

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

31/07/2009

Before:

HHJ TOULMIN CMG QC

Between:

**NATIONAL TRUST FOR PLACES OF
HISTORIC INTEREST**

Claimant

- and -

IAN GEOFFREY BIRDEN

Defendant

**Mr Philip Sissons (instructed by Burges Salmon LLP) for the Claimant
Ms Caroline Hutton (instructed by Nigel Davis) for the Defendant
Hearing dates:**

HH Judge Toulmin CMG, QC :

1. The claimant, The National Trust for Places of Historic Interest or Natural Beauty (NT) is and was the freehold owner of Hardwick Park in Nottinghamshire. Part of Hardwick Park is an agricultural holding known as Hardwick Park Farm. The farm consists of 540 acres of which 240 acres are arable and 300 acres are grassland.
2. On the 31st July 1995 NT entered into an unusual type of agreement with the defendant (Mr Birden) known as a share-farm agreement in respect of the farm (the 1995 Agreement). Although the agreement is dated 31st July 1995 Mr Birden had entered onto the farm on about the 1st April 1994 and the share-farm agreement was (subject to specified variations) for a period of 10 years from that date. Mr Birden vacated the farm on the 8th April 2004 (having been granted a licence to remain on the farm for an extra 7 days).
3. At some date soon after the 8th April 2004, Mr Birden moved to become the farm business tenant of Dunsmore Home Farm, Clifton on Dunsmore, Rugby, Warwickshire (Dunsmore Farm) where he continues to farm. As a business tenant of Dunsmore Home Farm, he receives periodic payments from the Rural Payments Agency as a farmer under the Single Payment Scheme (SPS) which was introduced from 1 January 2005.
4. The payments are made pursuant to Council Regulation (EC) No.1782/2003 (the Council Regulation); Commission Regulation (EC) No.795/2004 of 21st April 2004, laying down detailed rules for the implementation of the Single Payment Scheme provided for in the Council Regulation (the Commission Regulation); and the UK implementation of the EU Legislation for

England enacted in Regulation 2005 SI 219. I have only cited or had cited to me the relevant Regulations. There are other EU and UK Regulations which are also concerned with aspects of the Scheme and its implementation. The implementing regulation for England was made on the 7th February 2005 to come into force on the 1st March 2005 and to provide a new form of EU subsidy from the 1st January 2005.

5. Among other provisions under the new legislation, the calculation of the amount which a farmer was entitled to claim under the Common Agricultural Policy included a sum to be calculated according to the total amount of payments which the farmer was entitled to claim for the reference period under the support scheme which had previously applied. This is known as the historic payment element which applies in decreasing amounts until it is phased out in 2012. The reference period comprised the calendar years 2000, 2001 and 2002.
6. It is agreed that (subject to liability) the sum referable to NT's claim amounts to £37,593.31 i.e. that proportion of the payment relating to the years 2005, 2006 and 2007 which NT claims relates to NT's share of the historic payment.
7. It is appropriate to indicate at the outset the framework of the submissions made by the parties.
8. By its amended particulars of claim NT claims that it is entitled to be paid 32% of the sums which Mr Birden received relating to the period when he was farming Dunsmore Home Farm, but in respect of which payments were calculated by reference to the reference period.
9. NT makes the claim on a number of alternative grounds. First it claims that it is entitled to received this sum under clauses 15 or 13 (c) of the 1995 Agreement. Alternatively it claims that it was an implied term of the 1995 Agreement that any subsidy system, which was introduced to replace the system of grants and subsidies then existing, would be dealt with in the same proportions as was agreed in the share-farm agreement.
10. In the further alternative, it is claimed that it was the common intention of the parties that a proportion of any sums received by Mr Birden in respect of agricultural activity on the farm during the course of the share-farm agreement would be paid to NT in accordance with the percentage distribution set out in the agreement as varied for the reference period.
11. In yet a further alternative NT claims that in submitting claims for subsidies during the course of the share-farm agreement, Mr Birden was acting as agent for NT. The claim is also made that pursuant to the share-farm agreement Mr Birden received such payments on trust for NT.
12. At the start of the trial NT added the further claims:
 - a) that it was entitled to an account of the sums paid to Mr Birden which were due to NT pursuant to the implied terms of the share-farm agreement or the alleged agency agreement; and
 - b) a declaration that NT is entitled to 32% of the historic element of the sums which may be paid to Mr Birden during the years during which the reference period is used to calculate one of the elements in the SPS i.e. from 2008 to 2011.
13. By his defence, Mr Birden denies that there are any outstanding sums due to NT under the share-farm agreement, denies that he held quota or production grants or subsidies pursuant to the share-farm agreement or to an agency agreement, or that in applying for a subsidies referable to his current farm, he was in any way acting as agent for or pursuant to any express or implied agency agreement separate or collateral to the share-farm agreement or held such sums on constructive trust for NT. In short, after the termination of the share-farming agreement on 1st April 2004, Mr Birden contends that he owed no continuing obligations to NT except those relating to the period during the subsistence of the Agreement and any obligations required by the Agreement on termination.

14. At paragraph 20 of the defence Mr Birden pleads the case that under the single Payment Scheme (which was only in effect from January 1st 2005) a qualifying applicant was required;
 - a) to have agricultural land at his or her own disposal for the purposes of farming on the 16th May 2005; and
 - b) to be (and have been) in business as a farmer during a qualifying period of 10 months commencing on a date between the 1st October 2004 and the 30th April 2005; and
 - c) to have been in receipt of qualifying subsidies as a farmer in his own right (whether as a sole trader or otherwise) during the reference period 1 May 2000 to 30th April 2002; and
 - d) to have applied for an allocation of entitlement to single farm payment on or before the 15th May 2005; and
 - e) to have been allocated payments by the Rural Payments Agency.
15. I shall return to the issues in the case in more detail but it is convenient first to set out the facts before returning to the submissions of the parties, the law and my conclusions.
16. I heard three witnesses. First Mr Priddle, an Area Manager at the National Trust, gave evidence. Between March 1988 and July 1999 he was managing agent of a number of properties including Hardwick Park Farm. From July 1999 until August 2004, when he took up his current post, he was not involved in the farm. Unfortunately he was not a well prepared or a careful witness. I am unable to rely on his evidence unless it is supported by other evidence. Mr Leivers also gave evidence for NT. He was NT's land agent at Hardwick Park Farm from November 1999 to the time when Mr Birden left the farm in April 2004. He was an honest and reliable witness. Mr Birden gave evidence on his own behalf. He was also an honest and reliable witness.

