

DECISION OF THE TRIBUNAL IN THE MATTER OF an Application under
section 39(1) of the Agricultural Holdings Act 1986

BETWEEN

RODNEY AUSTIN MEATYARD

of Keevil Wick Farm, Keevil, Trowbridge, Wiltshire BAH 6NH

AND

RICHARD WILLIAM NUTLAND (Deceased)

(By his personal representatives DAVID BOUSFIELD and
CHARLES LUCAS)

WHEREAS Application was made to the Tribunal in writing dated 25 January 2009 under section 39(1) of the Agricultural Holdings Act 1986 for a direction entitling RODNEY AUSTIN MEATYARD to a tenancy of the holding known as land at Lutsley situated along the Worton Road, Wiltshire extending to some 31.27 hectares of permanent pasture Ordnance Survey Field Nos. ST 9559 0222, ST 9559 1815, ST 9558 2973, ST 9559 3306, ST 9558 4198, ST 9558 4262, ST 9558 4993 and ST 9558 5856.

AND WHEREAS a Tribunal comprising Mr Timothy Bowles (Chairman), Mr M T Thomasin-Foster (Landowners Panel) and Mr A L Bennett (Farmers Panel) duly appointed in accordance with the provisions of the Agriculture Act 1947 (as amended) to hear and determine the said Application, sat at Government Buildings, Burghill Road, Westbury on Trym, Bristol on 8 July 2010.

NOW THE TRIBUNAL having considered the evidence and for the reasons set out in the attached Schedule hereby dismisses the Application

Date 16th November 2010

Signed

Timothy Bowles
Chairman of the Tribunal

I certify that this is a true copy of the decision of the Tribunal signed by the
Chairman

Date 2/2/11

Signed

Ray Gilbey
Tribunal Secretary

IN THE MATTER OF

RODNEY AUSTIN MEATYARD

Applicant

-and-

**RICHARD WILLIAM NUTLAND (DECEASED) (by his personal
representatives) DAVID BOUSFIELD and CHARLES LUCAS**

Respondent

REASONS OF THE TRIBUNAL

1. By an Application dated 25th January 2009. the Applicant, Rodney Austin Meatyard, has applied, pursuant to section 39(1) of the Agricultural Holdings Act 1986, for a direction that he be entitled to a tenancy of an agricultural holdings said to have been held by his father, Austin Reginald Trevor Meatyard, who died on the 28th October 2008, in respect of some 31 hectares of land adjacent to the Worton Road, at Lutsey in Wiltshire. The Respondent is the estate of Richard William Nutland. Mr Nutland died on the 9th November 2008.
2. The Application is contested by the Respondent on a number of grounds pertaining to the Applicant's eligibility to succeed to his father's agricultural holding, to the satisfaction of the 'livelihood' test for eligibility and to the fact that he is already the occupier of a commercial unit of agricultural land; namely what may be termed the 'family farm'. Keevil Wick Farm, Keevil. Trowbridge in Wiltshire.
3. Materially to these reasons, however, the Respondent contests, in the first instance, whether the alleged agricultural holding, to which the Application relates, was, as at the date of the death of the Applicant's father, an agricultural holding within the meaning of section 1 of the 1986 Act, as extended by section 2 of the 1986 Act and whether, therefore, the Applicant is entitle to apply, at all, for a direction under section 39 (1) of the Act.
4. The Respondent's case is that any agricultural holding of the land in question that Mr Austin Meatyard may have had, was surrendered by operation of law in or about 1992 and that from that date, or perhaps somewhat after that date, the occupancy of the land in question was governed by a series of grazing licences granted by Mr Nutland to Mr Austin Meatyard, each for a specified period of less than one year and so excluded from conversion into a tenancy from year to year and from qualification as an agricultural holding for purposes of the 1986 Act and for purposes of any section 39 direction by virtue of section 2(3) of the 1986 Act.
5. In light of this contention, it was agreed between the parties and embodied in a direction of the Tribunal Chairman, that the question as to whether Mr Austin Meatyard had been the tenant of an agricultural holding as at the date of his death should be determined as a preliminary issue.
6. These Reasons relate to that preliminary issue.

