

# S.S. LAW P.A.

THE SOCIAL SECURITY LAW PRACTITIONERS ASSOCIATION

## Social Security Law Practitioner's Association Minutes of meeting held on 13<sup>th</sup> July 2005

### Present.

Desmond Rutledge	2 Garden Court (Chair)
Finola O'Neill	Wandsworth and Merton Law Centre
Alison Macrea	Wandsworth and Merton Law Centre
Lily Devie	Infopreueur-
James Arnold	OSSCSC
Chiburo Chukuemera	Duncan Lewis and Co Solicitors
Ian Shury	Duncan Lewis and Co Solicitors
Samitra Balu	Duncan Lewis and Co Solicitors
Jayne Okacha	Duncan Lewis and Co Solicitors
D Francis	NTA
Harry McNeilly	Camden CABx Service
Joanna Newth	Barnet Law Service
Roza Choudhury	Enfield Law Centre
Paul Stagg	No. 1 Serjeants' Inn
Dave Stannard	Citizens Advice
Nadia Anufrijeva	Ole Hansen & Partners
Gareth Mitchell	Pierce Glynn Solicitors

### Apologies

Jo Silcox	FRU
Ranjiv Khubber	6 Kings Bench Walk
Sue Willman	Pierce Glynn Solicitors

### Guest Speaker: David Watkinson- Talk: Housing Benefit Update

The guest speaker took up a number of themes from the LAG Housing Benefit update, published in the July 2005 issue, at page 23.

#### 1. Dwelling normally occupied as the home

HB is only payable where the dwelling is occupied as a home (HB (Gen) Regs 1987, reg 5(1)). In *CH/2957/2004* (reported as *R(H)9/05*, Deputy Commissioner Mark considered the meaning of the phrase "*occupying as his home the dwelling normally occupied as his home*" where the claimant absent from her new flat due to sickness. The Commissioner was prepared to strain the meaning of the regulation to hold that she was temporarily absent from the flat

and intended to return even though she was in hospital and too ill to move in to the adapted flat. The Commissioner accepted that the moving in her furniture was sufficient. It is plain that the Deputy Commissioner took "normally " in regulation 5(1) to mean that from the date her furniture was moved into the flat the claimant was occupying the flat as her home through the period she was in hospital.

This was the alternative ground. The Commissioner also made a finding treating the claimant as in occupation under sub-paragraph 8B(a) of regulation 5 as someone who is temporary absent but intends to *return* - on the basis that the removal people were agents acting on her behalf and they had effected an initial act of occupation when they moved the furniture in.

The Deputy Commissioner was applying (perhaps unconsciously) the test developed in housing law – that the premises must be occupied as the tenant's "only or principle home". There is not a great deal difference between these concepts and those used in Housing Benefit.

Section 81 of the Housing Act 1985 provides that the tenant condition is only fulfilled where the individual (or at least one of a joint tenancy) "occupies the dwelling-house as his only or principle home". The Rent Act equivalent was "if and so long as he occupies the dwelling-house as his residence (Rent Act 1977.s2). Though there is a difference in terminology, the case law under the Rent Act has been followed in later cases under the Housing Act 1985. This means case law based on the Rent Act phrase has been incorporated into the Housing Act test so that it is not necessary to show actual physical occupation of the home.<sup>1</sup>

The Rent Act case law was pretty generous in favour of the occupier. In Herbert v Byrne [1964] 1 All ER 882, Lord Denning MR, at p 886 gave the example of a sea captain.

*"In order to be in personal occupation of a house, it is not necessary that the tenant should be there himself with his family all the time. A sea captain may be away from his house for months at a time, but it is none the less his home"*

In Crawley BC v Sawyer (1987) 20 HLR 98 CA, the tenant left his secure tenancy to live with his girl-friend. The gas and electricity to his home was subsequently cut off. The tenant however visited the premises once a month and paid the rent and rates. By the time the landlord issued possession proceedings, he had split up with his girlfriend and was again living in the premises. On the evidence the judge took the view that the tenant had been occupying his girlfriend's home on a temporary basis but he had no intention of giving up his permanent residence and this had remained his principle home throughout.

