

SOCIAL SECURITY ACTS 1975 TO 1986

CLAIM FOR WIDOW'S PENSION

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Doreen Whitbread (Mrs)

Appeal Tribunal: Walthamstow

Case No: 2/16/2896

[ORAL HEARING]

1. This is one of four appeals by the adjudication officer from the decisions of four different social security appeal tribunals allowing appeals from the decisions of adjudication officers that in each case the claimant widow was not entitled to a widow's pension. I heard the four appeals together. Mr M. Parke of the Office of the Solicitor to the Departments of Health and Social Security appeared for the adjudication officer and Mr M. Rowland of Counsel appeared for the four claimants. Mrs Whitbread's case was taken as the lead case.

2. Mrs Doreen Whitbread's husband died on 18 February 1988. Their one son, Christopher, was then 16. She made a claim for widow's benefit on 2 March 1988. An adjudication officer, on 7 March 1988, awarded her a widow's allowance for 26 weeks from 23 February 1988 to 22 August 1988 and later, on 12 July 1988, decided that she was not entitled to a widow's pension at the end of the 26 weeks of widow's allowance. That was because the conditions of entitlement to a widow's pension had changed as from 11 April 1988 and the adjudication officer took the view that whereas Mrs Whitbread had satisfied the conditions under the old law she did not do so under the new. The adjudication officer, apparently by oversight, made no decision in relation to widowed mother's allowance.

3. Entitlement to a widow's allowance, a widowed mother's allowance and a widow's pension arises under sections 24, 25 and 26 of the Social Security Act 1975. Those sections, as in force at the date of Mr Whitbread's death, provided -

"24.-(1) A woman who has been widowed shall be entitled to a widow's allowance at the weekly rate specified in relation thereto in Schedule 4, Part I, paragraph 5, if -

- (a) she was under pensionable age at the time when her late husband died, or he was then not entitled to a Category A retirement pension (section 23); and
- (b) her late husband satisfied the contribution condition for a widow's allowance specified in Schedule 3, Part I, paragraph 4.

(2) The period for which a widow's allowance is payable to a widow shall be the 26 weeks next following the husband's death:

Provided that the allowance shall not be payable for any period after the widow's death or remarriage or for any period during which she and a man to whom she is not

married are living together as husband and wife.

25.-(1) A woman who has been widowed shall be entitled to a widowed mother's allowance at the rate specified in section 13 of the Pensions Act, if her late husband satisfied the contribution conditions for a widowed mother's allowance specified in Schedule 3, Part I, paragraph 5, and either -

- (a) the woman is entitled to child benefit in respect of a child falling within subsection (2) below; or
- (b) the woman is pregnant by her late husband.

(2) A child falls within this subsection if one of the conditions specified in section 43(1) of this Act (conditions of payment of increase for child dependants) is for the time being satisfied with respect to the child and the child is either -

- (a) a son or daughter of the woman and her late husband; or
- (b) a child in respect of whom her late husband was immediately before his death entitled to child benefit; or
- (c) if the woman and her late husband were residing together immediately before his death, a child in respect of whom she was then entitled to child benefit.

(3) The period for which a widowed mother's allowance is payable to a woman shall be any period during which she satisfies the requirements of subsection (1)(a) or (b) above and for which she is not entitled to a widow's allowance:

Provided that the allowance shall not be payable for any period after the widow's remarriage or for any period during which she and a man to whom she is not married are living together as husband and wife.

26.-(1) A woman who has been widowed shall be entitled to a widow's pension at the rate specified in section 13 of the Pensions Act, if her late husband satisfied the contribution conditions for a widow's pension specified in Schedule 3, Part I, paragraph 5, and either -

- (a) she was, at the husband's death, over the age of 40 but under the age of 65; or
- (b) she ceased to be entitled to a widowed mother's allowance at a time when she was over the age of 40 but under the age of 65.

(2) The weekly rate of a widow's pension payable to a woman who was under the age of 50 at the time when her late husband died or, as the case may be, when she ceased to be entitled to a widowed mother's allowance shall be reduced by an amount equal to 7 per cent. of its amount apart from this subsection multiplied by the number of years by which her age at that time was less than 50 (any fraction of a year being counted as a year).