7. The factual substrate of this matter is not in any significant dispute.
8. The questioned land was, at all material times, owned by Mr Richard Nutland. It comprises eight fields; one block of five being to the north of the Worton Road, and the other three being to the south. Mr Austin Meatyard first took up occupation of the land in 1966. the agreement was completely informal; simply a paper record signed by Mr Meatyard reflecting a grass keep arrangement for the period April 1966 to January 1967. Somewhat similar informal documents exist for the years to 1969. In that year the stated term of the arrangement was March to November.
9. Thereafter, at least from 1972 and until 1982, a slightly more formal form of arrangement was used. In each case the stated period of the agreement was for a period of less than one year, predominately April to October in each year. The agreement in each case was for a temporary seasonal grass keep.
10. Despite that formulation, it is accepted by the Respondents that, from 1976 until 1991, Mr Austin Meatyard grew corn on two or three of the fields forming to supposed grass let and that that use of the land for arable purposes was consensual. A photograph placed before the Tribunal and apparently dating back to 1970 indicates that this arable user may have commenced even earlier than 1976. The same two or three fields (amounting to some 30 or so acres); namely the fields at the northwest of the block of land said be subject to the holding, were the only fields used for arable purposes. Those purposes however ceased in 1991 and it is common ground that from 1992 onwards and until the death of Mr Austin Meatyard the entire block of land has been used for grass keep or grazing only.
11. As already indicated, the arable user was not reflected in the agreements entered into up and until 1982. However, after 1982, some but not all of the agreements did reflect the arable user. For example, the 1983 agreement identified approximately 30 acres to be used to produce spring corn and the 1990 and 1991 agreements both excluded from the grazing arrangement 34 acres for a period of 10 months and contained specific so-called 'codicils', which acknowledged that that acreage for those periods was to be used to put the land under crops.
12. From 1983 until 1992, a slightly different form of grazing agreement (one prepared by the Country Land Owners Association) was used between Mr Nutland and Mr Meatyard. Thereafter, the agreement used fluctuated between the form used in the period to 1982, and that prepared by the Country Land Owners Association. Saved in respect of the extended ten month periods granted for arable user, the term of the annual arrangement entered into between the parties, at least until 2005, was said to be for a period to be from the end of March or beginning of April to the end of October in each year. After 2005 the period was altered to a period between February and the end of December. That change appears to reflect an agreement (as indicated in the 2008 agreement) between Mr Meatyard and Mr Nutland that Mr Meatyard had the land in each year for a slightly longer period in order to facilitate Mr Meatyard in making single farm payment claims on DEFRA.
13. In addition to reflecting the adjustments in the arrangement to accommodate the arable user of part of the land and to facilitate the application by Mr Meatyard for a single farm payment, a number of the agreements also reflect and make allowance for other matters apparently discussed and agreed between Mr Nutland and Mr Meatyard. For example, in 1984 and 1985, express allowance is made for hedging and a schedule, or ledger, kept by Mr Nutland in respect of the grass keep arrangement with Mr Meatyard, likewise, record express allowances for hedging and in respect on BSE in 1997, hedging in 1999 and a number of other matters (including, apparently, in 2008, an arrangement whereby

Mr Nutland received one half of the monies achieved by Mr Meatyard in respect of the single farm payment).