This means there can be long periods of absence but the tenant will continue to be treated as in occupation as long as there is (a) an intention to return (*animus*

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<sup>1</sup> The approach was also applied to the equivalent provisions in the 1988 Act for assured tenants Ujima Housing Association v Ansah (1997) 30 HLR 831 CA

*revertendi*) and (b) a visible state of affairs of occupation (*corpus possessionis* - body of possession). There must be signs of occupation – i.e. there must be furniture and so forth so that the house can be occupied as a home and, secondly, there must be an intention, if not physically present, to return to it.<sup>2</sup> As the Court of Appeal put it in Crawley:

*“... there must be furniture and so forth so that the house can be occupied as a home-and, secondly, there must be an intention, if not physically present, to return to it. That is the situation envisaged in the examples given by the Master of the Rolls, of, for example, the sea captain who is away for a while. His house is left fully furnished, ready for occupation, no doubt the rent paid in his absence, but his is not physically there and may not be for a very long period indeed.”* (page 102)

This is what the Deputy Commissioner had in mind when he rejected a submission by the local authority that normal occupation involves physical presence in a property.

*“Since the claimant had a physical presence in the property in the shape of her furniture, I find it difficult to see how she could be said not to have occupied it. It is plain that as a matter of general law occupation does not require the personal presence of the tenant if the property is under her control and is being used by her to store her goods and for no other purpose,”* (para. 13).

## **(2) – Relevance of Housing Benefit to Defending Possession Proceedings**

HB issues are highly relevant to whether it is reasonable to grant possession when the proceedings are based on discretionary grounds.<sup>3</sup> The courts have held that any substantial HB issues should be resolved before the court exercises its discretion (Haringey v Powell (1995) 28 HLR CA.). A tenant should not, for example, be put at risk due to arrears created by the benefits system making payments in arrears (LBC v Marks (1998) 31 HLR 343 CA).

### **Ground 8**

The crunch comes for assured tenant when the ground used is mandatory ground 8<sup>4</sup> where all that is required to gain possession is that the tenant owes eight weeks rent arrears, both at the time the proceedings are issued, and at the date of the court hearing. When the landlord uses this mandatory ground, the court has no discretion to consider whether granting possession is reasonable in all the circumstances of the case.

The Court of Appeal in North British Housing Association Ltd v Matthews and ors and London and Quadrant Housing Trust v Morgan [2004] EWCA Civ 1736 held that the court has no power to adjourn even if HB arrears were due to the tenant but had been delayed due to maladministration. It is sad but true that

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<sup>2</sup> See also Hammersmith v Fulham LBC v Clarke (2001) 33 HLR 77, CA, concerning a tenant who had moved into a residential home and whether she retained an intention to return.

<sup>3</sup> Housing Act 1985 Ground 1, Housing Act 1988 Grounds 10 and 11, Rent Act 1977, Schedule 15, Case 1.

<sup>4</sup> Ground 8 of Part 1 of Schedule 2 of the Housing Act 1988.

delays in HB are common. Therefore HB delays cannot be regarded as exceptional:

*"It is a sad feature of contemporary life that housing benefit problems are widespread. To a substantial extent, these are no doubt the product of lack of resources. But we do not consider that the non-receipt of housing benefit can, of itself, amount to exceptional circumstances which would justify the exercise of the power to adjourn so as to enable the tenant to defeat the claim," (para. 32).*

What to do:

(a) The Court did not lay down what *did* amount to exceptional but gave some examples in para. 31.

*"Suppose the tenant is on his way to court on the hearing date carrying all the arrears of rent in cash in his pocket, and he is robbed and all his money is stolen. Or suppose the tenant is in receipt of housing benefit, and the housing benefit authority has promised to pay all the arrears of housing benefit, but a computer failure prevents it from being able to do so until the day after the hearing date," (para. 31)."*

(b) It is also possible to defend an action for rent arrears by means of a counter-claim, for example, disrepair, where the prospect of damages would act as a set off reduce 8 weeks. There may be a public law defence but there are two limitations (a) the housing association must be a public authority and (b) the decision to bring proceedings must be based on error of law.

