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Case No: CO/3298/2007

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

17th May 2007

B e f o r e :

Mr. JUSTICE SULLIVAN

Between:

THE QUEEN
on the application of
WILLIAM ROBERT DAVIES **Claimant**

- and -

(1) AGRICULTURAL LAND TRIBUNAL
(2) ROBERT WINSTON PHILIPPS
(3) ISOBEL SHIRLEY PHILIPPS **Defendants**

MR M RODGER QC (instructed by Burges Salmon) appeared on behalf of the CLAIMANT
MR P HARRIS (instructed by Morgan Cole) appeared on behalf of the FIRST DEFENDANT

The SECOND and THIRD DEFENDANTS did not attend and were not represented

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MR JUSTICE SULLIVAN:

Introduction

1. This is an application under section 6(2) of the Agriculture (Miscellaneous Provisions) Act 1954 for an order requiring the first defendant, the Tribunal, to refer certain questions of law to the High Court in respect of the Tribunal's decision on 7th February 2007 to grant a certificate of bad husbandry.

2. The certificate was granted in respect of an agricultural holding known as Land at New Inn, Amroth, Pembrokeshire, of which the applicant in these proceedings is the tenant and the second and third defendants are the landlords. It is common ground between the parties that the question for the court at this stage is whether it is satisfied that there is a fairly arguable point of law that would justify ordering the Tribunal to refer it to the High Court for decision: see *William Smith (Wakefield) Limited v Parisride Limited* [2005] EGLR 22, [2005] EWHC 462 Admin, per Leveson J (as he then was) at paragraph 24.

The Statutory Framework

3. The Agricultural Holdings Act 1986 ("the 1986 Act") gives tenants of agricultural holdings a high degree of security. A notice to quit will not have effect if the tenant has served a counter

notice within time unless an Agricultural Land Tribunal consents. The circumstances in which the Tribunal may give its consent are limited: see sections 26(1) and 27 of the 1986 Act. There are a number of exceptions to that general rule which are contained in section 26(2) and Schedule 3 to the 1986 Act. Among those exceptions is Class C in Schedule 3 which applies where:

> "Not more than six months before the giving of the notice to quit, the Tribunal granted a certificate under paragraph 9 of Part II of this Schedule that the tenant of the holding was not fulfilling his responsibilities to farm in accordance with the rules of good husbandry, and that fact is stated in the notice".

Paragraph 9 in Part II of the Schedule enables the landlord of an agricultural holding to apply:

> " . . . for a certificate that the tenant is not fulfilling his responsibilities to farm in accordance with the rules of good husbandry; and the Tribunal, if satisfied that the tenant is not fulfilling his said responsibilities, shall grant such a certificate."

4. Good husbandry is defined in section 11 of the Agriculture Act 1947 (see section 96(3) of the 1986 Act) as follows:

> "(1) For the purposes of this Act, the occupier of an agricultural unit shall be deemed to fulfil his responsibilities to farm it in accordance with the rules of good husbandry in so far as the extent to which and the manner in which the unit is being farmed (as respects both the kind of operations carried out and the way in which they are carried out) is such that, having regard to the character and situation of the unit, the standard of management thereof by the owner and other relevant circumstances, the occupier is maintaining a reasonable standard of efficient production, as respects both the kind of produce and the quality and quantity thereof, while keeping the unit in a condition to enable such a standard to be maintained in the future.
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> (2) In determining whether the manner in which a unit is being farmed is such as aforesaid, regard should be had, but without prejudice to the generality of the provisions of the last foregoing subsection, to the extent to which –
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> (a) permanent pasture is being properly mown or grazed and maintained in a good state of cultivation and fertility and in good condition;
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> (b) the manner in which arable land is being cropped is such as to maintain that land clean and in a good state of cultivation and fertility and in good condition;
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> (c) the unit is properly stocked where the system of farming practised requires the keeping of livestock, and an efficient standard of management of livestock is maintained where livestock are kept and of breeding where the breeding of livestock is carried out;
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> (d) the necessary steps are being taken to secure and maintain crops and livestock free from disease and from infestation by insects and other pests;
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> (e) the necessary steps are being taken for the protection and preservation of crops harvested or lifted, or in course of being harvested or lifted;

(f) the necessary work of maintenance or repair is being carried out."