14. The Applicant, although a partner with his father in the family fanning business since 1997, acknowledged in his evidence that he had had no involvement at all with the making of any of the agreements relating to the land subject to this Application and had had no knowledge even of the agreements in question until they had been produced by the Respondent with reference to this Application.
15. The evidence both of Margaret McCaffery, a witness to a number of the agreements and Mr Nutland's long term partner, and of the Applicant is that Mr Meatyard would ring up Mr Nutland early each year to arrange a meeting to agree terms in respect of the subject land. The Applicant accepted that, as described by Margaret McCaffery, Mr Nutland and Mr Meatyard, who had known each other for many years would reminisce about their time in farming and, as it was put, have a bit of a banter and chat. Mr Meatyard never explained to the Applicant the agreements he had made with Mr Nutland, or discussed those agreements, or even made mention that written documents existed. There is no evidence that Mr Meatyard was ever given copies of the agreements. In consequence, the Applicant had had, until this Application, no knowledge of the particular terms of the arrangement, or the various allowances in respect of hedging etc. contained in the agreements.
15. In regard to the user of the land, the Applicant told the Tribunal that it was his impression that his father was allowed by Mr Nutland to use the land as he saw fit. The arrangements with which the Tribunal is concerned, however, go back to 1966; that is to say to a date before the birth even of the Applicant. The Applicant did not become a partner with his father until 1997 and even then was not let in on the arrangements that his father made annually with Mr Nutland. His impression, therefore, derived from his childhood and from circumstances where as he frankly admitted, he was not aware of all the facts (in particular the arrangements made and the details of those arrangements), carried, in the view of the Tribunal, only very limited evidential weight.
16. By way of example, the Applicant sought to evidence the control exerted by his father over the relevant land by reference to the fact that his father took responsibility for hedging. He did so unaware, as already set out, that specific allowances were from time to time agreed in respect of hedging and hence that there was, at the least, the possibility that access to the land for that purpose had been authorised, pursuant to those arrangements, outside the period covered by any one of the agreements.
17. Similarly, the Applicant sought to evidence his father's control of the land, by reference to the use made of a Dutch barn in one of the fields and of the hard standing relating to some cow sheds which had fallen out of repair and been demolished, apparently in the late 1970's. He did so without knowing that buildings were by many of the agreement excepted from the grass keep arrangements.
18. In respect of those buildings, it was, as it seemed to the Tribunal, of some relevance that Mr Meatyard had elected not to carry out any works to keep the cow sheds in repair. The Applicant explained this on the footing that his father was of the view that this would not have been worthwhile, given that he might have been put out of possession of the buildings at any time.
19. As regards the period in the year when the land was in use by Mr Meatyard, the Applicant asserted that, so far as he was aware, the land had in the past been used by his father throughout the year.

20. He accepted, however, that he had never been told by his father that the land in question could be used throughout the year and he accepted that from 1980 or thereabouts the practice had been to take the stock off the land in early November. Before that, he told the Tribunal, he had been told (presumably his father) that stock had overwintered on the land and he claimed a recollection of chasing cattle on the land in winter in the mud. He asserted that, in the winter months, farmyard manure was spread over the land, that in early spring, the land was chain harrowed, that reseeding took place in either the autumn or spring, the land was fertilized for first cut silage in April, a silage cut taken in May, and a hay crop thereafter. Cattle went on the land at the end of hay making. The Dutch barn was used to store straw from August each year to be used in late winter or early spring to straw up the cattle.
21. In respect of the period of arable user which, of course, terminated in 1991, save in respect of 1983, where the agreement identified an agreed user for spring corn, the Applicant was unable to say whether the arable user had been in respect of winter or spring crops and, therefore, whether or not the crops were in the ground over any period during which Mr Meatyard's occupation had been purportedly excluded by the relevant annual agreement. When in the ground the crops would have been sprayed, he said, two or three times. He could not say, however, when spraying had or would have taken place. The applicant pointed out that, when arable user ceased and the land used for arable reverted to grass keep and grazing, the grass lays would have had to be put down in either autumn 1991 or spring 1992.
22. The Applicant explained the fact that his father had entered into grass keep agreements, in the form he had, on the straightforward basis that his father had to make a living and that, if Mr Nutland stipulated particular terms, his father would have had to agree those terms if he wanted to stay on the land. He accepted also that the enforcement of those terms was a matter for Mr Nutland.
23. Against the factual matrix set out above, the issue for the Tribunal, as previously set out and for determination as a preliminary issue, is whether the arrangements subsisting as between Mr Meatyard and Mr Nutland, as at the death of Mr Meatyard in October 2008, was such that the land at Lutsey, the subject of this application, constituted an agricultural holding.
24. In that regard, it is clear that if the arrangements between Mr Meatyard and Mr Nutland were as set out in the grazing/grass keep agreements in place as at the date of Mr Meatyard's death, then the Lutsey land would not have constituted an agricultural holding and the Applicant's application for a section 39 direction would fall to be dismissed. The Applicant, however, contends that the agreements set out earlier in these Reasons did not reflect the true agreements between the parties and that those true agreements had given rise to an agricultural holding which remained in being up to and including the date of Mr Meatyard's death. Implicit in that was that Mr Meatyard and Mr Nutland had entered into written agreements which were deliberately untrue.
25. Mr Batstone, on behalf of the Applicant, challenged the accuracy of the agreement as reflecting the true agreement between the parties by reference to a number of matters. Firstly, he submitted that the rents or payments charged for the land in question over the years had been agreed and paid at such a level as to indicate that these were in truth rents for an annual agricultural holding rather than for a grazing licence for a period of a year. He drew the Tribunal's attention, in particular, to the charges made for the use of the land in 1979, where he submitted that the monies payable equated to £41.00 per acre and to 1984, where, he said, the monies paid equated to £53.00 per acre.
26. Secondly, he relied upon the Applicant's evidence as to the user of the land outside the periods contemplated by the various agreements to establish that the true agreements

