

397/1983

/SG

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON
A QUESTION OF LAW

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

SB - date of payment

7. 5. 80

Arrangement letter

DHS, UBO

Agency payment

[ORAL HEARING]

1. (1) This is a claimant's appeal against the decision dated 28 February 1983 of a supplementary benefit appeal tribunal ("the tribunal") brought by leave of a Commissioner upon the contention that the tribunal's decision is given in error of law. The tribunal's decision was given in reference to two separate decisions of a benefit officer, and to the effects of their inter-relation. The first was a decision issued on 5 11 82 in the terms: "supplementary allowance awarded at the rate of £41.73 weekly from the prescribed payday, Saturday, in week commencing 25 10 82 to and including the prescribed payday, Saturday in week commencing 1 11 82"; and the second (the date of which is not in evidence on the case file, but can be inferred to have been on or shortly after same date as the other), was to the effect that by reason of payments of benefit made under the first decision the claimant's requirements had been met, without entitlement to further payment, down to 12 11 82. In appealing to the tribunal the claimant was, in effect, taking no substantive point upon the first decision but contending that in the light of it the second decision was wrong. The tribunal's decision in substantive effect rejected that contention and upheld the later of the two decisions of the benefit officer. It was expressed in the terms:

"There is no further supplementary allowance due for the period up to 13 11 82."

- (2) As the subject matter of this appeal appeared to involve certain factors in common with the appeal on Commissioner's File C.S.B. 178/83, and likely to be of importance in other cases also, the Chief Commissioner directed a concurrent oral hearing of the two appeals by a Tribunal of Commissioners. The oral hearing was held on

7 December 1983, when the claimant attended to conduct his own appeal (the other claimant also attended but was represented), the benefit officer was represented by Mrs L Conlon of the Solicitor's Office, DHSS, and Mr J H Swainson appeared on behalf of "the Secretary of State" and confirmed that he represented, so far as material for our purposes, both the Secretary of State for Health and Social Security and the Secretary of State for Employment.

(3) It is not as a general rule permissible to entertain upon an appeal on a point of law, (such as is the present appeal) evidence additional to that which was before the tribunal whose decision is appealed against; but there are exceptions to that general rule. One example is where the grounds of appeal assert a breach of the rules of natural justice in the conduct of the tribunal's hearing; for, **within** limits prescribed by **settled law, evidence** is in such a case admitted as to what took place at the hearing. Another exception, in our judgment, is where **amplification of the existing evidence is needed in order to** ensure that all proper directions may (pursuant to Rule 10(8)(a)(ii) of the **Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 ("the Appeals Rules")** be given for the re-hearing of an appeal **rendered necessary by the setting aside of a tribunal's decision; and it is in that context that we have in this case admitted additional evidence referred to later below.**

(4) The appeal succeeds. We set aside the tribunal's decision as given in error of law in the respects undermentioned and direct that the claimant's appeal from the benefit officer's decisions be re-heard by a differently constituted tribunal in accordance with our directions set out in Appendix 1 to this decision. It is not appropriate for us to give ourselves the decision which the tribunal should have given as a proper determination will require findings of fact additional to those made by the tribunal.

2. (1) The claimant, a single man, was at all material times; unemployed and claiming supplementary allowance. Pursuant to Section 5 of the Supplementary Benefits Act as amended ("the Act") he was down to 17 10 82 subject to a condition as to registering for employment, and at all material times also subject to a condition as to availability for employment, save that for a short period which commenced on 2 11 82 but the precise duration of which was not in evidence before the tribunal he was a hospital in-patient and thus temporarily relieved of compliance with that condition (see generally the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 as amended and in force, respectively, prior to and as from 18 10 82 ("the **CE Regulations**").

- (2) During the period of his claim affected by the requirement for registration the claimant was required to attend an unemployment benefit office ("**UBO**") of the Department of Employment ("**DOE**) on a designated day - in his case Thursday - once a fortnight; and was paid a fortnight's allowance on the Saturday next following, if he had done so.
- (3) The weekly amount of his supplementary allowance is not of itself in dispute, and was at all material times £41.73. Nor is it in dispute that following his due attendance at the **UBO on Thursday 28 10 82 he received due payment of two weeks' supplementary benefit on Saturday 30 10 82.**
- (4) There next materially followed first the claimant's admission to hospital, and next the two decisions by a benefit officer already referred to. Whilst the tribunal were not so told, we understand - though it is unnecessary for us so to hold - that those decisions came to be given in consequence of the operation of routine control procedures following the claimant's admission to hospital. The practical effect of the two decisions was that the claimant was refused further benefit in respect of any date earlier than 13 11 82.
- (5) On 7 12 82 the claimant appealed against the decisions.
- (6) It appears to us likely, though it is again unnecessary for us so to hold, that the claimant had by 7 12 82 received official notification in terms which gave him to understand **that he had in the benefit officer's view** already been paid benefit in respect of the period 5 11 82 to 10 11 82, since in his grounds of appeal he indicated his wish to appeal against "your decision stating that I have been paid sickness and supplementary benefit from the 5 11 82 to the 10 11 82 ...".