The Facts

17. The background of the share-farming agreement is that since 1875 there has been legislation regulating the relationship between landlords and tenants of agricultural land. The Agricultural Holdings Act 1986 (the 1986 Act) consolidated the law to that date and reinforced the security of tenure which tenants were able to achieve. For this reason landowners became reluctant to let to tenants under the 1986 Act and used a number of alternative devices to achieve the farming of agricultural land without creating a relationship of tenancy between the landlord and the farmer. One such device was the share-farming arrangement or agreement.
18. On the 1st September 1995, soon after Mr Birden had concluded his share-farming agreement with NT, the Agricultural Tenancies Act 1995 came into force. The regime which was then put into place was less restrictive to landowners than the 1986 Act and my understanding is that thereafter share-farming agreements became uncommon. At all events, Mr Priddle said in evidence that he could think of only three such share-farm agreements which NT had undertaken including the one with Mr Birden.
19. On 16th August 1993 a firm called Stratton Creber reported to the NT on the viability of share farming Hardwick Park and the Farm as one unit. The Report described share-farming in these terms:

“1.3. A term applied where the owner of the farmland offers a contract to a ‘working farmer’ to enable them to farm all or part of that farmland. The owner provides the farm, the fixed equipment, the fixed machinery and he also paid for a share of input costs. The share-farmer provides the working machinery and the labour and he also pays for a share of the input costs.

Each is rewarded by a share of the gross output of the land. The proportion in which the input and the output is shared is based upon the financial contribution of the landowner and the share-farmer and this is agreed as part of the contract prior to commencing the arrangement. In the case of livestock, landowner and share-farmer share the ownership of the stock. Both parties share in the fortunes or otherwise of agriculture and there is no guaranteed return to either party. No tenancy is created and the benefits of “working farmer” reliefs for capital and income tax purposes are available to the land owner”.

20. NT decided to proceed with the arrangement and issued particulars inviting potential farmers to tender for the contract. The particulars reproduced the description of a share-farming agreement which I have set out above.
21. The invitation to tender made it clear that the share-farming agreement would be based on the farming policy “to be agreed between the trust and the share-farmer”. The tender document set out the provisional budgets and a proposed split of income of 35% to NT and 65% to the share-farmer but indicated that the ratio would be agreed subsequently between the parties depending on the inputs between each party and on the farming policy.
22. The invitation to tender dealt with the administration of the arrangement and made it clear that each party would run its own separate business. The invitation to tender also indicated that there would be a contract between the parties to include:
 - a) An agreement for 10 years from the 25th March 1994 with a 5 year break clause;
 - b) Provision for a review clause;
 - c) The position on termination of the contract;
 - d) Stocking and management conditions for the land;
 - e) Maintenance of the farm;
 - f) Provision for resolving disputes; and
 - g) Any particular conditions required by either party.”
23. The tender documents provided for viewing on the 3rd December 1993.
24. On the 13th December 1993, after he had visited the property, Mr Birden tendered for the share-farm agreement to commence on the 25th March 1994 on a 36% NT and 64% farmer (Mr Birden) share in accordance with the budget which Mr Birden attached. The tender offer form on which Mr Birden made his tender had been drafted by NT and said clearly “this offer is subject to detailed negotiation and the signing of a share-farming agreement.”
25. On the 4th January 1994 Mr Priddle wrote to Mr Birden informing him that he had been selected for interview.
26. There is a reference to Mr Birden having telephoned to confirm his offer. There were significant negotiations to be carried out and this telephone call did not alter the position that any offer was subject to detailed negotiation and the signing of a share-farming agreement. On 19th January 1994 NT accepted Mr Birden’s offer subject to further negotiations.
27. One of the administrative arrangements to be put in place before any agreement could be implemented was the setting up of a joint bank account in the names of Mr Birden and NT. All income from the business would be paid into this account and would then be split in the agreed

shares and the appropriate sums would then be paid into Mr Birden's and the NT's separate bank accounts.

28. On the 22nd February 1994 NT wrote to the manager of the National Westminster Bank in Alfreton to put the arrangement into effect. The split was to be 60% to Mr Birden, who had a separate account at the same branch, and 40% to NT.
29. On the 5th March 1994 Mr Priddle sent Mr Birden a memorandum setting out the progress of the discussions which had taken place. The letter noted that there were other matters which needed to be resolved and that they would meet again on the 22nd March 1994.
30. On the 9th March 1994, Mr Priddle wrote to Mr Lawton, the valuer jointly instructed by NT and Mr Birden, relating to the valuation of produce, feedstuffs, fertilisers and livestock.
31. On 22nd March 1994, on behalf of the National Trust, Mr Priddle signed a form authorising Mr Birden to make an IACS Area Aid Application for quota subsidy to include NT's share of the quota. (IACS is the acronym for Integrated Administration and Control System administering the EC rules for agricultural support). This was the wording of the standard IACS form which was used for this purpose.
32. On the 5th April 1994 Mr Priddle sent a handwritten memorandum to Mr Johnson, the Regional Financial Controller of NT, asking him to open a joint bank account for Mr Birden and NT. The memo said:

“the exact split has to be finalised but it is likely to be in the order of 60% to the former (Mr Birden) and 40% to the latter (NT).”
33. In a further memorandum to Mr Johnson on the same day, Mr Priddle asked him to make a payment to Mr Birden “on account”.
34. On 28th April 1994, Mr Priddle sent the draft Share-Farm Agreement to NT's own solicitors for final comments and redrafting. He said that it was complete except for the missing appendices.
35. On 4th July 1994 Mr Priddle sent the draft Share-Farm Agreement to Mr Birden asking him to sign it and return it to Mr Priddle. It contained significant variations from the previous draft.
36. This was followed up by a meeting between Mr Priddle and Mr Birden on the 7th July 1994. The meeting seems to have been satisfactory to Mr Birden. His diary records that “the agreement is now sorted even if the Bank Account isn't.” However it is clear that this comment was subject to the comments of his solicitors to whom he had very sensibly referred the draft agreement.
37. Mr Davis, then a partner in Shakespeares, a firm of solicitors in Birmingham, went through the draft Share-Farm Agreement and in a three page letter to Mr Priddle, dated the 13th October 1994, made a number of points which he said that he needed to discuss. Mr Davis said that he looked forward to hearing from Mr Priddle at his earliest convenience.
38. An internal NT memorandum dated the 11th November 1994 from Mr Young, the Rural Affairs Advisor of NT, said, referring to the IACS subsidy, “I am assuming that Ian Birden will make the claim for Hardwick.” There is an issue as to whether or not this was the only way in which NT could obtain any share of the subsidy since NT was not deemed to be the farmer under the Regulations and therefore unable to make a claim on its own account. Before me Mr Priddle contended that NT were also ‘farmers’ but MAFF (Ministry of Agriculture Fisheries and Food) does not appear to have taken this view.
39. Mr Birden did make the claim for 1994 but in the subsequent accounting it appears that he was not paid for cows owned by NT. Mr Young wrote to MAFF and said “Mr Birden has claimed for

all the cows under the 1994 Scheme but has only been paid for those covered by his own quota. This is understandable but we would like to make the transfer of the Trust's quota so that he can be paid the remainder. Clearly we cannot do this until the quota is registered in our name".

