

JAMES HENRY TOWNSON v THE EXECUTORS OF G. WADDINGTON Dec'd
Re Black Moss Farm, Slaidburn
(ALTW/S/352)

THE DECISION

The Tribunal's decision is as follows:

- (1) That the Applicant has not satisfied the Tribunal that he meets the 'livelihood condition' as set out in paragraph (a) of section 36(3) of the Agricultural Holdings Act 1986.
- (2) That therefore the Applicant has not satisfied the Tribunal that he is an eligible person within the meaning of section 36(3) of that Act.
- (3) That the Applicant's application, made at the start of the hearing, for permission to amend his application to include an application to be treated as an eligible person under section 41 of the Agricultural Holdings Act 1986 cannot be entertained by the Tribunal because it is made more than 3 months after the day after the death of Mrs Townson, the last tenant of Black Moss Farm.
- (4) That the Tribunal therefore dismisses the Applicant's application for a direction entitling him to a tenancy of Black Moss Farm.

THE TRIBUNAL'S REASONS FOR ITS DECISION

The relevant law

1. Before the Tribunal can give a direction that the Applicant is entitled to the grant of a new tenancy of Black Moss Farm, he must satisfy us that he is both
 - (1) an eligible person to make the application, and
 - (2) a suitable person to become the tenant of the Farm.

Eligibility

2. Section 36(3) of the Agricultural Holdings Act 1986 ('the 1986 Act') defines 'eligible' for this purpose to mean "any surviving close relative" of the deceased tenant who satisfies the two conditions set out in paragraphs (a) and (b) of subsection (3). These conditions are:
 - (a) that, in the seven years ending with the date of [the last tenant's] death his only or principal source of livelihood throughout a continuous period of not less than five years, or two or more discontinuous periods 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 [the 'livelihood' condition], and
 - (b) that he is not the occupier of a commercial unit of agricultural land [the 'commercial unit' condition],
3. The only element of eligibility which was in dispute at the hearing of this case was the livelihood condition.

The livelihood condition

4. In order to meet the livelihood condition an applicant must satisfy the Tribunal that not less than 51% of the value in money and money's worth of his livelihood was derived from his agricultural work on the holding or on the larger agricultural unit of which the holding formed part in each of the requisite five years out of the seven years before the day after the last tenant's death. Mrs Townson died on 11th October 2006. This means that the relevant seven year period in this case ends on 12th October 2006 and begins on 13th October 1999. The Applicant may choose the five years, or any five years, within that period which best suit his case.
5. 'Livelihood' for this purpose means an applicant's "means of living" – what he actually spent and consumed for the purpose of living in the style which he had chosen and in which he in fact did lead his life during the relevant years. The annual monetary value of this livelihood is the aggregate of the cash spent and the value in money's worth of any benefits in kind enjoyed and used by him to support or achieve that lifestyle in each of those years.¹
6. The burden of proving compliance with the livelihood condition lies on the applicant. The information and evidence on which the Tribunal must base its findings and decision must necessarily come primarily, if not entirely, from the applicant. It is therefore incumbent on him to give full disclosure – by way of the particulars set out in his Form 1 (and in his replies to any

¹ *Thomas Casswell v Sir Richard Welby Bt and D&S Farms Ltd* (1995) 71 P&CR 137 at 142 per Stuart-Smith LJ

requests for further information of these) and by disclosure of all documents necessary to prove his case – of all matters relevant to the question of what constitutes his lifestyle and how that is supported.

Suitability

7. Section 39(8) of the 1986 Act requires us, when determining whether or not an applicant is in our opinion a suitable person to become a tenant of the holding, to have regard to “all relevant matters”. These include –
 - (1) the extent to which the applicant has been trained in, or has had practical experience of agriculture;
 - (2) the applicant’s age, physical health and financial standing; and
 - (3) the views (if any) expressed by the landlord on the applicant’s suitability.
8. The only element of suitability in issue at the hearing was the Applicant’s financial standing.

Financial standing

9. A reasonably prudent landlord is entitled to expect and to be reasonably satisfied that the value of his reversion will not be diminished by his tenant’s lack of financial resources. The requirement of suitability so far as concerns financial standing is intended to ensure that an applicant will be able adequately to finance his farming of the holding so as to comply with his covenants under the lease and generally to discharge his other obligations to farm the land prudently and keep it in good heart. It is not necessary that the applicant should himself own all the live and dead stock used in the farming of the holding, nor that he should himself have all the working capital required to run the business. However, he must be able to satisfy the Tribunal that he has, and will continue to have available to him for the reasonably foreseeable term of the tenancy, sufficient access to funds, whether from family, friends or otherwise, to ensure that the farming business will be adequately capitalised.
10. The burden of proving suitability also lies on the applicant. It is therefore for him to provide all the evidence necessary to do that. In regard to his financial standing this will usually include providing full details of his own assets and, where he intends to rely on assets or funds to be supplied by others, to provide evidence in the case of each such person of the existence and extent of these and of the owner’s long-term commitment to make them available to the farming business. Such evidence would usually include both oral testimony from the persons concerned and any documentary evidence necessary to support that testimony.

The evidence

11. There were surprising gaps and shortcomings in the evidence put forward by or on behalf of the Applicant. These played a major part in our decision. We therefore think it proper to set out the evidence we did see and hear in greater detail than we might ordinarily have done and to include some comments on that evidence and on what we might reasonably have expected to have seen or heard in this case but did not.

The Applicant’s Form 1 and his evidence as disclosed before the hearing

12. In paragraph 10 of his Form 1 [at pp3-4 of the Hearing Bundle] the Applicant stated that his only source of livelihood in the relevant period before his mother’s death was derived from his

agricultural work on the unit of which Black Moss Farm formed part. The form had been completed and submitted on the Applicant's behalf by Mr Richard Turner (of local agricultural auctioneers and valuers Richard Turner & Son, whom the Applicant had appointed as his agent). The only documents submitted with the Form were a map of the holding and the other land farmed with the holding (the adjoining Grimshaws Farm and a single field beyond that known as Guys Land), copies of Mrs Townson's death certificate and will, and a copy of the notice appointing Mr Turner as the Applicant's agent.

13. The Respondents in their Form 1R [pp 18-19] put the Applicant to proof of both his eligibility and his suitability. In letters of the same date to both the Tribunal Secretary [p 692] and Mr Turner [pp 690-1], Mr Richard Cornish (of chartered surveyors and land agents Ingham & Yorke, the Respondents' land agent) criticised the lack of particulars in the Applicant's Form 1 and of supporting documents. He specifically requested disclosure of Mrs Townson's farming accounts and a copy of any contract of employment and statements of the Applicant's wages.
14. Under cover of a letter dated 22nd February 2007 Mr Turner disclosed Mr Townson's birth certificate, a certificate from his GP, a "letter of support" from his (and his late mother's) accountants, and copies of Mrs Townson's farm accounts for the years 2001/02-2004/05. It is convenient to note here the following points in regard to these accounts –
 - (1) The profit and loss account for the year ended 31st March 2002 shows expenditure in respect of "wages and keep" for the previous year (2000/01) in the sum of £3,878. We were not told to whom such wages and keep had been paid and provided. Nor were we told how much of that sum had been paid in wages as such and how much had been attributed to keep. Nothing at all is shown in respect of wages and keep in the profit and loss accounts for any of the years 2001/02-2004/05.
 - (2) In each of the years covered by the accounts one of the liabilities shown in the balance sheet is "Loan Account – J Townson". Initially this was recorded as a current liability in the sum of £24,720. By the year ended 31st March 2004 it had become a long term liability in the sum of £32,649 which, together with Mrs Townson's capital account, was financing the business. In no year is there recorded any payment of interest or repayment of principal in respect of this loan account.
 - (3) With the exception of the year 2002/03, for which a net profit of £1,287 is recorded, the business is shown as having made a net loss. At its lowest (in the year ended 31st March 2001) that loss was £3,011 (or, according to the next year's accounts, £3,687) and at its highest (in the year ended 31st March 2002) £9,747.
15. By letter to the Tribunal Secretary dated 12th March 2007 [pp 694-5], Mr Cornish asked that a direction be given by the Chairman requiring the Applicant to provide proper particulars of his case in respect of the livelihood condition together with any documents to be relied upon in regard to it. No such direction had been given before the Tribunal Secretary received a letter from Mr Turner dated 28th March 2007 [p 632] in which he said:

"I have now had a meeting with my client Mr Jim Townson. Mr Townson's livelihood and only source of income was as follows:

<i>1968-1980</i>	<i>Gisburn Auction Mart Thursday and Friday and £12 per week from his father for Saturday to Wednesday.</i>
<i>1981-1985</i>	<i>As before but only Gisburn Auction Mart on Thursday.</i>
<i>1986-2001</i>	<i>Only Gisburn Auction Mart. No other pay.</i>
<i>2002-2006</i>	<i>No Gisburn Auction Mart. Only pay was tax credit.</i>

Basically Jim Townson worked at Black Moss Farm for sleep and sustenance”

No supporting documents were disclosed with this letter.