3. In substance what the claimant was so contending was that on the basis that he **had** not received a payment subsequent to that made to him before his entry into hospital until further payment was made to him in respect of a date subsequent to 10 11 82, he was being underpaid - though this seemingly left his contentions, if any, as to 11 and 12 11 82 obscure.

4. (1) As the case developed before the tribunal accurate identification of the issues became further complicated because the claimant himself referred to a girocheque payment dated 22 10 82 **and received on 30 11 82** - but no such girocheque appears to have been in evidence before the tribunal.
- (2) In the light of what we have been told as to the payment procedures in point there is some intrinsic unlikelihood

as to a payment received on 30 10 82 having been so dated. But it is unnecessary for us to pursue that point; and whilst prima facie the tribunal re-hearing the appeal will need to do so, that may well be immaterial if the claimant again accepts that he received payment on 30 10 82.

5. The tribunal recorded as findings **of fact that:**

- (i) the claimant was in receipt of supplementary allowance;
- (ii) he was registering fortnightly at the unemployment benefit office and declaring his availability for work;
- (iii) he registered on 28 10 82 and received on his pay day two days later two weeks' supplementary benefit;
- (iv) such supplementary benefit was in respect of the two week period up to and including 12 11 82;
- (v) supplementary allowance was paid from 13 11 82 for four days to bring him to a Wednesday pay day as he had become sick; and
- (vi) "the girocheque issued by the UBO bore dates relative to the payment of unemployment benefit i.e. pay week ending 22 10 82 to 4 11 82."

6. (1) It is a matter of calendar record that 22 10 82 was a Friday and 4 11 82 a Thursday.

(2) It is open to question whether there was evidence before the tribunal upon which they could properly reach the finding (vi) above **in so far as it specifies pay** weeks, but whilst it will be material for the tribunal re-hearing the appeal to reach clear conclusions as to the benefit period to which related the payment which, it has so far been common ground, he in fact received on 30 10 82, it is unnecessary for the purposes of our decision to pursue that question.

7. The tribunal's stated reasons for decision were as follows:

"The Tribunal considered [the claimant's] request for adjournment but decided they had evidence sufficient to determine this matter. They confirmed that payment made by the unemployment benefit officer on 30 10 82 was supplementary benefit and was for the advance period 30 10 82 to 12 11 82 inclusive. No further supplementary benefit is due for that period. It is unfortunate that the dates on giro cheques issued by the Department of Employment serve to confuse Supplementary Benefit recipients".

8. (1) It is, very properly, conceded by Mrs Conlon on behalf of the benefit officer now concerned that the tribunal's stated reasons do not adequately satisfy the criteria for a sufficient compliance with the obligations imposed upon the tribunal by rule 7(2)(b) of the Appeals Rules as applicable in the light of decision R(SB)6/81. In particular the reasons stated do not sufficiently explain to the claimant why and how it had come about that the tribunal had decided that the payment he received on 30 10 82 satisfied his entitlement for supplementary allowance down to 12 11 82. That failure, in our judgment, constitutes an error of law sufficient to found our decision above indicated.
- (2) It appears to us that the tribunal were also in error in referring to 13 11 82 as a date up to which payment had been received. since the benefit officer's case did not go beyond 12 11 82; but that is no longer of importance, since the whole decision is set aside.
9. (1) Regulation 7(2) of the Supplementary Benefit (Determination of Questions) Regulations 1980 ("the DQ Regulations"), made under the Supplementary Benefits Act 1976 as amended ("the Act") provided at all material times that the "benefit week" applicable to a person not receiving unemployment benefit but to whom section 5 of the Act (right to allowance subject to condition of registration and availability for employment) applied should be the day of the week on which if he had been entitled unemployment benefit would have been payable.
- (2) Regulation 7(2) further provided that, in cases other than those (such as the last-mentioned) specially provided for therein, the applicable benefit week should be a week commencing on a Monday.
- (3) We would here mention that consequential upon a general waiver of the condition as to registration for employment as from 18 10 82, Regulation 7(2) has since been amended in terms which have the effect that payment of supplementary allowance is aligned with unemployment benefit payment dates only for claimants in receipt of unemployment benefit. But what we have later to say about the arrangements where such an alignment is or has been operative will continue to be of relevance in "repayment cases" under Section 20 of the Act for many years to come; and may well be relevant to pending and future criminal proceedings under the Act also.

10. (1) It does not appear that the tribunal were referred to regulation 7 of the DQ Regulations as such, but their findings clearly reflect some explanation before them of the practical effect it had on supplementary benefit payment periods when a claimant was or was not, registering for employment - and also as to girocheque payments of supplementary benefit in respect of a claimant registering for employment showing a benefit period other than the correct period.
- (2) The proposition that a claimant might be sent in payment of supplementary allowance due to him a payment instrument bearing upon its face a clear representation of the dates in respect of which payment was being made, but which dates were, when issue was taken as to the claimant having received or not received his proper entitlement, disclaimed by the DHSS as incorrect appeared to us so startling (unless attributable to an isolated oversight) as to merit inquiry by us of potential relevance both to and beyond the re-hearing of the present case. We had in mind in the wider context first that in many cases brought within our own jurisdiction under section 20 of the Act (recovery of benefit overpaid in consequence of misrepresentation or non-disclosure of a material fact) the critical issue is as to whether before encashing a particular payment of benefit a claimant has disclosed a material change in his circumstances and secondly that (although no part of our jurisdiction) claimants are exposed to substantial criminal penalties upon conviction of the offence of making a false declaration for the purposes of obtaining benefit.