(c) Advisors should also check whether the landlord had regard to Housing Corporation Circular guidance.<sup>5</sup> This was cited by the Court of Appeal in Matthews. The guidance makes it clear that possession must always be the action of "last resort". The HB paragraph is also of interest.

*"Possession proceedings for rent arrears should not be started against a tenant who can demonstrate that they have (1) a reasonable expectation of eligibility for housing benefit; (2) provided the local authority with all the evidence required to process a housing benefit claim; (3) paid required personal contributions towards the charges. Associations should make every effort to establish effective ongoing liaison with housing benefit departments and to make direct contact with them before taking enforcement action. A certificate should be obtained, if possible, to confirm that there are no outstanding benefit enquiries, according to Department of Work and Pensions good practice guidance."*

Rent arrears in public sector housing are often associated with delays with HB. But a tenant cannot bring a private law action in the county court against the housing benefit authority for a failure to determine his or her entitlement to HB.<sup>6</sup> This is because the HB scheme constitutes a detailed, self-contained and exhaustive procedure for the determination and payment of HB: Haringey LBC

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<sup>5</sup> Housing Corporation Regulatory Circular No 07/04, issued July 2004, para. 3.1.1. page 5, available on.

[http://www.housingcorporlibrary.org.uk/housingcorp.nsf/AllDocuments/F637C10798565FFE80256EDE0051AAB1/\\$FILE/Circ0704.pdf](http://www.housingcorporlibrary.org.uk/housingcorp.nsf/AllDocuments/F637C10798565FFE80256EDE0051AAB1/$FILE/Circ0704.pdf)

<sup>6</sup> If HB has been awarded, but there is delay in it being paid, then the tenant is entitled to sue for the benefit as a debt.

v Cotter (1997) 29 HLR 682 CA. This principle has recently been applied In Waltham Forest v Roberts [2004] EWCA Civ 940, where it was part of Mrs Roberts' Defence against possession that she was entitled to HB. The Recorder decided that given that she was on a limited income, the Authority had been wrong to refuse to pay or backdate HB. The Court of Appeal held it was not open to the Recorder to reach a determination in connection with Mrs Robert's entitlement to HB.

If the tenant gets to you before the possession proceedings are issued, then you could argue that the housing association (or the local authority landlord) should not issue proceedings because all the material is before the HB authority in accordance with the requirements under reg 72. and the HB authority should be required to make a payment on account within 14 days under reg.91.

Delays in HB payments due to maladministration are so common that the Local Government Ombudsman<sup>7</sup> has in effect produced a tariff for financial compensation. These are (a) £25 per month for delays in dealing with housing benefit claims (b) £100 if a NSP is issued (c) £100 for a court summons; (d) £300 for a suspended possession order. Additional amounts may be appropriate where the complainant is vulnerable. In relation to council tax, compensation will be appropriate where the council takes recovery action.

Note that compensation may also be available where there has been a delay in processing an appeal. For example, where there was a delay of 18 months in the council submitting an appeal to the Appeals Service, compensation of £250 was recommended.<sup>8</sup>

### **(3) Watch this Space**

#### **(a) Civil Justice Review – Rent Arrears Protocol**

The Civil Justice Council issued a consultation paper on a Rent Arrears Protocol. The aim of the protocol is to ensure that all reasonable steps are taken to avoid issuing proceedings. The essential method of the Protocol is to encourage early intervention. There are 11 steps that the landlord should follow *before* issuing proceedings. HB is relevant to the steps 6, 8 and 10.

Step 6 states the landlord should assist and provide advice in relation to HB:

*6) The landlord will assist the tenant in any claim s/he may have for housing benefit. Possession proceedings for rent arrears should not be started against a tenant who can demonstrate that they have:- (i) a reasonable expectation of eligibility for housing benefit; (ii) provided the local authority with all the evidence*

<sup>7</sup> Local Government Ombudsman Guidance on Good Practice No. 6 on Remedies - Part V Housing benefit and council tax benefit, page 22, downloadable at <http://www.lgo.org.uk/pdf/remedies.pdf>

<sup>8</sup> Case ref O2/A/11146 from Digest of Cases 2003/04 for Housing Benefit, downloadable at <http://www.lgo.org.uk/pdf/digest03-04/housing-benefit-2003-04.pdf> £250 for 18 months equals £13.80 compensation for each month's delay.

