AGRICULTURAL LAND TRIBUNAL **ALT/M/S/372-376**
MIDLANDS AREA
Succession to a Tenancy

WILLIAM RODNEY SANDERCOCK	Applicant
and	
CHRISTOPHER SANDERCOCK, ANDREW SANDERCOCK AND STEPHEN SANDERCOCK	First Landlords
and	
The said C SANDERCOCK, A SANDERCOCK, S SANDERCOCK AND PAUL RODNEY STEPHENS AND PHILIP ALLAN STEPHENS	Second Landlords

The Tribunal sat at the Angel Hotel, Market Harborough on 24-26 January 2000, 21-23 February 2000 and 10 April 2000 to consider the following applications:

(a) an application made by the Applicant dated 19 January 1999 made under Section 39(1) of the Agricultural Holdings Act 1986 ("the Act") for a direction giving entitlement to a tenancy of various blocks of land making up together Station Farm, North Kilworth, in the county of Leicestershire ("the Holding");

(b) an application by the First Landlords dated 21 May 1999 under Section 44(1) of the Act for consent to the operation of a notice to quit given in respect of part of the holding;

(c) an application by the Second Landlords dated 21 May 1999 under Section 44(1) of the Act for consent to the operation of a notice to quit given in respect of the whole of the Holding;

(d) an application for costs made by the Applicant.

The Tribunal having considered the applications and other documents relating to them, having inspected the land, having listened to the evidence of witnesses and having heard the submissions of the advocates found and directed as follows:

(1) as to the application referred to in paragraph (a) above that the Applicant is both eligible and suitable to become the tenant of the Holding, and does hereby give a direction under Section 39(5) of the Act entitling him to a tenancy of the Holding commencing one day before the expiry of three months from the date hereof;

(2) as to the application referred to in paragraph (b) above that the Tribunal refuses to give its consent to the operation of the notice to quit;

(3) as to the application referred to in paragraph (c) above that the Tribunal refuses to give its consent to the operation of the notice to quit;

(4) as to the application referred to in paragraph (d) above that the Second Landlords do jointly and severally pay to the Applicant a contribution to his costs involved in preparing, issuing and conducting his response to the applications referred to in paragraphs (b) and (c) above amounting to one third of the total thereof. Such amount to be agreed between the parties and in default of

agreement with liberty for either party to apply to the Tribunal for the purpose of having the said contribution fixed.

Signed this 27th day of May 2000

Chairman

The members of the Tribunal were Mr J H Weatherill (Chairman), Mr S J Packe-Drury-Lowe (Landowners' Panel) and Mr G E Botterill (Farmers' Panel).

I hereby certify that this is a true record of the decision of the Tribunal.

J R WILLIAMSON
Tribunal Secretary

The Tribunal met to consider five applications numbered 372 to 376 inclusive made by William Rodney Sandercock ("the Applicant") under Section 39(1) of the Agricultural Holdings Act 1986 ("the Act") requesting directions giving entitlement to tenancies of various blocks of land making up together Station Farm, North Kilworth, Leicestershire following the death of his father William Reginald Sandercock ("the Deceased") on 20 October 1998. The Tribunal was also required to consider five corresponding applications by the various landlords of the said blocks of land made under Section 27 of the Act asking for consent to the operation of notices to quit on the grounds set out in paragraphs (a) and (b) of Section 27(3) of the Act.

The reason for the proliferation of applications was that the core of Station Farm had been let to the Deceased on 2 June 1947 and thereafter various blocks had been added and rent reviews completed so that it was uncertain whether the farm consisted of one tenancy or four separate ones. The Applicant had, therefore, made one application (376) comprising the whole of Station Farm as it was at the date of death and four others comprising individually the core of the farm contained in the 1947 tenancy and the land which had been added (372-375 inclusive). The Respondents had replied accordingly with their applications under Section 27.

At the outset it was important to note that the Respondents in applications numbered 372, 373 and 374 (and also the Applicants for Section 27 consents in these cases) were the brothers Christopher Sandercock, Stephen Sandercock and Andrew Sandercock, whilst the Respondents (and Section 27 Applicants) in the application numbered 375 were Paul Rodney Stephens and Philip Allan Stephens. The Respondents (and Section 27 Applicants) in the composite application numbered 376 were the three before mentioned Sandercock brothers and Messrs PR and PA Stephens.

As a preliminary issue the proliferation of Applications was considered by the parties legal representatives and as a result it was decided that the applications for succession and for consent to the operation of notices to quit numbered 372, 373, 374 and 375 should be withdrawn with the proviso that the Section 44 application for unit numbered 372 together with the Reply thereto, instead of being withdrawn, should be consolidated with the 376 application. The practical result would be that the Tribunal could, in dealing with the Section 44 applications, treat the two parts differently if it was thought appropriate so to do. The land and buildings comprised in application 376 contain 46.89 hectares (115.774 acres), comprise the whole of Station Farm and are hereinafter referred to as "the Holding". Evidence was given that there had been other land farmed with the Holding at the date of death of the Deceased, so there was an agricultural unit of which the Holding formed part. This other land consisted of land owned by the Applicant, land tenanted by the Applicant and land tenanted jointly by the Applicant and the Deceased. The area of this other land was 43.71 hectares (107.69 acres). The total of the agricultural unit was therefore 90.56 hectares (223.468 acres). Evidence was also given that there had been an extra 25 acres or thereabouts of grass keep farmed by the partnership at the date of death.

Before evidence was taken the Tribunal inspected the Holding and the other land and buildings which formed the remaining part of the agricultural unit of which the Holding formed part. In particular, at the request of Ms Moss of counsel, acting for the Respondents, the Tribunal paid particular attention to the farmhouse (inside and out) and other land and buildings held by the Applicant as tenant of the Knight and Palmer Charity; the land at North Kilworth owned by the Applicant and the footings of a dwelling thereon and the Applicant's livestock. A brief examination of part of Tollgate Farm, owned by the Respondent Sandercock brothers' father was made. The Sandercock brothers' livestock on Tollgate Farm was examined closely.

For the Applicant to obtain a determination from the Tribunal that he is a suitable person to become the Tenant of the Holding, Section 39(2) of the Act requires him firstly to show that he was an eligible person at the date of his father's death and that he has not subsequently ceased to be such a person. If he can show himself to be an eligible person the Tribunal can then go on to consider whether he is suitable.

For the purposes of the Act^an eligible person is defined in Section 36(3) as "any surviving close relative of the deceased in whose case the following conditions are satisfied –

(a) in the seven years ending with the date of death his only or principal source of livelihood throughout a continuous period of not less than five years, or two or more discontinuous periods together amounting to not less than five years, derived from his agricultural work on the holding or on an agricultural unit of which the holding forms part, and

(b) he is not the occupier of a commercial unit of agricultural land."

It was conceded by the Respondents that the Applicant, being the son of the Deceased, was a close relative within the definition and that he was not the occupier of a commercial unit of agricultural land, so the dispute as to eligibility revolved around paragraph (a), commonly called "the livelihood test". In applying this test the Tribunal found the down-to-earth remarks of Stuart-Smith LJ in *Welby and another v Casswell* [1995] 2EGLR to be helpful. In connection with Section 36(3)(a) he said :

> "Like most questions of construction this one is largely a matter of impression. Moreover I consider that the subsection should be construed in a purposive manner and very much in the way that a jury would do and without adopting too legalistic an approach. Livelihood can be defined as "means of living" (see *Shorter Oxford Dictionary*) that is to say what is spent or consumed for the purpose of living. The source of one's livelihood in so far as it is money, is income; in so far as it is the use or consumption of goods, it is benefits in kind. An applicant may have income derived from one or more sources. If so, in order to qualify under section 36(3)(a), the income derived from work on the agricultural holding must be greater than his income from other sources."

It was common ground that the Applicant in the Sandercock case had income derived from one or more sources, but what was at issue was whether his income derived from work on the agricultural holding was greater than his income from other sources.