Thus in both those contexts it is of major importance that a claimant be duly furnished with the means of knowing the benefit period to which a particular payment relates. For both girocheques and payment orders can be encashed only when indorsed by signature below a declaration on the instrument that the claimant is entitled to the benefit so payable. But whilst it will be material to a claimant's benefit for a period in which 1 October is comprised to disclose that he or his wife has earned on that date it will not be material to his benefit for 30 September that he or she has worked, or is expecting to work, on 1 October - so he needs to know, in the contexts both of disclosure and of entitlement, the dates to which the benefit payment truly relates.

11. (1) Our concern was not allayed by the written submissions of the benefit officer on the present appeal, adopted by Mrs Condon. These after explaining the effect of regulation 7 of the DQ Regulations, included in regard to the dates shown on the girocheques of which the claimant had been in receipt, the frank but - to us disturbing - acknowledgement:

"... it is accepted that the dates recorded on the girocheque bore no relation to the period the payment

covered ..."

- (2) We therefore considered it material to explore what was the tenor of the "arrangements" which produced such a result. As to that the written submissions before us indicated that "where a person is unemployed and he is entitled to Supplementary Benefit arrangements exist for his Supplementary Benefit to be paid to him via the Unemployment Benefit Office (UBO)". The girocheques issued by the UBO show the relevant unemployment benefit pay days and these days are quoted on the girocheques issued to him in respect of supplementary allowance; that the issuing system was computerised, and that the computer was not equipped to distinguish between the relevant dates applicable for unemployment benefit and supplementary benefit respectively.
- (3) It was also pointed out - as we were already aware - that the material difference as regards payment periods is that unemployment benefit is at the present day normally paid fortnightly, "week in advance, week in arrear" whilst supplementary benefit is also normally paid fortnightly but is so paid wholly in advance.
12. (1) In the circumstances we gratefully accepted Mr Swainson's offer to adduce additional evidence, written and oral, as to such "arrangements". What we have so learned is in part re-assuring, in that since **16 September 1983** some (but not entire) **improvement has been effected** as to the information provided on the girocheques; but is in further part disturbing to us as it has become apparent that in addition to the problems to which "misleading official information" on girocheques give rise, and to which we have already referred, a number of Commissioner's Decisions which have been given in the past and have involved issues as to disclosure by **claimants of material facts have been given without the** benefit of evidence as to the true extent of the involvement of the DOE in the administration of supplementary benefit which, from what we have now been told, we conceive would have been of at **least** circumstantial relevance, and in some cases crucial.
- (2) As we consider it of importance that benefit officers, appeal tribunals and Commissioners generally are in future aware of what has been the past, and is the present tenor of such "arrangements", in order that they **are all** "on inquiry" as to the existence of any "arrangements" which may be operative at any times material to issues with which they are concerned, we are setting out a summary of what we have now learned as Appendix 2 to this decision.

13. Our decision is as indicated in paragraph 1(4) above.

(Signed) I O Griffiths
Chief Commissioner

(Signed) V G H Hallett
Commissioner

(Signed) I Edwards-Jones
Commissioner

Date: 30 January 1984

Commissioner's File: C.S.B. 397/1983
C SBO File: 427/83
Region: North Western

APPENDIX I

1. The tribunal re-hearing the appeal are to be furnished with copies of our decision including both Appendices, but are to have in mind that all matters of fact (including matters of that character to be found in Appendix 2) will be wholly at large before them.

2. Without prejudice to their making such other findings as they may deem proper the tribunal are to reach and express findings of fact, on such materials as may be available to them, as to:

- (i) the amount of the payment received by the claimant, if any, on 30 10 82;
- (ii) **the date and amount of the payment (if any) or supplementary allowance he received next after that date;**
- (iii) **the dates of the claimant's admission to and discharge from hospital in November 1982.**

3. Taking due account of the proper attribution as to benefit periods of all amounts received the tribunal are to express an explicit conclusion as to whether or not the claimant has received all supplementary allowance to which he was entitled in respect of the period 30 10 82 to 12 11 82 (both dates included), and if not as to the amount of shortfall.

4. The tribunal are to so frame their stated reason as to enable the claimant to discern on the face of their decision why the contentions he has advanced have or have not satisfied them, as the case may be. If and so far as their decision embodies any finding **that a benefit payment received by the claimant related to dates other than such as they may hold to have been indicated on the face of the instrument of payment** their stated reasons for decision shall include a clear explanation of why that is so and how they have arrived at the dates to which they attribute it.

