DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Leicester appeal tribunal, held on 8th October 2002 under reference U/42/038/2002/01841, is not erroneous in point of law.

The appeal to the Commissioner

2. This case concerns an overpayment of housing benefit and a payment of excess council tax benefit. The appellant is the claimant. The respondent is her local authority, Leicester City Council.

3. The case comes before me as an appeal to a Commissioner against the decision of the appeal tribunal brought by the claimant with the leave of Mr Commissioner Lloyd-Davies. He has transferred the case to me for decision. The local authority does not support the appeal.

The concession issue

4. In his record of proceedings, the chairman of the tribunal wrote:

> 'Mr P - ... substantive issue conceded.'

In his statement of the reasons for the tribunal's decision, he wrote:

> 'At the outset of the hearing Mr P... conceded the substantive issue.'

The local authority has referred to this in its observations on the appeal. In response, the claimant's representative has written:

> 'I am at a loss as to what to say with regard to the allegation that I am supposed to have conceded that there was an overpayment. Bearing in mind that the entire case was based on the fact that there was no overpayment as defined by the regulations I would suggest that it is unlikely that I would make such a concession. Reg 98 of the HB (General) Regulations (and its Council Tax Benefit equivalent) defines overpayments of benefit. By that definition, I continue to submit that there was no overpayment.'

5. This is an argument about words only. The claimant's representative clearly accepted that the claimant had been paid too much housing benefit and council tax benefit. That is what the chairman wrote twice. It is confirmed by the nature of the arguments recorded in the record of proceedings. My interpretation of this apparent disagreement is that this. The claimant's representative conceded that the claimant had been paid too much benefit. But he did not concede that there was a valid decision on which recovery could be based. In that sense, on his argument there is no overpayment or excess benefit payment *as defined for the purposes of the relevant Regulations*.

6. If that is not what he means and he is challenging the calculation of the amount of benefit that the local authority seeks to recover, it is too late and it is clear both from what the chairman wrote and from the form of argument presented to the tribunal that this was

conceded. It was not, therefore, an issue raised by the appeal and the tribunal cannot be faulted for not dealing with it.

The revision/supersession issue

7. The claimant's representative has argued that although there may be some evidence that the local authority has undertaken a supersession, there is no evidence that it has undertaken a revision. He further argues that a supersession is not sufficient to found recovery.

8. This argument is based on the wording of the definitions of 'overpayment' and 'excess benefit'. Regulation 98 of the Housing Benefit (General) Regulations 1987 provides:

> 'In this Part "overpayment" means any amount which has been paid by way of housing benefit and to which there was no entitlement under these Regulations whether on the initial decision as subsequently *revised or further revised* and includes any amount paid on account under regulation 91 which is in excess of the entitlement to housing benefit as subsequently decided.' (My emphasis)

Regulation 83 of the Council Tax Benefit (General) Regulations 1992 is to similar effect.

9. In short, the argument can be put like this. Does 'revised' in those provisions mean revised as opposed to superseded? Or does it simply mean 'replaced', covering both 'revised' and 'superseded'?

10. The words I have italicised are identical to the words used in paragraph 3(1) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 and in regulation 4 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001. Those provisions deal exclusively with revision in contrast to supersession, which is dealt with under different provisions. The use of identical wording in related procedural provisions suggests that the words should mean the same in all contexts.

11. However, against that argument is this. It makes no rational sense to confine recoverable payments to those that arise as a result of a revision. Take these examples. A claimant completes a claim form incorrectly by omitting a relevant fact (X). As a result the claim is decided incorrectly and the amount of benefit awarded is higher than it should have been. When the local authority discovers this, it revises the decision on the claim. If the argument for the claimant is correct, the resulting overpayment is recoverable. Assume now that the claimant completes the claim form correctly. However, the day after the award is notified, the relevant fact (X) changes. The claimant does not report this to the local authority. When the local authority discovers that the change has occurred, it supersedes the decision on the claim. If the argument for the claimant is correct, the resulting overpayment is not recoverable. That is a surprising result. It is difficult to envisage what policy might underlie the distinction between overpayments arsing on a revision and those arising on a supersession.