It was the Applicant's contention that he fulfilled the livelihood test for every one of the seven years prior to the Deceased's death, but the Respondents disagreed. In their opinion the Applicant fulfilled the test for four years, but fell short for the other three. For two of those three years he fell very far short because that part of his livelihood deriving from his agricultural work on the Holding amounted to 11% of his total livelihood in the year immediately preceding his father's death and 12% for the year before that. For the remaining one of the three years immediately preceding the death the percentage was 39% which, although nearer to the figure above 50% commonly accepted as the requirement for "principal source of livelihood", did in fact fall short and, as the Applicant had not invoked the aid of Section 41 of the Act, the percentage was not sufficient to qualify him in that year. Section 41 allows an Applicant who is not fully eligible under the livelihood test, in certain circumstances, to ask the Tribunal to treat him as eligible, but the request has to be made within three months of the death and the Applicant had made no such request. In the Respondents' opinion, therefore, because he only fulfilled the requirements for four out of the seven year period immediately preceding death, he must fail the livelihood test and, thus, the eligibility requirement.

There were several reasons for the discrepancy between the percentages advanced by the Applicant and those advanced by the Respondents. The Respondents' figures were advanced in a series of tables prepared by Mr A J Harrison, a Chartered Surveyor, who was the expert witness called on their behalf. Using information from the partnership accounts and IACS forms he split the Applicant's sources of livelihood between those which he labelled "Relevantly Derived Livelihood" and those which he labelled "Non-Relevantly Derived Livelihood". The Tribunal understood the former to mean the livelihood derived from the Applicant's agricultural work on the Holding or on an agricultural unit of which the Holding formed part, and the latter the livelihood that came from other sources. Amongst the other sources Mr Harrison included the remuneration received by the Applicant from his contracting activities, his wife's wages, his own wages from other work off the Holding, investment income and that derived by the Applicant from work on land which did not form part of the unit containing the Holding at the date of death. By far the largest contribution towards Mr Harrison's category of "Non-Relevantly Derived Livelihood" in the three years before death however, came from the rent received from milk quota leasing and sheep quota leasing. In fact so large was this contribution that Mr Harrison acknowledged that, without any other adjustment to the figures, if the quota rents were held by the Tribunal to fall under the "Relevantly Derived Livelihood" heading rather than the "Non-Relevantly Derived" one, the former would in all of the seven years exceed 50% of the Applicant's total livelihood. The contention of the Respondents was that milk and sheep quota rents are not derived from agricultural work on the agricultural unit and so must be siphoned out of the drawings for the purposes of Section 36(3)(a). It was not alleged that the milk and sheep quotas were paid directly to the Applicant. They reached him in the form of his drawings from the partnership bank account. Nor was it alleged that the Applicant did not carry out agricultural work on the agricultural unit, only that his drawings contained elements that did not derive from his agricultural work on the agricultural unit.

Before he had entered into partnership with his father in 1988 the Applicant had run a profitable dairy business on his own account. Because his father had found himself in financial difficulties with his fanning enterprise the Applicant had amalgamated his own business with that of his father to prevent the father going bankrupt and had entered into partnership with him. As well as land owned and land tenanted by him he had brought milk quota from his own business to the partnership business and in the early days the milk quota had been used in connection with the dairy side of that business. Mr Harrison had said that the quota was registered in the name of the partnership at the date of death, but the Tribunal was not sure on this point. However the identity of the registered holder was immaterial. The main point was that the partnership accounts showed both the quota rents as being paid into the partnership. When the partnership business went out of milk the milk quota was leased out and it is the Respondents' claim that the rent received from that leasing and from the leasing of sheep quota was "Non-Relevantly Derived Livelihood" and, as such, formed a part of the Applicant's livelihood which was not derived from his agricultural work on the Holding. As the "Non-Relevantly Derived Livelihood" by this calculation made up more than 50% of the Applicant's total livelihood for three of the seven years before the Deceased's death, the Applicant must fail the livelihood test.

The "Non-Relevantly Derived Livelihood" was not made up exclusively of the milk and sheep quota leasing. Other items were included as set out in the meticulously researched series of tables prepared by Mr Harrison. These items are referred to in a preceding paragraph of these reasons and are more fully seen in Mr Harrison's Table No. 2. The quota rents did, however, make up the largest part of the value thereof, and, as previously indicated, if they were to be transferred from the category of "Non-Relevantly Derived Livelihood" to the category of "Relevantly Derived Livelihood" the Applicant would fulfil the livelihood test. For instance, in Table 1 prepared by Mr Harrison his figures show the "Relevantly Derived Livelihood" to amount to £2,700 and the "Non-Relevantly Derived Livelihood" to £22,712 for the year immediately preceding death. If, however, the milk quota leasing and sheep quota leasing (totalling £10,015) are taken out of the latter category and transferred to the former, the former is increased to £12,715 and the latter reduced to £12,697. In the year preceding that the sane exercise would produce a "Relevantly Derived Livelihood" of £13,855 and a "Non-Relevantly Derived" one of £9,661. To go to the year before that the figures would be £11,973 and £5,234. In other words, if this exercise could be legally adopted, for the years in which Mr Harrison had claimed that the Applicant's "Relevantly Derived Livelihood" had been 11%, 12% and 39% of the total livelihood figure, these percentages would be increased to a little over 50% in the first case, 59% in the next and 69% in the final one. In feet the percentages would be sufficient to qualify the "Relevantly Derived Livelihood" as comprising the Applicant's principal source of livelihood in all those years and as the percentages were admitted by Mr Harrison to be over the 50% mark in the remainder of the seven year period, the Applicant would pass the livelihood test without querying any other figures used by him.

Whilst admitting that a small proportion of the Applicant's livelihood derived from sources other than his agricultural work on the Holding or on the unit of which the Holding forms part, Mr Buxton of Messrs Burges Salmon, acting for the Applicant, contended that the majority of it derived from the Applicant's agricultural work on the agricultural unit. The argument that any significant part of such livelihood derived from any other source was misconceived.

He argued his case in two ways. Firstly he contended that the *Welby v Caswell* case made the source of the moneys represented by the quota rents irrelevant. It was sufficient that more than half the income representing his livelihood had come from drawings and payments in kind from a partnership that was engaged in agriculture on the agricultural unit and that the reason he was able to make those drawings and obtain those payments was because, over the seven years, he had been engaged in agricultural work on that unit. It mattered not that the main reason the partnership bank account was able to support those drawings was because it received moneys into it that might not be derived from the Applicant's agricultural work on the unit. In making this contention he did not concede that the leasing of quotas was anything other than agricultural work. Secondly he contended that even if the quota rents ought properly to fall in the "Non-Relevantly Derived Livelihood" column, two of Mr Harrison's other figures for the critical third year before death (the 39% year) were incorrect and if these figures were corrected the "Relevantly Derived Livelihood" would be over 50% of the whole.

To deal with the first point. As well as relying on *Welby v Caswell* Mr Buxton argued that for the seven years prior to the Deceased's death the Applicant had been a working farmer. He had worked on the unit of which the holding formed part and the majority of his livelihood – certainly well over 50% – came from benefits in kind derived from the farming partnership farming that unit and from drawings from the partnership bank account. The partnership had used the milk quota whilst it was producing milk, and when it had ceased to produce milk it had leased out the quota. Initially the Applicant had regarded this as a temporary measure as he intended that the partnership should go back into milk production, but this ambition was fading. It had not disappeared altogether, however, as his stock rearing policy would allow him to go back into milking if that should become economically viable. In leasing his quota he was only doing what many other farmers were doing, all of whom would be surprised if they were to be told that their decisions and executive actions in connection with something so tied to agriculture was not agricultural work. To reject the leasing of milk quota as "Relevantly Derived Livelihood" would call into question many other farming operations and receipts, such as the payment of set-aside (the payment of set-aside being only one of the comparables suggested by Mr Buxton).

For the Respondents, Ms Moss argued that virtually no work was required by the Applicant to lease out the quota. If there was agricultural work it was work carried out by the payers of the rents rather than the receivers. The rents were in the nature of investment income rather than rewards for agricultural work. They were payments for transactions the government allowed precisely because there was no agricultural work entailed, i.e. precisely because the owner of the quotas had decided to go out of that sort of agricultural work. The comparables (e.g. set-aside etc.) advanced by Mr Buxton were inapplicable or misleading.

The Tribunal then considered the facts of *Welby and another v Caswell* in connection with the livelihood test. In that case there was a partnership between father and son which in four of the seven years prior to the father's death had only been able to meet the son's drawings because of injections of capital and loans from the son, from his father, from banks and from family members. The landlords contended that the source of the son's livelihood was the money provided by these injections of capital and not the son's agricultural work on the holding. The Tribunal did not agree and granted a succession. The landlords appealed and succeeded in their appeal, whereupon the son appealed to the Court of Appeal and obtained a decision in his favour. It was held by the Court of Appeal that:

> "the proper inquiry is not to consider where certain sums which were in the partnership account had come from, but why the appellant was able to have access to those sums in the four years in issue. The only reason he was able to draw on partnership funds was because of his agricultural work on the holding. Section 36(3)(a) of the Act requires the applicant for a tenancy to establish his economic dependence on the holding: the appellant's work on the holding was the sole source of his livelihood and where the net profits were insufficient, it was irrelevant how his living expenses were funded".

