

## DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by a claimant landlord ("the claimant"), with the leave of a legally qualified panel member, against a decision of an appeal tribunal sitting at Hartlepool on 18th December 2002 ("the appeal tribunal"). For the reasons which I give, that decision is erroneous in point of law. However, the tribunal reached the only conclusion which was open to it. I therefore give a decision to the same effect. Namely, that the claimant's appeal against the decision referred to in paragraph 3 below is dismissed.

2. The respondent is the Hartlepool Borough Council ("the Council").

3. The claimant appeals against a decision of the Council, given on 1st February 2002, that a recoverable overpayment of housing benefit had occurred for the period from 14th January 2002 to 3rd February 2002, and that the overpayment was recoverable from the claimant to whom it had been paid directly. The sum involved is £210.

4. The primary facts are not, for the most part, in dispute and can be stated quite shortly. The claimant is the landlord of a number of properties in the Hartlepool area. There are references in the papers to the effect that, in respect of housing benefit and his dealings with the Council, he is regarded as a good landlord. Certainly, the facts of this case bear that out. The appeal relates to one of his properties which it is convenient to call "No. 9". At the beginning of 2002, No. 9 was let by the claimant to a Miss W. She had applied for, and had been awarded, housing benefit in respect of the rent payable to the claimant. Benefit was being paid direct to the claimant as her landlord. The amount involved was £70 per week. On 10th or 11th January 2002, Miss W applied to the Council for housing benefit in respect of another property. See the application form which appears at pages 16 to 18 of the papers. She stated that she was moving to the new property on 12th January 2002, which was a Saturday, and would no longer be living at No. 9. The claimant accepts that she moved in mid-January 2002 but he disputes the precise date on which the move took place. This case has proceeded on the basis that she did move out of No. 9 on 12th January 2002. If that is right then, in

accordance with the legislation, she ceased to be entitled to housing benefit in respect of that property on that date. Unfortunately, she failed to inform her landlord that she was moving out and, I think, left owing him some rent. See what he says in his letter of 27th February 2002 at page 26 of the papers. The fact that Miss W had left came to his notice about two weeks later, and, on 4th February 2002, he wrote to the Council to inform it of the fact. In his letter he said "I have just been informed by the neighbours of [No. 9 that Miss W] vacated the property a couple of weeks ago. I have checked the property and it is completely empty. Some of my furniture has been stolen and [some] has been left in the backyard". He offered the Council an opportunity to inspect No. 9. As I have already said, the claimant takes care to carry out his obligations to the Council. In this case it appears that he was badly treated by his tenant, Miss W.

5. The claimant, on being informed by Miss W that she was about to quit No. 9, took steps to close the award in her favour and to stop the payments that were being made to the claimant as her landlord. Nevertheless, the end result was that the claimant received the sum of £210, being three weeks housing benefit at £70 per week for the period from 14th January to 3rd February 2002. I find nothing surprising, or for that matter suspicious, in that. Arrangements under which one has some sort of an account with a service company or supplier, or under which one receives regular payments from some organisation, are a commonplace of modern life. Whenever such an arrangement is brought to an end, there has to be a settling up or final account. Sometimes that results in a balance in the individual's favour and he or she is paid that balance. Sometimes the result is the other way round and the individual owes money. In this case, the claimant had received more housing benefit than he should have and was asked to repay £210. The period involved – three weeks – is not excessive and nor was the amount he was required to repay.

6. The claimant was, however, indignant at having to pay anything when Miss W had left No. 9 without telling him and, I think, owing him money. Perhaps I should say that although Miss W has been asked to repay this sum of £210, she has not done so. Indeed, one of the claimant's principal complaints is that she does not appear to have ever responded to letters from the Council and he considers that she should have been pursued more forcefully. In making a claim against her landlord, the Council is relying on sections 75(3)(a) of the Social Security Administration Act 1992, which provides that, except in such circumstances as may be prescribed, a

recoverable amount shall be recoverable from the person to whom it was paid. The prescribed circumstances are set out in regulation 101 of the Housing Benefit (General) Regulations 1987 (SI 1987/1971) as amended. The amended form of the regulation, which does not assist the claimant, has been in force since 1st October 2001.