16. On 19th June 2007 the Chairman directed that the issue of whether the Applicant met the livelihood condition should be the subject of a preliminary hearing at which, in particular:

- “(a) the status of tax credits received by the Applicant shall be argued and determined*
(b) the value of benefits in kind received by the Applicant and claimed by him to be attributable to his agricultural work on the holding shall be determined and
(c) particulars of all other income received by the Applicant over the relevant period shall be provided.”

He gave further directions requiring disclosure of documents and of written statements of witnesses, including expert witnesses, to be relied upon at the hearing by specified dates. That preliminary hearing was then fixed for 19th December 2007.

17. Under cover of a letter to Mr Cornish dated 3rd August 2007 [p 633] Mr Turner disclosed the Applicant’s income tax returns for the years 1998/99-2002/03 [pp 37-41], his Working Tax Credit awards for 2003/04-2007/08 [pp 42-62] and some correspondence from Pearl Assurance relating to a personal pension plan policy held by the Applicant [pp 63-8].

- (1) In the tax returns the Applicant had declared his income as follows:

1998-99	Gisburn Mart	£1,530
	Investment income	1,241
	Part time earnings	200
1999-00	Gisburn Auction Mart	£1,431
	BSI	115
	Part time earnings	200
2000-01	Employment etc	£1,329
	Building Society int	225
	Part time earnings	200
2001-02	BSI	£ 315
	Part time earnings	200
2002-03	Building Soc Int	£ 264
	Part time earnings	100

Against each of the amounts for part-time earnings there had been added (in either the Applicant’s or Mr Turner’s handwriting) a note that these were wages received from the Applicant’s mother.

- (2) The Working Tax Credit Awards, which were stated to have been based on information provided by the Applicant, showed the following:

26/06/04 – 05/04/04	Worked 40 hrs/wk	
	Earnings	£ 515.00
	Working Tax Credit	1,672.95
06/04/04 – 05/04/05	Worked 40 hrs/wk	
	Earnings	364.00
	Working Tax Credit	2,215.55
06/04/05 – 05/04/06 (Final award)	Worked 40 hrs/wk	
	Estimated earnings	364.00
	Working Tax Credit	2,281.25
06/04/06 – 05/04/07	Worked 40 hrs/wk	
	Earnings	364.00
	Working Tax Credit	2,350.60

06/04/07 - 05/04/08	Worked 40 hrs/wk	
	Earnings as an employee	400.00
	Working Tax Credit	2,437.56

- (3) The Pearl Assurance documents revealed that on 17th August 2006 the Applicant had been paid £9,350.07 on the maturity of his pension plan policy.

18. By the time of the directions hearing on 19th December 2007 the undated statements by Mr Turner [pp 151-2] and by the Applicant [pp 168-9] had also been provided. On page 2 of his statement the Applicant said :

“In the last 5 years out of 7 prior to my mother’s death in October 2006 my principal source of livelihood was from Black Moss Farm as follows.

2001	Gisburn Auction Mart 1 day per week	£1,329.00
	Black Moss Farm say 950 hours @ £4.57	4,341.50
	Building Society Interest	<u>115.00</u>
		5,785.50
2002	Black Moss Farm say 110 hours @ £4.77	5,247.00
	Building Society Interest	<u>315.00</u>
		5,562.00
2003	Black Moss Farm say 1100 hours @ £5.15	5,665.00
	Building Society Interest	264.00
	Tax Credit	<u>1,1672.94 (sic)</u>
		7,601.94
2004	Black Moss Farm say 1100 hours @ £5.40	5,940.00
	Building Society Interest	250.00
	Tax Credit	<u>2,215.55</u>
		8,405.55
2005	Black Moss Farm say 1100hours @ £5.58	6,138.00
	Building Society Interest	<u>250.00</u>
	Tax Credit	2,281.25

“... my Mother allowed me board and sustenance in return for non payment of the minimum wage.”

No pay slips or statement of wages from Gisburn Mart or from the Applicant’s mother were disclosed. The hours of work at Black Moss Farm claimed worked out at a little over 21 hours a week rather than the 40 hours stated in the Tax Credit awards. No building society passbooks or bank statements were disclosed.

19. At the hearing on 19th December (attended by both Mr Turner and the Applicant) Mr Cornish complained that the directions relating to disclosure of documents and witness statements had not been complied with and invited the Tribunal to dismiss the Applicant’s application. We declined to do that but instead the Chairman gave further directions [pp 22-3] which included repeating those directions concerning disclosure previously given, imposing a fresh timetable setting realistic deadlines for each stage to which both Mr Turner and Mr Cornish agreed, and directing a full hearing of the application on a date to be fixed. It is worth noting that the Chairman explained the effect of these directions and also where the burden of proof lay and the nature of the evidence which the Tribunal would usually expect in order to enable it to determine if the Applicant met the livelihood condition.

The evidence given at the hearing

20. **Mr Richard Turner** was the first witness to be called. He was called on the Applicant's behalf as an expert witness. He had provided two written witness statements [the first at pp 151-2 of the Bundle and the second at pp 49-50]. He formally identified and confirmed the veracity of these and they stood as his evidence in chief.
21. In both his written statements and at the hearing Mr Turner estimated that 90% of the Applicant's livelihood since 2001 had been his work on Black Moss Farm (including Grimshaws Farm and Guys Land). He had reached that estimation on the basis of what he had been told by the Applicant and Mr Lamb and his knowledge of "farms like that". He thought it reasonable to estimate the Applicant's working time on the holding at 21 hours a week, "that being the figure I felt equated to the value of the Applicant's board and lodging even though the Applicant had told me he had worked on the Farm for longer than that". We were later told that Mr Turner and Mr Cornish had agreed that the running of a unit like this would reasonably require on average a little over 26 standard man hours a week. This did not cause Mr Turner to revise his assessment of the Applicant's working time on the holding. It seemed to us he had ignored the fact that both Mrs Townson and Mr Lamb also worked on the holding throughout the relevant period. He conceded that he had not seen any of Mrs Townson's bills relating to the upkeep of the farmhouse or investigated with the Applicant or Mr Lamb just what was included in the keep provided to the Applicant. The best he could say was that this was his "professional guesstimate". He thought there was no "scientific way" of assessing the value of the Applicant's keep.
22. On the question of the Applicant's suitability, Mr Turner's evidence fell into two parts: firstly, his forecast of the net profit which the Applicant might generate if he were to be granted a tenancy of the holding; and secondly, his opinion on the prospects of selling off the derelict farmhouse and buildings at Grimshaw Farm for development in order to provide some working capital for the Applicant.
23. Mr Turner's forecast is set out on page 2 of his first statement [p152 of the Bundle]. It is based on Mrs Townson's last set of accounts (for 2004/05). The forecast is in respect of one year only and is not accompanied by any kind of business plan or supporting documents. The net profit forecast is £2,711. This forecast is open to criticism on a number of fronts:
 - (1) Mr Turner does not appear to have had sight of (or, if he did, to have paid any regard to) any accounting records for the business for the years 2005/06, 2006/07 and 2007/08.
 - (2) Mr Turner had not seen any supporting receipts and bills for the 2004/05 accounts but had generally increased the amounts for both income and the costs of sales shown in those accounts by 10%. Exceptions to or variations of this simple 10% increase were that he had
 - (a) substituted current rates for the Single Farm Payment, Hill Farm Allowance and Entry Level Stewardship in place of the pre-CAP reform subsidies;
 - (b) left the rent as it had been in 2004/05 (and currently still is);
 - (c) averaged repairs and renewals over 5 years and reduced depreciation by 10%. He conceded that this was a somewhat rough and ready allowance for increased costs, particularly having regard to the actual increases in the cost of motor and heating fuels and feed in the last year, but considered nonetheless that this was a fair and realistic assessment.
 - (3) Mr Turner had included in his forecast receipts from the ELS scheme which he had advised the Applicant to apply for. He said his firm would provide assistance to the Applicant both for setting this up and with his annual SFP and HFA claims thereafter, with annual stock valuations for tax purposes, and with advice on the sale and purchase of