Mr Buxton submitted that the *Welby* case made it clear that if the quota rents were used to finance the business (including the payment of drawings to a partner who made the drawings as a consequence of his agricultural work on the agricultural unit) it was not appropriate to look into where the money that had funded the Applicant's drawings had come from. It was sufficient that the Applicant carried out agricultural work on the unit of which the Holding formed part and that this work was the reason he had been able to draw from the partnership bank account the sums which provided his livelihood.

Ms Moss did not agree. She said that paying sums into a partnership bank account did not "magically" convert those sums into "Relevantly Derived Livelihood", giving as an example a wife's wages. In her submission *Welby* v *Caswell* was concerned with a different problem .and it was necessary to look at each source of livelihood and determine whether it complies with the test in Section 36(3)(a). She quoted Stuart-Smith LJ as follows:

> "The proper inquiry is to ask why the son was able to have access to those sums. The only reason he was able to draw on partnership funds was because of his agricultural work on the holding"

and she also quoted from Mr Derek Wood QC, with whose arguments the Court of Appeal agreed, as follows :

> "The solution is to look at the immediate source of the income. As a matter of ordinary language a person who has no significant source of income other than his drawings from a partnership account, and is entitled to make those drawings because he is engaged full time in agricultural work on the holding "derives" his livelihood from that work".

But unfortunately the Tribunal felt that neither of these quotations supported her case. Both of them suggest that the derivation of moneys paid into a partnership account has to be ignored and the immediate source of the Applicant's income is the one that counts. The immediate source of the income to the Applicant is his drawings from the partnership account and the reason he was able to make those drawings was because of his agricultural work on the Holding. The quota rents were not the immediate source of the Applicant's income. The rents were not paid to the Applicant; they' were paid into the partnership bank account and were used, in part, to defray partnership expenses before being used to pay the Applicant's drawings. In fact the Applicant received a sum which was less than the rents paid into the account. The rents had been invested in the business. In the words of Mr Derek Wood QC in the *Welby* case they were "not a pot of gold on which the son could draw". They were meant to finance the business as well as provide the drawings. As in the *Welby* case the gross farm output from the agricultural holding in every one of the years in contention exceeded the Applicant's drawings. In every one of those years there was no equivalence between, the amount of the quota rents and the amount of the drawings. Had there been such an equivalence it might have been contended that the rents were, in truth, "a pot of gold".

Although not caring to use the word "magical", the Tribunal felt that *Welby* did suggest that income not deriving from agricultural work on the agricultural holding could be converted into income that satisfied the livelihood test. This could be done by paying it into the business farming an agricultural holding in order to finance that business and then paying it out to a person who was economically dependent on his drawings from that business.

Ms Moss had encouraged the Tribunal to read the *Welby* case in full and this they did, paying particular attention to the down-to-earth remarks of Stuart-Smith LJ, before referred to. It then asked itself how a jury would determine from where the Applicant's livelihood derived and came to the conclusion that it would be likely to answer that it did not derive from the quota rents but from his ability to draw from the partnership bank account and to take benefits in kind, and that that ability derived from agricultural work he carried out on behalf of the partnership on the agricultural unit of which the Holding forms part. To regard the derivation of the Applicant's livelihood as being the rent for the quotas would be looking at the ultimate source of the income providing the livelihood rather than the immediate source, and the Court of Appeal had approved the view that it was the immediate source that was relevant. Over the seven year period the Applicant had spent the majority of his working time on the agricultural unit carrying out the thousand and one items of agricultural work necessary for running the farm. He had worked off the farm, both as a contractor and as an employee, but this work had been done in his spare time and largely to support the business on the farm. There was no question about where his main work took place. It took place on the agricultural unit, and it was*because of this that he was able to make drawings from the partnership account to provide the principal source of his livelihood.

The Tribunal further considered whether the *Welby* case was substantially different from the case before it, as had been suggested by Ms Moss. Unfortunately she had not elaborated her reasons for this submission so the Tribunal had to look for any differences itself, and could find none of any significance.

After having considered the *Welby* case and the advocates' arguments thereon the Tribunal came to the conclusion that the source of the quota rents was immaterial. The proper consideration was how the Applicant had access to them. Once they had gone into the partnership account the only reason he was able to draw on them was because what he drew was in recognition of his agricultural work on the unit of which the Holding formed part. He was economically dependent on that unit. His agricultural work on that unit was the source of almost the whole of his livelihood, certainly well over 50%.

In case he should have failed in his reliance on the *Welby* case, Mr Buxton secondly argued that the figures shown in Mr Harrison's Table 2 for the third year preceding the Deceased's death (i.e. the 39% year) were incorrect, and if they were corrected the "Relevantly Derived Livelihood" would exceed the "Non-Relevantly Derived" one. This would happen even if the quota rents were left under the latter heading.

There were two corrections required. Firstly to the figure representing benefit in kind from Accommodation and secondly to die figure representing Farming Enterprises on the Additional Land. With regard to the former Mr Harrison had used £1,907 being the figure shown in the Applicant's accounts for the vital third year before death adjusted to tally with the statutory year rather than the financial year and also because he saw it as a reasonable proportion of the total rent from the Knighton Charity holding to represent the benefit in kind arising from accommodation. Mr Buxton said the figure should be £4,800 as that was the figure the Applicant would have to pay on die open market if he had to look for equivalent accommodation. Mr Harrison agreed that if the test of obtaining equivalent accommodation on the open market was the correct one, the figure of £4,800 was somewhere near right. He considered it was not the correct one, however, and although he had looked at open market comparable figures he had net included them in his tables. Mr Buxton was faced with the difficulty that the Applicant had shown a figure equivalent to the adjusted £1,907 in his accounts as representing the value of the accommodation. Although the Tribunal were aware that the accounts were not set in stone in this connection, it thought that Mr Buxton had not made a sufficiently strong case to warrant their alteration. In importing the £4,800 figure he was unwarrantably importing hypothetical facts when an actual fact was in existence and had been tried and tested with the Inland Revenue. The Tribunal could not accept Mr Buxton's argument on this point. As the correction to the figure for Farming Enterprises on Additional Land would not support Mr Buxton's argument unless he had succeeded on the Accommodation point, and as he had not succeeded on that point, the Tribunal do not intend to rehearse the arguments thereon.

In the opinion of the Tribunal Mr Buxton had successfully argued that the *Welby* case applied to this case, so whether the actual sums received in the quota rents were derived from agricultural work on the agricultural unit was immaterial as they had undoubtedly gone into the account that funded the Applicant's agricultural work on that unit and the Applicant was economically dependent on that work, and hence on the unit (*Welby v Caswell).* The argument gave rise to the result, that if they were fed back into Mr Harrison's tables the "Relevantly Derived Livelihood" would exceed the "Non-Relevantly Derived Livelihood" for all of the seven years ending with the death of the Deceased and, therefore, the Applicant's principal source of livelihood for a continuous period of not less than five years in the seven years ending with the death of the Deceased derived from his agricultural work on die agricultural unit of which the Holding forms part as required by Section 36(3)(a). As it had already been established that die Applicant satisfies the commercial unit test of paragraph (b) of that Section the Tribunal found that he had been accordingly an eligible person for the purpose of his application at the time of the Deceased's death and that he had not subsequently ceased to be such a person.

Although its decision on the livelihood test was made on the basis of *Welby v Caswell*; the Tribunal was by no means certain that if, contrary to the *Welby* case, the proper test was to enquire where the moneys in the partnership account had come from, the quota rents would have to be regarded as "Non-Relevantly Derived Livelihood". Most farmers would regard them as farming income, and, although perhaps the work necessary to obtain them might have been minimal, nevertheless some work was necessary. Management decisions would have to be taken, instructions given and papers signed. If Managing a farm can be classed as agricultural work – as seems to be suggested in *Muir Watt & Moss* 14.40 – then surely managing the acquisition of part of the farm income must fall into the same classification.

