2700
2000/2001	£6000	£3000
2001/2002	£6600	£3300

(b) The Applicant's half share of utilities deducted as expenses in the farming accounts:-

	<u>100%</u>	<u>50%</u>
1995/1996	£1312	£ 656
1996/1997	£2425	£1212
1997/1998	£1491	£ 745
1998/1999	£1403	£ 701
1999/2000	£1311	£ 655
2000/2001	£1053	£ 526
2001/2002	£1586	£ 793

- (c) Half of the drawings by cheque from Mr Williams's bank account. We find that these were as follows:-

	<u>100%</u>	<u>50%</u>
1995/1996	£5905	£2952
1996/1997	£6136	£3068
1997/1998	£5516	£2758
1998/1999	£6463	£3231
1999/2000	£6348	£3174
2000/2001	£2789	£1394
2001/2002	£ 725	£ 362

- (d) Half the Applicant's earnings as a nurse:

	<u>100%</u>	<u>50%</u>
1995/1996	£8305	£4152
1996/1997	£9346	£4673
1997/1998	£7687.51	£3843
1998/1999	£9462	£4731
1999/2000	£10469	£5234
2000/2001	£9367	£4683
2001/2002	£9016	£4508

36. What conclusions are to be drawn from the above?

Mr Meade's submissions have given no assistance to the Tribunal in coming to a conclusion as to the correct approach.

On the other hand Miss Bleasdale's submissions are detailed, cogent and very helpful.

We partially part company with Miss Bleasdale at paragraph 37 of her submissions. She poses the question "Can the cheque payments drawn on the Deceased's bank account be treated as income from his agricultural work?" She answers this question by saying that it is accepted that where drawings are taken from a farm business it is not appropriate to enquire as to the source of those drawings, i.e. whether funded by borrowings, capital injection or paid out of profits. This is the point with which we have dealt earlier when quoting from the decision in *Welby v. Caswell* - the test of "economic dependence". That case dealt with losses. What we have to do is to assess what livelihood the

Applicant derived from the Deceased's work other than on the Holding which involves an examination of how he funded his agricultural enterprise.

As we have previously stated the Deceased's income from his outside employment and the income and expenditure of the farming business are all lumped together in one account.

The Tribunal do not accept that the cheques drawn on the Deceased's bank account are all necessarily categorized as drawings from his employment income and not from the farming business because it is clear that he "injected" his employment income into the bank account which was used for business purposes as well as others.

37. However, because of the lack of more detailed evidence the extraction of which is beyond the scope or capacity of a tribunal of this kind we are left with the conclusion that the only feasible way of treating the drawings from the business account is the way that Miss Bleasdale has submitted.

We are not entirely happy with this but owing to the way in which the application has been presented we feel that we have no alternative.

Accordingly our conclusion is that we must look at each and work out the Applicant's total livelihood which for this purpose consists of one half of each of the following as above:-

- (a) Half the rental value of house
- (b) The Applicant's half share of utilities deducted as expenses in the farming accounts
- (c) Half of the drawings by cheque from Mr Williams's bank account
- (d) Half the Applicant's earnings as a nurse.

The sum of these in each year is the Applicant's total livelihood for the purposes of this application and the Applicant's livelihood derived from agricultural work on the Holding is the sum of (a) plus (b). Accordingly the formula for each year if (e) equals the total is:-