*required to process a housing benefit claim; and (iii) paid other sums due not covered by housing benefit. The landlord should make every effort to establish effective ongoing liaison with the housing benefit departments and to make direct contact with them before taking enforcement action."*

Step 8 states there should be an interview:

*8) After service of the statutory notice but before the issue of proceedings, the landlord will contact the tenant to discuss the amount of the arrears, the cause of the arrears, repayment of the arrears and the housing benefit position.*

Step 10 states that the landlord should disclose his knowledge of HB situation 10 days before the hearing.

*10) The landlord will provide the tenant with an up to date rent statement no later than 10 days before the date of the hearing. The landlord will also disclose to the tenant the landlord's knowledge of the tenant's housing benefit position no later than 10 days before the date of the hearing."*

#### (b) . Article 8 Defence

In Harrow London Borough Council v Qazi [2003] 1 AC 983, the House of Lords emphasised that the right to respect for a home is concerned with privacy in accommodation ('an Englishman's home is his castle') or enjoyment of a home free from interference, and not with accommodation as such. However, they concluded that Article 8 does not give any more protection than that contained in statute or contract. The recent decision in Price v Leeds City Council [2005] EWCA Civ 289, raises the question whether the decision of the House of Lords in Qazi needs to be reconsidered following the decision of the ECtHR in Connors v UK [2004] HLR 991. If Qazi is incompatible with Connors, then it is arguable that granting possession to a public landlord where the arrears of rent are attributable to maladministration by a HB authority is disproportionate and therefore not justified under Article 8(2). The matter is due to be heard by a 7 judge panel of the Committee of the House of Lords on 12-15 December 2005.

#### (4) Beltekian

In Beltekian -v- Westminster City Council and Secretary of State for Work and Pensions [2004] EWCA Civ 1784, concerned a refusal of HB in February 2000 as a contrived tenancy under regulation 7(1) of the HB (General) Regulations 1987 (SI. 1987/1971). This decision was then upheld on review and on further review in September 2001, by a Housing Benefit Review Board. Mr Beltekian then sought to challenge this Review Board's decision. Thomas LJ granted permission to appeal as to whether there was power after July 2, 2001 to review determinations made prior to that date under reg.79. Before the Court of Appeal the claimant took a new point, that regulation 4(2) of the HB and CTB (Decisions and Appeals) Regulations 2001 (SI. 2001/1002) provided a route whereby the council could still revise its original decision in this matter on the grounds that it arose from an official error. This meant the sole issue before the Court of Appeal was whether a letter from Mr Beltekian of March 2002 (seeking to review the decision of the Review Board on the ground of mistake

of material fact) could be treated as an application by him for a revision, on the grounds of official error. In the Court's view it could not. Even if the letter of March 2000 could be so construed, the local authority had refused to revise its original decision, and the statutory scheme under paragraph 6 of Schedule 7 to the CSPSSA 2000 does not allow for appeals from a refusal to revise decision itself. The reasoning in R(IS)15/04 applied.

**(5) – The narrow boat case - CH/0318/2005**

This is a case which concerns a narrow boat case but it is not concerned only a narrow point as it holds that lawful residence is not required to be entitled to HB. The HB scheme expressly accepts the possibility that the claimant's presence in the accommodation may not be lawful: HB (General) Regulations 1987 (SI 1987/1971), reg.10:

*"I reject the argument that only lawful residence is within the housing benefit scheme. Regulation 10 expressly provides that housing benefit is payable in respect of what are in effect damages for trespass. The housing benefit scheme expressly accepts the possibility that the claimant's presence in the accommodation may not be lawful. I therefore reject any argument in so far as it is based on the fact that the claimant was not entitled to be where he was," (para. 31).*

The decision is consistent with decisions on Article 8, the fact that Gypsies are unlawfully in occupation does not prevent the Convention rights coming into play.