Having decided that the Applicant was eligible, the Tribunal had to consider whether in its opinion he was a suitable person to become the tenant of the Holding. In reaching this decision Section 39(8) of the Act requires it to consider all relevant matters, including:

(a) the extent to which the applicant...has been trained in, or has practical experience of, agriculture,

(b) the age, physical health and financial standing of the applicant...and

(c) the views (if any) stated by the landlord on the suitability of the applicant..."

To deal first with paragraph (a). The Applicant did have some formal training but the Tribunal feels sure that he would not feel offended if it said that such training was minimal. On the other hand his practical experience of agriculture goes back a long way. He has been involved in farming all his life and has an intimate knowledge of the Holding. He worked with his father until he left in 1976 to farm on his own account on parcels of land he had acquired over a period. He gave up his own farming enterprise to rejoin his father as a partner in 1988. The reason for this was because he had been advised by accountants that unless the two farming enterprises were amalgamated his father was likely to go bankrupt.

The Respondents argued that although the Applicant had experience in agriculture that was long on time it lacked in quality. Since he joined his father in 1988 little had been done to give them confidence that he knew how to farm well. Fences had fallen into disrepair, building repairs had not been carried out, silage effluent was running on to the land, stock husbandry was poor, the land was understocked and was not in good heart. Evidence in support of this was given by Mr Harrison who drew an assumption that all these defects were due to the Applicant because he was the predominant partner. Although he was criticised by Mr Buxton for making this unsubstantiated assumption on who was the predominant partner, later evidence appeared to indicate that he was correct. The Tribunal was more concerned to note that many of the complaints referred to failure to observe the terms of the tenancy agreement and that the Applicant had not been the tenant of the Holding at the material terms. Indeed on at least one occasion agents acting for the Sandercock landlords had indicated that they did not wish to deal with anyone on tenancy matters other than the Deceased, who was the tenant. The Tribunal had to consider how. far breaches of the tenancy agreement were the responsibility tif the Applicant, and consequently how far they went against him in determining his suitability. It came to the conclusion that he could not escape responsibility for all breaches as some of them related to poor farming, but neither could the question of who had been the tenant, nor the history of the tenancy, be ignored.

The Tribunal felt that instances of what might otherwise be regarded as bad farming coupled with tenancy breaches had to be looked at in an historical light. Whilst not agreeing with Mr Buxton that the landlords had formally waived their rights to enforce the tenancy agreement it was felt that the conduct of landlord and tenant relations over the period of the tenancy had lulled the Applicant into thinking that the rights would never be enforced. The tenancy seems to have been run 011 a "You don't bother us and we won't bother you" basis for many years, certainly since long before the Applicant had any effective control of it. This was no excuse, however. A tenant should perform the terms of his agreement without pressure, but in this case the Applicant had not been the tenant and it was likely that some of the breaches had originated before he even became a partner (e.g. the gaps in the hedges seemed to be of long-standing). It would be unfair, therefore, to blame him for all farming defects-that were a result of failure to observe the tenancy agreement. But failure by the father did go to reducing the educational value of the Applicant's long practical experience. Were it not for three factors it might be said that the *laissez faire* attitude of both landlord and tenant had ill prepared the Applicant for a succession tenancy. It might be said that he had been schooled in an environment of bad farming and contempt for tenancy obligations. The three factors suggesting otherwise are :

- (a) Before going into partnership with his father the Applicant had built up a successful fanning enterprise of his own. So much so that when he entered into partnership with his father he was able to introduce capital of some £52,000.

- (b) Agents acting for other landlords of his were satisfied with him as a tenant. Mr Fox, a chartered surveyor acting for the Knight and Palmer Charity Trustees, stated "we have never experienced difficulties with him as a tenant and would happily recommend him as a suitable tenant if asked to do so."

- (c) When it became obvious that the *laissez faire* regime had ended with Mr Harrison serving a report of condition on him, the Application showed what he was capable of by carrying out a blitz on the Holding which remedied the majority of the defects. In this connection the Tribunal was surprised to note that Mr Harrison described the acknowledged extent of the work completed as merely "window- dressing". It was a surprise that when his request was substantially carried out he was still not satisfied. If the Respondents felt that "the blitz" was an aberration and once over with the Applicant would settle back into the old ways, his relationship with at least one other of his landlords would appear to suggest otherwise. Ms Moss submitted that the evidence of Mr Fox was irrelevant because he had no knowledge of conditions on the Holding, but the Tribunal felt otherwise. His evidence helped show what sort of a tenant the Applicant could be when historical baggage is stripped away and he is operating as a tenant in his own right.

There were other cases of apparent defects on the Holding for which the Applicant had to take responsibility. For instance a soil report tended to show certain mineral deficiencies would have become obvious earlier if the Applicant had kept a better eye on the condition of the land. The Tribunal felt that the deficiencies were not serious, however, and those needing rectification could easily be attended to, but the picture was given of a farmer who was lagging behind in technical matters. However Mr Lowe, an agronomist, stated that the tests were not the best he had seen amongst his clients, but neither were they the worst. It appeared to the Tribunal that the Applicant had spread manure on the Holding and had applied compounds and had then gone by eye as to what more was required. It was not a question of fertilisers not having been spread - the accounts refer to them - but that perhaps the wrong ones had been used. Although the Applicant appeared in cross-examination to show a certain lack of knowledge of how to remedy the soil deficiencies, it was felt that this could easily be remedied by advice and all the indications of his evidence were to the effect that the Applicant was ready to take advice. Certainly Mr Lowe thought so.

The condition of the grass on the holding was not particularly good, although it had to be said that the fields opposite Charity Farm were good and had obviously been re-seeded. In view of the reaction of the landlords when the Applicant tried to improve permanent pasture by ploughing it up for the purpose of re-seeding to replace the unproductive native grasses, the Tribunal wondered whether inertia and opposition on the landlords' part might have something to do with the condition of the grass.

The fencing was certainly not up to the standard required by the tenancy agreement, but the Tribunal felt that this was a perceptive rather than a real defect. Whilst the hedges are well cut they are gappy and Mr Harrison explained that to perform the agreement the Applicant should be planning extensive replanting. The Tribunal noticed however that where necessary (i.e. on livestock land) the gaps had been made stockproof with post and wire and with electric fences, and so it is doubtful whether failure to come up to the strict requirements of the tenancy agreement at a period when he was not tenant should weigh in the suitability balance. Even a cursory glance at the hedges of neighbouring farms shows that the same situation applies on most of the farms in the area.

The Respondents' objections on suitability arising out of husbandry matters were not helped when it became obvious that their witness, Mr Harrison, was making pejorative comments without evidence. Such as unacceptable sheep husbandry based partly on having seen at least 10 extremely lame sheep, but without having tried to find out why they were lame and whether they were being treated. Such as his comment with one breath that the cattle husbandry is below average and with the next that he did not have the detailed knowledge to be specific. Such as his comment on silage effluent without making any tests. Such as his failure to make enquiries from the Applicant's other landlords as to the standard of farming on their holdings that led him to make the statement that "the burst of activity on the Holding only and not on the remaining part of the Agricultural Unit does not reflect the husbandry standards to be expected from the Applicant outside the constraints of imminent legislation about his farming skills". Had he made enquiries from the Knight and Palmer Charity Land Trustees, for example, he might have found that there was no burst of activity on that land because none was necessary. He might also have found out that at least one other person (Mr Fox) who had reason to know, was satisfied with the Applicant's farming skills. According to Mr Fox the Applicant took the Charity Farm in an unimproved state and brought it up to modern standards.

It was generally conceded that the Applicant's arable cultivation and husbandry was of a high standard, but here again the Tribunal was concerned to note that in acknowledging this, Mr Harrison highlighted in his statement of evidence the comment that it was likely the Applicant had very little input in the day-to-day arable fanning decisions and operations. The relevance of this was not clear to the Tribunal unless it was meant as a criticism, and again it was a criticism made without the back-up of specific evidence. If it was meant as a criticism it was unjustified. Evidence from Mr Lowe showed that the Applicant was no different from the many arable farmers with whom he deals*in the course of his business, who choose their crops, take advice from their agronomists and employ contractors to a greater or lesser extent to farm the crops. In this modern age the Tribunal felt the farmer who was willing to take advice and was astute enough to keep down his overheads by using contractors' plant was the one likely to succeed. If Mr Harrison was continuing to imply – as Ms Moss appeared to suggest in her summing up – that the arable land was being farmed by Mr Jones, in the face of the Applicant's and Mr Jones' express denial of this, the criticism was seen as even more irrelevant to the question of suitability. The Tribunal noted that the generally satisfactory arable operation took up about 100 acres of the total acreage of approximately 225 acres of the agricultural unit, so to that extent the unit was acknowledged by all to be well farmed.