40. Mr Priddle said in evidence that he had a meeting at the farm with Mr Birden on the 23rd March 1995 (i.e. before the written agreement of the 31st July 1995). Mr Birden explained to him that he was very frustrated by the way he, Mr Priddle, was insisting on having NT's name on the application forms for subsidies. Mr Priddle said that he would vary the arrangement provided that Mr Birden signed the Form for himself and as agent for the Trust. Mr Priddle said that it was on this basis that he signed the Authorisation Form dated the 23rd March 1995 "to give effect to this oral agreement". NT claims that at this meeting Mr Birden entered into a collateral agency agreement with NT.
41. Annex 8 to the Application for Quota is indeed signed by Mr Priddle. It authorises Mr Birden to make an Area Aid Application for subsidy "on our behalf". This approach is at variance with the position taken by Mr Young that the only basis on which a claim for NT's share of the quota could be made was if NT's quota was transferred to Mr Birden and a claim for the whole quota of the farm was made by Mr Birden.
42. Mr Birden agrees that he did have a meeting with Mr Priddle on the 23rd March 1995 but he rejects Mr Priddle's account of the meeting. He said that he did not consider that he was then or at any time thereafter acting as an agent of NT. He said that in his mind there was a problem in dealing with MAFF because the Share-Farming Agreement did not fit into any category generally recognised by MAFF.
43. Rather surprisingly no note of this meeting has been disclosed by Mr Priddle. However, Mr Birden has disclosed his diary entry for the 23rd March 1995. It makes no mention of any agreement. The diary entry says "Mark Priddle came for the invoices. We discussed the sheep set-up, rewiring farm and buildings and a possible barn, spraying the Upper Camp etc". This was consistent with a review by Mr Birden and Mr Priddle of the farming operations under the Agreement. I find that Mr Birden's recollection of the meeting is to be preferred to that of Mr Priddle and that no collateral agreement was made in the manner described by Mr Priddle. This, of course, still leaves open the question of the capacity in which Mr Birden made the claim to MAFF for NT's share of quota.
44. On 24th April 1995 Mr Birden submitted the IACS Area Aid Application for 1995. Mr Birden said in Section 5 that he was a share-farmer. Mr Birden was told by MAFF not to use the term share-farmer but to use the term "sole producer".
45. There was clearly further correspondence between Mr Birden's solicitors and Mr Priddle which has not been disclosed. By a letter dated the 19th July 1995 Mr Davis sent Mr Priddle a letter enclosing the agreement with Mr Birden's signature duly witnessed. The court's copy of the agreement is signed by Mr Birden and witnessed but the signature is not dated.
46. The agreement is expressed to have been made on the 31st July 1995. It contains in addition to the agreement, schedules and appendices. Appendix 3 is a valuation of cattle, sheep and produce agreed between NT and Mr Birden on 25th March 1994 before Mr Birden entered with occupation of the farm-share. I will set out the relevant terms of the agreement separately.
47. On 8th August 1995, MAFF declined NT's application to transfer Suckler cow quota for 1995 from NT to Mr Birden but said that it could be done for 1996.
48. This developed into a wider argument between NT and MAFF over quota. Mr Young wrote to MAFF on the 29th August 1995 to say that it was illogical for MAFF to say that quota belonged to the share farmer who received more than 50% of the income from the produce (calves) and yet "prevents the other share farmer from transferring his quota belonging to the farm without the

siphon [deduction of 15% of value] operating”. Mr Young said that “Had we not tried to accommodate your (MAFF) interpretation of the rules on share farming, we would have continued to claim on the Hardwick Cattle which we still own and the income would have been credited to the share farming enterprise”.

49. MAFF responded on 16th November 1995. It said that it was prepared to allow NT to transfer the relevant units of Suckler quota to Mr Birden but unfortunately it would attract the siphon deduction.
50. On the 8th August 1996 Mr Birden and Mr Priddle had one of their periodic meetings. It is used as an illustration of the extent to which Mr Priddle was participating in the direction of the farm. The items in the note of the meeting consist of decisions (or requests) by Mr Birden in relation to the upkeep of the fabric of the farm (pointing on the tiles, repairs to buildings etc) and decisions over the stocking rate for the park, the purchase of units of sheep quota and the fertiliser and spray policy for the park. The meeting was consistent with the obligations set out in clause 20 of the agreement requiring periodic meetings to which I shall refer later.
51. On 8th July 1997 the shares for the payments out of the joint account in relation to the agreement were varied to 64% to Mr Birden and 36% to NT.
52. On 19th May 1998, Mr Birden made an IACS Area Aid Application to MAFF. In it he described the arrangement as a “new share-farming partnership set up”. MAFFs Form ends with a separate form entitled “authorisation for an agent or partner to make the Area Aid Application”. It was filled in by Mr Priddle. Annexed to it was the share farm split which had been varied to 65.5% to Mr Birden and 34.5% to NT based on the inputs set out in the schedule.
53. Mr Birden said that he filled in the standard form as he did because his arrangement with NT did not seem to fit the standard wording. I accept his explanation that this was not a concession that he was acting as NTs agent. To do so would, of course, have been contrary to the Share-farm Agreement.
54. A further example of an authorisation is dated the 10th May 2000. Again there appeared to be two forms. NT, now through Mr Leivers, apparently authorised Mr Birden to make the IACS Area Aid Application on its behalf. Mr Leivers said in evidence that he was not aware of any oral agreement between Mr Birden and NT relating to agency as was contended for by Mr Priddle. Mr Leivers signed similar applications on 8 May 2001 and 13 May 2002.
55. The 2001 Form prompted a request for information from NAWAD (National Assembly of Wales Cultural Division). NT, East Midland Branch, replied on the 15th November 2001 that the nature of the holding of the farm was share farming, “switched from previous in hand management to Share-Farming”. The Welsh farm had also moved to Share-Farming.
56. Question 17 of the 2001 Application form asks the question of what arrangements were made to manage the share-farm agreement. Mr Leivers replied “Quarterly Meetings between the parties with decisions recorded in writing” Mr Leivers said that under the share-farming agreement, the proceeds were divided between participants by way of “receipt of agreed share of gross output of farm and grants/subsidies.” Mr Leivers wrote a commentary on the terms of the agreement on the continuation sheet. This included “b) no tenancy, partnership, relationship of principal and agent or contract of employment shall be created by the parties”. This follows Clause 7 of the Share-Farming Agreement.
57. By the 1st April 2002 the shares had been re-valued so that Mr Birden received 68% and NT 32%. The revised agreement was signed by Mr Leivers and Mr Birden respectively on the 2nd and 7th May 2002.

