CAS

★ 90/95

JMe Commissioner's File: CIS/1460/95

SOCIAL SECURITY ACT 1986
SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No: ,

[ORAL HEARING]

1. The adjudication officer's appeal fails. The decision of the Nottingham social security appeal tribunal dated 7 November 1994 is not erroneous in point of law and therefore stands.

2. The claimant was awarded income support from 6 May 1993. She was then aged 63 and was a widow. She was a long-leaseholder under a co-ownership scheme for elderly retired persons run by Coventry Churches Housing Association. Touchstone Housing Association has now taken over the scheme. As a condition of the lease the claimant was obliged to pay a service charge, then £87.90 per month. Initially the adjudication officer allowed £16.75 per week of the service charge (the equivalent of £72.56 per month) as part of the claimant's housing costs. On 20 January 1994 the adjudication officer reviewed the decision awarding income support from 6 May 1993, apparently on the ground of error of law, and gave the revised decision that £10.95 per week of the service charge should be allowed as a housing cost. The available documents do not show a date from which the revised decision was to be operative. If the ground of review was error of law, as stated in the adjudication officer's submission on form AT2, one would expect the revised decision to be operative from 6 May 1993, although of course no overpayment of benefit made in the intervening period would be recoverable from the claimant.

3. The claimant appealed against the decision dated 20 January 1994. In the written submission on form AT2 the adjudication officer submitted that only £1.47 per week of the service charge should be allowed as a housing cost. The service charge was made up of the elements described briefly in paragraph 5 of the appendix to this decision. It was submitted that only the items relating to maintenance of fire and warden call equipment and to insurance related to the provision of adequate accommodation to the claimant. She lived in a self-contained bungalow and did not occupy or have necessity to visit any common areas, so that

charges related to those areas were not connected with the provision of adequate accommodation. In a subsequent submission it was submitted that £5.85 should be allowed, by the addition of a small proportion of the charges for the scheme manager service and for administration.

4. The claimant attended the hearing before the appeal tribunal, accompanied by her son. She was represented by Mr Peter Carnes of the Touchstone Housing Association. Neither the adjudication officer who made the decision under appeal nor any representative was present, the appeal tribunal chairman having earlier refused a request from the adjudication officer for an adjournment. Rightly, no complaint has been made about that.

5. The appeal tribunal allowed the claimant's appeal and decided that all of her service charge of £20.29 per week from 6 May 1993 was eligible as a housing cost. In addition to the points already mentioned, it specifically found that the scheme was a sheltered accommodation scheme and made the following findings of fact (I have corrected some obvious typing errors):

> "4. The legal basis on which the charges are claimed are contained in the lease a draft of which is with the papers and which are set out and clause 2 of the lease which in itself refers to clauses 3(5)(a), 3(5)(b), 3(6)(i) to (iii). These last clauses contain covenants by the leaseholder. She is legally bound as between herself and the landlord, the housing association, to pay those sums.
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> 5. So far as [the claimant] is concerned the scheme consists of a number (exceeding 30) of units of accommodation, comprising in the case of [the claimant] a self-contained bungalow. She has the use of communal areas by way of private pathways, gardens and a communal lounge which she is both entitled to use and does use.
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> 6. The housing association employs a scheme manager. The job description is set out on page 9 and following and against each task is assigned a percentage being the estimate of the time expended by the scheme manager on each of those tasks.
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> 7. On page 8 the service charge breakdown for the years 1992/93 and 1993/94 are set out specifically apportioning items of the monthly service charge. The tribunal finds that the proportion of those charges is analogous with the split of the percentage time spent on the specific tasks.
>
> 8. All these services provided by Touchstone are provided to ensure that the accommodation (i.e. the dwelling and the communal areas) are adequate for the residents on the scheme, bearing in mind their age and frailties."