5. If in so far as material to their decision the tribunal shall take note of the amendment of regulation 7 of the Regulations operative as from 18 10 82.

APPENDIX II

Part 1 - As to payments of supplementary allowance by girocheque produced by the DHSS computer on instructions initiated by an officer of the DOE at a local UBO:

(As indicated - save where otherwise shown - by Mr Swainson on behalf of the Secretary of State and the evidence, accepted by the Tribunal, of his witnesses Mr D Jackson, a DHSS administrator, and Mr D Roberts, a DHSS computer expert).

1. Payment by girocheque generated by the DHSS computer on instructions from an UBO is the normal mode of payment of supplementary allowance in the case of claimants who are in receipt of unemployment benefit. For some years up to **15 September 1983 this applied also to claimants who, though not so in receipt, were registering for employment pursuant to a condition imposed under section 5 of the Act as to registration for employment.** [From other sources we have reason to believe though we do not so hold) that this procedure continues to apply also to claimants who though not subject to a condition as to registration for employment are in fact so registering, in order to demonstrate "availability for employment"].
2. Local UBOs have on-line contact with the computer and authority to access it for the production of girocheques which comprise (wholly or in part) payments in respect of supplementary allowance to such claimants.
3. The number of such girocheques issued annually is of the order of 15 million a year.
4. The girocheque is drawn upon an account of the DHSS with the National Giro and the drawer is the Accountant General of the DHSS.
5. Down to 15 9 83 the computer was programmed to produce by way of text explanatory of the entitlement to which the payment related (or purportedly related) only the legend "allowance now due" followed by 2 dates a fortnight apart e.g. "9 Sept to 22 Sept 82". The dates so specified reflected the unemployment benefit period of the claimant current at the date of issue of the girocheque - regardless of whether or not the claimant was in receipt of unemployment benefit. If he was, the so specified dates reflected correctly the benefit period applicable to the component of unemployment benefit comprised in the payment - but not that applicable to the supplementary allowance component also included. **In the case also of a claimant entitled only to supplementary allowance the dates so shown were those of the - then quite irrelevant - unemployment benefit period.**
6. A person sufficiently instructed in the modus operandi might in routine cases be able to deduce from the dates so stated an aggregate benefit period applicable in respect of the supplementary allowance entitlement somewhere within which must fall any supplementary allowance comprised in **the payment.** **But no one could deduce from the dates indicated precisely what dates of entitlement the payment reflected. Nor was it possible**

for anyone to deduce from the face of the instrument what, if the payment represented elements both of unemployment and of supplementary allowance, were the respective elements and for what dates.

7. As from 16 9 83 what is in most cases an improved explanatory legend became operative. Under this if the payment is a compound payment of unemployment benefit and supplementary allowance the legend indicates in relation to supplementary allowance the closing date of the entitlement period to which it relates (but no opening date, and no identification of the individual dates, within whatever period so ended it was that the payment referred) - together with the unemployment benefit period reflected by the unemployment benefit content of the payment made, if any. Reference to the unemployment benefit period is now omitted if the payment relates exclusively to supplementary allowance.

8. Sometimes the same mode of payment is employed for payment of arrears of supplementary benefit. In that or other cases of supplementary benefit which do not fall within either of the above formulae, but for which the girocheque procedure for payment is used, the print-out legend now reads "Supp. Benefit - for period see leaflet SB9". Leaflet SB9 is a leaflet with which claimants for supplementary benefit are equipped at the inception of their claims and materially contains a brief exposition of the manner in which supplementary benefit is computed. It could be read from cover to cover by the most informed reader without his being able to detect in it anything which would enable him to identify positively to what entitlement for what dates a payment by girocheque bearing such legend in fact relates.

9. Even prior to the September 1983 change the girocheque should, we were told, have been accompanied by a computer-produced letter purporting to emanate from the UBO at which the claimant was registering. Such letters would, if the payment embraced payment of unemployment benefit, indicate the unemployment benefit period in respect of which it was payable, the weekly rate, the total of the payment of unemployment benefit, and additionally - but without attribution of any date - the amount of the supplementary allowance component. If the payment related only to supplementary allowance then the letter would materially indicate only "supplementary allowance" and the amount in which the cheque was drawn, with no date specified. We were told also that these letters should still accompany girocheque payments. [We have, however, (from other sources) acquired the impression that they have not in all cases done so, and that this still obtains].

10. So far as our informants at the hearing were aware no further improvements in the information provided by the computerised system were in contemplation. The existing girocheque stationery would present a practical obstacle to expressing more cogent or detailed explanations, because the space on the form for expressing such was already restricted. They were, however, aware of no technical impediment to the computer producing on modified girocheque stationery additional and more cogent explanations than were at present furnished.

Part 2 As to the administrative procedures relevant to payment of supplementary allowance by computer generated girocheque issued on UBO instructions:

(Sources as for Part 1)

11. Persons registering for employment at a UBO are as a matter of normal routine furnished with a copy of the DHSS leaflet SB21 - "Cash Help" - which in its current edition indicates that supplementary benefit may be claimed by persons unemployed and that a person seeking to do so should ask at the UBO for a supplementary benefit claim form, and continues "the clerk will give you:

- the claim form
- a leaflet, SB.9, and
- a prepaid envelope addressed to your local Social Security Office.