The specific point raised in the appeal was whether a houseboat was "situated" in the local authority (s130(1)(a) SSSCBA 1992 and s134 (1A) of the SSAA1992). The claimant lived on a narrow boat with his two daughters. He had a licence to occupy the boat. The boat was kept on a canal that passes through the area of the local authority. The claimant had a licence to be on the canal but did not have a specified mooring place. The claimant gave evidence that for the majority of the time he stayed within the area of the local authority from which he claimed HB. The tribunal decided that the narrow boat was not situated in the area of the local authority. The Commissioner allowed the appeal. Where the case involves a dwelling that moves it is a matter of fact and degree whether the dwelling is situated within a local authority's area.

*My analysis of 'situated' is this. The word conveys connotations of a location. The precision with which that location is delimited will depend on the context. In section 134(1B), the degree of precision is expressly set out. It is the area of the local authority. The claimant's dwelling must be situated with that area if housing benefit is to be available. (I use 'available' as a neutral word sufficient to cover entitlement and payment.) Usually a dwelling will be permanently situated in one place. In the case of a dwelling that moves, it is a matter of fact and degree whether it is situated within a local authority's area. Take two extreme examples. A claimant who lives in a camper van which passes through a local authority's area on a motorway stopping only at a service area would not be situated in that area. But a claimant who lives in a camper van which stays permanently on the same camp site leaving only to visit a supermarket elsewhere would be situated in that area," (para. 35).*

## 2<sup>nd</sup> Speaker: Desmond Rutledge Backdating Housing Benefit for 'Good Cause'

The talk referred to the traditional concept of 'good cause' in social security from R(S)/ 2/63.

*"...some fact which, having regard to all the circumstances (including the appellant's state of health and the information which he had received and that which he might have obtained) would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did."*

However, as the case law evolved the Commissioners emphasised that the test was fact sensitive and that a flexible approach was required:

*"Whether a person has good cause for a late claim depends on the facts and circumstances of the particular case, and an a priori approach to the question – an approach which avoids considering the facts and circumstances but seeks to apply some fixed and automatic principle – can in many cases lead to injustice."*<sup>9</sup>

In April 2000, the government proposed that the test for 'good cause' in the traditional sense should be abolished for HB and CTB to bring it in line with the restrictive criteria used for all other benefits.<sup>10</sup> The proposal was rejected by the SSAC in strong terms and was subsequently abandoned. The SSAC's report<sup>11</sup> concluded that the complexity of the administration of HB/CTB plus the serious social consequences of rent and council tax arrears justifies retaining the traditional 'good cause' rule for this part of the social security system. The SSAC drew attention to a number of features of the HB/CTB scheme which created the need for backdated claims: (i) claimants were often unaware that their HB/CTB had stopped or been suspended as it was paid directly to the landlord; (ii) awards needed to be renewed annually;<sup>12</sup> (iii) where entitlement to IS or income based JSA ceased, HB/CTB is cancelled from the same date leading to a retrospective withdrawal of HB/CTB; (iv) claimants temporarily absent from the home, e.g. hospital in-patients or on trips abroad,<sup>13</sup> needed to backdate claims when they returned home; and (v) rent arrears in public sector housing were often associated with delays in the administration and payment of HB. The SSAC went on to state that the complexity becomes greater for people with particular personal problems:

*"... for example, inexperience with the system, old age (the majority of HB/CTB claimants are pensioners), mental health problems, a lack of language or literacy skills, chaotic lifestyles, drug or alcohol addiction or chronic sickness or disability. A person with any one or indeed a combination of the above would have severe*

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<sup>9</sup> R(G) 2/74

<sup>10</sup> Social Security (Claims and Payments) Regulations 1987, reg.19, which came into force in April 1997.

<sup>11</sup> Report of the Social Security Advisory Committee on the Housing Benefit and Council Tax Benefit (General) Amendment (No.X) Regulations 2000, published October 2000.

<sup>12</sup> The requirement that HB/CTB claims are renewed every year was abolished for all claimants from April 5, 2004, H/CTB Circular A17/2004 and HB/CTB Circular A31/2004 (having previously been abolished for pensioners).

<sup>13</sup> HB (General) Regulations 1987 (SI 1987/1971) reg.5.



