

BETWEEN:

RICHARD JOHN HOPKINS

Applicant

-and-

MAJOR EDWARD HAMMOND RIVERS MARLOW

AND

GUY TREHARN HOWEL JONES

AS TRUSTEES OF THE DYFFRYN LLYNFI ESTATE

Respondents

REASONS FOR THE DECISION OF THE TRIBUNAL

1. Richard John Hopkins (“the Applicant”) of Dyffryn Farm, Caerau, Bridgend CF34 0SL (“the holding”), under Section 53(1) of the Agricultural Holdings Act 1986 applies for a direction entitling the him to a tenancy of the holding in succession to the existing tenant of the holding, his father David Aneurin Hopkins. The Respondents to the application are Major Edward Hammond Rivers Marlow and Guy Treaharn Howel Jones as Trustees of the Dyffryn Llynfi Estate.
2. The application to the Tribunal was made by the Applicant and was dated 6 April 2005.
3. The application was made following the service of a retirement notice dated 4 April 2005 by agents for David Aneurin Hopkins. On the retirement date of 11 November 2006 David Aneurin Hopkins will be 65 years of age or older. He has farmed the holding for over 50 Years. The retirement notice nominated the Applicant as his Successor.

4. By a Reply form 5R dated 25 April 2005, the Respondents, as landlords disputed the claim of the Applicant to be an eligible person and put the Applicant to strict proof of his eligibility and suitability to become a tenant of the holding.
5. On 4 May 2005 the Tribunal requested that a number of documents be lodged with the Tribunal including details of the Applicant's income or benefits received from other sources.
6. On 6 July 2005 Davis Meade responded and claimed that there was no income or benefits received by the Applicant from other sources.
7. On 23 February 2006 Messrs Cooke and Arkwright requested that the Tribunal ask the Applicant to supply, amongst other things, full details of the payments that the Applicant had received out of his fathers drawings over the last seven years, tax returns and full details of unemployment benefit or other benefits that the Applicant has received from the Department of Health and Social Security or any other Government Department. The Tribunal Secretary then requested these details by letter from Messrs Davis Meade.
8. By a letter dated 2 March 2006 from Messrs Davis Meade, the Applicant denied that he had any other business than the farm, claiming that he had worked on the farm for the last twenty years and has not had any further employment.
9. On 8 March 2006 the Tribunal again wrote to Messrs Davis Meade asking for a statement of the Applicant's own capital including any other capital which may be available to him; farm accounts for the year ending 31 March 2005; tax returns submitted by the Applicant for five years and details of payments that the Applicant has received out of his father's drawings.
10. By a letter dated 13 March 2006 Messrs Davis Meade informed the Tribunal that the farm accounts for the year ending 31 March 2005 were being finalised and that an accountant's certificate was being obtained concerning tax returns for the last five years. Messrs Davis Meade also confirmed that Mr Hopkins senior gives the Applicant £100 per week for electricity, rates, heat, light, petrol and food for both of them; that he also pays for the Applicant's

personal use of a vehicle and that he also has "*the accommodation*".

11. Prior to the hearing the parties were asked for dates on which they would be available for a hearing and, taking into account these dates, the application was duly listed for hearing on 23 and 24 August 2006.
12. By a letter dated 10 July 2006 Messrs Cooke Arkwright, on behalf of the Respondent, requested that the hearing be postponed on the basis that the Respondent could not be present on the date of the hearing. The Deputy Chairman considered the request but refused the postponement on the basis that the parties had already been asked to provide their available dates and the Respondent had stated that they would be available on 23 and 24 August. However, later that day Messrs Cooke and Arkwright informed the Tribunal that the Respondents' had re-arranged their engagements and were now available on 23 and 24 August 2006.
13. The Tribunal then set out directions for the conduct of the application which included dates for lodging experts' reports, witness statements and skeleton arguments. The Applicant duly submitted a Statement of Case and the Respondent a Reply. The Statement of Case was not fully particularised and thus the Respondents' Reply was understandably limited in scope.
14. By a letter dated 27 July 2006 the Respondents made a further application to postpone the hearing on the grounds that their chosen counsel was not available to attend the hearing listed for 23 and 24 August 2006.
15. By a letter dated 3 August 2004 from the Tribunal Secretary to the parties the Tribunal refused the application for the postponement. The letter informed the parties that they had been consulted on the issue of the date of hearing before the dates were determined. After the hearing has been fixed in this way the Agricultural Land Tribunal (Wales) will not order a postponement, unless very good reasons are made out. The Respondent has had more than adequate time to instruct counsel and whilst every effort will be made by the Tribunal to accommodate the parties' choice of counsel, there can be no absolute right to be represented by a particular member of the Bar. If, as in this case, due to chosen counsel's unavailability,

unacceptable listing delays would occur, the appointment of alternative counsel may be necessary.

16. Prior to the hearing the Applicant lodged an expert report from Mr James Fletcher of Fletcher Harwood, Farm Management Services together with witness statements from the Applicant, Mr Stephen Gronow of Graham Paul Chartered Accountants, Mr Aneurin Lllyn Hopkins, Mr David Hopkins, Mr Rhys Williams and Mr Barry Meade FRICS FAAV.
17. Prior to the hearing the Respondents also lodged witness statements from Mr Guy Howel Jones and Mr Richard Williams, Private Investigator.
18. At the hearing the Applicant was represented by Mr Barry Meade FRICS, FAAV and the Respondents were represented by Mr Robert Hawkins of Counsel.
19. On the morning of the hearing, 23 August 2006, the Respondents sought an adjournment on the grounds that they wished to apply to Court for witnesses summons in respect of the witnesses referred to in Mr Richard Williams' witness statement. The Deputy Chairman refused the application on the basis that an adjournment was not in the interests of justice. The Respondent has had many months to obtain Mr Williams' evidence and to delay the hearing further when many witnesses had made themselves available for the two days of the hearing would not be in the interests of justice. The Respondent then asked the Tribunal for permission to lodge a further witness statement, that of Francesca Tanguy. Having considered the parties representations, the Tribunal gave permission for the Respondent to lodge Francesca Tanguy's witness statement.
20. On the morning of the 23 August 2006 the Tribunal inspected the holding, commencing with the farmhouse. The entrance to the farm is in the village of Dyffryn, near Caerau. Dyffryn is situated in the Llynfi Valley. The farmhouse and buildings are accessed via a short track off the A4063. The Tribunal made the following observations:
 - (1) The farmhouse is in total disrepair. The Tribunal found that there was no internal bathroom or toilet facility and, other than one gas fire, there was no heating to the property. The