If you are in any doubt about anything

- Ask!"

[We pause here to comment that this appears to us, at least, to be an invitation to ask the clerk at the UBO about anything as to which a prospective claimant is in doubt but that we believe that some earlier editions of the form did not include that invitation]

12. The materials so identified are held in stock at UBOs and are so issued. The claim form so issued is a "Form B1" and the prospective claimant is told in the leaflet SB21 to fill in the form, at his home if he wishes, and post it to his local social security office in the prepaid envelope **also issued. Earlier editions indicated that the forms could be handed in at the UBO.**

13. After the Form BI has been processed at the local DHSS **office there will** in cases in which entitlement to supplementary allowance is demonstrated be prepared **at such office a "Form A14" Assessment, constituting a** benefit officer's decision upon the claim, a copy of which is furnished to the claimant.

14. There is also prepared in duplicate a "Form B273" order to pay. In contradistinction to the Form A14, which constitutes an adjudication, the Form B2/3 is an administrative document. The top copy (B2) contains space for an authorisation stamp and "boxes" indicating the claimant's particulars and the weekly rate at which benefit is to be paid for a stipulated initial period and for subsequent weeks, and is sent to the relevant local UBO. That copy also comprises a detachable slip for return to the local office of the DHSS by the UBO when a decision has been taken at the UBO to "lapse" the order to pay. On the reverse of that detachable slip are boxes for completion indicating the grounds upon which such decision has been taken, e.g. that the claimant has "failed to claim" (i.e. "sign" on his due signing date) for a complete benefit pay week or more, or that there has been a change in his circumstances.

15. As a detachable part of the original B2/3 and with a carbon paper interleaf enabling the payment details to be carried down to it, a further sheet - the B3 - is **to be sent to the claimant notifying him as to his** having been awarded supplementary benefit in the amounts so indicated, together with an intimation that he should read carefully the notes on the back of the B3. Those indicate such matters as that supplementary benefit will continue subject to continued signing as unemployed, as to the payment interval, as to changes to be reported, and so forth.

16. In now current form those notes indicate that changes of circumstances to be found specified in leaflet SB9 are to be reported to the social security office. In asking that the leaflet SB9 be read carefully, the notes further indicate that if a claimant has not got a copy of that leaflet he should ask for one at the social security office or the UBO. The notes also indicate that if a claimant does any work, paid or unpaid, while he is getting benefit he must tell the UBO, as also if starting full-time work.

17. **Claimants registering for employment are also issued by the UBO with a Department of Employment leaflet UBL18. In the July 1983 edition with which we were furnished it is headed "responsibilities of claimants while unemployed"** and indicates at the outset that it "tells you about claiming unemployment benefit and supplementary benefit. Read it carefully. If you give false information, or deliberately withhold information you may be prosecuted". Apart from a concluding disclaimer as to the leaflet giving general guidance only and not being a complete statement of the law, its terminal text reads "Ask us ... if you want to know more about anything in this leaflet or if you are not sure about something. If we cannot answer your question we would tell you who can help". Under the head "so you must tell us "- i.e. the UBO -" at once" it indicates a number of subject matters identifiable to the informed reader as relevant primarily to unemployment benefit but of no less relevance to supplementary benefit entitlement, concluding under that head with "if there are any changes in your family or home circumstances which might affect your benefit". **It does not, we observe, here indicate any separate need to tell the DHSS anything. The contents of this leaflet include** an intimation "if you want to claim supplementary benefit ask us [i.e. the UBO] for a claim form", but it next continues "The Social Security Office will tell you in writing whether you can get supplementary benefit". It then runs on "and, if you can, they normally ask us [i.e. the UBO] to pay it to you". **The text under this head concludes with** "if you want to know more ask the Social Security Office". [We find it scarcely surprising, having regard to the tenor of that leaflet that - rightly or wrongly (and, subject to certain very limited exceptions the tenor of Commissioners' decisions in point has been in the sense "wrongly") a number of claimants have taken the view that sufficient disclosure is made by them of matters relevant to their entitlement to supplementary benefit if disclosed to an officer at the UBO which they are attending in order to register for employment.]

18. As regards a claimant for supplementary benefit in respect of whom they hold a current Form B2, the UBO procedure is, as each current unemployment benefit pay period relative to him is drawing to a close, to wait to see whether the claimant registers for employment on his due signing date or not. If he does not no action is taken to initiate the

issue by the computer of his next girocheque. If (as is made clear by the text of the detachable slip on the B2) he fails to sign for a complete "benefit week" the current B2 is treated by the UBO as "lapsed" and the local office of the DHSS is, by return of the detachable slip duly made out, notified accordingly. If, however, the claimant duly **"signs"**, then an officer so authorised at the UBO gives instructions to the computer for the preparation and issue of a girocheque payment of the appropriate amount of supplementary allowance. Any necessary decision of an insurance officer authorising the payment of any unemployment benefit component in the aggregate payment is given by an insurance officer (at the computer centre, we were told) in a standard form covering a batch of girocheques.