*difficulties with negotiating the claims process, or with understanding the decision notices or requests for further information sent to them" (para.16).*

The legal test for 'good cause' in *R(S) 2/63* was approved by the Court of Appeal in *Chief Adjudication Officer v. Upton* [1997] 2 CLY 4668. Provided an authority or tribunal has regard to this test, the decision on whether good cause exists is one of fact:

*"Upton makes it clear that the meaning of "good cause" is a matter of law but its application to the primary facts is itself a matter of fact. Upton also adopts the test set out in R(S) 2/63 (and before that CF 371/49). It is a test that, as Beldam LJ commented, has stood the test of time. It is an application in this context of the general legal test of what is reasonable in all the circumstances. The effect of Upton is therefore to confirm the test set out in R(S) 2/63 as binding as to the meaning of the test of good cause on all those applying the test for the purposes of social security benefits, while also confirming that its application to the facts is itself a matter of fact, appealable to an appeal tribunal but not to a Commissioner" (CH/2659/2002 para. 15).*

In *CH/2659/2002* the Commissioner agreed that it was not necessarily an error of law if the tribunal did not cite the test from *R(S) 2/63*, however, this was qualified by the following comments:

*"While I do not find this tribunal to have erred, it is in part because of the full arguments put to it in clear documentary submissions by, if I may say so, competent representatives for both parties, and in part because of the full way in which the case was discussed at the oral hearing and that discussion was recorded, by the chairman. I commended the parties for their written documents at the oral hearing. I have to say that in other cases the documentation falls some way below those standards. In those other cases it may be necessary, and it will always be best practice, for a tribunal to remind itself and the parties of the key test from R(S) 2/63 and to show, if asked to give its reasons, how it has applied it" (para. 24).*

In *CH/1791/2004*, the claimant was in receipt of long-term incapacity benefit and lived in supported accommodation. He did not make a renewal claim for HB. It was argued on the claimant's behalf that given his state of health and vulnerability it was reasonable for him to have left the administration of his benefit affairs in the hands of the support workers. The Tribunal Chairman dismissed the appeal recording that it was the responsibility of the landlords to ensure that claims are made at the appropriate time. There was no reference to *R(S) 2/63* in the documents or in the tribunal's decision. Deputy Commissioner Poynter concluded that this was an appeal in which the tribunal's failure to remind itself of the test had led it to misapply the law. By concentrating on the issue of whether the landlords had behaved properly or reasonably, rather than on the correct issue of whether or not the claimant had demonstrated continuous good cause for his delay in making his claim, the tribunal had applied the wrong test. The case law on delegated cases makes it clear that where it is reasonable for a claimant to delegate making a claim to another person then the claimant will not be prejudiced by the delegate's failure to submit the claim in time. The authorities also suggest a supplementary question; could the claimant reasonably be expected to take any further action to ensure that the delegate was in fact dealing with his or her affairs? Given the nature of the test for delegated cases, it is arguable that even if the tribunal

had the test in R(S) 2/63 in mind, it would have been at a substantial disadvantage without the additional guidance on good cause in delegation in earlier authorities.<sup>14</sup>

In CH/0393/2003 the claimant was mentally disabled. The representative says he told the tribunal that the claimant had a mental age of an infant but the chairman did not record this. The tribunal refused to backdate a renewal claim for good cause, stating that although the claimant had a learning difficulty it was "reasonable to expect her to have been aware that there would be some time limit for claiming her benefit". The Commissioner set the decision aside as the tribunal failed to make findings as to the claimant's mental age. He directed that at the rehearing the local authority and the tribunal had to:

*"...take into account how a reasonable person of the claimant's age would have reacted. In this context, the claimant's age refers to her mental age, not to her chronological age. I so direct the tribunal at the rehearing" (para. 5).*

In CSH/352/2002, the claimant sought to backdate HB on the basis that she had not received a renewal claim due to problems with her post. Deputy Commissioner Agnew held that a claimant would only have been invited by the local authority to make a renewal claim if it could be shown that the invitation had been 'received'. Proof of posting alone was not enough. Mr Commissioner Jacobs in CH/3439/2004, an overpayment case, said that it was expecting too much of a local authority to be able to prove that its letters were received. All it can realistically prove is that its computer generated a letter and that it was then posted. The tribunal is then entitled to infer that the letter has been delivered. It is then up to the claimant to show that the letter did not arrive.