staircase to the first floor was in such a poor condition that the bottom two or three stairs were missing as were several other complete stairs and some individual treads and risers. There was evidence of wet rot and dry rot throughout and the floors to the first floor accommodation exhibited such "give" as for the whole of the first floor to appear unstable. Windows were cracked, broken or missing. At one stage a gable wall had entirely collapsed and had been rebuilt by the Applicant's family. A bed with fresh sheets and table had been placed in one of the rooms and the Tribunal was invited to accept that this is where the Applicant sleeps.

- (2) The remaining farm buildings are serviceable and, at the date of inspection, they contained items of farm machinery including a mower.
- (3) The rest of the holding comprises approximately 230 acres of grass hill farm and is located on the upper slopes of the Llynfi Valley. The perimeter of the farm is fenced and there are some fenced enclosures within the holding. The stock on the holding comprises sheep and cattle which the Tribunal found generally to be in good order. The Tribunal attempted a headcount of stock but could not tally the exact number of stock with that referred to in the Tenancy Succession Report.

21. Following the inspection the parties made their opening submissions and the Tribunal heard the following witnesses. On behalf of the Applicant:

- (1) The Applicant Mr Richard Hopkins;
- (2) Mr Stephen Gronow of Graham Paul Chartered Accountants;
- (3) Mr James Fletcher of Fletcher Harwood, Farm Management Services;
- (4) Mr David Hopkins;
- (5) Aneurin Llyn Hopkins;
- (6) Rhys Williams;
- (7) Barry Meade FRICS, FAAV;

And on behalf of the Respondent:

- (8) Mr Guy Howel Jones;
- (9) Ms Francesca Tanguy;

(10) Mr Richard Williams.

22. The matter was heard on 23 and 24 August and so as to limit costs and the need for witnesses to attend the second day of the hearing, the Tribunal decided to sit late on the 23 August. Both parties were content for the evidence given in all of the witness statements to stand as evidence in chief.

The Law

23. As regards the application for succession, there are two issues in dispute, firstly, eligibility and secondly, suitability. So far as eligibility is concerned the principal dispute between the parties concerns the livelihood condition as set out in sections 50(2) (a) and (b) of the Agricultural Holdings 1986 Act ("the Act"). The Applicant has to establish that in the 7 years ending with the date of the retirement notice, that his only or principal source of livelihood was throughout a continuous period of not less than 5 years or 2 or more discontinuous periods together amounting to not less than 5 years derived from his agricultural work on the holding or on an agricultural unit of which the holding forms a part. This test thus requires the examination and comparison of all of the Applicant's sources of livelihood. The Applicant must demonstrate that the livelihood relevantly derived from agricultural work on the holding or a unit of which the holding forms a part is greater than all of the other sources of livelihood. In addition, the Applicant must not be the occupier of a commercial unit of agricultural land.
24. If the Tribunal decides that the Applicant is indeed eligible, in accordance with section 53(5) of the Act it is then necessary for the Tribunal to determine whether the Applicant is suitable. In accordance with section 53 (6) the Tribunal must have regard to all relevant matters including:
- (a) the extent to which the nominated successor has been trained in, or has had practical experience of, agriculture,
 - (b) his age, physical health and financial standing of the Applicant,
 - (c) the views (if any) stated by the landlord on his suitability.

The Applicant's Case

25. In accordance with the Tribunal's directions, Mr Meade lodged a Skeleton Argument with the Tribunal. On behalf of the Applicant Mr Meade submitted that there was no dispute between the parties that the holding in question was a tenancy of an Agricultural Holding or that the Applicant was the child of the existing tenant. Mr Meade submitted that the Applicant's principal source of livelihood was derived from the holding, that he did not farm another holding nor was he the occupier of a commercial unit. Mr Meade also submitted that the application had been made within one month of the retirement notice.
26. As to the Applicant's purported suitability, Mr Meade submitted that the Applicant was suitable; as the majority of his spending money was derived from the work on the holding; because of his financial standing in that he had been given all the live and dead stock by his father; as he has an overdraft facility of £10,000 made available to him by his bank; because of the budget produced by Fletcher Harwood; because of his experience, age and health; because of the evidence that would be given by the Applicant, his accountant, by Mr Meade himself, Mr Rhys Williams and also because of the evidence found in letters from livestock auctioneers and suppliers.
27. Mr Meade submitted that the landlord had made no application in accordance with section 53(8) as regards greater hardship and that the repairing liability in respect of the farmhouse lay with the Respondents in accordance with the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973 SI 1973/1473 (as amended).
28. The Applicant had lodged a witness statement and gave oral evidence to the effect that he had lived at Dyffryn Farm all of his life and that it had been his family's home for 400 years. The Applicant stated that he had worked on the farm since leaving school in 1977 and that he was given food, accommodation and a certain amount of money and benefits by his mother and father. The Applicant also stated that he had never knowingly had a wage that required declaration to the Inland Revenue, that he had never claimed unemployment benefit or that he had any other paid work other than that on the holding.

29. The Applicant also stated that he had personally laboured on the holding and when necessary hired labour and had bought and sold stock, crops and expendables and had purchased both stock machinery on behalf of his father.