5. It is common ground between the parties that when considering whether an occupier of an agricultural unit has been farming it in accordance with the rules of good husbandry, the Agricultural Land Tribunal must have regard to the whole of the unit. A certificate will not necessarily be justified merely because there has been poor husbandry on a part only of the holding. Equally, it is not necessary for the landlord to demonstrate that the rules of good husbandry have been breached over every part of the holding. The test is a pragmatic one. To satisfy section 11(1), the breaches must "significantly affect the holding so that it can broadly be said that a reasonable standard of efficient production has not been maintained nor the unit kept in such a condition to maintain such a standard in the future." See *Ross v Donaldson* [1983] SLT 26 at page 27, a decision of the Scottish Land Board. See also *Maggs v Worsley*, a decision of the south-western area Agricultural Land Tribunal dated 11th May 1982.

The Tribunal's Decision

6. The hearing took place over four days. The morning of the first day was occupied by a site visit to the holding by the Tribunal. Having dealt with certain formalities and having set out the statutory background (including the definition of good husbandry in section 11 of the 1947 Act, see above), the Tribunal briefly described the holding. The holding comprises 37.87 acres of which just over 26 acres was grass ley, a little under 10 acres was originally let as rough grazing and the remainder, just under 2 acres, was woodland. There are no dwellings or other buildings on the holding.

7. The Tribunal then summarised the evidence of the landlord (the first defendant) (paragraph 7) and his expert witness Mr Owen (paragraph 8), the tenant (the applicant in these proceedings) (paragraph 9), a witness called by the tenant (paragraph 10), and the tenant's expert witness, Mr Sanders (paragraph 11).

8. Although there was a great deal of detailed evidence, including many photographs which were before the Tribunal, the areas of difference, at least as between Mr Owen and Mr Sanders, were in reality very limited. Mr Owen acknowledged that with the exception of one field (OS 2062), the fields in grass ley were in a reasonable standard of efficient production. In respect of field 2062, he said that:

> "He saw dock, creeping thistle and other weeds. In places willow, bramble and bracken had encroached into the field."

In respect of the fields that were let as rough pasture, he said that they:

> " . . . had become overgrown with large areas of bramble, gorse, willow and ash. He saw no evidence of management of these fields on his inspection, just abandonment. The hedge between fields 0052 and 7638 had not been cut, trimmed nor laid for a number of years.
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> On his inspection of field 0062 the ground was very overgrown. He noted partially buried tyres, plastic, rusting metal and parts of machinery, together with burnt remains of plastic as shown in paragraphs 51-76. Part of the holding had been used to bury waste. Such practice constituted extremely bad husbandry in his opinion.

9. Mr Sanders recognised that "the application was based on the condition of the rough pasture fields", and said:

> "These fields were not being actively farmed . . . Returns indicated that the land use on these fields on the 31st December 1991 was barley stubble and in the

absence of grazing livestock the fields had not been actively farmed since the early 1990's. The holding was subject to Tir Cynnal management enquiries and fields 0052, 0062 and 8657 were designated as 'habitat areas' for the purposes of the Scheme. Out of a total holding of 37.87 acres the areas which were not being actively farmed, enclosures 8657, 0052, 0062 and 2456 amounted to 11.57 acres and represented 31% of the total acreage."

Enclosures 8657 and 2456 were the 1.94 acres of woodland and scrub woodland.

10. Among the matters in dispute between the landlord and the tenant was whether the 'rough grazing' part of the holding was fairly described as merely wet or as very wet. There was also a dispute as to the extent of the tipping on field 0062 and the extent to which evidence of that tipping remained.