In CSH/352/2002 the benefit authority argued that claimant could not show good cause because they took no action when they received council tax demands after their HB/CTB had expired. The Deputy Commissioner said that receipt of a council tax demand would not necessarily break the chain of continuous good cause unless the evidence showed that a reasonable person would have understood that there was a problem with HB or CTB which needed to be addressed.

There has to be an underlying entitlement, subject only to making a claim, for the whole of period and the claimant has to have good cause throughout that period for failing to making a claim at the appropriate time (subject to a maximum of 52 weeks). See CH/996/2004 which concerned a claimant who was temporary absence abroad in Bangladesh and CH/1237/2004 where the underlying entitlement depended on the claimant having an intention to return to her home, after having to flee it through fear of violence, within 52 weeks of the date they left the home.<sup>15</sup>

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<sup>14</sup> A useful summary of the case law on delegation is contained in R(P) 2/85 at para. 17. The decision is not available on the Commissioners' official website but a copy has been posted on the Rightsnet website in the 'toolkit' section. It also contains copies of the leading cases on good cause and mistaken belief R(S) 3/79 para. 3 and R(SB) 6/83 para. 12.

<sup>15</sup> HB (General) Regulations 1987 (SI. 1987/1971), reg. 5(7A) and (8B)(x).

In CH/3579/2003 the claimant's original HB application was returned to her in December 2001 because she had not completed the relevant sections. A covering letter explained that the form itself should be returned completed even if all the supporting documents were not immediately available. The claim was not lodged with the local authority until April 2002. The tribunal accepted the existence of good cause because the claimant "had children to care for, her English was poor and she sought advice as soon as she could". Mr Commissioner Howell said the tribunal's finding failed to address the claimant's knowledge of the benefit system acquired when she arrived in the UK. According to a factual statement prepared by the claimant's representative when she came to Leicester, she immediately started to look for housing she could afford, she found out about schools, GP's and Social Security Benefits ... she did everything she could to settle in the UK". There was also reference to the "growing Somali community with good facilities" in Leicester. Accordingly the evidence did not support the chairman's finding that she had good cause for not pursuing her claim or getting advice for another four months until April 2002. The Commissioner set the tribunal's decision aside and substituted his own decision. He concluded that someone who was capable of putting in a HB claim in December 2001 but who then did nothing to pursue the claim or take further advice before April the following year could not be taken to have good cause. In particular, there could be no good cause after the claimant had received the letter in December 2001, advising her to return the form straightaway and not wait until she had the necessary documents.

The need to make a backdated claim because the claim has been treated as defective should become less common following the Tribunal of Commissioners' decision in R(H) 3/05. The regulations have since been amended and guidance issued to local authorities that they must decide all claims, defective or otherwise.<sup>16</sup> If the claimant can satisfy the information and evidence requirements by the time of the appeal hearing, the tribunal has jurisdiction to award benefit from the date of the claim.

CH/4501/2004, concerns a claim for CTB but the ratio applies to both CTB and HB. The claimant had met his partner in hospital whilst recovering from a mental illness. In November 2002, they moved to a property that had previously been his partner's family home. The property had remained empty from 1996 and was in a state of disrepair. When they made a joint claim for JSA they were provided with a claim form for CTB. However, they neither informed the Council Tax department that they were living in the property or claimed CTB. Following a routine visit by a council tax inspector in 2004 they were sent bills for council tax from 2002. The claimant wrote to say they did not owe any council tax as they had been in receipt of JSA since moving in. He subsequently claimed CTB and requested that the claim backdated. The request was refused. The claimant opted for a paper hearing and stated that he had forgotten to complete the CTB in November 2002 as he was ill and under a lot of stress at the time. The tribunal dismissed the appeal but did not refer to the statutory test nor did it make any findings on the claimant's

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<sup>16</sup> Social Security, Child Support and Tax Credits (Decisions and Appeals) Amendment Regulations 2004 (SI. 2004/3368); Urgent Bulletin U9/2004.

submission that he had good cause due to his illness. After reviewing the evidence the Commissioner said he did not consider the claimant's mental health problems to be the real cause of the claimant's failure to claim CTB. Rather, the claimant (and his partner) simply did not see the need to claim CTB because they were not paying council tax and it did not occur to them that they might have any liability for council tax. Further, they had not received the usual letter or bill that would prompt a person into contacting the authority because the local authority believed the house was unoccupied.