6. In its reasons for decision the appeal tribunal correctly described the effect of paragraph 9(2)(a), (b) and (c) of Schedule 3 to the Income Support (General) Regulations 1987. It then went through each element of the service charge as follows:

> "1. Repairs and maintenance reserves in respect of future maintenance of the site common areas and exterior of the bungalow in which [the claimant] resides. The tribunal considers that the sort of repairs outlined in the evidence do not fall within the definition of repairs and maintenance in accordance with paragraph 8(3). The adjudication officer was wrong in either assuming that [the claimant] did not occupy or have necessity to visit the common areas. She must have to walk over assess [sic] areas and [the claimant] herself said that she attended the communal lounge. Indeed the whole purpose of such sheltered schemes is to provide that kind of communal facilities.
> 2. Maintenance of the scheme gardens. This a provision which the tribunal finds is covered by the Housing Benefit (General) Regulations 1987. The tribunal accepts the guidance given by the Housing Benefit Guidance Manual prepared by the DSS adjudication officers which specifically includes gardens within the list of eligible purposes.
> 3. Maintenance of equipment. There is no dispute between the adjudication officer and the appellant as to this item of charge.
> 4. Communal area costs, which refers to heating, lighting and cleaning of the communal areas. The tribunal finds that paragraph 9(2)(a) of Schedule 3 relates only to fuel charges of the specific dwelling of [the claimant] and not the communal areas. Schedule 1 Part 2(7) of the Housing Benefit Regulations states communal areas mean areas (other than rooms) of common access (including halls and passageways) and rooms in common use in the sheltered accommodation. The tribunal is satisfied that fuel charges for exterior lighting of the scheme and fuel charges in respect of the heating and lighting of the rooms in common use in the sheltered accommodation fall to be included by a cross reference to the Housing Benefit Regulations as housing costs for [the claimant's] income support.
> 5. Scheme manager service. Much work has been done to show the percentage of time spent by the scheme manager on each duty. In her additional submission a proportion of the scheme manager's service cost is allowed in direct proportion to the allowance in respect of other service charges. The tribunal considers that the work of the scheme manager is to ensure a continued adequate provision of accommodation for the elderly and frail residents in the scheme. Her job description includes no charge for any service rendered which would be an ineligible service under the Housing Benefit Regulations. She specifically has no obligation toward the medical or therapeutic care

of the residents and the description of her task for general welfare of the residents is to help residents to feel that they are individuals with their own independent lives to lead. Her health and safety obligation is limited to the health and safety procedures relevant to the scheme including fire precautions and procedure and to ensure any relevant actions are taken. The tribunal views that provision as being protective of the property as a first obligation. The scheme manager is required to be on call for emergencies, which the tribunal takes as being accommodation oriented rather than medical or therapeutic.

6. Provision for replacement. This refers to the communal lounge. The tribunal finds that the adjudication officer was wrong in her suggestion that [the claimant] had no necessity to use the communal lounge as she lives in a self-contained bungalow. Again the whole purpose of such sheltered accommodation is to provide overall accommodation and not merely individual dwelling houses.
7. Insurance. This has been allowed by the adjudication officer and the tribunal supports the allowance.
8. Administration. There has been a concession by the adjudication officer which the tribunal supports in her additional submission. In view of the fact that this tribunal considers that all the services charge should be payable the consequential administration cost is allowed."

7. The adjudication officer was granted leave to appeal to the Commissioner by the appeal tribunal chairman. I have set out the course of the proceedings and recorded my conclusions on the general questions of law raised on that appeal and the five associated appeals in the appendix to this and the other five decisions. In view of those conclusions, and the matters not in dispute, the appeal tribunal's conclusions on elements 1, 2, 3, 6 and 7 of the service charge embody no errors of law, although some of the reasoning expressed is, as it turns out, not necessary in order to support the conclusions. The other elements need slightly more examination.