Mr D R Bennett, a Chartered Surveyor, called on behalf of the Applicant, was not so overtly judgmental in his evidence, but the Tribunal was careful to bear in mind that he was a long-standing friend of the Applicant, admitted admiration for him when he had stepped in to save his father and felt sympathy for him. Nevertheless, with this caveat before it, the Tribunal accepted his evidence that the Applicant was a genuine hard-working farmer who carried out virtually all the physical work and decision making on the agricultural unit. In his view the chosen enterprises were ideally suited to the farm and the crop management was of a high standard, but with these latter two statements the Tribunal preferred to rely on its own inspection.

The Tribunal accepted that the standard of farming had to be seen, not only in conjunction with the landlord-tenant history, but also in conjunction with the difficult nature of the unit. Split by the Lutterworth to Market Harborough main road running from east to west it was also split by a disused railway line (part of the unit) and a canal (not part of the unit), both running from north to south.

Moreover it has an inadequate water supply. Certain of the criticisms of the state of the farm and farming methods that might have been justified in connection with a more handy farm had to be rejected in connection with this Holding. Especially is this so in connection with the area of land to the side of the canal which is difficult to get to by vehicle and has a poor water supply, and also that when milk was being produced the effect on the viability of the farm must have been affected by the necessity of driving a herd along a busy main road four times a day.

Having heard so much conflicting evidence on the farming suitability of the Applicant, and having reason to be suspicious of some of it, the Tribunal came *to* the conclusion that its own inspection of the agricultural unit should weigh heavily in its deliberations. The members had inspected on the first day of the hearing and had been surprised to find that the Holding bore little resemblance to the photographs taken by Mr Harrison before "the window dressing" had taken place. Obviously a great deal of effort had gone into the work and the farm was then in an acceptable condition, although it would be considered by many, as indeed it was considered by the Tribunal, to be untidy. Apart from the arable land and the grass leys recently re-seeded the Holding appeared to be in average condition for that type of farm in that area. The standard of stock was not high, but neither was it low. Again it could be described as average. With regard to the re-seeded area and the arable land, the standard could be said to be high, but this did not make the Applicant an excellent farmer in the light of the whole. Nevertheless the Tribunal came to the same conclusion that Mr Lowe had drawn in another context - that he was not the best farmer the members had seen, but neither was he, by a long chalk, the worst. Nothing from the inspection persuaded the Tribunal that the Applicant was anything but suitable on farming grounds to take the tenancy and taking into account the evidence of their own eyes, of the two Chartered Surveyors, of the two Sandercock Respondents (see later), of the agronomist and of Mr Jones (who carried out contractual work on the Holding) the Tribunal was satisfied that in the farming respect, the Applicant was suitable.

It next fell to consider paragraph (b) of Section 39(8) of the Act. To start with the Applicant proved his age to be 47 and that he was in good health. As neither of these aspects were challenged the Tribunal considered the Applicant to be suitable in connection therewith.

Next it fell to consider the financial standing of the Applicant, which subject was, in the words of Ms Moss, the key to this case.

Prior to entering into the partnership with his father there are indications that the Applicant had been making a financial success of his milking enterprise. He entered into that partnership to stave off his father's bankruptcy, and the very fact that bankruptcy was in the offing made it almost inevitable that his financial position would deteriorate.

In 1988, when the partnership started, the bank overdraft was £31,457. At the end of the year in which the Deceased died, it had increased to £73,369. By 1 July 1999 there were two overdrafts totalling £84,246, but there was no evidence to suggest that the bank were taking any extreme action in connection therewith. On 1 July 1999 the proceeds of the sale of the Deceased's house (£50,000) were paid into one of the accounts, and the combined overdraft became £38,316. During the adjournment period between the first session of the hearing and the second the Chairman asked Mr Buxton to update the overdraft figure. This he did and at the adjourned hearing the overdraft was shown to be £29,118 at 17 February 2000, a reduction of £9,100 since July 1999. The Chairman had asked whether the current overdraft had included extraordinary items, and there were two. Firstly the Applicant's mother had paid a further £10,000 into the account by way of support for the business, and secondly the balance reflected the advance payment of some fees relating to the Tribunal hearing, amounting to approximately £6,800. If these items were to be ignored the overdraft would have been reduced by approximately £2,300, nowhere near as large a real figure of £16,000 as claimed by Mr Buxton, who appeared to have taken into account the extraordinary item that favoured his case and ignored the other. Nevertheless it is a step in the right direction and it is necessary to consider whether the Applicant had merely been exchanging one form of borrowing for another (i.e. money owed to his mother in substitution for money owed to the bank). Mrs Jean Sandercock, the Applicant's mother, had put in a written statement which did not state whether she was expecting repayment of the £10,000 she had paid into the farming account. It was clear from the statement, however, that her prime objective was to ensure that her son continued to farm at North Kilworth, so if there was any repayment to be made, the Tribunal felt it would not be on harsh terms. The Applicant did not look on the payment as a loan but rather as a gift, but it was his intention to pay it back in any event.

Probably a better picture of the overdraft can be obtained from the bank's attitude to it. Mr Bennett had said he had spoken to the bank manager who, because he had seen a steady improvement in the overdraft situation, was ready to back the Applicant. This evidence was hearsay, however, and the Tribunal preferred to rely on a letter from the bank dated 30 September 1999 (at a time when the overdraft was £27,682) stating that it considered the Applicant to be honest and trustworthy and that he had overdraft facilities currently standing at £40,000, which would be reviewed in the normal manner in August 2000. There was nothing here to indicate that the bank was becoming worried about the overdraft situation.

Mr Harrison had produced figures from the *Farm Management Pocketbook* by John Nix as part of a submission that comparing finance charges as a percentage of gross output and gross margin can be a useful pointer to the health of a farming business and these had shown that in the final three years before the Deceased's death the business would have a lending criteria of "Potentially Dangerous". In some of the years before the category would have been "Care Required" (4 years) and "Common Range Should be Safe" (5 years). The Tribunal was not sure whether these figures had any relevance other than to show the well understood ups and downs of farming fortunes. Certainly the "Potentially Dangerous" category was worrying but it had to be seen in the light of falling borrowing since the years involved.

Ms Moss submitted that any steadying of the overdraft situation was brought about by money received from quota rents and not from fanning operations and this situation was likely to continue during the two years of his forward budget. She referred to his financial affairs as being in crisis, supporting her submission by reference to the fact that the Applicant had shown in his evidence that he had no clear idea of where his money was coming from or going to (this with particular reference to the fact that he had no clear idea of what he had actually spent in carrying out the work requested by Mr Harrison). The state of the accounts and the depressing picture revealed by the budgets put forward by the Applicant were also advanced in support.

The accounts quite clearly show losses on the partnership business for the two years up to and including the date of death of the Deceased, but were the amounts of those losses (£4,752 before drawings and £1,679 before drawings) sufficient to describe the business as being in crisis? Admittedly the business was not providing sufficient for the partners to live on, and had not done so since 1996, but with the capital and bank support available the Tribunal did not consider it to be in crisis. Especially was this so when it was seen that the Applicant and his wife had done what so many other farmers have had to do in the present hard times, and had gone to seek alternative sources of income outside the farm.

The main consideration had to be whether the Applicant had any real prospect of turning the business round now he was running it in his own name. If there was no such prospect, Ms Moss's reference to the ALT case of *RW Cant* v *British Steel Pic* EA861 12.11.98 was highly relevant. In that case the Tribunal had found an applicant unsuitable largely on the grounds that the business was not making profits and the evidence adduced showed very little prospect of the situation being turned round. In addition that applicant had very little capital available to meet unforeseen eventualities. In the Sandercock case, the Applicant's forward budgets had been produced in co-operation with Mr Bennett, and other than Ms Moss's submission that future profits relied too heavily on quota rents, they do not appear to have been challenged in any substantial way. They show a modest turn round in the next two years and, as such, they are unlike the budgets in the Cant case.

The crucial question the Tribunal had to ask itself was whether the budgets were likely to produce a turn round but as forward planning in agriculture is a notoriously inexact science, to ask itself this simplistic question was considered unrealistic. Instead, it came to the conclusion that it should ask itself whether the Applicant had put forward proposals that could produce the results for which he was budgeting if there was no further significant deterioration in the farming industry in the period covered. As realists the members had to build into their considerations that there could be some deterioration falling short of significant, but in those circumstances they felt that the Applicant's capital position could iron out the troughs.