58. A further example of a share-farm meeting is set out in the minutes of the meeting between Mr Leivers and Mr Birden on the 7th October 2003. It followed the pattern of the earlier meeting. It was, again, concerned with farming policy. It is clear that the meeting was particularly concerned with the Quota Register. Since Mr Birden was leaving the farm on the 1st April 2004 it was also concerned with arrangements relevant to his departure.
59. Mr Birden had previously requested to stay on the farm and to have the agreement extended but his request was not granted. It is suggested in the documents that NT and Mr Birden did not part on particularly good terms.
60. It is clear that NT was concerned about what it could claim under the new EU Single Payment Scheme when it came into operation. Mr Leivers wrote to Mr Birden on the 24th March 2004, two weeks before Mr Birden vacated the farm. Mr Leivers confirmed in paragraph 4 of the letter that NT had instructed their solicitors, Burges Salmon, to advise on the position but that like everyone else NT was waiting for the guidance of DEFRA (Department of the Environment, Food and Rural Affairs) (formerly MAFF). Mr Leivers asked (paragraph 9) for copies of the IACS Claim Forms. He also asked Mr Birden to account to NT for payment of any further income receipts referable to his period in occupation of the farm.
61. NT had an internal meeting on the 11th May 2004 to review matters arising from the previous meeting with Mr Birden. The note of the meeting records that NT would be registering the farm for Single Farm Payment after 17th May 2004. As a follow up to this meeting Mr Leivers wrote to Mr Birden on 12th May 2004 again asking for past IACS Claim Forms.
62. On the 13th May 2004 Mr Evans, NT's Rural surveyor, wrote to DEFRA (confirming a previous conversation) setting out the facts that the share farm agreement had ceased on the 31st March 2004 and that NT was in full occupation of the farm.
63. The letter went on:
- “I understand that the address for the above holding Member is at Mr Birden's new farm in Warwickshire. As the Trust is farming the land and wishes to retain the holding number, I would be grateful if you could arrange for your records to be amended so that the address for all correspondence is the Regional Office as above.
- I would be grateful if you could also ensure that all payments under any scheme are sent to the Regional Office and we will ensure that if any part is due to Mr Birden we would forward that to him”.
64. I have internal emails dated the 24th May 2004 and 25th May 2004 which make it clear that NT was concerned to find out whether Mr Birden had any claim to the historic element of the new scheme i.e. that part of the Single Payment which was governed by claims in the period from 2000 to 2002. In his oral evidence Mr Leivers said that NT was waiting for guidance from the government as to how the new Scheme would operate.
65. Mr Evans wrote again to DEFRA on 25th June 2004. He said that under the terms of the arrangement, NT owned a substantial part of the sheep flock and Suckler herd and owned the sheep and suckler quota but that “for administrative reasons”, Mr Birden had submitted the claims for Sheep Annual Premium and suckler cow premium on behalf of the Trust and the income was then shared in accordance with an agreed percentage.
66. The Rural Payments Agency replied on the 19th July 2004:
- “as the Single Payment Scheme is based on previous claims, any information regarding entitlements can only be sent to Mr Birden. If you have any issues regarding entitlement under the Single Payment Scheme you will need to resolve them with Mr Birden”

67. Mr Birden appears to have been reasonably cooperative in trying to transfer to NT the Quota from NT which had been transferred to Mr Birden for the duration of the 1995 agreement. In a letter dated 29th October 2004 Mr Leivers acknowledged that he had received the IACS Forms in relation to NT's share of the quota and was returning them completed on behalf of NT.
68. It is not clear to me from the papers when the Rural Payments Agency sent their information statement for the Single Payment Scheme. It is clear from the reference at the foot of the Form that it cannot have been before the 14th June 2004. The information statement was sent to Mr Birden duly completed by the Agency with the request that he check it. It should have been returned, signed and dated, if it needed any amendment, but the coversheet made it clear that, if it was not returned, the information recorded by the Rural Payments Agency would be assumed to be correct.
69. Mr Birden confirmed in evidence that the information was correct. It included the quota belonging to NT which had been transferred to Mr Birden for the purpose of making the annual claims for the claimant under the former system which was the subject of subsequent accounting between Mr Birden and NT during the subsistence of that agreement.
70. On 2nd November 2004 Mr Evans notified the Rural Payments Agency that NT intended to claim its share of quota relating to the farm which it said should be transferred to it from Mr Birden.
71. On 8th February 2005 the Rural Payments Agency wrote to Mr Evans to say that this was not possible. The letter explained:

“quota is designated as being within a particular ring-fence and cannot be transferred or leased to a producer in another ring-fenced area. On checking our records it has been established that the quota you are attempting to acquire is of a different ring-fence area designation to that which you hold. We therefore have no alternative to reject this notification.”
72. I am not entirely sure that I understand this reference. In his very helpful summary of the documents Mr Sissons (entry for 4th March 2004) suggests that it is connected with the fact that the vast majority of “in hand” farming was in Wales and it may be that NT had retained its Welsh designation but not its Midlands area designation. The explanation was not investigated before me.
73. Mr Evans persisted in trying to persuade the Rural Payments Agency to change its mind and to permit the Quota to be transferred to NT. Mr Evans claimed that he had not had a definitive response from the legal department of DEFRA.
74. On 9th May 2005 Mr Macklin, Head of Agriculture for the NT, submitted the NT application for payment under the Single Payment Scheme for 2005. At paragraph 16(a) of the covering letter he asserted that, in accordance with the agreement at the time, a share of the sum paid in respect of the historic element of the Scheme should be included in the entitlement of the NT for Hardwick Park Farm.
75. On 24th May 2005 the Customers Relations Unit of the Rural Payments Agency responded to NT that since the share-farming agreements excluded partnership it was not possible to use the legislation to allocate reference amounts when a partnership had been dissolved.
76. This was followed up by a lengthy letter dated the 9th August 2005. Although it was sent by the Customer Relations Unit of the Rural Payments Agency, it would appear to have been based on legal advice. The letter set out the opinion that there were only two ways in which NT could be entitled to a direct allocation of a reference amount “i.e. if NT had made IACS applications during the reference period either as a farmer in its own right or in partnership with Mr Birden.” The letter noted that NT agreed that Mr Birden, as the share-farmer, could submit IACS applications as “applicant” and receive the payments. Further it contended that there was no

evidence that NT exercised any of its own agricultural activity i.e. farmed in hand during the reference period. This is supported by the form which NT sent to NAWAD on 15th November 2001.