livestock, but no allowance for the cost of all this assistance had been included in the projected cost of sales. He told us this would be some £150 to set up the ELS with annual costs thereafter of £80-90.

- (4) He had assumed that the Applicant would continue to farm Black Moss Farm in conjunction with Grimshaws Farm and Guys Land – the projected income and costs of sales had been made on that basis – but he had not included anything in respect of any additional rent the Applicant might have to pay to his two brothers for Grimshaws Farm.
 - (5) The forecast also assumed that the Applicant would purchase and utilise the farm live and dead stock which his mother had bequeathed to Mr Lamb but made no allowance for the cost of doing this.
24. The impression we had received from our visit to the farm was that neither the Respondents nor the Applicant's mother had been overly scrupulous in observing their respective obligations under the tenancy to maintain and repair the house, buildings and yards at Black Moss Farm. It is fair to say that neither the living to be derived in recent years from farming the holding, even in conjunction with Grimshaws Farm and Guys Land, nor the rent receivable by the Respondents allowed for much to be spent by either party on these. It is also right to say that there has not been, so far as we are aware, any problem about payment of the rent nor any serious complaint made or at any rate pursued by either party against the other in respect of these or any other obligations under the tenancy. But, on the net profit forecast by Mr Turner (even before making any adjustment to take account of the matters noted above), the living which the Applicant might reasonably be expected to earn from this holding is extremely modest. Mr Turner agreed that the Applicant is therefore bound to require a level of support beyond his entitlement to Working Tax Credit and which is unlikely to be found in the present or foreseeable economic climate from his bank. Hence the need to consider carefully the Applicant's own financial resources and those likely to be made available to him by his family – meaning his two brothers and Mr Lamb.
25. Mr Turner had advised the Applicant to sell off the derelict farmhouse and barn at Grimshaws Farm. Grimshaws had been owned by his mother and forms part of her residuary estate which she left by her will to the Applicant and his two brothers in equal shares. Mr Turner thought that the Applicant's one-third share of the net sale proceeds would be sufficient to enable him to buy out his brothers' interests in the land at Grimshaws and also to enable him to purchase the live and dead stock left by Mrs Townson to Mr Lamb.
26. We comment at this juncture that neither of the Applicant's brothers was called to give evidence, nor have we seen any written evidence from them which sets out their views on this proposal or indeed on their intentions in regard to the Grimshaws land. Mr Turner told us he had received instructions from all three brothers to offer the whole property for sale by auction in July this year. He had prepared particulars of sale [pp 119-124]. These do not include guide prices. The property was offered for in two lots – the house, barns and a meadow of about 3.07 acres, and the farmland of about 81.19 acres. Access to the property from the public highway was shown across part of Black Moss Farm. As we saw on our inspection, there was not even a stoned track. There is no right of way over Black Moss Farm in favour of Grimshaws Farm and the Respondents have had said they were not willing to grant one. The intended sale had not taken place. As we understood Mr Turner this was partly to enable a right of way to be sorted out and partly because the Applicant's brothers were not willing to sell the property at less than a sum which was not specified to us but which we infer was more than Mr Turner anticipated could be achieved.
27. Mr Turner had valued Grimshaws Farm as it stood for Probate purposes at £175,000. He said he thought its market value now would be significantly higher having regard to inflation in property values generally and to recent sales in the area. He thought the house and buildings ought to fetch £200,000 on the assumption that planning permission could be obtained for renovation and conversion for use as holiday accommodation and as much as £400-500,000 if permission could be obtained for permanent residence(s). He conceded in cross-examination that the 'recent sales'

he had referred to were all of properties with frontage to the public highway. Further, his assessments of value assumed the existence of a proper access from the public highway, which the Applicant could and was willing to grant, over Guys Land from a point on the road which we, had been shown on our inspection. Mr Turner's assessments also assumed that essential services would be available – electricity either by cable or from a private generator, water from a borehole, drainage and sewerage by septic tank. None of these services is presently available. It was our understanding of his evidence that it would be for the purchasers) to arrange and pay for the access and services but it was not made clear to us whether the property was to be offered for sale conditional upon the purchasers obtaining the necessary planning consents or the Applicant and his brothers were themselves to apply for these before offering the properties for sale.

28. It was already apparent from the statements that the Respondents had disclosed from Mr Cornish there was a substantial difference of opinion between Mr Turner and Mr Cornish about:
 - (1) whether and, if so, where on the public highway the highways authority would permit access;
 - (2) the likely cost of constructing a suitable access road;
 - (3) the likely cost of providing the essential services;
 - (4) whether the farmhouse had been unoccupied for so long that it would be necessary to apply for permission to change its use from agricultural land and buildings to residential use and, if yes, the likelihood of such permission being obtained;
 - (5) the realistic value of the farmhouse and buildings taking all these matters into account; and
 - (6) the likelihood of a buyer being found in the foreseeable future.
29. As to first and fourth of these issues, Mr Turner said he had had informal discussions with an architect which led him to believe there should be no great difficulty obtaining the necessary planning permissions. But he accepted that there could be no certainty about it. He thought it more likely that permission could be obtained for a development of holiday cottages or some (unspecified) commercial use or a mixture of the two than for full residential use.
30. Mr Turner estimated the cost of laying a “quarry bottom” access road over Guys Land at £4,000-5,000. A tarmac road would cost some £15,000. He based this on his experience on his own farm and his knowledge of the cost of laying roads on other farms known to him and the length of the road required, which he estimated at some 300 metres. He did not put a figure on the provision of services but he did suggest that using a generator would make more sense than installing an electricity supply line from the nearest available point and that it was likely water could be available through a borehole.
31. Bearing all these hurdles in mind, he still thought it realistic to hope that a buyer willing to pay £200-300,000 for the house and buildings without planning permission.
32. He was then asked about the value of the land at Grimshaws Farm. He said that, based on comparable sales in the area, prices of between £1,000 and £2,500 per acre were still being achieved. He was quite certain that the Applicant's third share of the net sale proceeds of the house and buildings would be sufficient to enable him to buy out his brothers' interests in the land and to purchase the live and dead stock from Mr Lamb. He reminded us that the Applicant was owed some £36,000 as a debt from his mother's estate which would have to be repaid to him before division of the residuary estate between the brothers.
33. Mr Turner was asked what the position would be if the house and buildings could not be sold, or could not be sold at a price acceptable to the Applicant's brothers or sufficient to enable the

Applicant to buy their interests in the land. He felt that farming Black Moss Farm (even with Guys Land) would not be a viable possibility without the Grimshaws land. He had talked to the brothers and understood that they would be willing to let it to the Applicant. He thought the annual rent should be about £1,500 or £20 per acre (which in fact equals an annual rental of £1,680). of which the Applicant in fact would have to pay just two-thirds. This would still be an expense of about £1,000 which Mr Turner had not included in his profit forecast.