But first it had to be considered whether the achievement of the projected results would support the Applicant's case for being regarded as satisfactory. The budgets were prepared on a gross margin basis and as such they showed an increase from a net loss for the year ended 6 April 1999 of £1,679 to a net profit for the year 1 of the budget of £12,696 and for year 2 of £18,868. Both figures took into account milk quota leasing and contracting work, but despite Ms Moss's comments it was felt that quota rents were a fact of farm income and had to be included. As the years progressed, however, the reliance on quota rents would decrease. In the first year of the budget the percentage of milk quota rent to total farm income was 28.24% and in the second year 25.57% and there was some possibility the Applicant might go back into milk in which case the rent would disappear. It was felt that if these budget figures could be achieved they would show the Applicant in a satisfactory light.

The Tribunal next considered the figures upon which the budgets were based. The members had seen the figures before the farm inspection and were in the position, therefore, of being able to judge them against what they saw as the Applicant's standard of farming and whether the land could support what was required. Two of the members were experienced in agriculture and could judge the claims in the light of that experience. Except in the field of arable husbandry, where it considered him to be good, the Tribunal felt that his other farming skills were average, but it considered that the budget proposals were realistic enough to be achievable by an average -farmer. There was little exaggeration in achievable outputs or variable costs and the fixed costs were based on actual figures rather than projections. It considered, therefore, that the question it had asked itself was answered in the Applicant's favour and that from a financial point of view the Applicant was suitable. In reaching this decision it discounted the heartfelt cry from Ms Moss that if this Applicant succeeded on financial grounds there would be no possibility of a landlord ever succeeding on those grounds in the future. Just as it discounted Mr Buxton's surprise that anyone could ever have doubted that his client was financially suitable.

In reality the Tribunal considered the financial suitability of the Applicant to be a close run thing which had only been tipped in his favour by his capital background. There was little reason to doubt that the Applicant owned assets to the value of approximately £195,000 in the shape of freehold land, milk quota and live and dead farming stock. There was no suggestion that any of this was charged in any way and evidence was given that he was in full possession of enough equipment to farm the agricultural unit without having to go to the expense of buying more. In addition, if the negotiations with regard to the Knight and Palmer Charity farmhouse come to fruition, he will be in possession of a further £75,000, making him worth in capital terms £270,000. Admittedly 4t was his intention to use the £75,000 to build a house, but if he did this he would only be transferring £75,000 of cash into an asset that would probably be worth roughly the equivalent. In case of difficulty he would have sufficient funds to either sell or use as security. A potential tenant with capital of over a quarter of a million pounds had to be taken seriously. Considering all the above the Tribunal found the Applicant suitable on financial grounds.

The Tribunal is required to take into account the views of the Respondents on suitability. Those views were developed by Mr Harrison in his evidence and summarised at paragraph 8.2. In reaching its decision on suitability the Tribunal confirms that those views were taken into account, and those items not dealt with above are dealt with below, using Mr Harrison's subparagraph headings in his paragraph 8.2 :

- 2. This is not seen as a major problem. Part of the reason for non- maintenance of farm buildings was that the Applicant expected to be moving some of them when he moved from Charity Farm. Also the responsibility goes two ways and the Tribunal felt itself unable to criticise the Applicant for lack of repair when some of the repairs on the Holding were the responsibility of the Respondents.

In addition, strictly speaking, the Applicant was not the tenant. He had expressed an intention to attend to any repairs that might be the responsibility of the tenant if he becomes the tenant.

- 4. The Tribunal was by no means sure that some of the drainage had been neglected. Areas pointed out as being affected might only have been as a result of exceptionally wet weather. Such areas were relatively small in extent.

- 5. The Tribunal preferred the evidence of the Applicant and the evidence of its own inspection.

- 6. The Tribunal could see a good reason for this that did not reflect on the Applicant's suitability. The area in question is unapproachable with motor vehicles and the water supply is poor. A good landlord-tenant relationship should be able to attain some acceptable alternative use.

Although Mr Harrison held himself out as putting forward the Respondents' views on suitability it is proper to examine the views put forward individually by Andrew and Stephen Sandercock. For very commendable reasons both of these Respondents expressed a desire to farm the Holding themselves. Probably because of their driving ambition to have the Holding back in hand some of their evidence did not stand up to inspection. They alleged manure had not been spread for a number of years and referred to the number and size of manure heaps. On inspection the attention of the Tribunal was only drawn to one and it had remained unspread for only one season, due to inability, through wetness, to get onto the land. The Tribunal felt that reference to clumps of untreated thistles and grassland being allowed to run wild was perhaps an exaggeration. The land was described as being infested with worms, but without any evidence being advanced. Sheep scab was referred to, which the Applicant denied. The Sandercock brothers made several valid points, in particular the reference to mineral levels, which were unsatisfactory. The Tribunal has indicated however that it did not consider the Applicant's failures in this regard made him unsuitable to be a tenant. The Tribunal also preferred the evidence of the Applicant that manure was regularly spread, except on the one occasion that heavy rainfall made it impossible. All in all the Tribunal did not consider that the additional evidence put forward by the Sandercock brothers added anything to what had already been advanced by Mr Harrison and considered by the Tribunal.

The Tribunal having considered the matters outlined in Section 39(8) paragraphs (a), (b) and (c) of the Act and all other relevant matters brought to its attention came to the prima facie conclusion that not only is the Applicant an eligible person under Section 39(2) of the Act but he is also in its opinion a suitable person to become the tenant of the Holding. This direction could not be given, however, until after the applications made by the Respondents for consent to the operation of the notices to quit under Section 44(1) of the Act had been considered. The giving of the Section 39 direction was conditional upon the decision on the Section 44 applications (Section 44(4)).

It next became necessary to consider these two applications made by the respective Respondents under Section 44 of the Act. The grounds upon which the applications were made are set out in Section 27(3) paragraphs (a) and (b) as follows :

(a) that the carrying out of the purpose for which the landlord proposes to terminate the tenancy is desirable in the interests of good husbandry as respects the land to which the notice relates, treated as a separate unit;

(b) that the carrying out of the purpose is desirable in the interests of sound management of the estate of which the land to which the notice relates forms part or which that land constitutes.

It has to be borne in mind that one of the applications refers to the succession application numbered 372 of 39.26 hectares, and the other to application 376 of 46.89 hectares. The land forming part of the former application is comprised, with other land, in the latter, and the applicants in the former are Christopher, Stephen and Andrew Sandercock and those in the latter are the said Sandercock brothers together with Philip A Stephens and Paul R Stephens.

Unfortunately the Respondents did not make it clear whether evidence was being proffered in connection with both Section 44 applications or merely in connection with one of them, and in the end the Tribunal had to come to its own conclusion, starting from the proposition that the same evidence could not fit both applications. There was a fundamental difference between the two because of the different Respondents in each application. It finally decided that any reading of the evidence must show that the Section 44 application in connection with the 376 land was not being supported by the necessary evidence. Messrs PR and PA Stephens did not give evidence. The nearest they came to giving their views was in the application for the 376 land where it was said on their behalf that the proposal was that die land should be farmed by the Sandercock brothers if possession was obtained, but a bald statement in an application is not evidence. On die other hand Mr Harrison, who gave the evidence in connection with the Section*44 application and formulated his views in connection with Section 27, stated quite clearly in his opening that : "Instructions have been received from the Landlords, Messrs Christopher Sandercock, Andrew Sandercock and Stephen Sandercock, to advise and report on the situation at Station Farm, North Kilworth following the application for Succession of Tenancy by Mr W Rodney Sandercock with particular reference to:

(a) and (b) …

(c) Landlords application for consent to the operation of the notice to quit."