7. The claimant appealed and his appeal was heard on 18th December 2002. It was unsuccessful. See pages 41 to 45A of the papers. After stating that the claimant argued that the overpayment should be recovered from Miss W, the appeal tribunal went on to say this in its statement of reasons.

4. [The claimant] attended the hearing of his appeal. He told the Tribunal, and the Tribunal accepts, that he is a reputable, long established landlord in Hartlepool and that he has a good relationship with the Local Authority. He makes the point that he had done nothing wrong in respect of the tenancy of [No. 9]; that [Miss W] should and could have given him notice of her impending removal, and that he feels that the overpayment which arose because of [Miss W's] removal from the property should be carried over to [Miss W's] new claim. He invited the Tribunal to direct that the Local Authority seek to recover the overpayment from [Miss W], and not from him. He does not consider that the reasons given by the Local Authority for seeking recovery from him rather than from [Miss W] are good reasons.

5. The decision of the Tribunal is that [the claimant's] appeal fails. The Tribunal considers itself bound by the decision of Commissioner Jacobs in CH/4943/2001. In that case, at paragraph 56, Commissioner Jacobs held that the Appeal Tribunal has no jurisdiction over the exercise of the Local Authority's discretion as to the person from whom an overpayment is recovered provided, of course, that the person from whom recovery is sought is a person who falls within the Housing Benefit (General) Regulations 1987, Regulation 101. [The claimant] clearly falls within that regulation, since he is the person to whom the overpayment was made and thus falls within Regulation 101(1)(b). [The claimant's] appeal therefore fails."

The reference to regulation 101(1)(b) is incorrect because it is a reference to that regulation in the form in which it existed prior to 1 October 2001, and the decision under appeal was made on 3 February 2002. Nevertheless, in view of section 75(3)

of the Social Security Administration Act 1992, I do not think that anything turns on the error. Section 75(3) uses the words "shall be recoverable".

8. The claimant's grounds of appeal were, essentially, that the tribunal chairman had been wrong to consider herself bound by decision CH/4943/2001 and that that decision had been overturned by the Court of Appeal on appeal from the Commissioner. See *Secretary of State for Work and Pensions – v – Chiltern District Council and Warden Housing Association* 2003 [EWCA] Civ 508. The claimant is correct that decision CH/4943/2001 was overruled by the Court of Appeal. It follows that I must set aside the decision of the appeal tribunal for error of law.

9. However, that is not the end of the matter. The claimant's appeal has been deferred pending the decision of a Tribunal of Commissioners in a number of housing benefit appeals (CH/5216/2001 and others). A copy of the decision of the Tribunal of Commissioners has been sent to the claimant together with a short explanation of its practical effects. See the direction given in this matter by a Legal Officer on 23<sup>rd</sup> November 2003 (pages 61 and 62 of the papers). For present purposes the relevant part of that summary is as follows.

"The [Tribunal of] Commissioners considered the Court of Appeal decision ... and decided that in an appeal by a landlord against the recovery of overpaid housing benefit, paid directly to the landlord, the landlord's right of appeal is limited, apart from factual matters such as the amount, and period of the overpayment, to considering legality or propriety of the authority's determination that the overpayment may be recovered from the landlord rather than the claimant. Examples from the latter taken from the law on judicial review are given in paragraph 43 of the decision, e.g. that the authority made improper or unlawful use of its statutory powers. In this case the landlord has not so far contended that the local authority has exceeded its powers in such a manner."

The claimant was invited to make further submissions and has availed himself of that opportunity. See the excellent summary of facts and his submissions which appear at pages 100 to 103 of the papers.