30. In his witness statement the Applicant also gave evidence from tables prepared by Mr Meade on the Applicant's behalf, the tables being exhibited in Mr Meade's own witness statement and set out below:

Year	Account drawings	Fathers pension	Fathers disability allowance	Fathers Total income	Richard weekly cash	Richard annual cash	Richard Meals	Richard cash and Meals
1998	1688	2600		4288	30	1560	1144	2704
1999	1108	2600		3708	30	1560	1144	2704
2000	1108	3120		4228	40	2080	1144	3224
2001	1047	3120		4167	40	2080	1200	3280
2002	1000	3120		4120	40	2080	1200	3280
2003	1663	3640	3536	8839	70	3640	1200	4840
2004	4396	3640	3536	11572	70	3640	1300	4940
2005	6628	3640	3536	13804	70	3640	1300	4940
2006						3000		3000

Year	Accommodation	meals	Heat*light	landrover use	Richard cash	Total benefit		Richard Carers Allowance
1998	1800	1144	219	480	1560	5203		
1999	1800	1144	211	480	1560	5195		
2000	2000	1144	183	480	2080	5887		
2001	2000	1200	152	500	2080	5932		
2002	2000	1200	136	500	2080	5916		
2003	2000	1200	131	500	3640	7471		3500
2004	2250	1300	198	520	3640	7908		3500
2005	2250	1300	213	520	3640	7923		3500
Aug - 06	1500		100	343	3000	4943	7415	

31. The Applicant gave oral evidence that he had always looked after his father and that he had a good relationship with his brothers and sister. Under cross-examination the Applicant denied having any arguments with his brother Aneurin Llyn Hopkins and that the police were called to the farmhouse at any stage. The Applicant vehemently denied the allegations of substance abuse and referred to the evidence submitted from his General Practitioner.

32. The Applicant gave evidence that his sister had moved back to the locality in recent years but she did not undertake any work on the holding, she merely did some paperwork and she had never organised the dispatch of the rent. The Applicant then gave oral

evidence that 5 or 6 years ago a cheque for rent had been sent to Mr Jones for the rent but that the cheque had not been cashed. Under cross-examination the Applicant added that Mr Jones had said to him that he did not need the rental income from the farm and that he need not pay any more rent and in the past three cheques to cover the rent had been sent and not banked.

33. The Applicant gave oral evidence that he had no knowledge of any liability on the part of the tenant to repair and maintain the farmhouse. He said that, on one occasion, part of a wall had collapsed and was repaired by his family but that the liability to repair was the landlord's and that his family had carried out no other works to the property. He added that in places newspapers had been placed in the gaps in walls to prevent draughts, the newspaper was still present and some dated from 1740. He said that the landlord had done nothing to the property in his memory although in 2002, when his father had a heart attack. Mr Perons of Cooke Arkwright had visited the farmhouse and had inspected the farmhouse in its entirety.
34. Under cross-examination the Applicant stated that he had no knowledge of a notice being served on his father under section 6 of the Agricultural Holdings Act 1986 following a request to reduce the terms of the tenancy to writing. The Applicant was also asked when he had informed the Respondents that the farmhouse was in need of repair. The Applicant referred to notes that he had sent to Mr Jones over the years, although he was not able to produce in evidence any of the notes. The Applicant went on to explain that at a meeting Mr Jones had offered him a 10 year farm business tenancy of Dyffryn Farm but that negotiations broke down because the Respondents wanted to exclude the farmhouse from the tenancy and the Applicant was reluctant because, he said, they "wanted my house back".
35. In response to assertions that he did not live at the farmhouse but with his girlfriend in 2 Gwynedd Avenue in Caerau, the Applicant gave oral evidence that while he did have a girlfriend living at 2 Gwynedd Avenue in Neath, there was no such address in Caerau. The Applicant said that he did not live with his girlfriend at that address.
36. The Applicant gave oral evidence that he occasionally assisted his uncle, Mr Rhys Williams, on his farm at Blaen Afon Farm,

spending up to 20 days per year making hay and shearing sheep but he denied ever being paid for this work. The Applicant said that on occasions he and his uncle would help each other out on their farms but that he did not work for any length of time on Blaen Afon Farm as he had to care for his father.

37. The Applicant also refuted the content of Mr Richard Williams witness statement, he said that he did not know any young man called "Rees"; that the lady in the post office would not know him any way; that he did not use the Navigator Public House; that he had no knowledge of any water rights but that in December 1998 he had shot two dogs belonging to the landlord of the Navigator as they had been on his father's holding savaging sheep; that he had not, as claimed by the taxi driver, left the village two years ago.
38. Under cross-examination the Applicant was asked to explain the absence of detailed invoices for stock which he had purchased for the holding. The Applicant said that no request had been made by the Respondents to the Tribunal for him to produce any invoices. The Applicant was also asked to explain if there were any invoices in his name but the Applicant said that he was only a co-signatory on his father's account and that invoices would, necessarily, be in his father's name.
39. The Applicant was also cross-examined as to the amount of time he spent working as a carer for his father. It was suggested to the Applicant by Mr Hawkins that the Applicant had been a carer for his father for 4 years and that he would have had to spend 35 hours per week caring for his father to be eligible for the allowance. Although, it is clear from the tables at paragraph 30 above that the Applicant only received the carers' allowance for 3 years.
40. The Applicant was cross examined as to the condition of the holding and asked to explain why some of the fences between enclosures were missing. The Applicant explained that, in the past, dogs from the adjoining council estate had managed to stray onto the farm and the lack of fencing prevented the livestock being penned in and thus liable to be savaged. The Applicant was also cross examined as to whether the Applicant's mower and hay bob had been used this year. The Applicant explained that the hay had not been produced yet due to the late spring and the recent drought. Finally the Applicant was questioned as to the existence of the tip on part of the holding. However, the Applicant responded by

saying that the area used as a tip had been used as such before his father acquired a tenancy of the holding and for sometime afterwards but that it had not been used as such for the last 10 to 15 years.