11. In paragraph 12 of its decision, the Tribunal referred to the final submissions by the representatives of the parties, saying that during the course of those submissions "the evidence was reconsidered" and the Tribunal was referred to various cases. In paragraph 13 the Tribunal said:

> "The application before the Tribunal is that the respondent is not fulfilling his responsibilities to farm in accordance with the rules of good husbandry. In answer to the question 'when the state of husbandry on the whole is to be assessed', the Tribunal has taken into account what was said in the decision in Hale and Stone and followed in Goldsmid and Hicks 'that the state of husbandry is a 'state of affairs' existing at the time, not merely a matter of 'instant' physical condition at the time of the hearing'."

12. The Tribunal's conclusions are set out in paragraph 14 and are as follows:

> "On the inspection of the site the Tribunal found:
>
> (1) OS No.2062 – evidence of long time poor management shown by the low quality work on the ditches and hedges and the long time dock problem. This will affect the production for several years. The hedges were allowed to become overgrown. The Tribunal find that the respondent has not maintained a reasonable standard of efficient production as respects both the kind of produce or its quality in this field.
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> (2) OS 0052 and 0062 and 8657 – part of the Tir Cynnal Scheme. This Scheme requires active management but the Tribunal found that the fields had been abandoned.
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> (3) Enclosure 0052 had been used for dumping rubbish, scrap metal, tyres, plastic and silage bales some of which had been brought onto the holding by the respondent from his other properties. The photographs submitted to the Tribunal also showed corrugated asbestos sheeting, organic material, timber, metal oil cans, glass and alkathene piping. The Tribunal find that these activities constitute extremely bad husbandry.
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> (4) In general the Tribunal found on inspection that other than on the road sides there was no evidence that the hedges on significant parts of the holding had been maintained. In particular, the large butts of plants and aprons indicated that no trimming had been carried out for some years. There was low quality work on the ditches. The gates and gateposts had been removed or become dilapidated. Part of the sward had a severe dock and weed infestation problem.

(5) The Tribunal found that the recent work carried out by the respondent was a belated effort to catch up. The Tribunal found the evidence of the respondent unreliable in his contention that there had been annual topping because much of the growth was of a substantial proportion.

(6) The Tribunal was impressed by the evidence of the expert for the applicant, Mr Anthony Owen. His evidence was corroborated by what the Tribunal found on their inspection.

15. The Tribunal having considered the application and other documents submitted unanimously find that the respondent is not fulfilling his responsibilities to farm the holding in accordance with the rules of good husbandry and grant a certificate accordingly."

Submissions and Conclusions

13. On behalf of the applicant, Mr Rodger QC submitted that the Tribunal should be required to state a case posing the following questions:

> "(1) Whether the Tribunal erred in law in failing to consider the 'unit' (ie, the whole of the agricultural holding which was the subject of the application) as a whole and by limiting its assessment of the extent to which the respondent was farming in accordance with the rules of good husbandry to those parts of the holding about which complaint was made.
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> (2) Whether the Tribunal made adequate findings of fact to support its decision, and in particular whether the Tribunal made sufficient findings to enable it to apply the mandatory statutory criteria in section 11(2) of the Agriculture Act 1947.
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> (3) Whether the Tribunal failed to give adequate reasons for its decision, which dealt with the main submissions made on the applicant's behalf and in particular –
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> (a) his submission that section 11(1) of the 1947 Act required that consideration be given to the 'unit' as a whole, including in particular those areas which were being properly farmed; and
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> (b) his submission that any inadequacy in the standard of his management of the holding was not material to the question of bad husbandry unless, as a result of that standard of management, he was failing to maintain a reasonable standard of efficient production."

14. Mr Rodger submitted that in the Tribunal's reasons in paragraph 14 of its decision it simply focussed on those parts of the holding where there was either poor or no husbandry, and the Tribunal had lost sight of the fact that over the majority of the holding, the grass ley, the landlord's own expert accepted that there was a reasonable standard of efficient production. The Tribunal had failed to stand back and ask itself the question: having regard to those areas was there, despite the failings in some parts of the holding, a reasonable standard of efficient production over the unit as a whole?