19. The necessary authority for payment of the supplementary allowance component is constituted by the triple operation of the award of benefit under the current form A14, the authority held at the UBO of a current form B2, and an internal confirmation at the UBO of the claimant having duly signed - in combination with an understanding there [whether by necessary implication from the B2 procedure or the subject of some collateral instruction by the DHSS not before us we do not know] that the UB2 authority for payment is not to be acted on unless the claimant has duly signed.

20. When the payment order is returned "lapsed" by the UBO to the **DHSS office administrative procedures provide for it being** added to the claimant's file there and for any requisite consequential action by way of a benefit officer's further decision to follow.

Part III - "The arrangements" existing between the DHSS and the DOE:

21. At an early stage in the hearing before us we were told both by Mrs Conlon and by Mr Swainson that, according to their instructions, extensive enquiry had been made as to any documentation recording arrangements under which the DOE acted in the fields of unemployment benefit and of supplementary allowance as in fact it does - notwithstanding that (as was common ground) both those benefits are now the responsibility of the DHSS. They further told they were instructed that no documentary record of the arrangements existed, but that "arrangements" were, as a matter of practical reality, operative. At a late stage of our hearing Mr Swainson produced to us copies of certain documents which he indicated he had had with him throughout but which he had conceived to be of no relevance to the appeals before us, even after being apprised of our wider concerns. They are not, we should say at once, documents entered into between the DHSS and the DOE; they all date from 1945, long before either of the two present departments was constituted. Nevertheless we regard them as of considerable significance in the broader contexts we have identified. But to explain why and how that is so we must in the first instance go back over almost 40 years. [Paragraphs 22 to 28 next below deal with relevant matters of history and public knowledge compiled by us.]

22. (1) Viewed in retrospect the course of history which has led up to the present day responsibility of the DHSS for all social security benefits reflects a progressive introduction of new

benefits and improvement of existing benefits in conjunction with a general progression - with some intermediate ebbs - towards centralised administration of the entire code.

(2) At the beginning of 1945 "War Pensions" were administered by the Ministry of Pensions. Health insurance (the precursor of "sickness benefit") and (in the main) contributory pensions were administered in part by the Ministry of Health and in part by the "Approved Societies", Contributory unemployment insurance was administered by the Ministry of Labour. Certain contributory old age pensions were administered by local authority committees under the aegis of the Board of Customs and Excise, Workmens' Compensation (the precursor of industrial injury benefit) was administered under the aegis of the Home Office, Unemployment assistance, and also pensions payable under the Old Age and Widows Pensions Act 1940, were administered by the National Assistance Board; and the only public assistance available to some sections of the community remained that under the old "Poor Laws".

(3) Whilst rejecting the suggestion in the Beveridge Report of 1942 of a "Ministry of Social Security" responsible for all welfare benefits, the Government of the day in 1944 enacted the Ministry of National Insurance Act 1944 ("the 1944 Act") under the provisions of which the Ministry so named became responsible for the administration of virtually all social security benefits then operative other than war pensions and "National Assistance". But it was considered administratively undesirable to dismantle the long established and nationwide administrative machinery of the Ministry of Labour (or as it then was "Ministry of Labour and National Service") for regional and local administration of unemployment benefit and replace it by an entirely new network. And accordingly an "agency agreement" was entered into between the Minister of National Insurance and the Minister of Labour and National Service under the express authority of a provision of the 1944 Act, implemented by "the Ministry of National Insurance (Unemployment Insurance and Assistance) Order 1945", which provided both for the transfer of functions in respect of unemployment benefit to the Ministry of National Insurance from the Ministry of Labour and National Service and also authorised the practical retention of those functions by the latter - but on an agency basis. The material provision in such Order states:

" 2. The Minister of National Insurance may make arrangements with the Minister of Labour and National Service for securing that any functions transferred by this Order shall be performed on behalf of the Minister of National Insurance by the Minister of Labour and National Service."

(4) Such arrangements as are so contemplated were constituted by an exchange of letters (copies of which Mr Swainson produced to us) respectively of offer and acceptance, together constituting an agency agreement. The offer letter proposed that subject to certain limited modifications (of no materiality to our concerns) the field over which the agency was to be operative was all work

then done by Regional and Local Offices of the Ministry of Labour and National Service in the field of unemployment insurance work (an enclosure setting out the more important functions involved). Those included (in brief summary) the receipt of claims, the processing of claims, including all the necessary collateral enquiries, the determination of claims by insurance officers, the investigation and prosecution of suspected fraud, and matters as to liability to repay excess payments. The two letters are dated respectively 30 March 1945 and 7 May 1945, the latter constituting with now immaterial exceptions an acceptance of the proposal in the former.

(5) In 1946 the Ministry of National Insurance became responsible for the administration of all benefits under the National Insurance Act 1946, and of industrial injuries benefit and family allowances. The administration of all pensions was added as a further responsibility of such Ministry in 1953, and the Minister of National Insurance was itself superseded in 1966 by the integrated Ministry of Social Security constituted by the Ministry of Social Security Act 1966 ("the MSS Act") - now usually cited as "the Supplementary Benefit Act 1966".