34. Finally, Mr Turner confirmed that he had also agreed with Mr Cornish that the working capital which the Applicant would require to run the holding without damaging the Respondents' reversion of Black Moss Farm (and including that necessary to stock the Farm) would be in the region of £50,000.
35. **The Applicant** then gave evidence. He had provided two written statements [pp 168-169 and 153-167]. He confirmed the accuracy of these but wished to make one amendment to paragraph 35 of his second statement [pp 162-163]. The third line of this paragraph as lodged and served states,

"Mr Lamb has promised that he will either sell to me the items he has been left, being the live and dead stock, which will allow me to farm the holding."

He now wished to amend that by inserting the words, "or give" after the word "sell". It seemed to us that the use of the word "either" in the original statement suggests an intention to follow the word "sell" with an "or ...". We allowed the amendment. The Applicant's evidence on this point was that he and Mr Lamb had originally agreed that he should buy the live and dead stock. Neither had intended or expected that he would pay for this in a single payment but that he would pay for it bit by bit over time. Then, after the last directions hearing, Mr Lamb had said he would give the Applicant the stock. He accepted that this was inconsistent with the wording of the written agreement and that, if he was bound by this, he would have to buy the stock but pay for it over time.

36. The Applicant also told us that he had recently found a building society account which he had "forgotten about" until now. As at 5th August 2008 this contained £3,859.05. The monies in this account had come from a Norwich Union share account into which the balance in a Skipton Building Society account (a/c no.563223406) had been paid on 29th March 1999. The Skipton Building Society account had been the account from which he had lent his mother £15,000 on the same date to reduce her bank overdraft and which, together with £6,580 previously lent to her on 3rd November 1998 to buy a tractor, had formed the basis of the loan account mentioned in his mother's accounts. The passbook for this "forgotten" account had been shown to the Respondents' solicitors shortly before the hearing and was produced at the hearing to confirm the current balance. We did not hear or see any evidence about the operation of this account since 1999; in particular, we know nothing about any interest earned on this account in each of the relevant years, the amounts and sources of any other credits to the account, or the amounts and purposes of any withdrawals made from it.
37. It is convenient at this stage also to note the other evidence about the Applicant's building society and bank accounts:
- (1) In paragraph 26 of his second statement [p 160] the Applicant said he held two further Skipton BS accounts (nos 01200424210 and 5656317905) in which there were respectively £18,653.24 as at 3rd December 2007 and £5,120.24 as at 28th January 2008. The "latest books" for these were said to be exhibited to that statement. In fact, what was exhibited in respect of the Skipton BS accounts were photocopied pages from passbooks for four Skipton BS accounts and one for a Yorkshire Bank Savings Account.
 - (2) The passbook for account no.521179807 [pp 585-589] shows that –

- (a) The account was opened with a deposit of £3,000 on 8th August 1991 described as a “transfer”. The source of this was not shown in the book. The Applicant said nothing about this, nor were we able to identify a corresponding transfer from the other accounts for which passbooks were before us.
 - (b) The account was closed on 4th June 2001 when the then balance of £2,128.04 was withdrawn by a cheque (payee not identified in the book or in evidence).
 - (c) £6,580 had been withdrawn on 3rd November 1998. We assume this was the first loan to Mrs Townson mentioned in paragraph 41 above.
- (3) The passbook for account no.563223406 [pp 590-591] (which must be the account mentioned in paragraph 36 above) shows that –
- (a) The account was opened on 16th February 1996 with a transfer of £11,042.06 (source not identified in the book or in evidence).
 - (b) It was closed on 29th March 1999 when £15,000 was withdrawn (which must have been the second loan to Mrs Townson) and the balance of £2,149.95 was transferred (destination not identified in the book or in evidence).
- (4) The passbook for account no.638691809 [pp 594-596] (which must be the first account mentioned in paragraph 6 of the Applicant’s second statement – the printed account number has not been deleted but the number 01200424210 has been added in manuscript) show that –
- (a) The account had been opened on 9th December 2002 with a deposit of £ 12,000 described as “Own (16/12/02)”, We were not told the source of this money but think it must have come from Skipton BS account no 565317905 (see subparagraph (5) below).
 - (b) On 24th August 2006 a cheque for £9,350.07 was received. This must have been the cheque from Pearl Assurance which Mr Townson had said in paragraph 23 of his second statement had been paid into his Norwich Union account.
 - (c) The entries thereafter (all but one of which are withdrawals) postdate Mrs Townson’s death and are not relevant to the livelihood issue in this application, although the current balance (£18,653.24) is of course relevant to the suitability issue.
- (5) The passbook for account no.565317905 [pp 597-604] (which must be the second of the accounts referred to In paragraph 26 of the Applicant’s second statement) shows that –
- (a) The account was opened on 9th April 1996 with a transfer of £9,000. This corresponds to a withdrawal in the same sum on the same date from account number 521179807.
 - (b) Between then and 11th November 2002 there are no receipts other than interest.
 - (c) £400 was withdrawn in cash in November 2001 and then a total of £5,247.77 in 2002.
 - (d) On 4th December 2002 there is recorded a receipt by bank payment of £18,172.48 (source not identified or explained in evidence).
 - (e) On 9th December 2002 there were withdrawals of £200 in cash and £12,000 by

cheque (we think the latter must have been the £12,000 paid into account no. 638691809/01200424210, see subparagraph (4)(a) above) plus a “transfer to 638691700 of £3,000”. We were not given any explanation of this last transfer nor have we been provided with any records relating to the destination account.

- (f) Thereafter there were broadly regular monthly deposits by bank payments from July 2003 to January 2008 of amounts which appear to correspond with the monthly payments or Working Tax Credit received by the Applicant.
 - (g) In the period January 2003 to January 2008 there were broadly regular withdrawals, mainly in cash of between £200 and £500, amounting to some £2,000 in each year. We were not told the purpose of these.
 - (h) There were two additional, more substantial withdrawals by cheques in 2005 for £3,500 and £1,400 respectively. We were not told the destination or purpose of these.
- (6) The passbook for the Yorkshire Bank savings account no. 12807 [pp 606-610] covers the period 4th July 2000 to 3rd December 2007. It was opened with a balance of £754.18 brought forward from an earlier but full passbook which we were not shown. It closes with a balance of £503.22 on 3rd December 2007. There are no significant deposits or withdrawals shown.
- (7) We were told that, on Mr Turner’s advice, the Applicant had opened a Lloyds TSB account with a transfer of £800 from his Yorkshire Bank savings account and that this was done for the purpose of receiving his SFP and like payments. We could not identify a record of this transfer and we saw no statements relating to this account. We infer from it having been opened to receive SFP payments that it must have been after his mother’s death. If so, the Lloyds TSB account will not be relevant to the livelihood test, although its current balance would be relevant to the suitability issue. We have not seen any records relating to it.
- (8) We have not seen any records relating to the Norwich Union account.
- (9) It is pertinent to note that we were not taken to and were unable ourselves to identify in the passbooks before us any regular receipts or deposits which might have related to the Applicant’s wages in the period October 1999 to March 2001 from Gisburn Mart.
- (10) It is also pertinent to note that we cannot reconcile such figures as are shown for interest received in the account records before us with those stated in the Applicant’s income tax returns and Working Tax Credit awards for the relevant years, which appear to us to have been understated. Save to the extent that it might bear upon the Applicant’s general credibility and reliability as a witness, we are not strictly concerned with the fact and possible consequences of any non-disclosure or under-statement to HMRC. It is, though, important that we are fully informed about the amounts actually derived from the Applicant’s investment income as one of the sources from which his livelihood appears to have been derived. We were not satisfied that the Applicant has given full disclosure in respect of all his accounts, at least in the respects identified in paragraph 36 and earlier in this paragraph.