15. I accept the submission of Mr Harris on behalf of the first defendant that the applicant's principal complaint is not realistic. The Tribunal described the entirety of the holding. It inspected the entirety of the holding over the course of a whole morning. It summarised the parties' evidence in respect of the entirety of the holding. The decision was not addressed to the world in general, it was addressed to the applicant and the first defendant, the agricultural tenant and his landlord respectively, who were both well aware of what the real issues were. There was no dispute at the

hearing that, with the exception of 0S 2062, a reasonable standard of economic production was being maintained by the applicant on those parts of the holding which were being used for grass ley. Having noted that whilst summarising the parties' evidence, and in particular the evidence of the respective expert witnesses, there was no need for the Tribunal to repeat it in paragraph 14 of its decision. Understandably, the Tribunal focussed in paragraph 14 on those aspects of the evidence where there had been a dispute or disputes between the parties.

16. In respect of OS No.2062, it was a grass ley field. Mr Sanders acknowledged that it needed reseeding. The Tribunal agreed with Mr Owen that there was evidence of long term poor management which would affect production for several years. It concluded in respect of that field, where there was some area of doubt as to whether Mr Sanders did or did not accept that there was a reasonable standard of efficient production, that the applicant had not maintained a reasonable standard of efficient production in respect of that field.

17. Turning to the rough pasture, Mr Sanders had not suggested that it was so wet that it could not be used at all as rough pasture. It was, however, argued by him that although the rough pasture had not been actively farmed for some years, it had been set aside for nature management under the Tir Cynnal Scheme. The Tribunal rejected that contention and concluded that a conservation scheme would require active management, but what the Tribunal had seen was not active management but simply abandonment. In summary, it accepted Mr Owen's evidence that the rough grazing fields had been abandoned. It followed that in respect of those fields there was no production, much less efficient production.

18. There had been a dispute between the claimant and the first defendant as to the extent and impact of the dumping in enclosure 0062. The Committee resolved that dispute in favour of the first defendant, concluding that in respect of that field the applicant's dumping activities constituted extremely bad husbandry.

19. Pausing there, on these factual conclusions on the part of the Tribunal, which are not and could not be challenged, there was either very poor, poor or no husbandry over approximately one third of the holding. Complaint is made that the Tribunal did not resolve the dispute as to the extent of wetness on the rough pasture, but that dispute was of no consequence since this was not a case where some form of production was being attempted. There was no production whatsoever because the rough pasture had been abandoned.

20. In respect of the one third of the holding over which there was very poor, poor or no husbandry, there was either no production at all (because the fields had been abandoned) or no efficient production (OS 2062). Mr Rodger complained at one stage that the Tribunal had not explained how the lack of good husbandry had affected production, but the Tribunal does not have to state the obvious. If a field has been abandoned it is plain that there is no production. Similarly, it was unnecessary for the Tribunal to explain how the presence of timber, metal oil cans, glass and alkathene piping, asbestos sheeting et al would affect efficient production in that part of the holding where dumping had taken place.

21. In these circumstances, although the question is very much one of fact and degree for the Tribunal, using its own not inconsiderable expertise, it would have been surprising if, applying the test in **Ross**, the Tribunal had not concluded that although only part of the holding was so affected, the breaches did significantly affect the holding so that there was not a reasonable standard of efficient production if one looked at the unit as a whole. But the matter does not end there, because the Tribunal went on to consider the general condition of the holding, including the remaining two thirds where the experts were agreed that there was reasonably efficient production. It is clear from paragraphs 14(4) to 14(6) that the Tribunal concluded that even in respect of the remaining two thirds of the holding, there had been no significant maintenance and, for example, part of the sward had a severe dock and weed infestation problem. While there had been an attempt to carry out works recently, that had been a belated attempt to catch up on years of neglect. The Tribunal was entitled to have regard to these matters: see section 11(2)(f).

22. Mr Rodger submitted that such failings would not necessarily affect efficient production and that the matters listed in subsection (2) are plainly subordinate to the overarching test in subsection (1), namely "Was a reasonable standard of efficient production being maintained by the occupier". I accept that the overarching test is to be found in subsection (1). However, Tribunal decisions of this kind must be read in a common sense and not a legalistic or a pedantic way. In effect, the Tribunal was saying that on roughly one third of the holding there was either no or no efficient production and on the remaining two thirds where there was efficient production, the overall standard of husbandry was not particularly impressive. This may be contrasted, for example, with the decision in **Ross** where there were two farms farmed by brothers, one of them being impeccably farmed and the other, by the older brother, where there was, in parts, poor husbandry.