(3) The period for which a widow's pension is payable to a woman shall be any period during which she is under the age of 65 and for which she is not entitled to a widow's allowance or a widowed mother's allowance:

Provided that the pension shall not be payable for any period after the widow's remarriage or for any period during which she and a man to whom she is not married

are living together as husband and wife."

It is not in dispute that when her husband died Mrs Whitbread satisfied all the conditions of entitlement to each of those benefits - though for widowed mother's allowance she needed the assistance of regulation 16 of the Social Security (Widow's Pension and Retirement Pension) Regulations 1979 [S.I. 1979/1642]. However, significant changes were made by section 36 of the Social Security Act 1986 (which came into operation on 11 April 1988 by virtue of S.I. 1987/1096). Widow's allowance, payable under the old law for 26 weeks, was replaced by a benefit called widow's payment - a lump sum of £1,000.00 - pursuant to a substituted section 24. And section 26 was amended, by section 36(3) of the 1986 Act, by raising age 40 in subsection (1) to age 45 and age 50 in subsection (2) to 55. Section 25 was not amended but, in the case of a widow like Mrs Whitbread who was not entitled to child benefit in respect of her child (and who thus did not satisfy section 25(1)(a)) and who depended for entitlement on regulation 16 of the 1979 Regulations, the conditions of entitlement to a widowed mother's allowance were changed by an amendment to that regulation made by regulation 2(6) of the Social Security (Widow's Benefit and Retirement Pensions) Amendment Regulations 1987 [S.I. 1987/1854] as from 11 April 1988. I shall have to return to those Regulations later.

4. It is not in dispute that Mrs Whitbread is not entitled to any benefit under the new provisions. She was already in receipt of her widow's allowance when those provisions came into operation. And, by virtue of regulation 2 of the Social Security (Widow's Benefit) Transitional Regulations 1987 [S.I. 1987/1692] she remained entitled to widow's allowance as if the new provisions had not been enacted. However, regulation 3 of those Regulations, which makes transitional provision in relation to widow's pension, does not assist Mrs Whitbread because she was not in receipt of a widow's pension during the week ending 10 April 1988. The regulation provides -

"3.-(1) Subject to paragraph (2) below, where

- (a) a widow's pension is payable to a woman for a period which includes the whole or part of the week ending 10th April 1988, or would have been so payable but for any of the following provisions of the 1975 Act, that is to say, the proviso to section 26(3) (widow's pension not payable after remarriage), section 82(5)(b) (benefit not payable while person is imprisoned) or section 85 (overlapping benefits) or the regulations made thereunder; and
- (b) the woman was under the age of 55 either at her husband's death or at the time she ceased to be entitled to a widowed mother's allowance,

section 26 of the 1975 Act shall apply to her as though section 36(3) of the 1986 Act had not been enacted.

(2) Where on or after 11th April 1988 widow's pension ceases to be payable to a woman mentioned in paragraph (1) above because entitlement to a widowed mother's allowance arises in her case, that paragraph shall not thereafter apply to her."

As I have said, Mrs Whitbread's entitlement to a widowed mother's allowance depended on regulation 16 of the 1979 Regulations. She was not entitled to child benefit and so could not qualify under section 25(2)(a) of the 1975 Act; but regulation 16(1) allowed her to be treated as if she were entitled to child benefit because Christopher was under 19, resided with her and was her son by her late husband. However, regulation 16(1) was amended as from 11 April 1988; under the amended provision there is the additional condition, which Mrs Whitbread does not satisfy, that child benefit would have been payable in respect of the child had he not been absent from Great Britain. But that is not the end of the matter;

there is a transitional provision, in regulation 3 of the 1987 Amendment Regulations, for widowed mothers to whom widowed mother's allowance was "payable ... by virtue of regulation 16(1) of the principal Regulations for a period which includes the whole or part of the week preceding 10th April 1988 ... "; (in regulation 4 of the 1987 Amendment Regulations there are certain savings but they are not relevant to widowed mother's allowance). Regulation 3 does not of course apply to Mrs Whitbread because widowed mother's allowance was not payable to her in the week preceding 10 April 1988.