38. The Applicant’s evidence about the nature and scope of his agricultural work on the farm may be summarised thus:

- (1) He had worked on the Farm since leaving school. His father was then the tenant. He did not tell us who else besides him and his father worked on the farm or how many hours a week he worked or how the work was shared between them but he did say that he helped generally with all the work on the farm.

- (2) He worked as a yardman for one day a week at Gisburn Mart between 1964 and 1968 and for two days a week from 1968 to 1978. He went back to one day a week thereafter until when, in consequence of the foot and mouth outbreak, he stopped altogether in March 2001. As noted already above, we have not seen any evidence from the Mart about his employment there. Otherwise, he told us, his only work was at the Farm. This remained the position until his mother died.
- (3) He has produced his personal diaries from 2000 to 2007 [pp 177-582]. These record various jobs he says he did on the Farm during the relevant period. These confirm that the Applicant did some agricultural work on the Farm most days of the week throughout that period, but –
 - (a) Much of that work appears to have been shared with “Jeff and Ma”.
 - (b) Many of the jobs described in one day, even taken together, would not have occupied a whole day or even a substantial part of one day.
 - (c) There is no note of the time actually spent by the Applicant personally in such work.
 - (d) Some entries mention names of people and places as part of the description of an activity. Of these, some are consistent with the activity described having been done on the Farm by an outside contractor; others are at least ambiguous as to whether the work described was actually done by the Applicant on the Farm or was done by him for someone else on another farm or elsewhere.
 - (e) The Applicant had not disagreed with the experts’ agreed assessment of the number of man hours reasonably required to run the Farm.

39. The Applicant then gave evidence about the nature and scope of his livelihood and the sources of that livelihood.

- (1) He had his keep free of charge. He received no regular cash wage from his mother for his work on the Farm, It had been agreed between them that he would have his keep free instead of being paid the minimum wage. He could not explain or comment on the item for “wages and keep” in his mother’s 2000/01 accounts or the absence of any such expenditure in the subsequent accounts.
- (2) Although the Applicant received no regular cash wage from his mother, he was given “odd amounts” from time to time. He declared these in his income tax returns as part-time earnings – £200 in each of the years 1999/00, 2000/01 and 2001/02, £100 in 2002/03. It was not possible for us to identify what he declared for these in the years after 2002/03 because his Tax Credits awards do not distinguish between his earned income and his investment income and, as noted already, the income stated in these awards does not correspond to the interest earned as shown in his disclosed building society passbooks. The Applicant conceded that he had no record and no recollection of what he actually received from his mother in any one year and that his income tax returns cannot be relied on to prove the amounts received. They may have been more; they may have been less. He could not even say £200 was an average over the period. Further, he had said in paragraph 17 of his second statement [p 57] that he “was not sure as to where these monies came from but just believed it was through the farm business”.
- (3) He said his only other employment had been at Gisburn Mart. We have not been able to correlate payments received by the Applicant from Gisburn Mart in the period October 1999 to March 2001 with deposits in any of the building society accounts before us. The only evidence about these is the declarations made in the Applicant’s disclosed income tax returns:

1999/00	£1,431
2000/01	1,329

- (4) The Applicant said nothing about what he did with the cash withdrawn from those of his various building society accounts for which passbooks had been disclosed, particularly from account no.565317905. Calculated from these those withdrawals in each of the relevant years were as follows –

12/10/99-11/10/00	£1900
12/10/00-11/10/01	[no information available]
12/10/01-11/10/02	1690
12/10/02-11/10/03	5900
12/10/03-11/10/04	1500
12/10/04-11/10/05	5450
12/10/05-11/10/06	2650

As noted already above, the Applicant's Working Tax Credit was paid into this account and so, as from July 2003, these withdrawals would have derived from the tax credits.

40. As to what was comprised in the Applicant's keep, his evidence was as follows:

- (1) He had always lived at Black Moss Farm. In the relevant years he shared the farmhouse with his mother and Mr Lamb. Mr Turner's first statement tells us that the accommodation there comprised a kitchen, one living room, three bedrooms and one bathroom with we.
- (2) We were not provided with any invoices or statements in respect of the Council Tax paid by Mrs Townson nor in respect of insurance, water, lighting, power and heating. It was not clear whether or, if so, to what extent, the Applicant may have contributed to any of these.
- (3) When asked what "services" from his mother were included in his keep, the Applicant was not altogether clear or consistent, but we understood that the cooking, cleaning and laundry were done at least mainly by his mother and Mr Lamb rather than by him although he did play some part in these chores. We did not hear anything about any repairs or decoration in the house. The majority of household shopping seems to have been done by Mrs Townson and Mr Lamb. It seems likely that Mrs Townson would have paid for most purchases at the point of sale but the source of the money used for this is unclear.
- (4) The Applicant's mother paid for his (and Mr Lamb's) working clothes but the Applicant "bought a few clothes" himself. No further particulars and no quantification were given in respect of these.
- (5) The Applicant had the use of the farm vehicles for his personal use as and when he needed. He gave no particulars of the frequency or extent of the use he enjoyed.
- (6) The Applicant told us he rarely took holidays, drank alcohol only occasionally and modestly. We did not note and we cannot recall what, if anything, he may have said about smoking. He said his social life was generally limited to his family and the local farming community. He gave no evidence about his actual expenditure in relation to these matters.

41. As to the Applicant's financial standing, the effect of his evidence may be summarised thus:

- (1) His actual or projected future sources of income are –
 - (a) the net profit from the farm as projected by Mr Turner (including SFP and like payments and any benefits in kind arising out of the farming business).
 - (b) interest earned on deposits in his building society and bank accounts.

(c) Working Tax Credit.

Although the Applicant did not himself say so, we also recognise that his income is likely to be supplemented by his state retirement pension once he reaches the age of 65. We do not know how this may affect his entitlement to Working Tax Credit.

(2) His capital comprises –

- (a) the principal sums shown in the building society account passbooks disclosed (this totals £28,139.75).
 - (b) the £32,649 owed to him by his mother's estate (together with any interest accrued on that since his mother's death).
 - (c) his one-third share in his mother's net residuary estate as and when that is realised. [An undated estimate of the value of the estate, which includes Grimshaws Farm at Mr Turner's probate valuation of £175,000 and allows for repayment of the Applicant's loan, is at pp34-36. The Applicant's one-third share on that estimate would be £44,611 on top of the £32,649 loan repayment.]
- (3) The Applicant repeated that Mr Lamb would make available to him the live and dead stock currently on the Farm which the latter had acquired under Mrs Townson's will. Whether this was by way of a direct gift now or by gift under Mr Lamb's own will, this would mean he would not have to find the capital to purchase it immediately or in one lump sum.
- (4) The Applicant was confident that he would be able to come to an arrangement with his two brothers whereby he would be able to carry on farming the land at Grimshaw Farm in conjunction with Black Moss Farm and Guys Land, whether under a tenancy or licence agreement or by buying out their interest in the land.

Having regard to all these matters he thought he would have no difficulty in complying with his obligations to the Respondents under a tenancy of Black Moss Farm.

42. **Mr Geoffrey Lamb** then gave evidence on behalf of the Applicant.

- (1) Mr Lamb had lived at Black Moss Farm, in effect as a member of the Townson family, since 1968. He had lived there rent-free in return for his casual, part-time work on the Farm. He did make some contribution towards the cost of food.
- (2) In 1985, when the Applicant's father died, he had given up his "day job" at Gisburn Mart and had worked "full time" on the Farm with Mrs Townson and the Applicant. He was not paid a cash wage but had his keep free and was given money by Mrs Townson as and when he needed it for clothes or other living expenses.
- (3) In 1993 he qualified for his State retirement pension and thereafter he used that for his personal living expenses. He continued to work on the Farm and in return have his keep free, although he still made some contribution towards the cost of food and other household purchases. The amount and frequency of his contributions was never specified.
- (4) He described his work on the Farm from 1984 as "general farm duties" including lambing, dealing with sheep generally. In some years contract clippers were engaged but in others clipping was part of his duties. It was not clear to what extent the Applicant shared in this work unless the job required two persons. Mr Lamb also went to mart, apparently without the Applicant, both to take stock for sale and to purchase fresh stock. Field work appears to have been done by the Applicant and/or contractors. Mr Lamb did not say anything about

the number of hours worked by him, the Applicant or Mrs Townson. He was not asked to comment on the experts' agreed assessment of the number of hours required to run a farm of this type and size.

