

## **DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. My decision is as follows. It is given under paragraph 8(4) and (5)(c) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000.
  - 1.1. The decision of the Stoke on Trent appeal tribunal, held on 7<sup>th</sup> March 2002 under reference U/04/049/2001/01265, is erroneous in point of law.
  - 1.2. I set it aside and remit the case to a differently constituted appeal tribunal.
  - 1.3. I direct that appeal tribunal to conduct a complete rehearing of the issues that arise for decision. It must deal with any issue raised by the landlord about the existence, amount or recoverability of the overpayment. In dealing with recoverability, it must apply my analysis in this decision. It has no jurisdiction over the Secretary of State's decision to recover from the landlord rather than from the tenant.

### **The appeal to the Commissioner**

2. This case concerns the recoverability of an alleged overpayment of housing benefit. The appellant is the claimant's landlord, from whom recovery is sought. The respondent is the City of Stoke on Trent.
3. The case comes before me as an appeal to a Commissioner against the decision of the appeal tribunal brought by the landlord with my leave. The local authority does not support the appeal.

### **The history of the case**

4. The facts are not in dispute and can be stated briefly. The claimant was receiving housing benefit in respect of a dwelling owned by the landlord. She moved out, without telling the landlord. The local authority became aware of this on 25<sup>th</sup> October 2000. It actioned the information on 15<sup>th</sup> December 2000. It made a recoverable overpayment decision for the inclusive period from 16<sup>th</sup> October 2000 to 10<sup>th</sup> December 2000. It further decided that the overpayment was recoverable from the landlord. The landlord exercised his right of appeal to an appeal tribunal. The tribunal dismissed his appeal.

### **The recoverability of the overpayment**

5. The relevant legislation is regulation 99 of the Housing Benefit (General) Regulations 1987:

- ‘(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.
- (2) Subject to paragraph (4), this paragraph applies to an overpayment caused by official error where the claimant or the person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or of any notice relating to that overpayment, reasonably have been expected to realise that it was an overpayment.

(3) In paragraph (2), "overpayment caused by official error" means an overpayment caused by a mistake made, whether in the form of an act or omission, by the appropriate authority or by an officer or person acting for that authority or by an officer of the Department of Social Security or the Department of Employment acting as such, or a person providing services to either Department where the claimant, a person acting on his behalf or any other person to whom the payment is made did not cause or materially contribute to that mistake or omission.'

6. That is easier to understand if it is broken down into some simple questions. For this case, those questions are:

*Question 1: did the local authority cause an overpayment by making a mistake?*

7. If it did not, the overpayment is recoverable. If it did, other questions arise.
8. So, did the local authority make a mistake?

9. The local authority made no mistake until it was aware that the claimant had moved out. So, for the first part of the period, it did not cause the overpayment. This part of the period begins on 16<sup>th</sup> October 2000. It runs until the first date when the local authority could act on the information it received on 25<sup>th</sup> October 2000. The overpayment for that period is recoverable. **I direct the appeal tribunal to identify the end date and to decide accordingly. This, of course, is subject to any decision the appeal tribunal may make on the existence or amount of the overpayment.**

10. The overpayment for the rest of the period (from 26<sup>th</sup> October 2000 or thereabouts to 10<sup>th</sup> December 2000) only arose because the local authority failed to act promptly on the information that it had received. So, it was caused by the local authority's omission. Now question 2 arises:

*Question 2: did the claimant or the landlord cause or contribute to the local authority's omission?*

11. If so, the rest of the overpayment is recoverable. If not, another question arises.
12. So, did either the claimant or her landlord cause or contribute to the local authority's omission to act promptly?
13. The answer is obviously: no. Once the local authority knew she had moved out, the speed with which it acted on that information was outside the control of either the claimant or the landlord. The delay was entirely the fault of the local authority. Now question 3 arises:

*Question 3: could the claimant or her landlord reasonably have been expected to realise an overpayment was being made?*

14. If yes, the rest of the overpayment is recoverable. If not, it is not.
15. So, could the claimant or her landlord have reasonably been expected to realise that an overpayment was being made overpaid?

16. There is no way that the claimant could know. She had left and payment was being made to the landlord. Once the local authority knew she had moved out, she had no means of knowing whether or not benefit was still be paid to the landlord.

17. So, the decisive issue in this case is: could the landlord reasonably have been expected to realise? The tribunal reasoned that the landlord was under a duty to ensure that the tenant was still resident. It recognised that this was ‘wearisome, to say the least’, but considered that it was ‘not an unreasonable duty’. In this reasoning, the tribunal went wrong in law. The issue for the tribunal was not whether the landlord was under a duty to check that the tenant was still in residence. The issue was whether the landlord could reasonably have been expected to realise that he was being overpaid. That came to this: could the landlord reasonably have realised that the tenant had left. That required an analysis of fact, not of law. What steps was it reasonable for the landlord to take? Would they have revealed that the tenant had left? A rehearing is necessary so that the facts can be investigated.

### **Recoverability from the landlord**

18. The decision to recover the overpayment from the landlord instead of from the claimant is not appealable. See my decision in *CH/4943/2001*.

### **Summary**

19. I allow the appeal and direct a rehearing.

**Signed on original**

**Edward Jacobs**  
**Commissioner**  
**10<sup>th</sup> October 2002**