5. Mr Parke's principal submission was that neither a widowed mother's allowance nor a widow's pension is payable to Mrs Whitbread because the new law had come into operation before she was entitled to either and her entitlement is governed by the new law - under which she does not qualify. Mr Rowland relied on section 16(1)(c) of the Interpretation Act 1978 and submitted that no repeal or amendment enacted by the 1986 Act or by the 1987 Regulations can operate so as to deprive Mrs Whitbread of the benefits to which she had acquired or accrued rights. Section 16(1)(c) of the Interpretation Act provides that -

"16(1) Without prejudice to section 15, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears, -

.....

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;

.....

Section 16 does of course apply to amendments to enactments in the same way as to repeals. Mr Rowland contended that under sections 24, 25 and 26 of the 1975 Act entitlement to widow's allowance, widowed mother's allowance and widow's pension arose when the woman is widowed and provided the other conditions of entitlement are satisfied. Subsection (1) in each case provides for entitlement. The period for which the benefit is payable is provided in subsection (2) of section 24 and subsection (3) of the other two sections. In each case, under the proviso, payment ceases if the widow remarries or cohabits. Mr Parke contended that subsection (1) in each case created what he referred to as an underlying entitlement but not an acquired or accrued right; his argument, as I understand it, is that before the benefits were put into payment there were no rights either acquired or accrued because the "underlying entitlement" could be defeated by death, remarriage or cohabitation. In my view the scheme of the provisions is quite plainly that to which I have referred - a clear distinction is drawn by the provisions themselves between entitlement and payment, and I cannot see that referring to what the provisions themselves refer to as entitlement ("shall be entitled") as 'underlying entitlement' advances the matter. The four widows had all claimed all of the benefits - Mr Parke agreed they could not have been required to make any further claim; they had all satisfied all the conditions of entitlement and widow's allowance was in payment - all before the law had changed. That entitlement to benefit arises when the relevant conditions are satisfied and that entitlement is to be distinguished from payability is made clear in Insurance Officer v McCaffrey (H.L.) 1984 1 WLR 1353. That case concerned section 36 of the Social Security (Northern Ireland) Act 1975 which laid down the conditions of entitlement to a non-contributory invalidity pension and section 79 of that Act which, subject to exceptions, had the effect that no award was to be made unless the benefit was claimed. It had been contended on behalf of the insurance officer that entitlement to the pension did not arise under section 36 unless a claim had been made. As to that Lord Scarman said (pages 1355 to 1356) -

"The submission is, in my view, totally misconceived. First, entitlement is governed by section 36. The section does not define entitlement by reference to the making of a claim or require a claim as a condition precedent to entitlement. Secondly,

section 79(1) has to be construed so as to be consistent with the entitlement which is created by section 36, and not "vice versa". Any other approach makes nonsense of section 36. ... The logic of entitlement and claim is clear: claim is based on the existence of entitlement. Thirdly, section 79(1) does not speak of "entitlement". It merely declares it to be "a condition of a person's right to any benefit that he makes a claim". These words do not have to be construed as a reference to entitlement. They can equally well, as a matter of ordinary English, be a reference to the right to be paid. ... Accordingly, I read the subsection as having this effect: a claimant not only has to show the existence of an entitlement but has also to make a claim in the prescribed manner and within the prescribed time in order that he may be paid."

Mr Parke relied on two decisions of Commissioners, R(S) 6/83 and R(S) 11/83. The first of those cases concerned entitlement to a non-contributory invalidity pension under section 36 of the Social Security Act 1975 (as then in force); under subsection (4) "a person who has attained pensionable age shall not be entitled to a pension under this section unless [she] was so entitled immediately before attaining that age". The claimant who did not make her claim until after she had attained pensionable age contended that she had good cause for her claim, that she was therefore entitled as from before she attained pensionable age and thus was not ruled out by subsection (4). However, section 82(2)(c) of the 1975 Act provides that "... no sum shall be paid to any person ... in respect of any period more than twelve months before the claim is made"; she could not therefore get her benefit back-dated for good cause for more than twelve months before the date of her claim; and even with the benefit of that twelve months she would still have been over pensionable age when she first became entitled. The Commissioner said paragraph 13) -