8. In relation to element 4, the conclusion and reasoning on heating and lighting and the meaning of paragraph 9(2)(a) of Schedule 3 to the Income Support Regulations is perfectly correct, but there is no specific explanation for the allowance of the amount for cleaning of communal areas. However, once the appeal tribunal had, correctly, found that, since the particular development constituted sheltered accommodation, the rooms of common use counted as part of a communal area (paragraph 7 of Schedule 1 to the Housing Benefit Regulations) it inevitably followed that the charge for cleaning those rooms was eligible within paragraph 1(a)(iv). Paragraph 1(g) could not then apply. In the context of the decision as a whole, and the submissions made to the appeal tribunal, I do not think that that omission to spell out the very last detail of the reasoning constitutes

an error of law. The appeal tribunal reached the only legally possible result on the facts which it had found.

9. In relation to element 5, Mr Scoon submitted on behalf of the adjudication officer that the appeal tribunal failed properly to apply the distinction between tasks connected with the provision of adequate accommodation and tasks related to the general welfare of residents. I think that it would be very hard to find a basis in the evidence for the appeal tribunal's approach that the entirety of the scheme manager's duties were directed towards the provision of adequate accommodation. However, it was not necessary for the appeal tribunal to go that far. The whole of those duties can be categorised as counselling or support services within paragraph 1(f) of Schedule 1 to the Housing Benefit Regulations. If not all of the duties were related to the provision of adequate accommodation, they could all still fall within paragraph 1(f), in its form both before and after 1 May 1994, if the scheme manager spent the majority of her time providing services which were eligible within the rest of paragraph 1. It is evident from the breakdown of the scheme manager's job description, which the appeal tribunal accepted in its findings of fact, that well over half of her time was to be spent on duties relating to the provision of adequate accommodation as properly understood or otherwise allowed under paragraph 1. The duties relating to answering alarm calls and administration of the alarm system, health and safety, supervision, repair and maintenance of all the buildings and the site and cleaning of common areas come to over 60% of the manager's time. Therefore, the appeal tribunal came to the right legal conclusion on the evidence before it. Its route to that conclusion may have taken some unnecessary detours, but the conclusion was not erroneous in law.

10. In relation to element 8, the costs of administration, the appeal tribunal adopted the correct approach in effectively linking its eligibility to whether or not the other elements of the service charge were eligible. Since the appeal tribunal did not err in allowing all the other elements, its allowance of element 8 was also correct.

11. I therefore conclude that the appeal tribunal did not err in law in the way in which it dealt with the substance of the issues before it. That leaves the question of whether it erred in not dealing with the question of review and the uncertainties mentioned in paragraph 2 above. In view of those uncertainties it might also be arguable that the appeal tribunal's decision was not entirely clear on the date on which it was to operate, although I am satisfied on that point that the decision did sufficiently clearly allow the full service charge of £20.29 per week as a housing cost from 6 May 1993, the date of the initial award of income support. The difficulty is that since the initial award allowed only £16.75 out of the service charge as a housing cost, and the appeal before the appeal tribunal was against a subsequent review and revision to a lower figure from an unspecified date, the appeal tribunal could only properly have made the decision it did after having found a ground of review

of the initial award. Miss Findlay's answer on behalf of the claimant was that the question of review was not in issue before the appeal tribunal. It was a matter of agreement that the initial award of income support from 6 May 1993 was erroneous in point of law, although there was considerable disagreement about the nature of the error. She submitted that the real question in issue before the appeal tribunal was what the revised decision from 6 May 1993 should be and that the appeal tribunal had dealt thoroughly with that. After a good deal of hesitation I accept that submission. It certainly would have been a great deal better if the appeal tribunal had expressly put its decision into the form of a revised decision following review on an identified ground. But I have concluded that it would in the circumstances be over-technical to regard that as an error of law requiring the setting aside of the appeal tribunal's decision, especially as this is not a point which has been raised at any stage on behalf of the adjudication officer. There was sufficient agreement that the adjudication officer's decision awarding income support from 6 May 1993 fell to be reviewed for it to be acceptable for the appeal tribunal to deal expressly only with the proper decision to be given on review.