(6) From 1948 onwards the "Poor Law" finally dropped out, and from then until the MSS Act took effect the administration of "public assistance" was concentrated in the National Assistance Board. The MSS Act abolished the National Assistance Board and placed the responsibility for means tested benefit - in particular the "supplementary benefit" which it introduced in place of "National Assistance" - on the Ministry of Social Security. However, by the MSS Act the functions of adjudicating upon claims for supplementary benefit and of exercising certain discretionary powers with regard to it were assigned to the "Supplementary Benefits Commission" ("SBC"), also constituted by the Act. The SBC has been described by Professor de Smith, the distinguished authority on administrative law, as having the character of a "semi-autonomous public corporation".

23. It is convenient to interpose here that as from the coming into force of the National Assistance Act 1948 the National Assistance Board, (which is recognised as having had the character of a Government Department in its own right) was both the awarding entity and the paying entity as regards National Assistance, section 61 of that Act providing (inter alia) that the expenses incurred in giving assistance under the Act were to be defrayed out of monies provided by Parliament. The Board were, however, authorised **to - and in practice did - exercise a** discretionary power to impose conditions as to registration for employment, and though no details are before us as to the machinery adopted it is a compelling inference that in order to impose those effectively arrangements must have been operative between the Board and the Ministry of Labour whereby the Board were effectively informed as to compliance or non-compliance by claimants subject to the condition with their obligations under it.

24. Under the MSS Act the SBC had express power, which they in turn exercised, to make entitlement to supplementary allowance dependent on the condition of registration by the claimant for employment in

specified cases. However, whilst the SBC became the awarding authority for supplementary allowance section 15 of the MSS Act provided that any sums payable under the Act by way of benefit should be paid by the Minister out of monies provided by Parliament.

25. It is quite clear from the contemporary Supplementary Benefit Handbooks that the SBC arranged for claim forms for use by claimants required to register for employment to be available at UBOs and for the transmission of **a completed claim form by UBOs to the local social security office** unless a claimant wished to submit it himself; and that the Ministry of Social Security arranged also for payment of benefit awarded to claimants subject to the condition of registration to be made, normally, by the local UBO. We see nothing irregular in any of those arrangements. The power to impose the condition of registration clearly, in our judgment, imported ancillary authority to make appropriate arrangements with the Ministry of Labour (and its successor the Department of Employment) for the effective operation of the condition in individual cases; the SBC's powers of award clearly embraced authority to make such proper arrangements for the provision and processing of claim forms as the SBC thought fit: **and the power** conferred on the Minister by section 15 of the MSS Act clearly conferred authority to effect payment by means of such administrative procedures as the Minister should think fit.

26. The now current practical arrangements for computerised payment of supplementary allowance are in our understanding the successors of earlier manual procedures to substantially the same effect, the Minister having arranged for authority to pay being exercisable by the Ministry of Labour (now DOE) offices at UBOs acting on "orders to pay" subject to the claimant's compliance with the condition of registration, and the SBC having likewise arranged for their awards to be so notified as to give rise to "orders to pay" and arranged also for the feedback of relevant information to the SBC via a "lapsed order" procedure of the nature now constituted by the SB2 and its "tear off" portion.

27. The Ministry of Social Security was (with the Ministry of Health) abolished in 1968, and the functions of both were transferred to the Secretary of State for Social Services, this Department being styled the "Department of Health and Social Security".

28. By the Social Security Act 1980 the SBC was abolished, a new code of provisions as to supplementary benefit was enacted, the award of supplementary benefit became the responsibility (subject to appeal procedures) of supplementary benefit officers constituted under that Act, and the payment of such benefit became the responsibility of the DHSS.

29. As regards unemployment benefit substantially the same procedures as were arranged for in 1945 have in practice been operated down to the present time by the separate departments whose succession derives respectively from the Ministry of Labour and National Service and Minister of National Insurance, parties to the 1945 Agency Agreement - though latterly by computerised means. Neither Mr Swainson nor Mrs Conlon was equipped to provide us with "chapter and verse" authority for the continuance of those arrangements through the

successive changes in Ministerial structure and responsibility down to the present DHSS and DOE. But, in accordance with the maxim "omnia praesumuntur rite esse acta" we are not disposed to conclude otherwise than that all such arrangements operative at the dates material to the appeals before us were operative pursuant to lawful authority vested in the Departments concerned. Shortly stated, it is still at local UBOs that there are to be found officers of, now, the DOE who administer the claims procedures, whose staff constitute the insurance officers whose decisions represent the core of the scheme, and whose officers have authority to direct, and to stop, payments of unemployment benefit.

30. It is less easy to define with accuracy the status of the "existing arrangements" between the DHSS and the DOE in regard to supplementary benefit; and more difficult still to determine their precise boundaries. We can foresee that there will be future cases in this jurisdiction in which those matters will be directly in issue. But whilst we do not seek to **prejudge their determination**, we think it right to record how **these matters appeared to us upon the materials available to us**, as at least a starting point for concurrence - or contrary contention - in what appears to us likely to be a difficult field.