The Commissioner considered whether the claimant's misunderstanding could form the basis for a claim to backdate CTB. After citing the familiar definition of 'good cause' from C.S. 371/49 the Commissioner continued: -

*"That dictum was expressly approved by a Tribunal of Commissioners in R(S) 2/63. However, it had been applied very strictly in C.S. 371/49 itself and the Tribunal of Commissioners went on to modify the approach taken in such early cases (see paragraph 16 of the Tribunal's decision), while approving the dictum. They said, at paragraph 13 -*

*"Ignorance of one's rights is not of itself good cause for delay in claiming. It is in general the duty of the claimant to find out what they are, and how and when they should be asserted. But an examination of numerous Commissioners' decisions shows that over the years there has been a gradual but appreciable relaxation of the strictness with which problems of good and reasonable cause have been approached. The Commissioner has long recognized a wide variety of circumstances, in which it would not be expected that a reasonable person would make inquiries or think that there was anything to inquire about."*

*In other words, claimants cannot always be assumed to have an understanding of public administration.*

*"... in my judgment, the new background evidence before me is important and I am satisfied that the claimant's belief that he did not need to claim council tax benefit in order to escape liability for council tax was one that he could reasonably hold in the circumstances of this particular case. It was not due to carelessness or any desire to obtain something to which he was not entitled and it was a firmly held misunderstanding until he received the revised council tax bills and the claim form in May 2004," (emphasis added).*

The Commissioner commented that the use of the well-established phrase 'good cause' in the legislation was obviously intended to have the effect that the general approach taken in social security cases should be applied also in CTB and HB cases.

*"It should be recognised that claimants do not always understand the social security system and that there are circumstances in which the information given to them does not really help or in which they cannot reasonably be expected to ask for information. It must also be borne in mind that, in the context of council tax benefit, a failure to award the benefit nearly always leaves the claimant with a debt, which is not the case with all social security benefits," (para.25).*

The talk referred to the problem of delay in HB and its possible relevance to good cause. In CH/1791/2004, the claimant's solicitors wanted to adduce evidence of past problems with the administration and payment of HB by Liverpool City Council. It was argued on behalf of the claimant that the delay in his case was typical of delay in the past and there was no reason why this should have alerted him to the need to make a further claim. The tribunal said that the administration of HB was not relevant to the appeal. The Deputy Commissioner disagreed. A claimant's previous experience of the benefit system may be a relevant factor in establishing whether or not s/he has good cause for his or her delay:

*"...the test of good cause involves consideration of whether a claimant has behaved as a reasonable person. His previous experience of the benefit system, including the way in which housing benefit or council tax benefit has historically been administered in the area in which he lives, is potentially relevant to that assessment of reasonableness. In some local authority areas, the administration of housing benefit has sometimes been less quick and efficient than those involved would have preferred—and, indeed than was required by the Regulations. The experience of some claimants in those areas was one of long delays—which were often unexplained by any communication from the authorities concerned—followed by large payments of arrears when the claim was eventually assessed. It is possible that a reasonable claimant with that experience of the benefits system would behave differently from an equally reasonable claimant in a different area whose experience was one of prompt and accurate decision-making and payment" (para. 29).*

By way of clarification, the Deputy Commissioner said that general evidence of overall delays or maladministration by a local authority would not normally be relevant to good cause appeals. This was because:

*".....the legal test for good cause goes to the reasonableness of the claimant's behaviour, not the authority's. It was only the particular experience of the individual claimant which was potentially relevant to the issue of backdating" (para.30).*

Next meeting – TBA

Minutes prepared by  
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