entered into each year were annual arrangements rather than arrangements for a period of the year as set out in the written agreements ostensibly entered into between Mr Meatyard and Mr Nutland.

27. Thirdly, of course, he emphasised the arable user carried on in the period 1976 to 1991 and which he submitted necessarily gave rise to an agricultural holding. He submitted, further, that, even if, in the years, following 1991 the arrangements entered into between Mr Meatyard and Mr Nutland had, in essence, reflected the user of the land by Mr Meatyard, they were nonetheless to be regarded as simply a continuation of the series of previous agreements which had not reflected the true arrangement between the parties and did not, therefore, give rise to a surrender of the agricultural holding arising from those arrangements.
28. No expert evidence was called before the Tribunal in respect of the level of payments made for the land and the Tribunal, having regard to the expertise in particular of its two farming members, was not satisfied or persuaded that the payment levels relied upon by Mr Batstone were outside the level of payments appropriate to a grazing licence of the kind ostensibly granted by Mr Nutland.
29. In regard to the alleged user of the land outside the periods contemplated by the written grazing agreements, the Tribunal reminded itself that the question was not simply one of the actual user of the land but rather whether the true intention of the parties, as demonstrated or established by that use, was that the land was to be used by Mr Meatyard throughout the year, and ergo that the written agreements did not in fact reflect the true agreement of the parties. The Tribunal did not consider that such out of period user as may have taken place demonstrated or established the falsity or deliberate inaccuracy of the written agreements.
31. As already indicated. Mr Nutland had over the years, made specific arrangements with Mr Meatyard in respect of hedging. The fact, therefore, that Mr Meatyard, or his contractor, might have entered onto the subject land outside the periods prescribed by the grazing agreement in order to hedge was, or would have been, as consistent with a permission granted to Mr Meatyard for that purpose as with Mr Meatyard retaining occupation outside the apparently contracted period and was not, in consequence evidence that the written agreements did not reflect the true agreement between Mr Nutland and Mr Meatyard.
32. The other matters potentially relied upon on behalf of the Applicant, the possible overwintering of cattle on the land prior to 1980, the spreading of farmyard manure, spraying, the chain harrowing of the land in early spring and the use of the Dutch barn for the storage of straw over the winter, equally did not seem to the Tribunal to be capable, whether individually or collectively, of establishing or demonstrating the falsity or intentional inaccuracy of the grazing agreements. The evidence of the overwintering of cattle was negligible, being based only on the Applicant's one-off recollection as a 13-year old boy, and what he had been, apparently, at some stage told. That evidence was wholly insufficient to establish the deliberate inaccuracy of the grazing agreements and was in any event historic; it being accepted that no overwintering had taken place since 1980.
34. The spreading of farmyard manure, during what can only have been a very small part of the fallow period contemplated by the agreements, was, as it seemed to the Tribunal, likewise, wholly insufficient to establish the deliberate inaccuracy of the grazing agreements or to prove a consensual year round occupation of the land by Mr Meatyard. It may well be that, in this very modest way, Mr Meatyard did not strictly comply with his written agreements. It may well be that Mr Nutland was unaware of the manure spreading. It may equally well be that, the user being minimal, he was not concerned to

enforce the strict terms of the written agreements. None of this can go any significant way to establish that the agreements, entered into between Mr Nutland and Mr Meatyard year by year, for so many years, did not accurately reflect their true agreement.