77. The letter went on to say that the only other possible route to NT being entitled to receive a payment direct from MAFF would be if there was what is described as “a partnership-like arrangement”. I note that the share-farming agreement expressly excluded partnership. In these circumstances the Rural Payments Agency considered that there was no legal basis under the applicable Regulations to enable NT to receive any direct allocation of reference amounts.
78. In the summary of documents it is argued that the critical issue of law is whether or not share-farming can be included within the definition of “farmer” under Article 2(a) of the Regulations 1782/2003. This is not an issue between Mr Birden and NT but between MAFF/DEFRA and NT.
79. The letter dated 9th August 2005 concluded as follows:

“In the event that you disagree with our conclusion we would request that you demonstrate to us in line with both domestic and European law, the legal basis on which you maintain that:

 1. the NT was the “farmer” in its own right;
 2. a partnership existed between the NT and Mr Birden so that the parties jointly constituted a “farmer”; or
 3. Any other basis upon which it is asserted that RPA has the power to intervene in this matter.”
80. I have no evidence as to whether or not NT pursued this course. It was open to it to do so but whether it had a significant chance of success is something on which I am unable to comment. I note that although partnership was excluded, MAFF left open the possibility that a quota could be transferred if it could be established that there was a “partnership-like arrangement”. This at least left this avenue open to NT. It is not an issue between NT and Mr Birden and I make no findings on it.
81. By 2006 Mr Priddle had become NT’s Area Manager. On 10th July 2006 Mr Priddle wrote to Mr Birden. The letter is headed “without prejudice” but it is clearly not a without prejudice letter. The letter claimed that the “spirit” of the agreement was that all production grants and subsidies should be shared (Clause 15). Mr Priddle said that this included the historic element of the new scheme which was linked by reference to the period 2000-2002. Mr Priddle said that the Trust was farming with Mr Birden in the reference years.
82. The letter went on to assert that Mr Priddle had agreed that Mr Birden should submit all subsidy claims and sign as agent for the Trust. I comment that if NT was correct in this assertion, it may have had some prospect of succeeding in claiming that the parties jointly constituted “a farmer” (see below). If this was correct then the Rural Payments Agency was conceding that it may have power to intervene in this matter and to transfer the quota. Again, this is not an issue for me to decide.
83. Finally on 30th March 2007 Mr Birden received a letter from Burges Salmon, solicitors, making the claim which led directly to this litigation.

The Share Farm Agreement

84. The Agreement dated 31st July 1995 contained the following relevant clauses on which the parties rely.

85. Clause 1 delineates the land “which shall be farmed by the Trust (NT) and Mr Birden for the separate benefit of each of them” on the terms set out in the clauses that follow.
86. Clause 3 provides that the agreement shall continue until 1st April 2004 and, unless terminated on that date, thereafter from year to year.
87. Clause 5 provides that throughout the subsistence of the agreement, Mr Birden shall have the right to use the land jointly with the Trust.
88. Clause 6 is an important clause and is quoted in full.

“6 Neither party shall hold himself out as partner of or agent for the other party and each party agrees to indemnify and to keep indemnified the other against all claims, demands, proceedings, costs and liabilities in respect of the activities or business of the indemnifier whether or not in relation to this agreement.”

89. Clause 7 follows Clause 6:

“7 Nothing in this agreement nor anything done in pursuance of this agreement shall create or be deemed to create a tenancy, partnership, relationship of principal and agent or contract of employment between the parties.”

90. Clause 9 is concerned with the share of input costs. Clause 10 sets out clearly the obligations of Mr Birden. He is to manage the day to day farming of the land and livestock efficiently to a high standard of husbandry and to carry out the agreed farming and cropping programme. This clause is linked to clause 20 which requires the parties to meet at least once in any three months to review the farming operations under the agreement and after each harvest to review the farming policy for the following farm year.
91. Clause 13 is concerned with quotas. Clause 13(a) is concerned with the parties’ Quota throughout the term of the agreement and any extension thereof. It requires a quota register to be set up by the parties and the initial quotas of the parties to be registered. Clauses 13(b)(c) and (d) are concerned with arrangements at the commencement and the termination of the agreement. Clause 13(e) is concerned with claims made in respect of premium quota rights in breach the terms of sub clauses 13(c) and 13(d).
92. Since Clause 13(c) is relied on by NT, I quote it in full. “On the termination of the Agreement, the Trust shall be entitled to retain its [500] units of sheep quota and [35] units of beef suckler cow quota and any additional quota (less permanent cuts) recorded as belonging to the Trust in the Quota Register referred to in (a) above and to use such quota as it sees fit. Mr Birden hereby undertakes to make no claim to that quota nor to any compensation thereof notwithstanding the fact that all quota may be registered by MAFF in the name of Mr Birden as the share farmer entitled to more than 50% of the income from the sale of the flock/herd and/or flock/herd product received by each party to the agreement.”
93. Clause 13(e) deals with the treatment of quota at the termination of the agreement:

“(e) in the event of any claim being made in respect of the premium quota rights contrary to the terms of sub-clauses 13(c) and (d) hereof, either by means of arbitration or otherwise that party succeeding in claiming premium quota rights belonging to the other shall pay to the other party such sum as shall represent the cost at the then market value of acquiring the same number of the relevant premium quota rights (including, for the avoidance of doubt, all other costs incurred as a result of the actions of the party acting in breach of the terms hereof).”

94. Clause 15 is also relied on by NT and I quote it in full. It provides as follows:

“15 Any production grants or subsidies paid to either party in respect of livestock or other Agricultural Production or cessation of production on all or part of the land or otherwise shall be shared between the parties 40% being paid to the Trust and 60% to Mr Burden.”

95. Clause 25 contains a covenant against assignment. Clause 27 sets out the arrangements to apply on termination of the agreement. It does not refer to quota.
96. Clause 28 is important. It provides that “This Agreement contains the whole of the Agreement between the parties and no variation shall be made unless it is made in writing and signed by both parties.”
97. I now address the EU legislation. In *Pease v McMillan and others* [2009] EWCA Civ 258, Mr Justice David Richards, sitting in the Court of Appeal, on 2nd April 2009, explained (see paragraph 5 (f)) that the Single Payment Scheme was agreed by EU members in 2003 under the mid-term review of the Common Agricultural Policy. The framework was contained in Council Regulation (EC) No. 1782/2003 to which I have already referred. The detailed rules are contained in Commission Regulation (EC) No. 795/2004 to which I have also referred. Legislative effect was given for England by the 2005 Regulations 2005 SI 219.
98. The purpose of the Regulation is set out in paragraph 3 of the preamble to the Council Regulation. The Regulation establishes a community framework within which member states may take measures to avoid the abandonment of agricultural land and to ensure that it is maintained in good agricultural and environmental condition
99. Paragraph 29 of the pre-amble provides that “in order to establish the amount to which a farmer should be entitled under the new scheme, it is appropriate to refer to the amounts granted to him during a reference period...the single payment should be established at farm level.”
100. As Mr Justice Richards found, the 2003 Council Regulation provides a scheme for single payments which would replace many of the subsidies then paid to farmers.
101. Under Article 41 of the Council Regulation, the reference sum could not exceed the national ceiling specified in the 2003 Council Regulation. (Article 41(1)). Under Article 58 a member state was entitled to apply the Single Payment Scheme at regional level provided that the regions were defined according to objective criteria. Article 59 of the Council Regulation is concerned with the regionalisation of the single payment scheme.
102. Article 63 of the Regulation established the conditions under which a member state was entitled to apply the Scheme differentially between regions (see also Article 59). Article 63(1) provided that the entitlements established under Article 59 may only be transferred or used within regions or between regions where the entitlements per hectare were the same. It is, as I understand it, the reason why DEFRA claims that part of the 2000-2002 entitlement cannot be transferred to NT.
103. In order to enable farmers to adapt their farms to the new system there was a reducing element linked to their payment entitlement calculated according to their subsidy receipts for the period 2000-2012 (referred to as the historic element). It is this element which comprises the share of Mr Birden’s quota and that which NT transferred to Mr Burden from year to year for the duration of the share-farm agreement as contemplated by clause 13 of the share farm agreement.
104. In my summary of the facts I have referred to the definition of “farmer” and eligibility for the Single Payment Scheme. I now set out the relevant law. Under Article 2 of the Regulation a farmer is defined as follows:

“(a) “farmer” means a natural or legal person or a group of natural or legal persons whatever legal status is granted to the group and its members by national law...and who exercises an agricultural activity.