- (5) In recent years, in addition to his work on the Farm, Mr Lamb has done most of the housework and the yard work. It was not clear to us whether he had started doing this only after Mrs Towns or/s death or had gradually been doing more of this over a number of years before her death. It appears that it is now he who assists the Applicant with "two-man" jobs rather than the other way round. They also rope in neighbours and friends as necessary.
 - (6) He confirmed that, although he had initially agreed to sell to the Applicant the live and dead stock he had inherited under Mrs Townson's will, he had more recently agreed to gift them to the Applicant "because he had no-one else to leave them to". He anyway had expected to make them available to the fanning business as part of the consideration for his keep.
43. The only witness called on behalf of the Respondents was **Mr Richard Cornish**. He is a chartered surveyor and land agent and a partner in Ingham & Yorke of Clitheroe and is the partner responsible for the management of the Respondents' tenanted agricultural estate. He had provided two witness statements [pp 626-631 and 615-625]. He duly verified these.
44. As to Grimshaws Farm:
- (1) Mr Cornish thought It unlikely, on the basis of his knowledge and experience of Ribble Valley District Council's planning committee, that planning permission would be obtained for either the farmhouse or the buildings for full residential use. Further, given the location, particularly the absence of a right of way to the public highway, and the nature and extent of the work required, he thought it by no means certain that planning permission would be granted even for use as holiday cottages.
 - (2) He had spoken informally to someone in the Council's planning department. He had been told that planning permission would be required to lay a track or road. It was by no means certain that the highways authority would agree to an access being opened up along the frontage of Guys Land because of problems of visibility. Any access over the adjoining common land would require the consent of the Commons Commissioner, which he thought was unlikely to be given.
 - (3) Whichever route were to be chosen and allowed, the wet nature of the ground and the length of road required would mean that the cost is likely to be far greater than that suggested by Mr Turner. The route originally suggested (over the Respondents' land, for which they are not willing to give their consent) was about 700 metres. He "did not blink" at a figure of £50,000 for that. A route across Guys Land would be shorter – c.500 metres – but the problems with the point of access onto the highway and the need for a wide visibility splay would mean that he still would not blink at £40-45,000. He had not had the job properly quantified and costed. These figures were his own best guesstimates based his knowledge of previous cases, the nature of the ground and the length of road required for a quarry stone road suitable for use by private vehicles for residential purposes and for any vehicles required in the redevelopment of the house and buildings and the usual delivery vehicles.
45. Mr Cornish confirmed and explained his agreements with Mr Turner:
- (1) The man-hours required to manage Black Moss Farm if farmed in conjunction with Grimshaws Farm and Guys Land would be 1368 hours in a year. They had calculated this by reference to their own knowledge and experience of like farms and to the standards set

out in *Nix's Farm Management Pocket Book*. Broken down, this represented 122 man days for managing the livestock listed in Mr Turner's valuation and 49 man-days for the land work, a total of 171 man days in the year which on an 8-hour day means 1,368 hours or a little over 26 hours a week. He accepted that the age and nature of the traditional buildings at Black Moss Farm (but not the newer building and the attached lean-to sheds) would be more labour intensive than assumed in the standard but qualified that by saying that the stock were evidently kept outside for much of the time. He did not think that made any significant difference to their estimate. He agreed that this unit could be managed by one person with casual help as and when required and that this was usual for this type of farm.

- (2) The working capital required for this farming business was £50,000 of which £30,000 was the value of livestock, dead stock and machinery. He accepted that Mr Lamb would make this available and that, if the Applicant had to pay for it, he would not have to do so immediately as a single capital sum. £20,000 would be needed to see things by on a day to day basis and comply with the tenant's obligations under the lease.
46. Mr Cornish accepted that it was necessary to attribute a monetary value to the Applicant's board and lodging. He disagreed with Mr Turner that should be determined in relation to the hours actually worked; it should have a value in its own right. He had cited the offset allowed by the Agricultural Wages Orders for providing accommodation other than a house (£22.75 a week as from 1st October 2001 for following year) for illustrative purposes only. He was not saying that was the value of the board and lodging in this case. He had been, and still was, unable to make a proper valuation in this case because of lack of particulars. The AWB offset had been the best he could do in the circumstances.

The Submissions

47. We will refer to the relevant parts of the helpful submissions made by Mr Newail for the Applicant and Mr Hayes for the Respondents in the course of setting out our findings and conclusions.

Our findings and conclusions

48. The term "surviving close relative" plainly includes a son of the deceased tenant. The Applicant satisfies the first element of the eligibility requirements.
49. Black Moss Farm was and is farmed as part of a larger unit of agricultural land comprising Black Moss Farm itself, the adjacent Grimshaws Farm and a single field between Grimshaws Farm and the public highway. There was the possibility that the Applicant in this case might be the occupier of a commercial unit by virtue of his occupation of Grimshaws Farm and Guys Land, but the point was not taken at the hearing. We still have to be satisfied on the point. Having seen both Grimshaws Farm and Guys Land, we are satisfied that, taken together or separately, they could not constitute a commercial unit. The Applicant was not at the time of his application or at the time of the hearing the occupier of a commercial unit of agricultural land.
50. In order for us to determine if the Applicant met the livelihood condition it was necessary for us to decide the following questions:
 - (1) What constituted the Applicant's livelihood in each of the requisite five years out of the seven year period beginning 12th October 1999 and ending 11th October 2006?
 - (2) What were the sources of this livelihood?
 - (3) Which of those sources were attributable to the Applicant's agricultural work on the unit of

which Black Moss Farm was a part, and which of them were not attributable to that work?

- (4) What proportion of the monetary value of the Applicant's livelihood is represented by the value in money and money's worth derived from his agricultural work on the unit of which Black Moss Farm formed part?

51. The Applicant's livelihood throughout each of the relevant seven years comprised –

- (1) The benefit of his accommodation at Black Moss Farmhouse – meaning a bedroom, fully furnished and equipped, for his own use, and the shared use of the bathroom, w.c., kitchen and living room, also furnished and equipped, in common with his mother and Mr Lamb.
- (2) The benefit of his proportionate share of the outgoings required to maintain and enjoy that accommodation such as Council Tax, the cost of fuels for water and room heating, electric power and light.
- (3) The cost of food and drink consumed by him at the house,
- (4) The benefit of his proportionate share of “services” provided and enjoyed in the house such as cooking, cleaning, laundry (which seem to have been provided mainly by his mother and Mr Lamb).
- (5) The cost of all his personal clothing, toiletries and other items bought and enjoyed for his personal use, including any motoring or other transport expenses incurred in connexion with these.
- (6) The cost (or his proportionate share of the cost) of all leisure activities, entertainments and holidays enjoyed by him personally, including any motoring or other transport expenses incurred in connexion with these.

52. Although it is easy enough to list the above elements as the “skeleton” of the Applicant's livelihood, the lack of particulars makes it difficult to cloak them with flesh so as to appreciate the full picture of this livelihood.

53. The sources of the Applicant's livelihood included:

- (1) between 12th October 1999 and 31st March 2001, the income earned from his part-time work as a yardman at Gisburn Auction Mart;
- (2) between 26th June 2003 to 11th October 2006, the Working Tax Credits received;
- (3) throughout the relevant seven year period, the interest received on his several investment and other building society accounts as shown in the passbooks put before us;
- (4) throughout the relevant seven year period, his agricultural work on the agricultural unit of which Black Moss Farm was a part.