12. The appeal tribunal's decision was not erroneous in point of law. The adjudication officer's appeal must therefore be dismissed.

(Signed) J Mesher
Commissioner

Date: 9 NOV 1995

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APPENDIX

1. The six claimants in the appeals to which this appendix relates are long-leaseholders of dwellings in sheltered housing developments providing retirement homes. The landlords are, in two cases, the Touchstone Housing Association, and, in four cases, the Longhurst Housing Association. The leases demise self-contained premises to the claimants (in five cases a bungalow, and in one case a flat) together with the right to use buildings, facilities, drives, paths, gardens etc used in common. A condition of the lease is for the claimant to pay a service charge covering costs relating broadly to the maintenance of communal areas and the structure of the buildings and of the provision of a resident manager in the development.

2. The issue which has arisen is whether the whole amount of each claimant's service charge is to be met as a housing cost under paragraphs 1(f) and 9 of Schedule 3 to the Income Support (General) Regulations 1987 ("the Income Support Regulations"). The Nottingham social security appeal tribunal decided in each case that it was. The adjudication officer argues that that conclusion embodies errors of law and that only a small proportion of the service charge is to be met.

The legislation

3. I am concerned with the legislation in force as at the dates dealt with by the appeal tribunal. With effect from 2 October 1995 the whole of Schedule 3 has been replaced by a new schedule, but I shall refer only to the pre-2 October 1995 form. Paragraph 1(f) of Schedule 3 includes "service charges" within the amounts which may be met as housing costs. Paragraph 9(1) and (2) provides:

> "(1) Subject to sub-paragraph (5), there shall be met under this paragraph the amounts, calculated on a weekly basis, in respect of the housing costs specified in paragraph 1(c) to (i) subject to the deductions specified in sub-paragraph (2).
>
> (2) Subject to sub-paragraph (3), the deductions to be made from the weekly amounts to be met under this paragraph are--
>
> (a) where the costs are inclusive of any of the items mentioned in paragraph 5(2) to Schedule 1 of the Housing Benefit (General) Regulations 1987 (payment in respect of fuel charges), the deductions prescribed in

that paragraph unless the claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, in which case the estimated amount;

(b) where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 to Schedule 1 of the Housing Benefit (General) Regulations 1987 (ineligible service charges) the amounts attributable to those ineligible service charges or where that amount is not separated from or separately identified within the housing costs to be met under this paragraph, such part of the payments made in respect of those housing costs which are fairly attributable to the provision of those ineligible services having regard to the costs of comparable services;

(c) any amount for repairs and improvements, and for this purpose the expression "repairs and improvements" has the same meaning as in paragraph 8(3)."

In paragraph 8(3) "repairs and improvements" means major repairs necessary to maintain the fabric of the dwelling occupied as the home and certain measures undertaken with a view to maintaining the dwelling's fitness for occupation. Sub-paragraphs (3) to (5) of paragraph 9 are not relevant in the present cases.

4. There is nothing further in the Income Support Regulations to define what is or is not to be allowed as a service charge. There must be reference to the Housing Benefit (General) Regulations 1987 ("the Housing Benefit Regulations") to identify what are ineligible service charges under paragraph 9(2)(b). The whole of paragraph 1 of Schedule 1 to those Regulations must be set out. It provided, at the dates first relevant in the present cases:

"1. The following service charges shall not be eligible to be met by housing benefit--

(a) charges in respect of day-to-day living expenses including, in particular, all provision of--

(i) subject to paragraph 1A meals (including the preparation of meals or provision of unprepared food);

(ii) laundry (other than the provision of premises or equipment to enable a person to do his own laundry);