$$\frac{(a) + (b)}{(e)} \times \frac{100}{1}$$

38. In each year we have to work out the percentage of the livelihood derived from the agricultural work.

1995/1996	$\frac{(a) + (b)}{(e)} \times \frac{100}{1}$	$\frac{2400 + 656}{10160} \times \frac{100}{1}$	30.07%
1996/1997	$\frac{(a) + (b)}{(e)} \times \frac{100}{1}$	$\frac{2400 + 1212}{11353} \times \frac{100}{1}$	31.81%
1997/1998	$\frac{(a) + (b)}{(e)} \times \frac{100}{1}$	$\frac{2400 + 745}{9746} \times \frac{100}{1}$	32.26%
1998/1999	$\frac{(a) + (b)}{(e)} \times \frac{100}{1}$	$\frac{2400 + 701}{11063} \times \frac{100}{1}$	28.03%
1999/2000	$\frac{(a) + (b)}{(e)} \times \frac{100}{1}$	$\frac{2700 + 655}{11763} \times \frac{100}{1}$	28.52%
2000/2001	$\frac{(a) + (b)}{(e)} \times \frac{100}{1}$	$\frac{3000 + 526}{9603} \times \frac{100}{1}$	36.71%
2001/2002	$\frac{(a) + (b)}{(e)} \times \frac{100}{1}$	$\frac{3300 + 793}{8963} \times \frac{100}{1}$	45.66%

39. Thus we find that the "qualifying percentage" in each year is as follows:-

1995/1996	30.07%
1996/1997	31.81%
1997/1998	32.26%
1998/1999	28.03%
1999/2000	28.52%
2000/2001	36.71%
2001/2002	45.66%

As Miss Bleasdale submits these results indicate that the Primary Test is not satisfied in any year.

40. The next question to which we have to address ourselves is whether the Secondary Test is satisfied, in other words as the Applicant does not qualify under the Primary Test does she qualify under section 41 of the Act on the grounds that the condition specified in paragraph (a) of section 36 (3) "though not fully satisfied, is satisfied to a material extent".

41. We accept that in coming to a conclusion whether the condition is satisfied to a material extent the word "material" means "substantial in terms of time and important in terms of value".
42. We have come to the conclusion that in each of the years listed above what Miss Bleasdale describes as "the Holding value" is an important satisfaction of the requirement of 51%. In all but two of the years the percentage is over 30% and in the other two years is over 28%.
43. In the case of this Holding we consider it to be of considerable relevance that when he gave his evidence Mr Barter said "Generally speaking a prudent landlord would let the residence separately from the farm land as the Holding is not a viable unit on its own and therefore, the land and buildings can be seen only as a useful additional resource to an existing farm business". When cross examined by Mr Meade Mr Barter said that very few holdings of 41 hectares (101.31 acres) are viable and a viable holding requires at least 120 acres (or 48.56 hectares).
44. We have already referred to sub-section (6) of section 41 of the Act which says that without prejudice to the generality of paragraph (b) of sub-section (1) of that section cases where the condition mentioned in that paragraph might be less than fully satisfied include cases where the close relative's agricultural work on the Holding fell short of providing him with his principal source of livelihood because the Holding was too small.
45. The Tribunal accept the evidence of Mr Barter that the Holding is not a viable unit on its own and conclude that the reason for this is because it is too small.
46. Muir Watt & Moss (14.70) say:
- "In the formulation "important in terms of value" it should be noted that this refers not to whether a relevant contribution is an important contribution towards livelihood generally but whether it is an important satisfaction of the 51% requirement".
47. The Tribunal feel that despite the observation of the Court in *Wilson v. Earl Spencer's Settlement Trustees* that the provision in section 41(6) is so obscure as to be unintelligible, the Applicant can be treated as eligible if the contribution of the agricultural work of the Deceased and the Applicant on the Holding fell short of providing her with her principal source of livelihood because the Holding was, according to the evidence that we heard, too small to be viable.

This finding, in our view, largely explains the fact that even before the Deceased was ill he was not trading at a profit in any of the years in question.