41. Mr Stephen Gronow, who had been the accountant for the Applicant's father since 2004, then gave oral evidence. While Mr Gronow's involvement with the Applicant's father was relatively recent he confirmed that since 1997 Mace and Partners and, more latterly since 2004, Graham Paul Ltd had been the Applicant's fathers accountant. Mr Gronow confirmed that an informal arrangement existed where the Applicant administers his father's finances and those of the farm and that this arrangement includes collecting his father's pension and benefits. According to Mr Gronow after attending to his father's needs and domestic expenditure, any balance would be retained by the Applicant. Mr Gronow also stresses in his witness statement that the Applicant has no other source of income and that he has arrived at the conclusion that the Applicant has derived his living from work on the farm.
42. In his witness statement Mr Gronow says that he has never acted on behalf of the Applicant in respect of his personal tax affairs but that he understood that the Applicant had never completed a tax return. Mr Gronow also confirms that his firm had not completed any tax forms for the Applicant's father as an employer but that neither of them would be necessary as ESC A 60 confers special treatment on the value of board and lodging provided to lower paid agricultural workers making such sums not liable to income tax; that in any event the Applicant's earnings did not take him above the threshold where non cash benefits had to be declared to the Revenue and that non P11d employees are not normally taxed on benefits unless those benefits can be converted to cash.
43. In the final paragraph of his witness statement Mr Gronow comments on the mental condition of the Applicant's father when he met in him last in 2005 to discuss the application. Mr Gronow was satisfied that the Applicant's father understood what was being discussed and that he was a willing party to the discussion.
44. Mr Gronow gave oral evidence that the Applicant's father had paid the rent up to and including 2002 and, while no rent had been paid since then, the rent was treated as an accrual in the farm's annual

accounts. Accordingly, by 31 March 2006 there was an accrual to the amount of £4,000 in respect of unpaid rent. In cross-examination Mr Gronow agreed that the accounts did not say whether the Applicant's father had attempted to pay the rent at all.

45. Under cross-examination and with reference to the balance sheets for 2003, Mr Gronow was asked whether there was an accountancy reason why the balance sheets referred to contract rather than permanent labour and whether the two would normally be differentiated. The suggestion being that if the Applicant was permanently employed on the farm and his wages paid in cash, then that would normally be accounted for under wages or labour. However, Mr Gronow made it clear that there was no formal agreement between the Applicant and his father, implying that there was no contract between them and he restated his view that the money paid to the Applicant was simply living expenses.
46. Mr James Fletcher, a partner in Fletcher Harwood Farm Management Services had prepared a tenancy succession report in respect of the holding. Mr Fletcher's report was treated as evidence in chief and he gave oral evidence in support of his report. Mr Fletcher's report briefly describes the location and nature of the holding together with the farm policy and also sets out estimates of gross margins, single farm payments and profits and loss.
47. To commence, the Tribunal asked Mr Fletcher to confirm the exact amount of the Single Farm Payment attributable to the holding, Mr Fletcher said that it was in fact in the region of £8,000 and that in his report he had neither taken into account the entitlements statement issued by the Welsh Assembly to the Applicant's father on 8 April 2006 nor modulation at ten per cent when he arrived at a figure of £16,029. This statement notified the Applicant's father that the Single Farm Payment would be £8,162.30. Mr Fletcher was then cross examined as to the farm's viability and it was suggested that the farm was only viable as result of the Single Farm Payment. Mr Fletcher said that it was his view that the farm can carry the stock suggested and the Applicant intended upon improving the holding to the extent that it could maintain an additional 10% stock.
48. David Hopkins, the Applicant's older brother then gave evidence to the Tribunal. He had prepared a witness statement which stood as his evidence in chief. Mr Hopkins told the Tribunal that the

Applicant had lived on the holding all of his life, that the Applicant has never worked at Blaen Afon Farm rather he simply helped his uncle out on occasions. He confirmed that he was aware and in agreement that the Applicant should take the stock and the tenancy on the holding on their father's retirement. It was put to Mr Hopkins that Mr Jones in his witness statement had inferred the relationship between the Applicant and his father was poor. However, Mr Hopkins denied that this was the case and said that if it had been so then the two would not have been living together. He also denied that the Applicant lived at 2 Gwynedd Avenue, Caerau.

49. Under cross-examination, Mr Hopkins said that the Applicant had lived all his life in the farmhouse on the holding and that he had never met or spoken with the Applicant's girlfriend. Mr Hopkins explained that while he knew roughly of the Applicant's whereabouts he sometimes only saw him once a week or once a fortnight. Mr Hopkins also denied working on the holding or on his uncle's farm at Blaen Afon Farm he said that he was a plasterer by trade. Mr Hopkins denied that he and his brothers had argued with the Applicant over the stock which is owned by their father and present on the holding or that the police had been called to any such argument and said and that it was obvious to him that stock on the holding should go to the Applicant.
50. Mr Aneurin Llyn Hopkins then gave evidence to the Tribunal. He confirmed the evidence in his witness statement saying that the Applicant had always lived and worked on the holding, that there had been no argument about stock and that all the stock was tagged anyway. Under cross-examination it was put to Mr Hopkins that he had indeed argued with the Applicant about the stock on the holding and that he had told Mr Jones about the argument during a telephone conversation. Mr Hopkins denied that the argument had taken place or that the argument could have been the result of stock straying from one farm to another as a result of fallen fences.
51. It was put to Mr Hopkins that the Applicant had only come back to the farm 2 or 3 years ago and that before then it was he who had assisted his father in running the farm. Mr Hopkins denied this suggestion and said that until 1997 he was in England working and more recently he had been running his own farm.
52. Mr Rhys Williams, the Applicant's uncle then gave evidence. Mr Williams then gave oral evidence and denied ever paying the

Applicant for any assistance he may have given him running his farm at Blaen Afon Farm.

