Neutral Citation no. [2007] NICA 29 | *Ref:* **KERB4766.T**

Judgment: approved by the Court for handing (subject to editorial corrections)* | *Delivered:* **29/05/07**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

McALEENAN

Appellant;

v

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

Respondent.

Before Kerr LCJ, Higgins LJ and McLaughlin J

KERR LCJ

[1] This is an appeal from the judgment of Mr Justice Girvan (as he then was) given on 24 January 2006 whereby he dismissed the appellant's application for judicial review of the decision of the Department of Agriculture and Rural Development. That decision had been to seek re-coupment from the appellant of monies paid to him under the Beef Special Premium Scheme. The background to the case is set out in paragraphs 1 to 4 of the learned judge's judgment and I do not propose to rehearse that. A very brief summary is that between 2002 and 2004 the appellant, who is a farmer from Ballynahinch, County Down, made applications for subsidy payments under the scheme; he was paid a net amount of premium of some £22,530.00.

[2] Subsequently the Department sought to recover payments totalling £21,229.88 as it considered that fifty three of the animals for which the appellant had claimed subsidy were ineligible since he had not satisfied the scheme's requirements relating to cattle identification, registration, notification and record keeping. In particular, Mr McCloskey QC on behalf of the Department has identified three principal defaults or deficiencies in the record keeping of the appellant. First, in relation to the movement out of the mart of the cattle which the appellant has claimed he sold

privately after they failed to meet the reserved price on auction and that he says arises from the operation of Regulation 7 paragraph 3 of Council Regulation 1760 of 2000; secondly, the failure of the appellant to keep a record of the transaction in the form of a receipt as required by Regulation 9 of the Beef Special Premium Regulations (Northern Ireland) 2001; and finally a failure to make a record in the register or herd book of the destination of the cattle after they were sold privately to the individual that the appellant claims was the purchaser of the animals.

[3] The appellant, who was represented by Mr Barry McDonald QC and Mr Ronan Lavery, submits that he was not required to keep any of the records which Mr McCloskey has identified. In particular it is submitted that neither Regulation 7(3) of Council Regulation 1760 of 2000 nor Regulation 3(4)(a) of the Enforcement Regulations required the appellant to keep a record of movements of the cattle after they arrived at the mart. It has been submitted that the extent of the appellant's obligations was to record, as indeed he did, that the cattle had been taken to the mart. We reject those arguments. We are satisfied (without rehearsing the terms of the various regulations) that they extended to the requirement that the appellant should keep a record of the movement of his cattle out of the mart. We are further satisfied that it was brought sufficiently to the attention of the appellant that the Department considered that he had failed to keep those records and that it was this, as well as his failure to make the record necessary under Regulation 9(1), that had formed the basis on which the re-coupment was sought. It may well be that the terms of the initial correspondence did not make that as clear as might be but we are satisfied that, certainly after the tribunal had considered this matter and the Department had decided not to accept the recommendation of the tribunal, it was made sufficiently clear to the appellant that the Department relied on those particular provisions.

[4] The main thrust of the argument - as the learned judge recorded in his judgment - related to Regulation 9(1) of the Beef Special Premium Scheme 2003. The appellant contends that there is no requirement arising from that regulation, nor indeed in the notes for guidance, to obtain receipts for sales or purchases. He has drawn our attention particularly to the use of the word "retain" and to the expression "any receipts". This, it was submitted, indicates clearly that his obligation is to retain only such receipts as may have been in fact created and he makes the case that, given their purpose, the 2001 Regulation should be interpreted to allow producers to make maximum use of the scheme and to reward them for holding certain types of cattle. He also points out that Regulation 14 of the Enforcement Regulations imposes a criminal liability for failure to observe Regulation 9(1). It was submitted therefore that these regulations should be interpreted strictly.

[5] But on considering the terms of Regulation 9(1) we are satisfied that for them to have any purpose it is necessary that records relating to a transaction concerning bovine animals should be generated. The terms of Regulation 9(1)(b) are:

> "That an applicant shall retain for a period of four years from the relevant date any bill, account, receipt, voucher or other record relating to any transaction concerning bovine animals carried out by him on that date and during the period of twelve months following that date".

[6] Mr McDonald submitted that 'transactions' should be given a liberal translation and should refer to the transport of the animals to the mart and that a record has been kept by the appellant of that. We do not accept that submission. The verb "transact" means "to engage in a commercial exchange". At least in the context of this present case (and, as I have said, for Regulation 9(1)(b) to have any purpose or meaning) we are satisfied that it must require the appellant to generate or to obtain from the purchaser of the animals a receipt which can then be used to vouch and verify the authenticity of the transaction which he claims took place. We are satisfied therefore for those reasons that the appellant has been in default of the various regulations that we have identified, that the Department was entitled to seek the re-coupment for the reasons that they gave him, that the learned judge was correct in his judgment that he was in default and that the appeal must therefore be dismissed.