48. Scammell and Densham at page 254 give as their view "A shortfall of as much as 50% from compliance with the full test can, in a proper case, amount to compliance with the full test to "a material extent".
49. Taking into account the size of the Holding (too small to be viable) we consider that the Secondary Test has been satisfied in each of the following years:-

	<u>51%</u>	<u>Actual</u>	<u>Actual %</u>
1995/1996	5181	3056	30.07
1996/1997	5790	3612	31.81
1997/1998	4970	3145	32.26
1998/1999	5642	3101	28.03
1999/2000	5999	3355	28.52
2000/2001	4897	3526	36.71
2001/2002	4571	4093	45.66

50. In each of the years listed above we find that the amount of compliance is sufficient to satisfy the Secondary Test. We find that in each of the years in question the relevant contribution is an important satisfaction of the 51% requirement in terms of value.
51. The next task is to consider whether in all the circumstances it would be fair and reasonable for the Applicant to make a successful application under section 39.
52. We consider that it would be fair and reasonable for the following reasons:-
1. In none of the years in question as listed above is the shortfall as much as 50% from compliance with the full test. In 5 of the 7 years the percentage of compliance exceeds 30% of compliance with the Primary Test.
 2. The figures quoted above show that the agricultural work of the Deceased and the Applicant upon the Holding was an important contribution towards the Applicant's livelihood and because of the fact that the Holding is not a viable one anyway appropriate weight must be given to that fact.
 3. The members of the Tribunal were impressed by what they saw when the Holding was inspected. The pasture appeared to them to be in good

heart and the house well kept. The fencing was in excellent condition and the Tribunal have no grounds for believing that if the application

succeeds the standards which they saw and which impressed them would not be maintained in the future.

4. Evidence was given of the very poor condition of the Holding when first let and the Tribunal find that considerable effort and expense has gone into bringing the Holding into its present good state agriculturally.

53. Accordingly the Tribunal find Mrs Williams the Applicant succeeds in her application under the Secondary Test finding as it does that it would be fair and reasonable for the reasons given above for the Applicant to be able to make the application successfully.

54. We turn then to the issue of suitability.

Criteria for suitability are set out in section 39 of the Act.

In sub-section (8) the Tribunal must have regard to all relevant matters including:-

- (a) The extent to which the Applicant has been trained in or has had practical experience of agriculture.
- (b) The age, physical health and financial standing of the Applicant, and
- (c) The views (if any) stated by the landlord on the suitability of the Applicant. The date for judging suitability is the date of the hearing.

Miss Bleasdale in her submissions has helpfully stated that her client, the Respondent, does not rely upon the Applicant's age or health as matters that make her unsuitable.

55. The Tribunal have, therefore, considered the other criteria as follows:-

- (a) The extent to which Mrs Williams has been trained in or had practical experience of agriculture. She was married to the Deceased from the 24th September 1966 until the Deceased died on the 9th February 2002. When she gave her evidence she gave numerous examples of the contributions that she had made to running the agricultural enterprise. She told us that she kept the books and the accounts and made submissions to the tax office without the assistance of an accountant. She told us that she worked at her husband's side from day to day and

helped with tending animals, lambing, dipping, feet trimming, farrowing pigs. She gave an example of the day after the birth of her daughter Jennifer when she saw a ewe lambing on the front field and her husband had gone to the market. She "pulled the lamb" the day after she came home from hospital. We are quite satisfied that although she has received no formal training in she has over a long period of years (the tenancy of the Holding started in 1977 - 11 years after the marriage - and continued) acquired sufficient practical experience of agriculture. We do not think that the losses which the enterprise sustained in the years in question mean that she will be unable to make a full contribution to the husbandry at the Holding.

- (b) Financial standing. Mrs Williams gave evidence of the amounts of money available to her following her husband's death. Mrs Williams gave evidence that she had the following sums available:-
- (i) In an HSBC Bank account which had a balance of over £17,000 in an HSBC "Treasurer account" which included money which she obtained when animals and machinery were sold following her husband's death.
 - (ii) A mini cash ISA with First Direct with a balance of about £9,391 together with a further sum of just over £11,000 in a First Direct savings account. The money in the ISA, she told us, had come from the proceeds of a life assurance policy on her husband's life.

56. The evidence that she gave was that she had capital of about £37,721 available at the date of the hearing (which is the relevant date for judging her financial standing).

The Tribunal find that the Applicant's financial standing is sufficient to satisfy the criteria in section 39 (8) (b) of the Act (age and physical health not being in issue).