53. Under cross-examination Mr Rhys Williams said that the Applicant had provided him with some limited assistance over the years, perhaps 1 or 2 days a month at 1 or 2 hours a time. Likewise Mr Rhys Williams had assisted the Applicant in farming the holding. Mr Rhys Williams also explained that both he and the Applicant used their machinery on each others farm, on those limited occasions, because that obviously made sense as the job could be done with two machines quicker than with one.
54. Mr Williams also explained that he does have some other help running his farm as a young man from the village helps him as does his brother in law. He also pays contractors to shear his sheep and obtains occasional help from neighbours to assist with the shearing.
55. Mr Williams also explained that, to the best of his knowledge, the Applicant had not been working anywhere else than on the holding.
56. Mr Barry Meade then gave evidence. Rather than lodging an experts report Mr Meade had lodged two witness statements with the Tribunal, and he gave factual rather than expert evidence as to the Applicant's financial benefits including the chart set out at paragraph 30 above. In his first witness statement Mr Meade explained the basis of his calculations in respect of accommodation, meals, heat and light, vehicles and cash. In cross-examination Mr Meade admitted that he had not seen evidence of the Applicant's figures and that he had accepted what the Applicant had told him.
57. In his second witness statement, Mr Meade explained; how he had visited the Applicant and his father in March 2005 and explained to them the implications of the section 6 Notice and the procedure for succession on retirement; that the Applicant's father signed the application in his presence and that he appeared to be in sound mind; that the Applicant's father had told him that the landlords would not do any work to the farmhouse and never modernised it and that the landlords had never complained about the condition of the farmhouse.

Respondents' Case

58. The Respondents had failed to lodge a Skeleton Argument as Mr Hawkins of Counsel, who had been instructed at the eleventh hour, was unable to prepare one in time. Nevertheless he pointed to the Reply to the Application and to the Respondents' contention that the Applicant was neither eligible nor suitable on the basis of the evidence that the Tribunal had already heard and that which it would hear from the Respondents witness.
59. Mr Guy Howel Jones then gave evidence. Mr Jones had lodged a witness statement with the Tribunal which stood as evidence in chief. Mr Jones is a retired barrister who is now a farmer in Llandough, the principal source of his income is now the production of mini bale haylage for horses and he also sells hay and straw and has a flock of 200 ewes. For at least the last 15 years Mr Jones has been one of the Trustees of the Dyffryn Llynfi Estate whose principal asset is Dyffryn Farm, Mr Jones' ancestors having owned the holding since before 1570.
60. In his witness statement Mr Jones states that his grandfather Lewis David Thomas of Ty Gwen, Newton Nottage Road, Porthcawl let the holding to the Applicant's father in the 1950's and that he recalled from a conversation at the time that it was a term of the agreement that the rent would be kept low so long as the farm and the farmhouse were kept in good condition by the tenant. While giving oral evidence Mr Jones said that he had searched for the written agreement but was unable to produce it. However, Mr Jones referred the Tribunal to photographs of the farmhouse dating back to 1895 showing the property in good repair but told the Tribunal that there had been a spiral of decline in the condition of the farmhouse which is endemic to Welsh hill farms.
61. Mr Jones was not certain as to the level of the initial rent although he did recall that when he became trustee the rent was only £400 per annum. Mr Jones also states that he put the rent up by agreement to £1000 some ten years ago but that the rent has not been paid for three years. Under cross-examination Mr Jones admitted that the failure to cash the cheque dated 22 August 2004 was as a result of his own negligence and that it did not amount to a waiver of future or past rent. He also admitted that he had done nothing to chase the rent owing.

62. Mr Jones gave oral evidence to the effect that he had met with the Applicant's father when he had renegotiated the rent and had explained to the Applicant's father that the rent was low to take into account the fact that the repairing liabilities were that of the tenant. While he was aware of the model clauses that may shift liability to the landlord, given that the Applicant's father had never asked for the repairs to be undertaken, Mr Jones said that the Applicant or his father would be equitably estopped from maintaining that repairs should be undertaken.
63. Under cross-examination Mr Jones admitted that he had originally been unaware of the effect of the model clauses and while he agreed that ignorance of the law was no excuse, it was he contended, common place.
64. Mr Jones gave evidence that at that time he last met with the Applicant's father, some ten years ago, he did not get on with his son but was helped by his daughter who had been living in London and who had returned to the locality and who had the necessary secretarial skills to assist him with his paperwork. Mr Jones asserts that it was her who organised the "sporadic" dispatch of the annual rent cheque and also that, some 4 years ago, he had a series of meetings with the daughter and her partner with a view to her purchasing the farmhouse. Mr Jones states that, at this stage, the Applicant's father, although elderly, was farming the holding entirely on his own and that he was living in one downstairs room at the farmhouse although he had refused him, and on a separate occasion Mr Perons of Messrs Cooke and Arkwright, access to the farmhouse. In addition Mr Jones said that the Applicant's father had never expressed any desire for the Applicant to succeed to the tenancy and that he doubted that it was the tenant's genuine desire that this should occur.
65. Mr Jones also says that the Applicant has only farmed the holding for the last two years and that the police had told him there had been arguments between the Applicant and his brother as regards the ownership of stock on the holding. According to Mr Jones, this argument took place when the Applicant had returned to the holding and that Aneurin Llyn Hopkins told him that he could not get into the farmhouse to retrieve his father's possessions because the Applicant had put his dogs in the farmhouse.

66. Mr Jones gave oral evidence of a meeting he had with the Applicant in the summer of 2005 when in order to negotiate a settlement, he had offered the Applicant a 10 year farm business tenancy of the farm and relinquishment of rent on the basis that the trustees were relinquished from repairing the farmhouse or that the farmhouse was handed back to the trustees. This offer was on the basis that the Applicant withdrew his application to the Agricultural Land Tribunal.
67. In his witness statement Mr Jones says that the Applicant had not lived in the farmhouse at all but has put a caravan on the farm and that his present address is actually 2 Gwynedd Avenue, Caerau. Mr Jones adds that until two years ago the Applicant worked on his uncle's farm on Blaen Afon Farm.
68. Mr Jones gave oral evidence as to his own farming skills and his views on those of the Applicant. He said that he noted during the pre-hearing inspection that there was no evidence of any winter fodder on the farm and that while some of the fields had been cut, the fodder had been taken elsewhere. He also told the Tribunal he had noted that the Applicant's hay bob had not been used for at least five years which indicated to him that his brother was actually farming the holding rather than the Applicant himself. Under cross-examination Mr Jones admitted that, prior to his attending the inspection on the morning of the hearing, it was at least 15 years since he had visited the holding.
69. In his witness statement Mr Jones also makes allegations that the Applicant is prone to substance abuse and is generally not of good character and that these allegations would be proved Mr Richard Williams.
70. Mr Richard Williams, a private investigator, then gave evidence to the Tribunal. In his witness statement Mr Williams states that he visited Blaen Afon Farm on 31 July 2006 and that there was no one there. He states that he then made enquiries about the Applicant in the village and that local people told him that the Applicant had worked on his uncle's farm some years ago but that he had not been seen since. A postman told Mr Williams that the Applicant had left a couple of years ago and that a young man called Rees now helped out on the land. The post mistress also told Mr Williams that the Applicant had not been seen for some two years, while the landlord of the Navigator public house said that the

Applicant did not visit his establishment and that he was unsure how long the Applicant had been farming the holding. Mr Williams states that the Navigator's landlord also told him that the brewery was in dispute with the farm (i.e. the holding) over the water rights which it had won.