"In view of the difficulty that has over the years attended the interpretation of "entitlement" and "disqualification" it will be convenient if at this stage I set out the meaning which I attach to those terms. A person is entitled to a particular benefit if he satisfies all the conditions whose fulfillment is a pre-requisite of the award of such benefit. However even if he satisfies such conditions, he will still lose title to benefit if he incurs disqualification. The circumstances in which disqualification will arise are expressly provided for in the Social Security Act 1975 and the regulations made thereunder, e.g. sections 19 and 20 of the Act. In practice it matters not to a claimant whether he fails to satisfy one of the essential conditions for entitlement or whether he incurs disqualification. Either way he is without title."

and he went on to consider whether, having regard to "... no sum shall be paid..." in section 82(2)(c) a distinction was to be drawn between entitlement and payment. He said there was no such distinction, that "... if a claimant is not entitled to a payment of money then he is not entitled to the benefit" and referred to what was said by the then Chief Commissioner in R(S) 2/65 (paragraph 15) in relation to a similar provision in earlier legislation. The Chief Commissioner in that case said -

"... nobody has ever suggested that the effect of the words "no sum shall be paid" in paragraph 2 is that the statutory authorities award the benefit and the Ministry refuse to pay it. The words have always been treated as affecting the right to an award of the benefit, which is for the statutory authorities to decide. I proceed on this basis. The provision must mean not merely that the benefit shall not be paid, but that it shall not be payable."

This same point came before a Tribunal of Commissioners in R(S) 11/83. The Commissioners approved R(S) 6/83 and said (paragraph 14) -

"Having reconsidered the matter in light of the previous decisions we find the reasoning advanced by the Commissioner in R(S) 6/83 to be convincing and consistent with the conclusions reached in R(S) 2/65 and, in another context, by the Court of Session in Pearson v Secretary of State for Social Services. It is in our opinion

particularly significant that under the provisions of section 82(1) and regulation 14 the disqualification which may be incurred is disqualification "for the receipt of benefit". That must be equated with the absence of right to benefit under section 79(1). The relief from such disqualification afforded by regulation 14 upon proof of good cause for a delayed claim is expressly stated to be "subject to the provisions of section 82(2)", a provision which would not strictly speaking be necessary if section 82(2) were merely a bar to payment and if regulation 14 fell to be construed as permitting a "bare" entitlement to benefit, irrespective of payability, to be established for any period upon proof of good cause for a late claim. The construction contended for on behalf of the claimant, although given some plausibility by the imprecise terminology of the statutory provisions quoted above, remains in our opinion "strained and unrealistic" in its interpretation of the word "entitlement" where it is used in relation to a benefit payable in money."

Now those cases are of course cases of disqualification and, as the Tribunal of Commissioners said, it would be pointless to say of a person who was disqualified that he nevertheless remained entitled. That however does not, as it seems to me, say anything with regard to the provisions in question in the present case which, on my reading of them, do not disqualify but define the periods for which the various benefits are payable. Furthermore, both of those cases were before McCaffrey. Mr Parke also relied on R(G) 2/74. In that case the claimant was widowed when she was 48 and the relevant legislation at the time, section 28(2)(b) of the National Insurance Act 1965, required that to be entitled to a widow's pension she should be over the age of 50 when her husband died. That age was lowered to 40 by section 2(a) of the National Insurance Act 1970 and some time after the amendment a claim was made for a widow's pension on the basis of the new law. The Commissioner allowed the claimant's appeal and said (paragraph 9) -

"This decision lays down no general principle, except that there is no automatic short cut to the determination of good cause cases: all relevant facts must be considered. I would particularly emphasise that I am not here concerned with a late claim for a new benefit. Section 2 of the National Insurance Act 1970 altered the conditions governing entitlement to a widow's pension, and it did this with retro-active effect. By that I mean that widows who had no right to a pension at their husband's death, and whose right to widow's benefit under the legislation in force prior to 5 April 1971 had been completely satisfied, were, under the amended legislation, given a right to claim further benefit as a result of having been widowed."

The case was principally concerned with whether the claimant had good cause for her late claim but, on the relevant point, I do not see how the decision assists Mr Parke. In the present case the essential question is whether Mrs Whitbread is entitled to the benefit of section 16(1)(c) of the Interpretation Act. Mr Rowland has not disputed that without that she would fail. The claimant in R(G) 2/74 did not need the Interpretation Act to protect any rights she had under the 1965 Act. Applying what Lord Scarman said in McCaffrey, Mrs Whitbread in my view became entitled to widow's allowance, widowed mother's allowance and widow's pension when she satisfied the conditions of entitlement in the relevant provisions; the fact that by virtue of section 25(3) the period of payment of widowed mother's allowance is not to include a period of entitlement to widow's allowance and that by virtue of section 26(3) the period of payment of widow's pension is not to include a period of entitlement to widow's allowance or widowed mother's allowance does not affect the entitlement which arose when the conditions were satisfied.