57. We accordingly find that subject to criterion (c) the criteria to which we have to have regard are satisfied as to:-

- (a) Practical experience of agriculture
- (b) Age, physical health and financial standing

and, therefore, we have to turn to criterion (c), namely the views stated by the landlord on her suitability.

58. In considering the views of the landlord on the suitability of the Applicant we note that Scammell and Densham put it in this way :-

“This third set of provisions which the Tribunal has to take into account does not raise any new points but merely acknowledges that the landlord's views have to be taken into account. The landlord's observations are limited to his views on the suitability of the applicant which in turn means that it is merely the landlord's views on all relevant matters including those specified in section 39 (8) (a) and (b) which have to be considered”.

59. The burden of proof is on the Applicant.

60. It is submitted that the Applicant has not shown that she has sufficient ability to farm the land at a level where the landlord would receive a fair rent and she would achieve a reasonable standard of living.

We have to view this submission in the context of the evidence to which we have already referred that was given by Mr Barter to the effect that “the Holding is not a viable unit on its own”.

61. It may, therefore, be inappropriate for the Tribunal to consider how “to turn the business around to make a profit out of the Holding” when the landlord's expert witness has given evidence to the effect that the Holding is not a viable unit on its own.

The recent history of agriculture in this country leads one to believe that over the past few years very few smaller holdings have been profitable and larger ones have been fortunate to break even.

62. The role of the Applicant's son-in-law Stephen Williams has been given careful consideration in the submissions.

The members of the Tribunal are satisfied on the balance of probabilities that Stephen Williams will make a substantial contribution in terms of effort to the running of the Holding.

This does not appear to us to be an obstacle to a finding of suitability on its own.

63. The members of the Tribunal have carefully considered Miss Bleasdale's submissions. All of them are cogent and many of them are persuasive but when we have looked at the criteria set out in section 39 we are not convinced that overall the landlord has persuaded us that the views stated on behalf of the

landlord on the suitability of the Applicant outweigh the findings which we have made on the criteria in section 39 (8) (a) and (b).

64. It is clear that the applicant will not be running the Holding single handed. We accept her evidence that she proposes to run it in partnership with her son-in-law.

We are conscious of the deficiencies in the evidence given by Stephen Williams of the detailed terms under which he occupies other parcels of land.

65. When the Tribunal inspected the Holding they found it to be as one of the members of the Tribunal described it "in tip top condition".
66. We accept that there are deficiencies in the business plan propounded by Mr Roberts, parts of which appear not to be based on the facts.
67. On the basis of the evidence given and on the basis of the Tribunal's inspection of the Holding the Tribunal have no reason to doubt that the condition in which they saw the Holding on the day of the inspection would not continue.

The Tribunal have asked themselves the question "Is Mrs Williams the Applicant going to do what she says she is going to do". Is it a reasonable conclusion that if she is granted a succession tenancy Mrs Williams will be a suitable tenant.

68. One of the matters which weighed largely with the Tribunal is the Applicant's obvious wish to remain at the Holding. She must be aware that in order to achieve this ambition she will have to live up to the financial requirements, the management requirements and the husbandry requirements which the landlord will very properly be scrutinising in the future.
69. The Tribunal have found the case on suitability to be finely balanced but at the end of the day they unanimously find that Mrs Williams has discharged the burden of proof which lies upon her in that the Tribunal have determined that in their opinion on the balance of probability she is a suitable person to become the tenant of the Holding.
70. Accordingly the Tribunal unanimously find that the Applicant Mrs Williams is entitled to a tenancy of the Holding "as from the relevant time".

The tenancy commenced on the 6th of April 1977 and the year of the tenancy in which the Deceased died was the year ending on the 5th of April 2002.

71. The Tribunal's Direction is being given after the beginning period of three months ending with the 5th of April 2002 and accordingly section 46 (2) (b) of the Act applies. The Tribunal have decided to specify as the relevant time for the purposes of this application the 6th day of November 2004.

Dated the 20th day of September 2004

Chairman