71. Mr Williams also states that he visited the proprietor of 3 A's taxis who, according to Mr Williams, knew the Applicant very well. The taxi proprietor said that the Applicant came to work on the holding about two years after his father had become ill and that the Applicant had shot his two dogs because they were on the farmland. The proprietor added that three of his employees knew the Applicant well and stated that the Applicant worked on his uncle's farm at Blaen Afon until two years ago when his father was taken ill. The taxi drivers then stated that he took over working his father's farm and that he lives at 2 Gwynedd Avenue Caerau.
72. The final witness to give evidence was Francesca Tanguy, an associate director of Messrs Cooke & Arkwright and the wife of Mr Guy Howel Jones. Ms Tanguy lodged a witness statement with the Tribunal. In her witness statement Ms Tanguy says that about 12 months ago Mr Perons of Cooke & Arkwright had advised her husband that unless the Dyffryn Llynfi Estate could find the tenancy agreement for the holding the Estate could be liable for the cost of repairs to the farm. Ms Tanguy states that she believes the contrary to be the case as this would explain the low rent. Miss Tanguy says that she has assisted her husband with various matters relating to the freeholds belonging to the estate and that at no stage has there been any communication between the Applicant or his father requesting that any repairs should be carried out. Ms Tanguy gave oral evidence to the effect that she had between 2002 and the present day handled all of the post in respect of the Dyffryn Estate and had seen no notes about rent or repairs.
73. Under cross-examination Ms Tanguy admitted that she was not conversant with the Agricultural Holdings Act 1986 and that she was not an expert in agricultural rents. She also stated that while she did handle the mail for her husband she simply sorted it and gave it to her husband unopened and that she had no knowledge of what it contained.
74. In closing Mr Hawkins said that it was for the Applicant to establish both eligibility and suitability. The Respondent, he said,

did not take issue with the Applicant's agricultural knowledge but that Respondents arguments were in relation to the principal source of livelihood test and suitability. Mr Hawkins made the point that none of the Applicants purported sources of livelihood were evidenced by documents and that everything was based on cash. There was he said, no audit trail and all the evidence as to livelihood was a manifestation of what the Applicant had said. There were no bank statements produced in evidence and nothing to show that the Applicant was his father's carer. Neither were there any invoices from suppliers.

75. Mr Hawkins said that the efforts to pay rent went to the Applicant's suitability and that it was inconceivable that the Respondent would not have recorded efforts to pay the rent or notes in respect of the repairs required. Mr Hawkins made the point that if the Respondents had not required the rent to be paid, then why had the Applicant sent a cheque for rent in 2004.
76. According to Mr Hawkins the Applicant had been working on his brothers' and his uncle's farm. While accepting that the evidence given by the Respondents' witnesses consisted of a deal of hearsay, Mr Hawkins said that the evidence cast doubt upon the Applicant's eligibility as it questions the amount of time the Applicant spent on the holding.
77. In his closing arguments Mr Meade said that the Applicant did not farm any other land and that there was no evidence that he had ever worked away. In any event, according to Mr Meade, the time spent on the holding is not a part of the test for eligibility.
78. Mr Meade explained that while the sums paid to the Applicant were made in cash, they were actually meagre amounts and that there was no requirement for them to be paid by cheque. Mr Meade added that there had been no challenge by the Respondents to the effect that the benefits paid to the Applicant exceeded the sums earned for work on the holding.
79. In Mr Meade's view the Applicant had the necessary good health, age and experience to farm the holding. He had been given the live and dead stock and the Farm Budget prepared by Mr Fletcher showed that it would be feasible for the Applicant to farm the holding.

80. Mr Meade went on to say that the landlord's case consisted of red herrings, such as the question of payment of rent and pointed out that it was the Applicant's father and not the Applicant that was responsible for paying the rent. In addition, and as regards the allegations of substance abuse, Mr Meade said there was no evidence of such abuse and that, in any event, section 53 does not require the Tribunal to take into account evidence of the Applicant's character. Mr Meade said the rumours such as the allegation of a fight between the Applicant and his brother was not substantiated by evidence nor was the supposed telephone call between Mr Jones and Aneurin Llyn Hopkins.
81. Mr Meade contended that if Mr Jones had recalled a conversation about the repairing liabilities that took place in 1950, he would have been 5 years old at the time of the conversation. As to liability to repair the farmhouse, Mr Meade pointed out that the Respondents had not served any notices on the Applicant's father.
82. Mr Meade said that the Applicant could not be criticised even if he did live elsewhere than the holding as there was no requirement for him to live in the farmhouse on the holding.
83. Mr Meade said that the Applicant took great exception to the allegations made in respect of substance abuse and wished to make an application for costs under Section 5 of the Agriculture (Miscellaneous Provisions) Act 1954. According to Mr Meade, the Respondent had acted vexatiously and oppressively in making such allegations.
84. Mr Hawkins said that the costs application had taken him by surprise but the allegations were concerned with suitability and were relevant and that the Respondents were perfectly entitled to bring their case in this manner.

Decision

85. In order for the applicant to satisfy the primary test in respect of eligibility he must establish that during five of the last seven years his principal or only source of livelihood was derived from his agricultural work on the holding.