23. When one considers whether or not the reasoning of the Tribunal is adequate, it is important to bear in mind that the Tribunal is not addressing legal issues in a vacuum. It is responding to the arguments which have been advanced before it. In the present case, if one looks at the manner in which the parties were putting their submissions, it is plain that there was no issue between the parties that the Tribunal had to look at the unit as a whole. This was not a case where the advocate on behalf of the tenant was submitting that the unit as a whole should be considered and the advocate on behalf of the landlord was submitting that it was sufficient if one looked at one part of the holding and found that on that part of the holding there was poor husbandry. Thus, we find in an attendance note summarising the parties' final submissions the following submission on behalf of the tenant:

> "(4) One had to look at the unit, the whole of the holding. It was not good enough to look at bite size pieces. Mr Leach [the tenant's advocate] then summarised the case of **Maggs and Worsley**, where no certificate was granted. There were two fields involved and there was no complaint about field 65 but only about field 62. He took the Tribunal to page 3 and pointed out that it was up to the tenant merely to maintain the status quo and the principal reason for not granting a certificate was that one had to consider the unit in its entirety.
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> (5) Applying this to the facts of this case, there were complaints about an area of all altogether about 12.188 acres or just over 32% of the holding. There were no complaints about the permanent pasture. On one level on its own that was sufficient to dismiss the landlord's application even if the Tribunal was satisfied of the breaches made out."

The submission on behalf of the landlord was:

> "(54) [Mr Batstone] said that within his skeleton he addressed the basic facts and the provisions of Case C from paragraphs 4 onwards. [Mr Batstone] said that section 11 was what the Tribunal most closely had to have regard to. [Mr Batstone] said he would address first the issue of looking at the unit as a whole. In considering **Maggs v Worsley**, [Mr Batstone] said that you had to look at the unit in its entirety when considering aspects of husbandry. In **Maggs**, there were two fields, one of 8.4 acres and one of 1.76 acres. There was no complaint about the 8.4 acres, only the 1.76. On the figures, only about 17% of the holding was being complained about.
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> (55) [He] said there was a difference of emphasis. As the words made plain, it was a question of looking at the extent to which the unit was being farmed. It was not hard to see that when only 17% was complained about that the test was not satisfied. The statute does not say that if you have got a substantial area about which complaint is not made you cannot have a certificate. [He] said it must be right that you can have a certificate if there is bad farming on part but not the totality."

24. Thus, it was being said that the area which was either not being farmed at all or on which there was poor husbandry was so significant or substantial in respect of this holding that a certificate should be granted. In essence, the Tribunal agreed with that submission made on behalf of the landlord.

25. That disposes of the applicant's principal complaint in respect of the Tribunal's decision. A number of subsidiary issues were raised. In my judgment, none of them would warrant ordering the Tribunal to state a case. For example, it was said in respect of question 2, whether the Tribunal had made adequate findings of fact to support its decision, that the Tribunal had failed to resolve the issue relating to the extent to which the rough grazing was wet, and the extent to which that impeded efficient production on the rough grazing. That issue might have been relevant if some attempt to farm the rough grazing was being made, but since the Tribunal accepted that the rough grazing had effectively been abandoned, whether it was merely wet or whether it was very wet was beside the point. Mr Sanders, the tenant's expert witness, was not saying that the 'rough grazing' fields could not be used at all for any purpose.

26. Considering the adequacy of the Tribunal's reasons generally, Mr Rodger submitted that the applicant was entitled to know why a certificate had been granted. I entirely agree, but I am satisfied that the applicant knows perfectly well why a certificate was granted. In summary, and using my terminology, it was because the Tribunal concluded that he had allowed about a third of the holding to go to pot and although reasonable standards of efficient production were being maintained on the remainder of the holding, the standards there were no more than that. Overall, there was no proper maintenance. In other words, this was not a case where a tenant might be able to make up for very obvious deficiencies in the husbandry of one part of the holding by a good standard of efficient production on the remainder of the holding.