(iii) leisure items such as either sports facilities (except a children's play area), or television rental and licence fees (except radio relay charges, charges made in respect of the conveyance and the installation and maintenance of equipment for such conveyance of a television broadcasting service which is not a domestic satellite service, or charges made in respect of the conveyance and the installation and maintenance of equipment for such conveyance of a television programme service where in respect of the claimant's dwelling the installation of

such equipment is the only practicable means of conveying satisfactorily a television broadcasting service which is not a domestic satellite service, as these services are defined in the Broadcasting Act 1990;

(iv) cleaning of rooms and windows (other than communal areas) except where neither the claimant himself nor any member of his household is able to clean them himself; and

(v) transport;

(b) charges in respect of--

(i) the acquisition of furniture or household equipment, and

(ii) the use of such furniture or equipment where that furniture or household equipment will become the property of the claimant by virtue of an agreement with the landlord;

(c) charges in respect of the provision of an emergency alarm system, except where such a system is provided in accommodation which is occupied by elderly, sick or disabled persons and such accommodation, apart from the alarm system, is either--

(i) specifically designed or adapted for such persons, or

(ii) otherwise particularly suitable for them, having regard to its size, heating system and other major features or facilities;

(d) charges in respect of medical expenses (including the cost of treatment or counselling related to mental disorder, mental handicap, physical disablement or past or present alcohol or drug dependence);

(e) charges in respect of the provision of nursing care or personal care (including assistance at meal-times or with personal appearance or hygiene);

(f) charges in respect of general counselling or other support services (whether or not provided by social work professionals) except those related to the provision of adequate accommodation or those provided by the landlord in person or someone employed by him who spends the majority of his time providing services for which the charges are not ineligible under the terms of this paragraph;

(g) charges in respect of any services not specified in sub-paragraphs (a) to (f) which are not connected with the provision of adequate accommodation."

As from 1 May 1994 that form of sub-paragraph (f) was replaced by the following:

"(f) charges in respect of general counselling or of any other support services, whoever provides those services, except where those services--

(i) relate to the provision of adequate accommodation; or

(ii) are provided to tenants by either--

(aa) their landlord in person; or

(bb) someone employed by their landlord ("the employee"),
and the landlord or, as the case may be, the employee spends the majority of the time, during which he provides any services, in providing services the charges for which are eligible under these Regulations (other than any that are eligible only under the terms of this head);"

In paragraph 7 of Schedule 1 "communal areas" is defined as:

"areas (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation".

An example of the charges in question

5. The appeal tribunal dealt in detail with the individual elements making up the service charge in each case, and those details are mentioned in the decisions on each individual appeal. In this appendix I shall take as an example the make-up of the service charge in relation to the two claimants who live in Shrimpton Court, where the landlord is the Touchstone Housing Association. The elements are:

(a) repairs and maintenance reserves - amounts set aside for future maintenance of the site, the common areas (including the communal lounge) and the exterior of each bungalow;
(b) maintenance of the scheme gardens;
(c) maintenance of warden call and fire equipment;
(d) heating, lighting and cleaning of communal areas;
(e) scheme manager service, including the cost of providing a 24-hour alarm link to a central control;
(f) provision for replacements of fixtures and fittings in the communal lounge;
(g) insurance of the structure of each bungalow;
(h) administration costs of providing all services.

For 1993/94 the monthly charge was £87.90. A detailed job description for the scheme manager at Shrimpton Court has been provided, which includes an estimate of the allocation of time to different duties.

The submissions

6. An oral hearing of the adjudication officer's appeals was held, at which the adjudication officer was represented by Mr Leo Scoon of the Office of the Solicitor to the Department of Social Security. The claimants were represented by Miss Lorna Findlay of counsel, instructed by Freeth Cartwright Hunt Dickens. None of the claimants were present, but representatives of the housing associations concerned were present. I am grateful to all concerned for the exceptionally thorough examination of the appeals.