“ ‘Livelihood’ is a term wider in its implication than mere income and it covers not merely benefits which are measurable directly in cash terms, such as wages, but also benefits in kind. Therefore, if the Applicant has enjoyed rent and rate free living accommodation, with electricity, oil and other services paid for through the farm account and free, or subsidised, motoring, meals and the like, provided those benefits have been granted to the Applicant by reason of his agricultural work on the subject holding.....then they fall to be evaluated and added to the income received by the Applicant in determining the Applicant’s principal source of livelihood” See Littlewood v Rolfe [1981] 2 ALL ER 51.

86. The Respondents have disputed whether the Applicant has made his livelihood from the holding for five of the last seven years. The Tribunal heard evidence from the Applicant, Mr Gronow, the Applicant’s brothers and uncle to the effect that the Applicant had always worked on the holding. The Applicant has himself told the Tribunal that he has worked on the holding since 1977 when he left school. The applicant’s witnesses gave evidence under oath and had sufficient knowledge and proximity to the Applicant for the Tribunal to attach significant weight to their evidence.
87. The Tribunal has also had put before it some documentary evidence to support these assertions including; a copy of a newspaper article from December 1998 that places the Applicant on the holding, a letter from Glamorgan Farm supplies to say that they have known and dealt with the Applicant for the last 10 years and that all relevant invoices are sent to Mr Richard Hopkins at Dyffryn Farm; a letter from J.G. Plant Limited that says that the Applicant has been a customer of the company since 1980 purchasing machinery and parts on behalf of Dyffryn Farm and a letter from David Ricketts Agricultural Engineer that says that the Applicant had been a customer of his for 25 years. The Tribunal also notes efficacy of these letters was not challenged by the Respondents.
88. The Respondents led evidence from Mr Jones and Mr Williams. Mr Jones said that he had no doubt that the Applicant had only been farming the holding for the last two years. Mr Jones referred to the police visiting him about that time in respect of violence between the Applicant and his brother and also to a phone call made to him by Aneurin Llyn Hopkins who he claims told him that he could not get into the farmhouse to retrieve his father’s

possessions because the Applicant had put his dogs in the farmhouse. Mr Jones also claims that the Applicant worked on his uncle's farm at Blaen Afon Farm and that it was only when he discovered what was necessary in order for him to succeed to the agricultural tenancy that the Applicant became more closely associated with the farm. However, it was clear to the Tribunal that Mr Jones knew little of the recent history of the holding, he told the Tribunal he had not visited the holding in the 15 years prior to the inspection on the morning of the hearing and that he had needed to employ the service of Mr Williams a private investigator to find out whether the Applicant had worked on the holding for the requisite number of years.

89. However, Mr Williams' evidence was largely hearsay evidence, and while admissible, it was given little weight by the Tribunal. However, interestingly, it did at times contradict the Respondents' case. For example the proprietor of the taxi company claimed that the Applicant had shot two of his dogs for being on the holding. This places the Applicant on the holding in 1998 some seven years prior to the Application being made to the Tribunal.
90. Accordingly, the Tribunal finds that the Applicant worked on the holding during the seven years between 1998 and 2005. The Tribunal must now determine whether during five of those seven years the Applicant's principal or only source of livelihood was derived from his agricultural work on the holding.
91. The Tribunal has heard evidence that between 1998 and 2005 that the Applicant has received cash and rent free accommodation, meals, heating and lighting and use of the Land Rover. It is apparent from the farm accounts that the heating and lighting and the use of the Land Rover have been paid for out of the farm account. These items are benefits in kind and thus a part of the Applicant's livelihood.
92. The Respondents contended that the Applicant did not live at the farmhouse and thus the accommodation, meals, heating and lighting could not be benefits in kind and thus a part of the Applicants livelihood. Whether the Applicant was living on a permanent basis in the farmhouse is not relevant to the eligibility test and neither is it necessary for the Applicant to live on the holding to enjoy the benefit in kind of free accommodation etc. A benefit in kind merely has to be made available to a recipient for it

to be enjoyed. Take the example of a company executive who is provided with a company car and vouchers for free meals in the company's restaurant. Providing the executive accepts the company car and the vouchers then the executive is enjoying a benefit in kind regardless as to the frequency of use of the car or the vouchers.

93. The Tribunal notes that for 3 years 2003-2005 the Applicant received a carers' allowance of £3,500 per annum in respect of the care he provided his father. Mr Hawkins says that in order to obtain this allowance a carer must spend 35 hours per week caring for a person who receives disability living allowance or attendance allowance. This may be the case, but it does not prevent the recipient of the carers' allowance taking full or part time employment unless the recipient earns more than the lower earnings limit for National Insurance.
94. The Respondent also made much of the lack of an audit trail, for example, the lack of any tax returns made by the Applicant. On this point the Applicant says that he has not filed a tax return in his life. The Tribunal believes that the Applicant is unlikely to have ever been asked to do so if his income is below the 40% tax threshold; he does not own the farm and is not a partner in a farming partnership. However, the Tribunal is troubled by the fact that the Applicant has not disclosed any bank statements to the Respondent or to the Tribunal, although it accepts that the Applicant's earnings were relatively meagre and may not have warranted him opening a bank account.
95. When the tables at paragraph 30 are considered it can be seen that the Applicant's only source of livelihood for the years 1998 – 2002 appears to be from the holding. When the sums received as carers' allowance are compared to cash and benefits in kind that the Applicant received during the years 2003 – 2005 the Applicant's Principal source of livelihood for these years appears to be his work on the holding.
96. The Tribunal must weigh the evidence of the Applicant, Mr Meade and the other witnesses who all state that the Applicant has only ever worked on the holding against that of the Respondents, who had no first hand knowledge of this issue. Having done so, the Tribunal finds that during the period 1998 – 2005 the Applicant's principal or only source of livelihood was derived from his work

on the holding and that the Applicant is eligible under section 53(5) of the Agricultural Holdings Act 1986.