(b) “holding” means all the production units managed by a farmer situated within the territory of the same Member State.”

105. Article 33 is concerned with eligibility under the Single Payment Scheme. Under article 33(1) farmers shall have access to the Single Payment Scheme if:

(a) they have been granted a payment in the reference period referred to in article 38 (i.e. 2000-2002)...

106. Article 33(3) refers to changes in the management of the farm. It refers to the farmer managing the new holding having access to the single payment scheme under the same conditions as the farmer managing the original holding.

107. Article 37 provides that

“1 the reference amount shall be the three year average of the total amounts of payments which a farmer was granted under the support schemes...calculated...in each year of the reference period.”

108. Article 43 provides that a farmer shall receive a payment entitlement per hectare which is calculated by dividing the reference amount by the three year average number of all hectares which in the reference period gave right to direct payments.

109. The United Kingdom implementing Regulation 2005 No. 219 provides that “farmer” and “holding” shall have the meaning given to it in article 2(a) and 2(b) of the Council Regulation.

110. It is important to set out these provisions to explain the line that DEFRA and the Rural Payments Agency have taken to the request to transfer Quota and the definition given to “farmer” under the Regulation but I observe again that this is not a review of EU law and that these are not issues between NT and Mr Birden. I note that the new system of payment of quotas is entirely different to that applying before 2005. I note also that Mr Birden co-operated with NT in attempting to transfer quota relating to Hardwick Farm back to NT at the end of the agreement, as he contracted to do, but that this apparently could not be achieved under the new Regulations although I have no knowledge as to how far NT pursued its claim to entitlement with MAFF beyond the letters which I have set out.

111. I should add that the line taken by MAFF and DEFRA in their interpretation of the Regulations was logical. Only those who farmed the land in hand were entitled to subsidy under the old and the new system. NT was required to transfer its quota to the farmer, Mr Birden, if it wished to benefit from its share of quota. In these circumstances Mr Birden was entitled to claim for the whole of the subsidy during the reference period. NT was not farming the land during the reference period so it had no entitlement or claim to historic payment. Whether or not NT did in fact, have a claim is not for me to decide.

The Parties’ Contentions

112. It is now appropriate to set out the alternative ways in which NT puts its case. These are helpfully summarised in Mr Sissons further closing submissions. They are:

(a) breach of clauses 15 and 13(e) of the Share Farming Agreement;

(b) breach of an implied term of the Share Farming Agreement;

(c) breach of an agency agreement separate to the Share Farming Agreement; and

(d) the existence of a constructive trust in NT’s favour.

113. Mr Sissons deals first with clause 15. NT's case under clause 15 is that, as a matter of construction, the historic element of the payment under the Single Payment Scheme was paid "in respect of" agricultural production during the operation of the Share Farming Agreement.
114. Mr Birden contends that the words of clause 15, read literally could apply to any production grants paid to either party at any time whether before, during, or after the period of the Share Farming Agreement. However it would be un-commercial for the clause to be construed as applying to all production grants and subsidies received by either party at any time. He contends that, properly construed, the clause must relate to payments made during or in respect of the period from 1st April 1994-1st April 2004.
115. Further Mr Birden contends that the payments under the Single Payment Scheme were not production grants and subsidies, a term which could only properly be applied to the Scheme in operation when the agreement was entered into. The payments were not made "in respect of" livestock or other Agricultural Production or cessation of production. Further in order to qualify for payment in the relevant year of application, Mr Birden had not only to have held land in 2000-2002 but, in the relevant year of application, to have carried on business as a farmer and to have farming land at his disposal.
116. In relation to clause 13(c) NT contends that on the plain wording of the clause:

"Mr Birden hereby undertakes to make no claim to that quota [i.e. the units of sheep and suckler cow quota provided by NT] nor to any compensation thereof notwithstanding the fact that all quota may be registered by MAFF in the name of Mr Birden."
117. NT contends that Mr Birden's use of NT's share of the 2000-2002 quota to establish single payment support entitlement amounts to a claim for compensation in respect of that quota. Hence it amounts to a breach of clause 13(c).
118. Mr Birden contends that if one takes the submission only that far this may be correct, but it cannot sound in damages unless one goes a step further and demonstrates loss to NT. The loss is not that NT was unable thereby to claim what it asserts is its share of the quota and be paid for it. It has tried, with Mr Birden's co-operation, to make such a claim and has been refused. The only basis on which the alleged breach could sound in damages is if NT is able to claim an account and there is no legal basis on which such a claim can be made.
119. Mr Birden further contends that he is not in breach of clause 13(c) because clause 13 must be read as a whole and clause 13(e) specified whatever damages were to be recoverable under clause 13(c). Further the Single Payment Scheme does not provide compensation for loss of quota. It is a wholly different Scheme.
120. Next, NT claims that it was an implied term of the Share-Farm Agreement that any subsidy system introduced by the UK government to replace the system of grants and subsidies previously subsisting, would be dealt with in the same proportion as is agreed in the Share-Farm Agreement. It is contended that the current situation was little different to the renegotiation of shares that took place during the currency of the Agreement.
121. Mr Birden contends that any implied term can only reflect the common intention of the parties. There is no claim for rectification, waiver or estoppel and the terms of the contract proposed by NT and, subject to negotiation, accepted by Mr Birden, included the stipulations in clauses 6 and 7 of the Agreement (against partnership, agency etc). The stipulation in clause 28 was that the Agreement contained the whole of the agreement between the parties and that no variation should be made unless it was made in writing and signed by or on behalf of both parties. It is contended that the implication of this is that from the date of the Agreement, 31 July 2005, the Agreement alone governed the relationship between the parties.