54. We say “included” rather than “consisted of” because

- (1) the Applicant had a Skipton Building Society account no.638691700 of which no records and particulars were given in evidence which was active during the relevant period at least on 9th December 2002 when £3,000 was transferred to it from account no.565317905 (the passbook for which was produced in evidence);
- (2) the Applicant's Yorkshire Bank savings account no. 12807 was in existence during the relevant period prior to the opening date (4th July 2000) of the passbook for that account

which was disclosed;

- (3) the Applicant had a Norwich Union account which was mentioned in his evidence as having been opened on 29th March 1999 with a transfer of the balance from Skipton Building Society account no.563223406 and which was in existence throughout the relevant period. We were told the balance in this account as at 5th August 2008, but we saw no records and heard no particulars about deposits in or withdrawals from this account during the relevant period.

55. The following sources of the Applicant's livelihood were not derived from his agricultural work on the unit of which Black Moss Farm formed part:

- (1) The income earned from Gisburn Auction Mart. This plainly did not derive from his agricultural work on the holding and the contrary has never been suggested.
- (2) The Working Tax Credits. We will explain this finding in the next paragraphs.
- (3) The interest earned on his various building society and savings accounts. The Applicant has claimed that the money in these accounts was derived from savings made by him out of his earnings from the Mart and from monies given to him by his mother and from the money received on the maturation of his pension plan. Leaving aside the earnings from the Mart and the monies from the pension plan, the Applicant has failed to identify any payment into these accounts which represents payments from his mother in respect of his agricultural work on the holding. Even if he had been able to do that, interest earned on unspent wages which had been available to him to spend but which he has not in fact spent to meet his living expenses will not count as a source of his livelihood, any more than would dividends earned from stocks and shares.²

Working Tax Credits

56. Working Tax Credit ('WTC') is described as "a payment from the government to support people on a low income" and was in essence introduced to keep people in work despite their earnings being low by topping-up those earnings. It is available to both the employed and self-employed. In order to qualify for WTC in any given tax year a claimant must (a) have been working a specified minimum number of hours each week and (b) have been earning less than the sum from time to time prescribed by *The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002*. It does not matter if a claimant has more than one job; it is the total number of hours worked in and the aggregate earnings from all his jobs (and any investment income or other source of income) which matter. Nor (subject to certain exceptions, none of which are relevant to this case) does the type of work matter; it could be in agriculture but it could equally well be in catering or another industry where the pay is low.³
57. The case argued by Mr Newall for the Applicant was, quite simply, that had the Applicant not worked on the holding, he would not have received the Working Tax Credits; therefore they derived from his agricultural work on the holding. He referred us to paragraph 35.40 of *Scammell & Densham's Law of Agricultural Holdings*⁴ where the editor refers to *Casswell v Welby*⁵ and says, "the Court of Appeal held that the proper test [for determining a source of livelihood] is not

² *Trinity College, Cambridge v Caines* (1983) 272 EG 1287, 1292

³ This information is taken from the HMRC publications and extracts from HMRC's and other websites provided by the parties' solicitors

⁴ 9th edition (2007), p.587

⁵ (1995) 71 P&CR 137 at 141

where the sums spent by the applicant come from, but why he had access to them". Mr Newall suggested that the reason the Applicant had access to the WTC in this case was precisely because he had worked on the holding for low pay. Given that the purpose of WTC is to keep people in low-paid jobs by topping-up their low pay, there is some logic and attraction in that argument.

58. Mr Hayes for the Respondent submitted that the WTC attaches to the Applicant rather than to his agricultural work on the holding. He raised the quite plausible possibility that a person might qualify for WTC while working part-time on a farm and part-time in an auction mart and asked rhetorically how, in those circumstances, could it be said that the WTC derived from that person's agricultural work on the farm? How could the WTC be sensibly apportioned between the two jobs? He, too, referred to *Casswell v Welby* and, in particular, to Stuart-Smith LJ's conclusion in which he said, "If asked the question 'from what is his income derived?', the son and the juryman would reply 'from his work on the farm'".⁶ The facts in that case were very different from the present case. In short, that case concerned an application by a son to succeed his late father with whom he had farmed the holding in partnership. In the majority of the relevant years the son had had to draw more than his strict profit share in order to meet his living expenses. The partnership business in those years had been supported by cash injections from a number of sources, including the family and the Bank. The landlord had argued that such part of the applicant's drawings as had exceeded his profit share had been derived from those sources not from his agricultural work on the holding. The son's livelihood was derived from his work on the holding and it was immaterial that the farming business was financed by cash injections from family members and the Bank.
59. The words quoted from *Scammell & Densham* in paragraph 57 above are a close paraphrase of words which do indeed appear in the judgment of Stuart-Smith LJ where he is rehearsing the arguments which had been put forward by counsel for the applicant, but they do not in fact form part of his conclusion (albeit that he says in his conclusion that he prefers that argument). To take the words out of this context and out of the context of the facts and the issues in that case may be misleading (we do not suggest for one moment that Mr Newall intended to mislead us). Had the Applicant in this case been paid a cash wage out of his mother's fanning business running at a loss but financed in part by his mother injecting her own WTC, that would have been a quite different case from what it is and would fall within the principles set out in *Casswell v Welby*. But that is not this case. The facts of this case are more akin to the case where an applicant has worked on his father's farm but has had also to do contract work on other farms (or to work in an auction mart) in order to make a living. It is well established that earnings derived from the off-farm work are not derived from his agricultural work on the holding. We therefore hold that the Applicant's WTC cannot be derived from his agricultural work on the holding.
60. The final question in regard to eligibility which we have to decide is, in light of the evidence before us and our findings as set out above, what proportion of the monetary value of the Applicant's livelihood is represented by the value in money and money's worth derived from his agricultural work on the unit of which Black Moss Farm formed part? This requires us
- (1) to ascertain the value in money and money's worth of the Applicant's livelihood, and
 - (2) to ascertain the value in money and money's worth of the cash earnings and the benefits in kind derived from the Applicant's agricultural work on the holding.

The lack of evidence about the nature and extent of the Applicant's keep and cash receipts for his agricultural work on the holding has given rise to enormous difficulties in both of these tasks.

61. The Applicant had said he and his mother had agreed that his keep should be free in lieu of payment of the minimum hourly wage rate for an adult farmworker from time to time set by the

⁶ Ditto at 142

Agricultural Wages Board.

- (1) Mrs Townson's annual accounts and the Applicant's income tax returns are not consistent with there having been such an agreement. It may be that these were prepared without taking into account the benefit of this benefit in kind in order to avoid a possible liability to income tax on the Applicant, but we have heard no explanation of why expenditure on wages and keep had been declared in Mrs Townson's accounts for 2000/01 but not thereafter.
- (2) In light of the agreement between Mr Turner and Mr Cornish that 26 standard man hours were required to run this farm, we certainly do not accept the suggestion that the Applicant worked 40 hours a week on the holding or anything like it. Nor, given that his mother and perhaps to a greater extent Mr Lamb carried out some of the necessary work on the holding, can we be satisfied that the Applicant worked as much as the 21 hours a week which Mr Turner suggested was reasonable to equate to the value of his board and lodging. He may have spent that time at the farm, but from the entries in his diaries and from what we saw on our inspection of the holding, we do not accept that he worked that number of hours on the holding or that his keep should be valued on the assumption that he did.
- (3) The entry in Mrs Townson's 2000/01 accounts for wages and keep must have been for the wages and keep of both the Applicant and Mr Lamb. As both say they received no regular cash wage, merely the occasional cash payment, the substantial part of this sum must relate to their keep. In the absence of any evidence from either the Applicant or Mr Lamb about the hours actually worked by each of them on the holding during the relevant years, we have heard nothing to suggest that the value in money of the Applicant's keep should differ from that of Mr Lamb's keep.
- (4) Mr Turner had provided no guidance to the market or commercial value of this benefit in kind. Shared accommodation of this type in this location will not often come to the market. Nevertheless, Mr Turner ought to have been able to investigate and obtain evidence about the going rate for a let of a third share in a furnished house of this size in the wider area, even if that would require some adjustment to take account on the one hand of its remoteness and on the other of its convenience for work to a farmworker on this holding. At the least it should have been possible for him to obtain from HMRC or an accountant information about how such a benefit in kind has been valued by HMRC for income tax purposes.