Again, on page 56 of his evidence, in paragraph 8.3.2.2, which is dealing with the Section 44 application, he states that the Landlords are Christopher, Andrew and Stephen Sandercock. He makes no mention of the two Stephens, so the only conclusion must be that evidence is not being proffered by him in connection with the Section 44 application relating to the land in succession application 376, bearing in mind the identity of the landlords of that land (i.e. the three Sandercocks and the two Stephens). In particular the Tribunal noted that evidence was given on behalf of Mr Christopher Sandercock (albeit hearsay evidence) as to his intentions for the future farming of the land, but no evidence was given by or on behalf of the Stephens. In fact Mr Stephen Sandercock stated in cross-examination that he had not had any discussions with the Stephens and that he had no agreement with them over the future farming of the land they owned. It would be inconceivable for the Tribunal to be asked to decide whether a particular purpose for terminating a tenancy would be desirable in the interests of good husbandry or sound management when that purpose is not put in evidence by or on behalf of all the parties who would have a hand in formulating it. Section 27(3) paragraphs (a) and (b) require the Tribunal to consider the purposes for which possession of "the land to which the notice relates" is required. For it to be able to do this it must have a knowledge of what those purposes are for the whole of the land and not just part of it. Even if the Sandercock brothers were able to show that their plans were in the interests of sound estate management or good husbandry, without evidence from the Stephens as to their proposals they could only do this in relation to part of the land in the 376 application. It might, for instance, be possible for the Sandercocks' proposals for their part of the whole to be completely negated by the Stephens' proposals for their part when considering the effects of both sets of proposals on "the land to which the notice relates". Hence the necessity for the Tribunal to have knowledge of what both proposals are (i.e. those of the Sandercock brothers and those of the Stephens). With regard to the 376 application the Tribunal was being asked to look at only a part of the picture.

The application for consent to the operation of the notice to quit in respect of the Holding (i.e. the 376 land) was, therefore, dismissed on the grounds that the applicants had failed to show the purpose for which they intended to terminate the tenancy on both of the grounds set out in paragraphs (a) and (b) of Section 27(3).

To turn to the application concerning the land in application 372, the same difficulty is not experienced to the same extent. The Stephens are not involved, so the fact that they have not given evidence is immaterial. Mr Buxton pointed out, however, that no evidence had been given by Mr Christopher Sandercock, so his views with regard to the proposed farming of the land in application 372 were only known at second-hand. Stephen Sandercock had said "My eldest brother Christopher is not involved in farming and he has agreed to grant Andrew and myself a Farm Business Tenancy covering his one-third share of the holding paying an agreed rent", and the Tribunal was prepared to accept that this was probably true, especially as Mr Harrison's evidence shows he was speaking for Christopher as well as the other two brothers. It left certain matters unanswered, however. The two brothers' proposals were set out in their evidence, but the Tribunal had no way of knowing what terms would be contained in the FBT nor what rent Christopher would be seeking, and the level of rent must bear on the viability of the proposed enterprise. Mr Harrison accepted that the details of the FBT had yet to be decided.

Assuming for the moment, however, that Christopher had agreed FBT terms consistent with their proposals and was seeking only a very low rent, were those proposals desirable in the interests of good husbandry? The basic question the Tribunal asked itself was whether the two brothers were likely to be better fanners than the Applicant, bearing in mind that "better" meant better in the terms of the rules of good husbandry contained in Section 11 of the Agriculture Act 1947. Section 11 is incorporated into the Act by Section 96(3) and reads as follows :

(1) For the purposes of this Act, the occupier of an agricultural unit shall be deemed to fulfil his responsibilities to farm it in accordance with the rules of good husbandry in so far as the extent to which and the manner in which the unit is being farmed (as respects both the kind of operations carried out and the way in which they are carried out) is such that, having regard to the character and situation of the unit, the standard of management thereof by the owner and other relevant circumstances, the occupier is maintaining a reasonable standard of efficient production, as regards both the kind of produce and the quality and quantity thereof, while keeping die unit in a condition to enable such a standard to be maintained in the future.

(2) In determining whether the manner in which a unit is being farmed is such as aforesaid, regard shall be had, but without prejudice to the generality of the provisions of the last foregoing subsection, to the extent to which –

(a) permanent pasture is being properly mown or grazed and maintained in a good state of cultivation and fertility and in good condition;

(b) the manner in which arable land is being cropped is such as to maintain that land clean and in a good state of cultivation and fertility and in good condition;

(c) the unit is properly stocked where the system of farming practised requires the keeping of livestock, and an efficient standard of management of livestock is maintained where livestock are kept and of breeding where the breeding of livestock is carried out;

(d) the necessary steps are being taken to secure and maintain crops and livestock free from disease and from infestation by insects and other pests;

(e) the necessary steps are being taken for the protection and preservation of crops harvested or lifted, or in course of being harvested or lifted;

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

Mr Harrison based the claim of the Respondents largely upon the deficiencies of the Applicant relative to sub-section (2) paragraphs (a), (b), (c) and (f) and how much better the Respondents would perform. He ignored the over-riding provisions of sub-section (1) which the Tribunal considered to be important. To decide whether the Holding was being farmed in accordance with the rules of good husbandry the "regards" specifically referred to in sub-section (1) have to be taken into account, and it would be wrong to ignore them. The question is whether if, after those points have been taken into account, the Applicant can be said to be maintaining a reasonable standard of efficient production while keeping the unit in a condition to enable such a standard in the future. The question posed by Section 27 of the Act is one of comparing farming regimes and this requires a level playing field. It would be wrong to compare one regime on an easily run farm with another on a farm which has the disadvantages suffered by the

Holding, without making the allowances set out in Section 11(1) of the 1947 Act. In particular it would be wrong to compare a regime with a good standard of management on the part of the landlord with one where there has been little or no management on his part, without making those allowances. To begin to make the comparison between the Respondents and the Applicant in the field of good husbandry the advantages enjoyed and the disadvantages suffered by both parties relating to the "regards" set out in sub-section (1) have to be considered.

Bearing the "regards" in mind the Tribunal asked itself:

- (a) whether the Applicant was farming the Holding in accordance with the rules of good husbandry; and

- (b) if he was not, whether the proposals put forward by the Respondents could be accepted as farming in accordance with those rules; and

- (c) if he was, whether the proposals put forward by the Respondents could be accepted as an improvement on the Applicant's observance of the rules.

Because of the "regards" the Tribunal was prepared to look with some degree of leniency on apparent breaches of the rules occurring before 1998. Before 1998 there was little, if any, evidence to show that the Respondents or their predecessors had exercised the smallest degree of management in respect of the Holding. Unlike Mr Harrison, who had said "I attach little weight to what has happened since 1998", the Tribunal attaches a great deal of weight to it. What has happened since 1998 is evidence of the Applicant acting under proper management, and seems to show that when that management is there he is capable of bringing the farm to an acceptable level. Despite his scepticism Mr Harrison could list few outstanding jobs of any real moment when asked by Mr Buxton in cross-examination to do so, and of these the Tribunal queried whether his criticisms of the fencing were justified or that his statement that there were four possible drainage defects could be supported without him being more positive than merely referring to them as "possible".

Bearing in mind that the test of good husbandry is the maintaining of a reasonable standard of efficient production and not the attainment of excellence, the Tribunal considered that the Applicant was observing the required rules. He was producing good arable crops and a reasonable standard and number of livestock. His choice of enterprise was suited to the farm and his grassland cultivation was acceptable, subject to him taking advice on and applying the requisite fertilisers. The soil analysis was not felt to pose a serious problem, and could be easily rectified where necessary. A better landlord and tenant relationship could result in the production of new leys, and thus of improved grassland productivity, but an answer in cross-examination from Stephen Sandercock showed there remained a certain reluctance on the Respondents' part to allow the Applicant to re-seed.

It remained to be considered whether the Respondents' proposals for farming the Holding would be any better than those of the Applicant. The Respondents were producing high quality stock and would presumably continue to do so. They appeared to be operating, however, with the assistance of their father. He was providing assistance with housing for the livestock and the brothers appeared to be using his equipment, albeit they were paying a consideration for it. Their financial position was not as well researched as that of the Applicant. It was likely that there would be no milk quota on the Holding to support the farm income whilst the regime was becoming established and the fact that there was no clear evidence of financial backing, combined with their present borrowing positions (£58,000 borrowed by Andrew and £35,000 borrowed by Stephen), raised a query over their capacity to finance their proposals. In total they were borrowing more than the Applicant, although their borrowing appeared to be secured. There was no letter from their bank manager to support an assertion that he was willing to support them to the tune of £10,000 and there was a suggestion that he might require security on Andrew's house before he would even do that. In addition no thought seemed to have been given to the rent that would have to be paid. Mr Harrison gave evidence to the effect that the land farmed by the two Sandercock brothers was fertile and in good condition, but the Tribunal wondered whether this information was significant in view of the fact that Andrew only farmed annual grass keep and Stephen fanned annual grass keep together with 37.9 acres he owned but which he had only bought as recently as May 1999. Presumably the fertility of the latter would be due as much to the previous occupant as to Mr Sandercock.