6. Does the entitlement to benefit which in my view Mrs Whitbread had on the death of her husband amount to an acquired or accrued right for the purposes of section 16(1)(c) of the Interpretation Act? In Hamilton Gell v White 1922 2 K.B. 422 a distinction was made, for the purposes of the very similar provisions of section 38 of the Interpretation Act 1889, between abstract and specific rights. That case concerned the repeal of section 11 of the Agricultural Holdings Act 1908 under which a tenant of an agricultural holding was entitled

to compensation when his tenancy was determined if he gave notice of intention to claim compensation and made a claim within three months after leaving the holding. Notice of intention to claim was given but, before the tenancy had expired and so before a claim for compensation could be made, section 11 of the 1908 Act was repealed; the tenant subsequently made his claim within the three months limited by section 11. The tenant's appeal succeeded. Lord Justice Atkin said (pages 431 to 432) -

"As far as the claim under the Act of 1908 is concerned that depends on the proper construction of section 38 of the Interpretation Act, 1889, which provides that where an Act is repealed "the repeal shall not affect any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment so repealed". It is obvious that that provision was not intended to preserve the abstract rights conferred by the repealed Act, such for instance as the right of compensation for disturbance conferred upon tenants generally under the Act of 1908, for if it were the repealing Act would be altogether inoperative. It only applies to the specific rights given to an individual upon the happening of one or other of the events specified in the statutes. Here the necessary event has happened, because the landlord has, in view of the sale of the property, given the tenant notice to quit. Under those circumstances the tenant has "acquired a right", which would "accrue" when he has quitted his holding, to receive compensation. A case was cited in support of the landlord's contention: Abbott v Minister for Lands 1895 A.C. 425, where the question was whether a man who had purchased certain land was entitled to exercise a right to make additional purchases of adjoining land under the powers conferred by a repealed Act, the repealing Act containing the usual saving clause; the Privy Council held that he was not. They said (1) that "the mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed to be a "right accrued" within the meaning of the enactment". I think that bears out the proposition that I have stated above. The result is that the tenant in this case has acquired a right to claim compensation under the Act of 1908 on his quitting his holding ... "

Free Lanka Insurance Co Ltd v Ranasinghe 1964 AC 541 was concerned with whether a motorist who was injured in an accident in Ceylon before the Motor Car Ordinance 1938 was repealed but who was not awarded damages until after the repeal should have the benefit of the Ordinance. And Lord Evershed said (page 552) in relation to section 6 of the Ceylon Interpretation Ordinance 1900 (similar in terms to section 38 of the 1889 Act) that "The distinction between what is and what is not a "right" must often be one of great fineness. But their Lordships agree ... in thinking that ... the respondents had as against the appellants something more than a mere hope or expectation ... that he had in truth a right, within the contemplation of section 6(3)(b) of the Interpretation Ordinance ... although that right might fairly be called inchoate or contingent". It seems to me that what Lord Justice Atkin said in the Hamilton Gell case and what Lord Evershed said in the Free Lanka Insurance case applies in principle equally to the circumstances with which I am concerned. In my view section 16(1)(c) of the Interpretation Act does apply in the case of these widows and that is so unless it can be shown that "the contrary intention appears" in the amending legislation.