12. The effect of the interpretation suggested by the claimant is random in its effect and surprising to the point of being irrational. In those circumstances, my conclusion is that 'revised' does not carry its technical meaning. In the context of overpayments, it means 'replaced', whether on revision or supersession.

The proof of decision issue

13. Those who represent claimants from whom local authorities have sought recovery naturally try to present the strongest case on behalf of their clients. As local authorities rely heavily on computers to assist in the adjudication of benefit claims, the representatives frequently cite the decision of Mr Commissioner Walker in *R(IS) 2/96*. In that case, the Commissioner was concerned with the evidence necessary to prove that a review had been carried out by an adjudication officer. In the hands of some representatives, that case has become an authority that effectively prevents a local authority from ever undertaking a valid overpayment decision. Some go so far as to argue that it applies to any document generated by a computer.

14. That is not a correct reading of the decision. The Commissioner was concerned with the evidential value of what he called (paragraph 9) 'part of computer print-out'. He did not consider that it was sufficient to prove that a review had taken place, at least not without evidence as to its interpretation. That case was reported in 1996, but the appeal was decided by the Commissioner in 1994 and the decision under appeal was made in 1992. It may be that in those days Commissioners and others were less familiar with computing and with the interpretation of documents generated by a computer. Whether or not that influenced the decision, it is clear from the terms of the decision itself that the Commissioner was concerned about issues of proof. What did the print out show? How was it to be interpreted?

15. It would be ideal if all computer systems used by local authorities could generate a copy of the decision reached in a form that sets out all the necessary information and is indisputably sufficient to prove that a valid overpayment decision has been made. I have been told in oral hearing that local authorities use a variety of systems and not all are capable of doing that. Until they all can, the issue is whether the documents that the computers generate are sufficient, alone or with additional evidence as to their interpretation, to prove that a valid overpayment decision has been made.

16. In this case, there is a document (number 15) which has been generated by a computer. The representative argues that it is not sufficient as proof. I reject that argument. The document shows that the decision awarding benefit has been amended. It sets out the effective dates of the amendments. It shows the new information taken into account. It is accompanied by a manuscript statement that it relates to the claimant. Added to this document are the letters, generated no doubt by the computer, that were sent to the claimant setting out the replacement decisions and the calculation of the overpayments.

The substantial prejudice issue

17. Finally, the claimant's representative argues that the notification of the decisions did not contain the necessary information. That information is set out in Schedule 6 to the Housing Benefit (General) Regulations 1987 and in Schedule 6 to the Council Tax Benefit (General) Regulations 1992. I accept that the notification of the decisions to the claimant did not contain all the particulars that they should have.

18. What was the effect of that? The answer is given by the Court of Appeal in *Haringey London Borough Council v Awaritefe* (1999) 32 Housing Law Reports 517 also concerned an attempt by a local authority to recover an overpayment of housing benefit from the tenant's landlord. The local authority sued in the county court. The landlord's defence was that the

notification of the decision was defective. The Court of Appeal applied a test of whether the landlord had suffered 'substantive harm' or 'significant prejudice'. (The members of the Court clearly regarded those terms as interchangeable.) If so, there had not been substantial compliance with the notification provisions. If not, there had been substantial compliance. On the facts of that case, there had been no prejudice.

19. The claimant obtained the services of a representative. With the help of her representative, she obtained the information she needed to check that whether the decisions were correct both in fact and law. With that information, by the time that appeal came before the tribunal, the claimant's representative was able to concede that the calculations of the claimant's proper entitlement were correct. The claimant was not prejudiced. Nor did she suffer any harm. There was a delay in her receiving the information to which she was entitled. She was inconvenienced, no more.

20. I have some sympathy with the arguments put by representatives in cases of defective notification. I would have thought that it was a relatively simple matter to ensure that claimants were provided with the information to which the legislation entitles them. Perhaps the computer systems have not been programmed to provide it. If that is the reason, it can and should be remedied. If the computer systems cannot provide it, then it should be provided manually. After all, the local authority is under a duty to provide the information. Claimants should not have to make an appeal in order to obtain the information.

Summary

21. The appeal tribunal came to the correct decision in law. I dismiss the appeal.

Signed on original

Edward Jacobs
Commissioner
14th April 2003