122. Next, NT claims that Mr Birden was acting as agent for NT. NT claims that an oral agreement was made between Mr Birden and Mr Priddle at their meeting at the farm on 23 March 1995. Mr Birden denies that such an oral agreement was made. I have already considered the facts and have concluded that there was no such agreement as is contended for by NT. This, however, is not the end of the matter. Ms Hutton, on behalf of Mr Birden, conceded that when Mr Priddle signed Annex 8 of the IACS form on 23 March 1995 he created the conditions of agency and in relation to that application and its proceeds, Mr Birden's obligation was to account to NT for the share of the proceeds.
123. However, Mr Birden contends that the relationship of agency, if it existed, was overtaken by the Share-Farm Agreement and did not apply to subsequent applications and payments. These were made by Mr Birden pursuant to the Share-Farm Agreement and in compliance with his contractual obligations under it. These obligations ceased at the expiry of the Share-Farm Agreement.
124. Mr Sissons half acknowledged the difficulty which the Share Farm Agreement poses because he was forced in his final submissions to claim that clause 28 of the Agreement no longer applied. He contended that the Trust acted to its detriment in reliance on Mr Birden to complete the subsidy application. NT claims that it could have completed a subsidy application on its own account because NT was a farmer and was carrying on agricultural activity within the meaning of Article 2 of Regulation 1782/2003.
125. NT contends that Mr Birden was in breach of his obligation in failing to ensure that NT's interest under the Share-Farm Agreement was brought to the attention of the relevant authorities. It is contended that had Mr Birden ensured that NT's interest was specified on the Application Form (contrary to the alleged agreement with Mr Priddle for which NT has contended), NT's claim would have been recognised as one of the applicants and NT would have received its share of the Single Payment Subsidy. I understand the contention, but I am not clear what evidence is relied on to support it. This claim was made later by NT and was rejected by the Rural Payments Agency.
126. In any event the issue between the Government Department and Agency appears to be not that they were unaware of the situation under the Share Farm Agreement but that NT did not qualify because it did not come within the definition of farmer under Article 2 of the EU Commission Regulation.
127. Finally, NT claims that Mr Birden was holding the proceeds relating to NT's share of the quota between 2000 and 2002 on trust for NT. NT starts by citing the well known definition of Millett LJ in *Paragon Finance Plc v D B Thakerer & Co (A Firm)* [1999] 1 All ER 400, 408:

"A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property (usually but not necessarily the legal estate) to assert his own beneficial interest in the property and deny the beneficial interest of another."

128. NT claims that it would be unconscionable for Mr Birden to deny NT any beneficial interest in the historic element of the Single Payment Subsidy because:
- a) The parties had a common intention that the proceeds of the farming operations during the Share Farm Agreement would be shared;
 - b) The historic element of the Single Payment Subsidy forms part of the proceeds of farming operations;
 - c) It is therefore inequitable for Mr Birden to deny the common intention that the proceeds should be shared in agreed proportions; and

d) therefore a constructive trust is imposed on Mr Birden at the moment when he receives the payment of the Rural Payments Agency.

129. It is alleged that evidence of common intention is derived from:

e) The share farming particulars that all farm production/income will be divided on the agreed proportionate share between the parties;

f) Mr Birden's offer to share the income 64/36;

g) Clause 15 of the Share Farm Agreement;

h) The setting up of a joint account;

i) The periodic reassessment of the shares.

130. Further it is alleged that Mr Birden agreed that subsidy payments received by him after the termination of the Agreement would be dealt with in accordance with the agreed shares.

131. The latter point is of doubtful factual validity. Mr Levers wrote to Mr Birden on 24 March 2004. The letter simply said that Burges Salmon, Solicitors, had been instructed to provide advice on entitlement to the Single Farm Payment. Mr Birden agreed to provide Mr Levers with copies of the annual IACS forms. Mr Birden provided them, although not immediately.

132. NT claims that although there is no direct legal authority establishing a constructive trust in these circumstances, the case is analogous to the joint venture cases beginning with *Pallant v Morgan* [1952] Ch at 951 and concluding with *Banner Homes Group Plc v Luff Developments* [2000] 2 All ER 117.

133. The Defendant sets out the law on constructive trusts derived from Lewin on Trusts, 18th ed, 20-46 as follows:

"If the trustee acquires property without using knowledge or opportunity that he has obtained as a trustee but which he has obtained in his personal capacity or in some other fiduciary capacity then he will not be accountable for the profit under the profit rule, and can be made accountable, if at all, only under the conflict rule, for example if he competes with the trust for an acquisition which is available for acquisitions by the trust and which the Trust has an interest in acquiring ... but where the liability is sought to be founded purely upon a conflict of duty and interest, the conflict will come to an end when the relationship ends and the duty of loyalty ceases and so the trustee will not be precluded by the conflict rule from dealing on his own merely because he would not have been permitted to do so had the relationship continued."

134. Mr Birden contends, therefore, that, bearing in mind Clauses 6 and 7 of the Share-farming Farm Agreement, no fiduciary duty of loyalty was imposed on either party after the termination of the contract. Further, Mr Birden submits that the opportunity with which he was presented as business tenant of his new farm, was not acquired during the operation of the Share-Farm Agreement.

135. In any event Mr Birden contends:

j) He could not have applied for entitlement on behalf of NT because his non-exclusive licence under the Share-Farm Agreement was not a relationship under which he could successfully have applied; and

k) NT could not apply by reference to its subsidy history because NT had no subsidy history during the reference period.

136. In these circumstances this was not a real maturing business opportunity otherwise available to NT at the time of the termination of the Share-Farm Agreement. It is not known in any event whether or not NT made an application for and received regional flat payment entitlement.

Conclusions

137. The starting point of any analysis of the relationship between NT and Mr Birden is the Agreement dated 31st July 1995. Although there were negotiations on individual points, the framework of the Agreement was drafted by the Claimants. Its primary purpose was to provide a mechanism whereby, on appropriate terms, a person would farm the land for NT for a fixed period of time without acquiring any tenants' rights. It was crucial for NT, therefore, that Clause 28 of the Agreement operated to ensure that the Agreement contained the whole agreement between the parties and that no variation would be made unless it was made in writing and signed by or on behalf of both parties.
138. Clause 3 of the Agreement stipulated that the Agreement should continue until 1st April 2004 unless terminated on 1st April 1999 with appropriate notice (clause 3b) or on 28 days' notice following serious breaches (clause 3c) or, if continued from year to year, on 12 months' prior notice (clause 3a). None of the latter events occurred, so the Agreement came to an end on 1st April 2004.
139. The agreement relating to quotas was set out in Clause 13 of the Agreement. Clauses 13(c) and (d) relate to arrangements on termination of the Agreement and Clause 13(e) relates to compensation to which parties may be entitled in the event of any breach of clauses 13(c) and (d).
140. It is necessary to construe clause 13 as a whole. Clause 13(a) stipulates that a quota register must be set up by the parties and the initial quota must be registered.
141. The purpose of clause 13(c) is to ensure that on the termination of the Agreement Mr Birden :
“undertakes to make no claim to that quota nor to any compensation thereof notwithstanding that the quota may be registered by MAFF in the name of Mr Birden. However Mr Birden should be entitled to retain his own quota as at the date of cessation and to use such quota as he thinks fit (clause 13(d)). In the event of a breach of clause 13(c) or (d) the aggrieved party has the right to redress set out in clause 13(e): ‘The party claiming premium quota rights belonging to the other shall pay to the other party such sum as shall represent the cost at the then market value of acquiring the same number of the relevant premium quota rights together with all costs incurred by the party concerned in acquiring such premium quota rights ...’”
142. I find that clause 13(e) provides the only remedy for breaches of clauses 13(c) or (d). There is no claim made under clause 13(e).
143. In any event I conclude that there was no breach of clause 13(c). The quota referred to is premium quota rights (see clause 13(e)). This is referable to the scheme in operation when the Agreement was made. Taken as a whole, the purpose of the clause was to ensure that under the existing scheme, even though the entitlement to subsidy was that of the farmer, i.e. Mr Birden, on the termination of the Agreement Mr Birden would make no claim to retain the quota. He made no such claim. It was implicit that the quota belonging to NT would be transferred back to NT. This Mr Birden attempted to do, but was not permitted to do so because of the way that the new scheme was interpreted by DEFRA and the Rural Payments Agency. In these circumstances I find that the claim under clause 13(c) fails.
144. Clause 15 of the Agreement provides that:
“Any production grants or subsidies paid to either party in respect of livestock or other agricultural production or cessation of production on all or part of the land shall be shared ... “