10. In his submissions, the claimant raises a number of points in an attempt to bring himself within the principles of the decisions of the Court of Appeal and the Tribunal of Commissioners. He begins by submitting that it has not been proved that Miss W left No. 9 on 12th January 2002, and that therefore the amount of the overpayment has not been established. The appeal tribunal proceeded on the basis that Miss W gave 12th January 2002 as the date of her move and that her award in respect of No. 9 was closed with effect from 14th January 2002. In my judgment it was right to do so. In the application form which appears at pages 16 to 18, Miss W herself said the date was 12th January 2002, while in the letter which he wrote on 4th February 2002, the claimant said she had vacated No. 9 a "couple of weeks ago". In his later letter dated 27th February 2002, to be found at page 26, the claimant said that on Friday 11 January 2002, he called for the balance of the rent. Miss W said she had not been paid and asked him to call again the following week. She also said she was thinking moving. He called the following Friday (18 January 2002) but could get no reply. On 1st February 2002, he got in touch with Miss W's father who told him she had moved out. I therefore see no reason to doubt that Miss W had moved by, at the latest, Monday 14th January 2002.

11. The claimant goes on to submit that the payment of £210 was not "excess" to him because he believed that Miss W was still in occupation and that if she was not, then she should have given him 4 weeks notice to quit – which she did not. Whilst these are valid issues between the claimant and Miss W, they do not affect the fact that on her moving out of No. 9 housing benefit ceased to be payable in respect of that property.

12. The claimant then refers to regulation 101 of the Housing Benefit (General) Regulations 1987. The wording to which he refers is that which appeared before the decision under appeal was made. That is not the claimant's fault because it is the incorrect wording which has been referred to throughout the papers. His point is, essentially, that the Council was required by the use of the words "shall" to proceed against Miss W. However what regulation 101 said in the form which he quotes was "a recoverable overpayment shall be recoverable from either – (a) [Miss W]; or (b) in any case the claimant or the person to whom the overpayment was made". The position is now left to primary legislation and section 75(3) to which I have referred.

13. Next, the claimant complains, for a number of reasons, that even if the Council did have a choice of whom to proceed against – something which I do not think he entirely accepts – it should either not have proceeded against him or should not have done so until it had exhausted all remedies against Miss W. I do not accept these grounds. As I understand the decision of the Tribunal of Commissioners (see, in particular, paragraphs 43 and 69) the decision against whom to proceed has been conferred by legislation on the Council and the Council's decision is not to be interfered with save in exceptional circumstances. I can find no such circumstances in the present case. The Council is seeking to recover a relatively small sum from the person to whom it was paid.

13. The claimant submits that the Council has a blanket policy of always seeking recovery from landlords. I shall assume in his favour – and it is only an assumption – that such a policy may be unlawful. (I am aware of a note to that effect on page 516 of, now, the 2003/2004 edition of the CPAG's handbook on Housing Benefit and Council Tax Benefit legislation.) However, there is simply no evidence before me that the Council has adopted such a blanket policy. All I know is that it has done so in this case and in another involving the same landlord. I am prepared to assume that it does frequently proceed against landlords. However, that does not establish a blanket policy. Further, as I have endeavoured to demonstrate, this is a relatively straightforward case involving a small sum of money. It does not seem unreasonable to proceed against the person to whom the money was paid.

14. The claimant also submits that the time taken to close the award and stop further payments being made was about two weeks. He submits that by failing to act more promptly the Council is guilty of official error. Since he did not contribute to that error, he ought not to be obliged to repay the money. See regulation 99(2) of the 1987 General Regulations. I entirely accept that if an official error did occur then he did not contribute towards it. However I do not accept that an official error has been made. In this day and age, cases involving large organisations, such as the Council, and matters involving a number of administrative procedures, such as housing benefit, a period of two weeks is not excessive. It certainly does not amount to an official error.

15. For the reasons given I allow the appeal but give the decision which I do in paragraph 1.

(Signed) J.P. Powell  
Commissioner

Dated: 10<sup>th</sup> August 2004