97. There is no dispute between the parties as to the Applicant's practical experience in agriculture or as to his age, physical health or financial standing. However, the Tribunal must have regard to all relevant matters including the views stated by the landlord on the suitability of the Applicant. Much of the time spent at the hearing was spent on the issues which the Respondents allege go to suitability; the condition of the farmhouse; the failure to pay rent; allegations of substance abuse; disputes between the Applicant and his family and the condition of the holding's enclosures.
98. It was the Respondents' contention that the Applicant, while farming the holding with his father, had exhibited his unsuitability by his failure to repair or maintain the farmhouse to any standard at all. It was the counter argument of the Applicant that the liability of the repairs to the farmhouse rested upon the landlord. While giving evidence Mr Jones said that his major concern was that he would be served a dilapidations notice by the Applicant if he succeeds. It therefore falls upon the Tribunal to consider whether the failure to repair and maintain the farmhouse was the responsibility of the landlord or the tenant, and, if it was the responsibility of the tenant did the disrepair mean that the applicant was unsuitable?
99. The Tribunal heard evidence from Mr Jones that his Grandfather had entered into an oral agreement with the Applicant's father sometime in the 1950's, the basis of the agreement being that the tenant would be responsible for the repairs to the farmhouse. There was obviously no written tenancy agreement to assist the parties at the Tribunal and, on behalf of the Applicant, Mr Meade suggests that the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973 import clauses into an agreement made before or after the commencement of the Agricultural Holdings Act 1948 to the effect that, in the absence of a written tenancy agreement conferring the responsibility on the tenant, the landlord is responsible for the repair and maintenance of the farmhouse.
100. Given that the Applicant advances no evidence to suggest that Mr Jones is incorrect as to the repairing liabilities prior to the 1973 regulations coming into force, then the Tribunal is of the view that the Applicant's father was initially responsible for the repairs and

maintenance of the farmhouse but that in 1973 these obligations were transferred to the landlord as a result of the regulations and in the absence of a written agreement. While the 1973 regulations apply to tenancies entered into before or after 1948, the effect of the Regulations is not retrospective so that the liability to repair the farmhouse prior to 1973 lies with the tenant and after 1973 with the landlord.

101. There was no documentary evidence put forward to the Tribunal of the tenant's or the Applicant's attempts, historic or recent, to bring to the attention the decay and disrepair and while Mr Richard Hopkins gave evidence of such notes being sent to Mr Jones he was unable to produce copies of these notes to the Tribunal.
102. The holding was first let to Mr Hopkins father in 1950's and both the landlord and the tenant appear to be equally culpable for the condition into which the farmhouse has fallen. The landlord has done no works on the property in living memory and the tenant has been responsible for allowing the property to fall into decay without serving formal notices on the landlord or bringing the matter to the attention of the Courts or the local authority.
103. Accordingly, it is perhaps inappropriate for either party to rely upon the dilapidated condition of the farmhouse as a means of assisting its case. For the Applicant's part it has to be said that while he claims he has worked on the holding for several years and is a signatory on his father's cheque book, any responsibility for maintaining or repairing the farmhouse has not been his as he is not yet the actual tenant.
104. As to the failure to pay rent, the Tribunal finds that this is irrelevant to the issue of suitability. The Applicant was at all material times a signatory to his father's account but he did not have power of attorney and could never have issued cheques without his father's prior approval.
105. The allegations of substance abuse made against the Applicant were unsubstantiated. The Tribunal notes that Applicant's own General Practitioner had not mentioned anything about this issue in his letter which was exhibited in evidence. Likewise there was no evidence other than that put forward by Mr Jones of any argument between the Applicant and his brother as to stock ownership or otherwise. Indeed the Applicant's brothers have given evidence to

the effect that they are content for the Applicant to have the live and dead stock.

106. The Applicant has contended that the enclosures are in reasonable condition and that the cattle on the holding are in *show* condition. In his oral evidence Mr Jones said that there was no evidence of winter fodder on the holding and that while some of the fields had been cut, the fodder had been taken elsewhere. He also told the Tribunal he had noted that the Applicant's hay bob had not been used for some years suggesting that it was not the Applicant that had cut the fields. He also contended that the tip was modern. The Tribunal were of the view that the enclosures were in reasonable condition given the nature of the terrain but that farming such land could only ever be marginal and that the tip was several decades years old. The Tribunal's head count of cattle did not match that of Mr Fletcher, the Tribunal counted only 29 cattle in total including calves and a bull. The Tribunal found the sheep and the cattle generally to be in good order.
107. In respect of the landlord's views as to suitability, the Tribunal is ultimately drawn to the one area of common ground between the parties, that the Respondents had offered the Applicant a 10 year farm business tenancy in the summer of 2005 dependent on various conditions which included the withdrawal of this application. The Tribunal does not see that it is possible that the Applicant can be suitable to become a tenant of a farm business tenancy and at the same time unsuitable to be a tenant of an agricultural holding. If the Applicant is suitable to farm the land subject to a farm business tenancy he must be suitable to farm the same land subject to an agricultural tenancy.
108. In the circumstances, the Tribunal finds that the Applicant is both eligible and suitable and is thus entitled to a tenancy of the holding. The Applicant has not applied under section 53(8) to the Tribunal for it to specify a date other than that given as the retirement date in the retirement notice, accordingly the relevant time shall be 11 November 2006.

Costs

109. Mr Meade made an application for costs under Section 5 of the Agriculture (Miscellaneous Provisions) Act 1954, as the

Respondent had acted vexatiously and oppressively in making allegations in respect of substance abuse by the Applicant.

110. Difficult issues are often raised when the suitability of an Applicant is made. The Tribunal agrees with Mr Hawkins that the Respondent should be allowed to put his case how he chooses. The Tribunal also notes that section 53(6) allows the Tribunal to consider "*all relevant matters*". An Applicant that was abusing substances may be dangerous if he became the tenant of the land and was using farm machinery. Thus it is a physiological issue rather than one of character but it is an issue that could go to suitability. Nevertheless the allegations made by the Respondents were not substantiated by first hand evidence and on that basis given little weight by the Tribunal.
111. Although clearly unimpressed by the allegations, the Applicant had to do little more than categorically deny them and the witnesses that made these denials would have been in attendance in any event.
112. Accordingly, the application for costs made by Mr Meade on behalf of the Applicant is refused.

Signed.....

S.J. Duffy
Chairman

Dated..... 4 October 2006