27. It can be said in summary, and reading the Tribunal's decision as a whole, that whereas two thirds of the holding just passed muster, one third of the holding very definitely did not. In these circumstances, the applicant knows full well why the Tribunal granted the certificate. For these reasons, the application to order the Tribunal to state a case must be refused.

28. MR HARRIS: My Lord, I have for you a schedule of costs in summary form of the first defendant, and I will make one remark about that. I do have a spare copy if you want me to hand it up.

29. MR JUSTICE SULLIVAN: I have it.

30. MR HARRIS: That is for today's hearing. It comes to a total of £11,863.92. Just before addressing that very briefly, can I ask whether the court also has had a schedule on behalf of the second and third respondents to today's application? I do not propose to address it at all, it is just that Mr Batstone asked that I ensure the court did have a copy.

31. MR JUSTICE SULLIVAN: I have it, but –

32. MR HARRIS: I have nothing to say about it, my Lord.

33. MR JUSTICE SULLIVAN: If I could ask you to tell Mr Batstone at least that I did consider it. I would say on the record though that the normal practice in challenges of this kind – in so far as there is a normal practice because there are not that many challenges against Agricultural Land Tribunals – but in statutory appeals of this kind one would, where the decision-maker was defending the decision, unless there was some very separate and distinct interest one would not normally order two sets of costs. That would be the normal position. I will hear submissions about it from Mr Rodger. I do not know if there is a different position in the case of Agricultural Land Tribunals. I would be surprised if there was, and I cannot see any reason why there should be. So at the moment I am not minded to make any further order as to costs apart from the Tribunal's costs.

34. MR HARRIS: My Lord, I entirely agree. I have nothing whatsoever to say about Mr Batstone's costs other than to ensure the court has a copy. I invite you to award my costs on behalf of the first defendant and being the sole set of costs relevant for today, I do invite you to summarily assess them in the full amount set out, namely £11,863.92. If invited to do so I will address and reply to any specific points that I apprehend my learned friend may take, but just in support of that summary application can I just remark upon one of your Lordship's final comments, leaving aside that obviously the application has been roundly defeated. Your Lordship's comment at the end was, as I noted it down, "The applicant knows full well why this decision was granted". I say that because you will have seen from my skeleton argument that we characterise as disappointing the bringing of that part of the challenge in the first place, by express reference to the passages in the recent Court of Appeal case, **English v Emery**. I respectfully do say we should not have been here today because it has been clear right from the beginning that this was an application doomed to failure. It was unarguable. I do not propose to deal with any other points in detail except by reply.

35. MR JUSTICE SULLIVAN: Yes, I know the best thing to do: see if there is any objection in principle and then the detail.

36. MR RODGER: My Lord, regarding my learned friend's last comments about whether this application has been arguable or unarguable, I do not –

37. MR JUSTICE SULLIVAN: Let us not get into that.

38. MR RODGER: I am happy to leave it at that. I do not object to the principle of my learned friend having his costs. My Lord, can I, for the purposes of summary assessment, ask your Lordship whether your Lordship has the claimant's bill of costs?

39. MR JUSTICE SULLIVAN: I do.

40. MR RODGER: My Lord, the only matter on which I wish to take some issue, and I do it without a huge amount of enthusiasm because of the nature of it – enthusiasm on my client's part, yes. My Lord, my learned friend's clerk saw his instructing solicitor coming, to put it in bold terms. My learned friend's brief fee for preparing written submissions, advising on the telephone and attending the hearing is £9,000. My Lord, my brief fee for exactly the same work was £6,850. In the circumstances, my learned friend's no doubt eminence in matters in this court does not justify quite such a divergence and I would invite your Lordship to introduce an element of equality between my learned friend's brief fee on the matter and my own. Doing that would reduce to £6,850 from £9,000, and, my Lord, I would invite you to assess the costs summarily at £9,500.