31. Having regard to the historical background we have above recapitulated we consider the "most likely starter" to be that the role of the DOE in supplementary benefit matters is that of agent to the DHSS as principal. True it is that no such formal agency agreement has been produced to us as would correspond with the 1945 exchange of letters. But the whole tenor of the inter-relationship smacks to us of agency, and whilst some implications arising from that conclusion might be unpalatable to the Departments - notably that within the scope of agency notice is imputed to the principal of facts communicated to the agent as to which no inhibition is to be inferred upon the agent's willingness to pass the information on to the principal (e.g. a risk of self incrimination) - it is a premise which, as at present advised, appears to us both to accord with the realities and to fit neatly enough with an implementation of the supplementary benefit scheme in a similar fashion, **as** between the two Departments, as has for-now-rising 40 years past applied in regard to the unemployment benefit scheme. It admits, moreover, of a pragmatic analysis - under the legal umbrella of what lawyers term "a course of dealing" - as to what in fact the boundaries are; though **it is attended** also by prospective applications of agency law which may be less welcome to the Departments, such as the doctrines of "holding out" and of "representation of authority". We do not ourselves foresee those concomitants as giving rise to any great difficulties in practice.

32. Mr Swainson, however, pressed upon us vigorous submissions in support of a different conclusion. His arguments started from the use in the Act of the expression "the Secretary of State" and the statutory definition of that term in the Interpretation Act 1978. That definition is "one of Her Majesty's Principal Secretaries of State" and does not for present purposes materially differ from that to be

found in the Interpretation Act 1889. References in the Supplementary Benefits Act to "the Secretary of State" as having powers or duties are thus, in Mr Swainson's contention, not limited to the Secretary of State for Social Services (but we would here observe that the latter expression is in terms used in sections 22 and 23 of the present Act) - and thus authorise every such duty and every such obligation being exercised by any one of Her Majesty's Secretaries of State for the time being (and, by necessary implication, import that the avoidance of any "free for all" is to be a matter for internal arrangement within Government). So proceeding, the argument runs, any action taken in due implementation of the supplementary benefit scheme by officers of the DOE responsible to the Secretary of State for Employment, and authorised by him so to act, are - in analysis - actions taken by the Secretary of State for Employment as principal, and not as agent for the Secretary of State for Social Services.

33. We are not, as at present advised, disposed to dismiss these contentions outright; but neither do they attract us. For, to our minds, if they are right then they give rise to practical consequences which, in the context of our jurisdiction, could produce little short of chaos. Apart from such difficulties" we would foresee difficulty arising also as to the boundaries between different Ministerial responsibilities, and as to Members of Parliament and the public in knowing with which department to deal. But in our own jurisdiction the crux would be as to what Department a disclosure of facts material to claims for benefit would require to be made to, in order to be effective.

34. (1) As at present advised we believe the better view to be that indicated by Commissioner Hallett in Decision R(SB) 54/83, in the tenor that (in the absence of material provision by a Transfer of Functions Order such as is exemplified by the 1945 Order above referred to) references in the Supplementary Benefit Act to "the Secretary of State" are to be read as references to such Secretary of State as is for the time being overtly accounting to Parliament for the due implementation of the supplementary benefit scheme; and to that Secretary of State only.

(2) In so concluding we recognize that Mr Swainson has, for the foundation of his submission, the powerful support of Professor de Smith for the proposition that, academically at least, any Secretary of State is constitutionally entitled to exercise any function assigned by legislation to "the Secretary of State".

However, there is to our minds a recognised convention that a "Transfer of Functions Order" is made where any significant change is to be made in what have been the antecedently established divisions of practical responsibility. Moreover, that a particular Secretary of State can, constitutionally, without formality exercise a function which another has hitherto exercised does not conclude the question whether or not a change which in fact occurs is properly to be attributed to an exercise of that liberty, since the existence of the liberty does not of itself lead to that conclusion once it is recognized that the change may alternatively reflect an agency agreement.

35. Whether the views we have above expressed are to be preferred or rejected when their subject matter arises for substantive determination, one further conclusion does, however, strike us with compelling force in the light of what we have been told in the present case. It is that, in the context of the supplementary benefit scheme as in fact administered it is an over simplification, to put it no higher, to proceed upon the basis that because a UBO is an organ of the DOE and the supplementary benefit scheme is (in the main, at least) administered by the DHSS, the UBO has no connection with, and exercises no functions in relation to, the supplementary benefit scheme, and that accordingly the general principle that notice to one Government Department does not constitute notice to another must axiomatically and universally apply. For whilst that approach may be fully justified as regards claimants subject neither to a condition of registration for employment nor to a condition for availability for employment, what we have in this Appendix set forth demonstrates clearly, to our minds, that, in cases where one or other or both of those conditions has applied and "arrangements" such as we have identified have been operative, an ad hoc appraisal, devoid of a a priori presumption, will be essential on any such issue.