As to other elements that might have been comprised in the Applicant's keep –

- (5) None of the invoices underlying Mrs Townson's annual accounts were produced and nobody gave evidence about what she might reasonably have been expected to pay for Council Tax, heating, lighting and power in the relevant years.
- (6) We heard no evidence about the cost of procuring "services" such as those apparently provided for and enjoyed by the Applicant in the house by his mother and Mr Lamb – cooking, cleaning and laundry. Nor have we heard anything about the hours which were or might reasonably have been expended in providing such services.
- (7) The Applicant had told us nothing about his expenditure on his personal clothing, toiletries and other items bought and enjoyed for his personal use.
- (8) The Applicant had said little about the leisure activities and entertainments enjoyed by him personally and nothing about what he actually spent on these.
- (9) The Applicant had provided no information about the extent of or the cost attributable to his personal use of his mother's farm vehicles.

62. In the result, the only concrete evidence we have on which to base our assessment of the value in money and money's worth of the Applicant's livelihood and of his keep is:

- (1) The annual rent for the holding – £2,850 – but no evidence which would enable us to know how this might reasonably be apportioned between the house and the rest of the holding.
- (2) The cost – £3,878 – ascribed to what we must reasonably infer was the keep for both the Applicant and Mr Lamb in Mrs Townson's accounts for 2000/01 and from which we might reasonably further infer the cost ascribed to the Applicant's keep in that year was therefore £1,939 or possibly, if he was paid small cash amounts of up to £200 in line with later years, £1,739.
- (3) The amount – £1,183 – of the annual offset allowed by the Agricultural Wages Board in 2001/02 where accommodation other than a separate house is provided to a farmworker, but not the amount of that offset in either earlier or later years of the relevant period nor any evidence about just what this offset is meant to cover.
- (4) The cash earnings for part-time work declared by the Applicant in his tax returns for the tax years 1999/00 to 2002/03 and which he says were payments received from his mother for work done on the holding.
- (5) The wages he declared in his tax returns for 1999/00 and 2000/01 from Gisburn Mart.
- (6) The amounts declared in his tax returns for 1999/00 to 2002/03 as investment income or building society interest.
- (7) The interest shown in the Skipton Building Society passbooks disclosed as having been received in the relevant seven years, which in all but one year exceed those declared in his tax returns.
- (8) The income stated in his Working Tax Credits awards to have been earned by him in the period 26th June 2003 to 5th April 2004 and in each of the tax years thereafter, which does not distinguish between earnings and interest and which, with the exception of the first period, is less than the interest shown as received in the passbooks disclosed.

63. Mr Newail and Mr Hayes tried to agree some schedules which might assist us in our task. They were unable to do so precisely because of the lack of evidence discussed above. We set out below a schedule which illustrates the problem.

<i>Year</i>	<i>Keep</i>	<i>Cash Earnings from farm</i>	<i>Earnings from Mart</i>	<i>Interest received in BS a/cs</i>	<i>Working Tax Credit</i>	<i>Total</i>
13/10/99-12/10/00	£ 1,939(7)	£ 200	£ 1,431	£ 115.63	–	
13/10/00-12/10/01	(?)	200	1329	2457.75	–	
13/10/01 - 12/10/02	1183	200	–	315.31	–	
13/10/02 - 12/10/03	(?)	100	–	264.21	£ 632.37	
13/10/03 - 12/10/04	(?)	(?)	–	581.07	2187.39	
13/10/04-12/10/05	(?)	(?)	–	752.09	2249.57	
13/10/05-12/10/06	(?)	(?)	–	786.55	2317.16	

- (1) Even were we to hold that we could accept half of the sum attributed to wages and keep in the 1999/00 accounts as the proper value of the Applicant's keep in that year, there is no evidence on which we could determine the value in subsequent years.
 - (2) Alternatively, were we to accept the AWB offset as the appropriate value for the year 2001/02, again there is no evidence on which we could we determine the value in earlier or later years.
 - (3) Were we to hold that whichever of those figures was a proper measure of the value of the physical accommodation in the relevant year, there is no evidence on which we could we determine a value for the other elements of the keep, or the changing value of those elements from year to year.
 - (4) In light of the Applicant's evidence that the sum declared in his tax returns for wages from his mother cannot be relied on as being accurate, we cannot properly find that the sum declared can be treated as a minimum wage in that year. In light of the inconsistency between the earnings stated in the WTC awards and the interest received as shown in the passbooks disclosed we cannot make a finding about such wage in 2003/04 and subsequent years.
64. Each member of the Tribunal can speculate about what might be a reasonable figure in total or for each element, but the very fact that each of us tried to do so and arrived at different figures and by different routes illustrates precisely why we are not entitled to speculate. Our findings must be made on, and only on, the basis of the evidence we have heard and seen. We may in reaching our conclusions draw reasonable inferences from that evidence. We may not make good shortcomings in that evidence by assuming matters which we think could or should have been given in evidence, however reasonable those assumptions may appear to us to be. For these reasons we find ourselves quite unable to arrive, on the very limited evidence actually before us or by drawing reasonable inferences from that evidence, at a true valuation in money's worth of that keep which we have felt able to find was provided to the Applicant and which we are prepared to accept was provided to him by his mother in consideration of his agricultural work on the holding during the relevant seven years.
65. It follows from the above that the Applicant has failed to satisfy this Tribunal that he meets the livelihood condition and thus has failed to satisfy us that he is an eligible person.

66. Strictly there is no need for us to decide the suitability issue. However, in case this matter has to be considered by another court it may be helpful were we to set out our findings and conclusions on that issue.
67. Like many others in his position, the Applicant has received no formal training in agriculture. But he has lived on Black Moss Farm all his life. The Respondents had initially expressed some concern about his knowledge and experience of marketing his livestock. They also had expressed some reservations about his apparent reliance on professional advisors matters of purchases and sales of livestock and administrative matters. These points at the hearing, at least not with any vigour. We are satisfied that the Applicant has had sufficient practical experience of the work involved in running a livestock farm of this kind. It would be a matter for him to decide whether and, if so, to what extent to rely on or buy in the assistance or services of others for the purposes of marketing and administration.
68. No point was taken by the Respondents about the Applicant's age and health. He is 61 years of age. We were provided with a certificate from his GP confirming he is "in a reasonable state of health". From our own observations of him at the hearing and on our inspection of the holding, we were satisfied that there is nothing in his age or health which would render him unsuitable to become a tenant of the holding.
69. We have had some reservations about the Applicant's financial standing but, had it been necessary, we would have held that it was not such as to render him unsuitable to be granted a tenancy of the holding.
- (1) While it is quite apparent from the very modest net profit projected by Mr Turner and from the net losses shown in all but one of Mrs Townson's accounts that it is difficult to make a living off this farm, we accept that the Applicant would have sufficient other sources of income to support him in his modest lifestyle, one that is little different from many hill farmers on this scale in this region. He is likely still to be entitled to Working Tax Credit. It will not be many years before he will be entitled to a state pension. (We do not know how that will affect his entitlement to Working Tax Credit). He has some modest investment income from his disclosed building society accounts.
- (2) Quite apart from his capital in the disclosed building society accounts, he is entitled to be repaid some £36,000 from his mother's estate and is entitled to one third of the residue of her estate. Given Mr Lamb's offer in respect of the live and dead stock and machinery, we are satisfied that the Applicant would have sufficient working capital – certainly as much as Mr Turner and Mr Cornish have agreed is required – to farm the holding without damaging the Respondents' reversion during the period for which, having regard to his age, he would be likely to retain the tenancy.

Signed: (Michael Haywood)
Chairman of the Tribunal
22nd October 2008

(Signed) M.J. Baker
Tribunal Secretary
22.10.08