41. MR JUSTICE SULLIVAN: Sorry, that is knocking off from the £11,800 odd?

42. MR RODGER: Yes, it is knocking off and rounding up a little bit. Just for the purposes of comparison, Mr Batstone's combined costs for advising, his skeleton argument and attendance, had he attended, were going to be £5,250.

43. MR JUSTICE SULLIVAN: Yes. Would you just help me on this, Mr Rodger. You heard what I said about two lots of costs. I have to say we do not get too many from the Agricultural Land Tribunal, but the normal practice would be on some sort of statutory appeal or certainly a JR of a Tribunal's decision that we would award one lot of costs unless there were particular circumstances, for example, the successful party before the Tribunal was running a separate and different argument to the Tribunal or there was some issue about some criticism of the other defendant saying they misled the Tribunal and they had effectively to turn up to say they did not.

44. MR RODGER: My Lord, I am aware in recent years that this is only about the third application of this sort. I participated in one other on paper and in that the landlord who put in written submissions did not ask for his costs. I am aware of the practice which your Lordship refers to

from Rent Assessment Committees which I used to deal with, and when the tenant turned up represented or unrepresented he generally did not get his costs if the Tribunal was represented. In my submission it would be exactly in the sense that your Lordship has indicated. I cannot think of any reason why there should be a different approach.

45. MR JUSTICE SULLIVAN: You are not aware of any authority to the contrary? That is all I want to know.

46. MR RODGER: No.

47. MR JUSTICE SULLIVAN: Thank you very much. Do you want to say anything? I do not want to embarrass you, Mr Harris, about the size of your brief fee.

48. MR HARRIS: Fortunately, in this case I find the task relatively straightforward. That is for two reasons, my Lord. If you have regard to my learned friend's summary schedule of costs it would be wholly otiose, save for the fact that the bottom line figure for what is truly the "exact same work" is £21,115, which nearly doubles the amount claimed for that work by the first defendant. So the first point is, frankly, it is a little rich to ask for any discount at all.

49. Secondly, and perhaps even more germanely, it is not fair to characterise the respective workloads on each side as being "exactly the same". What one can see quite clearly from the first defendant's costs schedule is that they have relied very heavily, almost to the exclusion of my instructing solicitor whose fees are negligible, whereas in contrast, and unsurprisingly bearing in mind that Mr Leach who appeared as advocate below instructed my learned friend, his costs are significantly higher. When one puts the two together I would invite you again to summarily assess in the entire amount, £11,800 odd. Unless I can be of further assistance, those are my costs submissions.

50. MR JUSTICE SULLIVAN: Thank you very much. First of all, it seems to me that the claimant ought to pay the first defendant's costs. Second, I do not think there are any special circumstances which would justify a second lot of costs. This is a case where the Tribunal was plainly going to defend its decision and where, in essence – and I say this not in any critical sense at all – the second and third defendants simply echoed the points that were being made in any event by the first defendant, so not two lots of costs.

51. Thirdly, it is right to summarily assess the costs. Fourthly, and notwithstanding the extent of costs put forward by the claimant, bearing in mind that the claimant would have overall conduct of the case and one would expect somewhat more costs to be incurred by them as opposed to a defendant, it seems to me that a figure of getting on for £12,000 for a one day challenge is fairly hefty. I think some trimming, but not very much, is justified. I take on board the point made by Mr Harris that it is to an extent swings and roundabouts. The less work done by the solicitors the more done by counsel and vice versa. Having said that, I think that the appropriate round figure, which is a fairly generous figure for a one day case of this kind, should be assessed in the round sum of £10,000.

52. MR HARRIS: My Lord, I am grateful. May I simply enquire what the status of the transcript is?

53. MR JUSTICE SULLIVAN: The shorthand writer will get it to me. I am not asked to expedite it, I cannot see a particular reason to do so. For some reason these are treated like applications for permission to apply for judicial review so they are not automatically transcribed unless the parties ask for them. If you want a transcript tell the associate and one will be ordered, but you have to do it.

54. MR HARRIS: Thank you very much.

55. MR JUSTICE SULLIVAN: No other application? Thank you very much.