7. Does the contrary intention appear? All that the 1986 Act does with regard to widow's pension is raise the age limits in subsections (1) and (2) of section 26. I cannot see how it could possibly be said that that shows an intention that section 16(1)(c) of the Interpretation Act should not apply. The position would no doubt be different if there were savings or transitional provisions in the statute. There are not. Any such provisions are in regulations and they cannot in my view be used to show a contrary intention in the relevant provisions of the 1986 Act. When age is a condition of entitlement there will always be the apparently hard cases of people who so nearly attain the requisite age. And so Mrs Whitbread could perhaps not have complained if she had been a day short of 40 when her husband died. However, if Mr Parke's contentions are correct, not only does she miss out because when her

husband died she was not quite 45; she also misses out because he did not die some weeks earlier. Had he done so the 26 weeks of widow's allowance could have been exhausted by the time the amendments were made. No doubt it was thought when those amendments were drafted that what I might call the transitional cases would be protected or saved by regulations. In the event only some were. But that is not in my view a reason for finding in the 1986 Act an intention that section 16(1)(c) of the Interpretation Act should not apply. It is a long established principle that a statute is not to be taken as depriving a person of a right or benefit he had before the passing of the statute unless there are express words or the plainest implication to that effect: see e.g. Lauri v Renaud 1892 3 Ch.402 and Henshall v Porter 1923 2 KB 193. It seems to me that that must equally apply in relation to "contrary intention" in section 16 of the Interpretation Act. And I have not seen anything in the enactment which amends the conditions of entitlement to widow's pension which shows an intention that section 16(1)(c) should not apply to that limited group of women who were over 40 in the six months' period to 11 April 1988 and whose husbands died in that period.

8. Mrs Whitbread's entitlement (if she is entitled) to a widowed mother's allowance depended, as I have said, on regulation 16(1) of the 1979 Regulations. As that regulation stood before its amendment as from 11 April 1988 Mrs Whitbread met the conditions. Under the amended regulation she did not. Regulation 3 of the Amending Regulations makes provision in cases where widowed mother's allowance is payable to a woman under unamended regulation 16(1) for a period including the week preceding 10 April 1988 - in such cases entitlement is to continue as though the amendment had not been made. The question is therefore whether section 16(1)(c) of the Interpretation Act applies in relation to the amendment to regulation 16(1); the Interpretation Act does of course apply in principle to subordinate legislation by virtue of section 23 of that Act. In my view the same principles apply in relation to determining whether, for the purposes of section 16(1)(c) of the Act, Mrs Whitbread had on the death of her husband an acquired or accrued right, as applied to determine that matter in relation to the provisions in question of the 1975 Act. But is the position different with regard to contrary intention? That question has to be asked because, unlike the provisions which amended the Act, the regulation which amends regulation 16 does, as I have said, contain express provisions in relation to widowed mother's allowance for women whose husbands died before 11 April 1988. Mr Rowland conceded that he had a more difficult task in relation to widowed mother's allowance on that account. But, he contended, if the 1987 Amendment Regulations operated so as to remove a pre-existing right they were made without authority. Now the power under which regulation 16 of the 1979 Regulations was made and then amended is, as I understand it, in Schedule 20 to the 1975 Act in the definition of "child". And the power to make the transitional or saving provisions of regulation 3 of the 1987 Amendment Regulations is, apparently, in section 89(1) of the Social Security Act 1986. The complaint of course is that regulation 3 did not go far enough in that it did not provide a saving for the case of a woman, like Mrs Whitbread, to whom a widow's allowance was payable in the relevant week. The answer however to Mr Rowland's point seems to me to be that the Secretary of State was not bound to exercise the power in relation to all possible cases or make the same provision for each case - see section 166(2) of the 1975 Act, and I do not see that the Amendment Regulations are beyond the enabling powers. In my view the fact that regulation 3 of the 1987 Regulations does make certain provision in relation to what I might call pre-11 April 1988 cases does show a sufficient "contrary intention" and accordingly section 16(1)(c) of the Interpretation Act does not apply.

9. The outcome is that I disallow the adjudication officer's appeal. The tribunal's decision is in my view the correct decision though perhaps not for all the correct reasons. In my view Mrs Whitbread is entitled to a widow's pension for the period allowed by and calculated in accordance with section 26 of the 1975 Act as if the amendments to that section had not been made. But she is not entitled to a widowed mother's allowance in respect of Christopher because she does not qualify under regulation 16(1) of the 1979 Regulations as amended and she is not assisted by section 16(1)(c) of the Interpretation Act which does not apply. I should say that, although widowed mother's allowance has

apparently never been dealt with by the adjudication officer and was not dealt with by the tribunal, Mr Parke and Mr Rowland both agreed that I could deal with it by virtue of section 102 of the 1975 Act.

(Signed) R A Sanders
Commissioner

Date: 27 February 1989