The respective budgets and forward proposals were presented by the respective expert witnesses, with each being criticised by the other. Not all of the criticisms were justified and some were valid, but the overall impression left with the Tribunal was that although the Respondents' proposals would enable them to farm in accordance with the rules of good husbandly, they would not produce any significant good improvement over those of the Applicant, and, in addition, might lead to financing difficulties.

For consent to be given for the operation of the notice to quit the Tribunal had to consider whether it would be desirable so to do and it came to the conclusion that unless the Respondents could show that their proposals were properly funded and would end up in a marked improvement in husbandry the granting of consent would not be desirable.

Finally the Tribunal considered the applications for consent to the operation of the notice to quit the 372 land on the ground set out in Section 27(3)(b), and faced an immediate difficulty. To decide on this question the Tribunal had to compare the present management of the estate with the future management proposed by the Section 44 applicants. To do this it had to know what "the estate" is.

In his response to the Respondents' application the Applicant had said "the land comprised in the tenancy does not form part of an estate", thereby begging the question as to whether the land itself formed the estate. In his evidence Mr Harrison said "the statement made by Burges Salmon as (sic) Station Farm is not part of an estate (presumably in the traditional terms) is not correct because, in the context of section 27(3)(b) Station Farm is an estate either on its own or in conjunction with other land farmed by the Landlords." This left the Tribunal unsure as to which of these "estates" the Respondents were referring. Were they, in fact, regarding the tenancy land as "the estate" or were they referring to the tenancy land plus other land. If the latter, what was the other land ? It is only identified in Mr Harrison's evidence by cross-reference to "Section 8 (CHECK) of my Report dated May 1999". It is presumed that this reference is to paragraph 1.3.1 of Mr Harrison's May 1999 report, which states "Stephen and Andrew Sandercock each farm approximately 50 acres of land in the locality, some of which is owner occupied, but the majority of which is on short term grazing agreement."

The identity of "the estate" is far from clear. On page 54 of his evidence Mr Harrison seems to be regarding a successful outcome to the application as ensuring "Station Farm will again become a Holding in its own right", which appears to indicate he is seeing "the estate" as being the Holding (or that part of it forming the 372 land). On the other hand on page 59, in paragraph 8.3.2.5 he is suggesting that "the estate" comprises other land when he says "the evidence referred to in this ground (b) is the same as in ground (a) above with the addition that other land owned or occupied by the Landlords can be taken into account." He also states in the same paragraph on page 58 "the Tribunal may look beyond the land to which the Notice to Quit relates and consider the amalgamation of that land with other land belonging to the landlords." The only difficulty with this is that there appears to be no other land belonging to the landlords. There is some land belonging to one of the landlords, Stephen Sandercock, some land farmed on a short term grazing agreement by Andrew and some land fanned on a short term grazing agreement by Stephen. No evidence was given of any other land either owned or tenanted by the landlords, viz Christopher, Stephen and Andrew jointly. Neither does any evidence appear to have been given to show the improvement of an "estate" consisting of the 372 land and other land. In his conclusion on page 59 of his evidence, in the paragraph immediately before 8.3.2.6, Mr Harrison appears to be confining his remarks to Station Farm and no other land.

For the purposes of Section 27(3)(b) the Tribunal considered, therefore, that "the estate" referred to by the Respondents was confined to the land constituting the land to which the notice to quit relates, i.e. the land contained in the succession application 372, but it was disappointed that it had had to look for the Respondents' meaning rather than having it made clear.

The Tribunal then looked for the purposes which would make it desirable to terminate the tenancy in the interests of sound management. It came to the conclusion that those purposes had become so irretrievably confused with the good estate management case as to make paragraph (a) and paragraph (b) applications under Section 27(3) almost identical. Indeed Mr Harrison stated that "the evidence referred to in this ground (b) is the same as in ground (a) with the addition that other land owned or occupied by the Landlords can be taken into account". As it has been established above that reference to other lands is inappropriate in determining the meaning of "the estate" Mr Harrison's evidence seems to be totally obliterating the distinction between "husbandry" and "management" contrary to the recommendation of *Muir Watt & Moss* at 12.35.

If he were to be given the benefit of the doubt, however, by supposing that his argument went beyond confusing "husbandry" with "management" his only clear contentions appear to be that possession would contribute to sound estate management because the Applicant had made it plain he did not like the landlord "snooping around" and that the Applicant had declined to have improvements made because the rent would rise (paragraph 8.3.2.5 of Mr Harrison's evidence). The first might have applied to the Deceased, but what evidence there was of it in connection with the Applicant would hardly support an application for consent to a notice to quit. And the second had been rebutted when the Applicant had given his reasons to the Tribunal for declining to have the improvements done. The other contention that uniting the 372 part of the Holding in an estate would do away with the difficulties faced by the Respondents arising out of the lack of annual maintenance on the farm once again seems to be confusing "good husbandry" with "sound estate management".

Although not expressly raised by either party, the Tribunal considered the effect of managing the 372 succession application land on its own. One of the disadvantages of the Holding (i.e. the land , the subject of the succession application 376) was its size and to cut it down still further by stripping from it 4.53 hectares of the Stephens' land to be left with the land contained in the 372 succession application was not, in the view of the Tribunal, in the interests of sound estate management. One of the best parts of the Holding had been the arable land owned by the Stephens and the 372 land would be weakened as an estate without it. Sound estate management would appear, therefore, to be better served by continuing to farm the Stephens' land with the 372 land. In the already remarked upon default of any evidence from the Stephens of their intentions, the only way this can be done is by allowing both blocks to remain within the one tenancy of the only person capable of uniting them, namely the Applicant.

The Tribunal found that neither set of Respondents (either those involved in the 372 application or those in the 376 one) had made a case under either paragraph (a) or paragraph (b) of Section 27(3) and declined, therefore, to grant consent to the operation of either notice to quit. As the question of the fair and reasonable landlord would only have arisen had the Tribunal been satisfied that either paragraph (a) or paragraph (b) applied, there was no need to consider Section 27(2).

The Tribunal had seen a difficulty inherent in the wording of Section 43 and 44 of the Act making it questionable whether it could give consent to the operation of a notice to quit relating to only part of the land (i.e. the 372 land) in connection with a succession application relating to a larger unit (i.e. the 376 land). This point had not been argued by either party, however, and the Tribunal had not based its decision thereon. It had preferred to rely on the fact that the Respondents had not made their case for the reasons outlined above.

This left the Tribunal free to implement its conclusion that the Applicant was both eligible and suitable to become a tenant of the Holding (i.e. the land in application 376) by giving a direction to that effect under Section 39(5) of the Act. Because the matter, understandably, had not been raised at the hearing, the Tribunal had no knowledge of the preferences of either party for a commencement date for the succession tenancy. It decided, therefore, to postpone the commencement date until one day less than the three months following the date of the giving of this decision. In making the appropriate direction the Tribunal reminds the parties that it applies to the application amended to exclude a small area of land occupied by CYO Seeds.

The Applicant made an application for costs under the provisions of Section 27(7) of the Act on the grounds that the Respondents' applications for consents to the notices to quit were misconceived. The Tribunal could not fully agree, but it did feel that the applications had very little merit so far as the basis of them was Section 27(3)(b) of the Act.

Accordingly it orders that the Respondents (namely Messrs C, S and A Sandercock and Messrs PR and PA Stephens) shall jointly and severally pay to the Applicant a contribution to his costs incurred in responding to the Section 27 applications on applications 372 and 376 of one third of the total. Such amount to be agreed between the parties and in default of agreement with liberty to apply to the Tribunal for the purpose of having the same fixed. The apportionment of costs between the Respondents to be ten per cent thereof to Messrs PR and PA Stephens and the remainder to Messrs C, A and S Sandercock.

The Applicant also made application for an order for costs under Section 5 of the Agriculture (Miscellaneous Provisions) Act 1954, on the grounds that the delay on the part of the Respondents in agreeing that the commercial unit test under Section 36(3)(b) had been satisfied amounted to conduct that was either frivolous, vexatious or oppressive. Although there had been some delay the Tribunal considered it had not been sufficient to be described under any one of these three headings.

The Tribunal considered the Respondents were entitled to proper time to consider and check the report on the commercial unit test and they had not significantly exceeded a reasonable time for that purpose. Costs were refused under the 1954 Act therefore.