34. The possibility (and it is no more) that some of the spraying that had taken place and perhaps the spring harrowing was carried out marginally outside the terms of the agreed period of occupancy must be viewed in the same way. The fact that a farmer may go on land a few days early, or leave a few days late, or carry out some minor operation on the land outside the term of the agreed arrangement does not establish the inaccuracy or falsity of that agreement.
35. The only other matter relied on, or potentially relied upon, by Mr Batstone was the use of the Dutch barn for the storage of straw through the winter. As to that, Mr Baxton accepted that the building on the alleged, or supposed, grazing land used for purposes ancillary to grazing, such as the storage of straw for strawing up cattle, was not of itself inconsistent with the grazing agreement. He was also constrained to accept that, as already stated, many of the relevant agreements expressly excluded buildings and further that, implicitly, a grazing agreement applies to land rather than buildings on land. Accordingly, in order to sustain an argument that the use of the Dutch barn through the winter demonstrated that the grazing agreements did not reflect the true agreement, it was necessary, also, for him to show that the agreement terms, which explicitly excluded buildings and hence the barn, themselves misstated the true position and that, in truth, there had been an agreement between Mr Meatyard and Mr Nutland that Mr Meatyard had the use of the barn.
36. In the view of the Tribunal, there is absolutely no basis on which that proposition can be supported. There is nothing before the Tribunal to suggest that Mr Meatyard's use for the barn was anything other than an informal user to which Mr Nutland took no objection.
37. Turning to the effect of the agreed arable user of the land in the period 1976 to 1991. it was (and had to be) accepted on behalf of the Respondent that, at least to the extent of the land used for arable production, the agreements in that regard made between Mr Nutland and Mr Meatyard gave rise to an agricultural holding protected under the 1986 Act.
38. An argument was advanced by Mr Thomas, on behalf of the Respondent, that the statutory conversion of the grazing agreement into a protected agricultural holding only applied to the three fields put into arable production and that the balance of the land continued to be held under the terms of the relevant grazing agreements and was thus outside the protection of the Act.
39. The Tribunal did not accept that argument. The land in question had always been held under one agreement and at one payment. There had never been any question of separate agreements, or separate payment, for separate areas and, therefore, there was nothing to suggest the parties intended to partition off the arable land. Rather, it is clear from those agreements which made specific reference to the arable user, that that user was agreed and allowed under and within the one agreement, with the clear consequence that, in the years when arable user was agreed between Mr Meatyard and Mr Nutland, the agreements in question went beyond grazing and grass keep, fell outside, therefore, the exception from protection provided by section 2(3) of the Act and took effect therefore as tenancies from year to year protected by the Act.
40. That being the case, the ultimate question for determination is whether, when arable user ceased in 1991 and the entire block of land reverted to grass keep/grazing, the grass keep/grazing agreements entered into in respect of the years post 1991 had the effect of

surrendering the yearly tenancy arising from the mixed arable and grazing use and creating new grazing/grass keep arrangements falling outside the protection of the Act.