145. Properly construed, the relevant payments are those made during the term of the Agreement or at the termination of and consequential on the termination of the Agreement. The Clause refers to production grants and subsidies. These must be separate from the quotas which are the subject of the Clause 13 regime.
146. The sums in dispute are not, in any event, paid in respect of agricultural activity on the farm during the Share-Farming Agreement. It is paid in respect of agricultural activity on Mr Birden's present farm. Part of the current payment of subsidy is referable to his historic activity on Hardwick Park Farm. For these reasons I find that the claim under Clause 15 fails.
147. Next, I consider the plea that there was an implied term of the contract that any subsidy system introduced by the UK government to replace the system of grants and subsidies would be dealt with in the same proportions as the Share-Farm Agreement.
148. This plea has a number of difficulties. First, the system of subsidies under the SPS is wholly different to the previous system. If there had been a change in the quota system during the subsistence of the Share-Farm Agreement, I have little doubt that there would have had to have been a renegotiation of clause 13 of the Agreement. It follows that it cannot be said that the term should be implied because it is so obvious "that it goes without saying". Equally, it is not required to give business efficacy to the agreement.
149. Secondly, even if there had been such an implied term (contrary to my finding) it could only be implied during the subsistence of the Agreement. Thirdly, and most importantly, the parties agreed that this was an entire agreement. There is therefore no room for implied terms. Nor are implied terms necessary to give business efficacy to the Agreement.
150. Next, I must consider agency. I have already found that there was no oral agreement on 23rd March 1995 as contended for by NT. This issue has, therefore, to be considered on the wording of the Share-Farm Agreement. Clauses 6 and 7 of the Agreement state specifically that neither party holds himself out as partner or agent for the other (clause 6) and "nothing in this Agreement or anything done in pursuance of the Agreement shall create or be deemed to create a tenancy, partnership, relationship of principal and agent or contract of employment between the parties" (clause 7).
151. This, however, is not conclusive. In *Garnac v Faure and Fairclough* [1968] AC 1130, 1137. Lord Pearson said:
- "The relationship of principal and agent can only be established by the consent of the principal and the agent. They will be held to have consented if they have agreed to what amounts in law to such a relationship, even if they do not recognise it themselves and even if they have professed to disclaim it"
152. It is, perhaps, surprising that NT are now seeking to set aside the clause which NT drafted for the purpose of its own protection. The Claims follow on from NT's prospectus which provided that "each party to the Agreement will run his completely separate business".
153. The Agreement seeks to give effect to the common intention of the parties that each party should run his completely separate business. During the subsistence of the Agreement the farmer, as the majority partner (and the person who farms the land), will claim the quota in his own right. (It is doubtful whether NT can be properly described as "The Farmer" within the terms of the Council Regulation).
154. In order for both parties to participate in payments for NT's quota under the Regulation, NT transferred the quota to Mr Birden. As a matter of contract, the money for the whole quota claimed by Mr Birden was to be paid into a joint account and then paid out in the shares agreed

under the contract. These shares were decided, not solely by reference to a strict percentage of quota, but by reference to the various matters set out in the Schedule to the Contract.

155. Further, the parties agreed that on termination of the Agreement the actual share of quota would be transferred by the farmer to NT. I conclude that this arrangement successfully (as NT intended) avoided the relationship of principal and agent between NT and Mr Birden. Despite any forms that may have been filled in at the time, Mr Birden was not claiming quota on behalf of NT but on his own behalf. NT's position was secured during the agreement by the payment out of the monies in the agreed shares from the joint account and was secured on termination of the Agreement because NT's quota would be transferred back to NT and Mr Birden was not entitled to claim that it was his quota.
156. Finally, NT claims that it would be unconscionable of Mr Birden to deny NT any beneficial interest in the historic element of the Single Payment Subsidy. I note that Mr Sissons had difficulty in framing this claim and had to resort to the plea that the case was analogous to the joint venture cases. In this case it is alleged that the joint venture was not in the claim for subsidy but in the contractual arrangements that were to apply during the time when Mr Birden was farming at Hardwick Park Farm.
157. I find that under the Share-Farm Agreement this was not a joint venture. Further the claim by NT is not founded on an alleged conflict of duty and interest which occurred during the period of the share-farm agreement. It was not related to obligations that occurred during the time when the agreement was in operation, for example, payments relating to the period in occupation which it was agreed were the subject of the accounting, but to payments made in respect of Mr Birden's occupation of other land after the agreement had terminated. The fact that the subsidy to which Mr Birden was entitled by reason of his occupation of other land was payable in part by reference to his occupation of Hardwick Park Farm between the years 2000 and 2002 did not require him to account to NT. The sums were not referable to the Share-Farm Agreement which came to an end on 1st April 2004 but to a qualifying period for current subsidy which happened to be during a time when Mr Birden was farming Hardwick Park Farm.
158. Mr Birden attempted to assist NT in obtaining the transfer of NT's share of the quota to NT, as he was required to do under the contract. The Rural Payments Agency refused to transfer the quota. In these circumstances NT has not been able to claim the historic element for Hardwick Park Farm. I find that Mr Birden was not denying NT's interest in the Quota or acting in a way that was unconscionable. The Share-Farming Agreement had come to an end. As NT had proposed, the Share-Farm Agreement was agreed to be a complete agreement. The historic element of the Single Payment Subsidy forms part of the payment to Mr Birden in respect of his new farming activity as a tenant of Dunsmore Home Farm. He does not hold any part of the historic element of the Single Payment Subsidy for Dunsmore Home Farm on trust for NT.
159. For these reasons I reject the claim and find for the defendant.