41. In the view of the Tribunal the answer to that question is 'yes'.
42. The Tribunal is entirely satisfied that at no stage in their relationship had Mr Nutland and Mr Meatyard deliberately entered into written agreements which intentionally failed to reflect their true agreement. As already stated, such user of the land by Mr Meatyard outside the contracted period as may have taken place did not begin to warrant the conclusion that the agreements did not reflect the true terms agreed as to the period user.
43. Rather, it was the clear view of the Tribunal that the conclusion to be drawn from a consideration of the written agreements was that Mr Nutland and Mr Meatyard, in entering into the agreements they did, made a real effort to set out their true agreements. It was striking in the view of the Tribunal that the agreements had from time to time being adjusted to reflect the special arrangements made about hedging, about BSE, about the recovery of the single farm payment and, indeed, about the arable user. If the agreements had been intentionally sham and agreements in form only, it is highly unlikely that these negotiated adjustments would have been recorded in the way that they were. The clear inference to be drawn (and to be drawn also from the way in which the various adjustments were kept and recorded by Mr Nutland in his ledger) is that the written agreements were intended to reflect the true agreements made.
44. That said, the Tribunal, of course, acknowledges that the agreements entered into only from time to time recorded the arable user and that, to that extent and in those years where the arable user was not recorded, the written agreements entered into were not an accurate reflection of the agreements made. The Tribunal did not, either, overlook the oddity that Mr Meatyard did not, apparently, receive copies of the written agreements made.
45. The Tribunal, however, did not consider, given the evident efforts made by Mr Nutland and Mr Meatyard to record their true agreements, as set out above (including the arable user), that any inference adverse to Mr Nutland should be drawn from the fact that copy agreements were not retained by Mr Meatyard. The likelihood, as between two men who had known each other for very many years, was that they saw no need to have more than the one copy of what they had agreed in respect of each year.
46. Likewise, the omission of any reference to the arable user in certain (even many) of the agreements did not, in the view of the Tribunal, indicate, or establish, any deliberate intention as between Mr Meatyard and Mr Nutland to put forward untrue agreements. Had that been their intention then it is, as it seems to the Tribunal, inconceivable that any of the agreements would have set out, as they did, the agreements as to arable use. It is simply fanciful to think that in one year the parties would put-forward a deliberately untrue agreement, disguising or hiding the arable user, and yet in another year, say 1990 or 1991 (where the codicils appear), they should decide to set out their true agreement. The only sensible answer is that both farmers always intended to set out their true position but that in some years they were more accurate in recording their agreement than in others.
47. The conclusion of the Tribunal, therefore, is that the agreements that existed as between Mr Meatyard and Mr Nutland in the years up to and including 1991, when arable user ceased, were not sham; albeit that, as already stated, they did give rise to an agricultural holding over and in respect of land in those years. That finding is material to the question as to whether in entering into the 1992 grazing agreement Mr Meatyard, thereby, surrendered that holding.

48. Mr Batstone's submission that the agreements entered into in 1992 and thereafter did not give rise to a surrender by operation of law, even although after that date any arable user had ceased and even if it were the case that from that date forward the grazing agreements accurately reflected the use made of land by Mr Meatyard, rested upon the footings: (a) that the 1992 and subsequent agreements were, nonetheless, a continuation of a series of sham agreements and, therefore, did not give rise to a surrender by operation of law; and (b) that surrender by operation of law, being a concept based upon equitable estoppel, did not operate if in all the circumstances it would be inequitable for a new agreement to operate as a surrender and that, if, as he submitted, the 1992 and subsequent agreements were a continuation of a series of sham agreements, then it would plainly be inequitable for those agreements to operate as or give rise to a surrender.
49. The substrate of those submissions, therefore, the first relying upon the decision of the Court of Appeal in *Short Bros (Plant) Limited v Edwards* 1978 249 EG 539, turned upon a finding being made that the 1992 and subsequent agreement continued and formed part of a series of sham agreement and were not themselves genuine agreements.
50. The Tribunal makes no such finding, but finds, rather, that the grazing agreements, although not always complete, were genuine agreements and not sham and, further, that the agreements post 1991 were also genuine. There is no reason, or basis, therefore, in equity or otherwise, that the 1992 agreement should not operate as a surrender. In those circumstances, the Tribunal was satisfied that the 1992 grazing agreement operated as a surrender of the agricultural holding which had come into being during and by reason of the arable user.
51. That being the case, the Tribunal was further satisfied that the Lutsey land was not subject to an agricultural holding as at the date of Mr Meatyard's death and that, in consequence, there is no jurisdiction in the Tribunal to make a section 39 direction in favour of the Applicant.
53. For these reasons, the Application must be dismissed.