7. Mr Scoon's general submissions on the law started from the decisions of the Tribunal of Commissioners in R(IS) 3/91 and

R(IS) 4/91, which he said laid down two essential conditions for the meeting of service charges as housing costs. The first was that the charges were for services provided in connection with a claimant's housing and that the payment of the charge was binding on the claimant. He accepted that that condition was met in all the present appeals. The second condition was that the service charge was not made ineligible by reference to paragraph 1 of Schedule 1 to the Housing Benefit Regulations. Mr Scoon thus did not adopt the approach taken in written submissions on behalf of the adjudication officer, that there was an overarching condition, independent of the operation of paragraph 1, that the service has to be connected with the provision of adequate accommodation. He put it that that condition came in through paragraph 1(g), which applies when the service is not specified in sub-paragraphs (a) to (f). Initially he submitted that paragraph 1(g) applies whenever a service is not specified as ineligible in sub-paragraphs (a) to (f), so as to supply a sort of additional ground of ineligibility in each of those categories. However, later he modified that submission to the position that if one of sub-paragraphs (a) to (f) clearly specifies a service as eligible (by way of an exception to the circumstances otherwise giving rise to ineligibility), then sub-paragraph (g) does not operate to make the service ineligible on the ground of lack of connection with the provision of adequate accommodation.

8. In relation to the test of adequacy in paragraph 1(g) so far as it related to communal areas, Mr Scoon submitted that it had to be asked whether the claimant's accommodation was complete without the use of the communal area. Thus he said that if a claimant occupied a bungalow and also had access to a communal TV room, her accommodation would be complete without the TV room, so that charges related to that room could not be connected with the adequacy of her accommodation. He would apply that test not only to rooms, but to gardens and suchlike beyond the immediate vicinity of the claimant's bungalow. Alternatively, he submitted that there had to be specific findings of fact as to the actual use of communal areas by a claimant, before services related to those areas could be found to be related to the provision of adequate accommodation to the claimant. He drew support for that general position from the judgment of Sedley J in R v North Cornwall District Council, ex parte Singer and others (26 November 1993) and in particular from his distinction, at page 19 of the transcript, between services related to the provision of adequate accommodation and services related to the personal needs of the individuals in that accommodation.

9. Mr Scoon submitted that the Touchstone service charge described in paragraph 5 above should be treated as follows.

(a) In so far as the amount for reserves for maintenance and minor repairs covered communal areas which the claimant did not use it was not connected with the provision of adequate accommodation and was ineligible under paragraph 1(g) of Schedule 1 to the Housing Benefit Regulations. Such an area could not be said to be part of the dwelling occupied as the claimant's home within the definition in regulation

2(1) of the Income Support Regulations, because it was not normally occupied as part of the home. Alternatively, the claimant's accommodation may have been complete without the communal area.

(b) An amount for maintenance of the scheme gardens should be allowed only in respect of gardens in the immediate vicinity of the claimant's self-contained dwelling.

(c) The allowance of amounts for maintenance of fire equipment was not disputed.

(d) The amount for heating, lighting and cleaning of communal areas should be subject to the adequacy of accommodation point.

(e) Only the proportion of the amount for the scheme manager service should be allowed corresponding to the proportion of the manager's time spent on duties relating to the provision of adequate accommodation, rather than the general welfare or well-being of residents.

(f) The amount for replacement of fixtures and fittings in the communal lounge should be subject to the adequacy of accommodation point.

(g) The allowance of amounts for insurance of the structure of the claimant's self-contained dwelling was not disputed.

(h) The amount for administrative costs should be divided on the same basis as for the scheme manager service.

10. Miss Findlay submitted that it was clear from the terms of the appendix to R(IS) 3/91 and R(IS) 4/91, rather than the headnote, that once an amount was accepted as a service charge it was only to be excluded under paragraph 9(2)(b) of Schedule 3 to the Income Support regulations in so far as specified as ineligible in paragraph 1 of Schedule 1 to the Housing Benefit Regulations. There was no overriding test of connection with the adequacy of accommodation. She also submitted, in relation to the meaning of paragraph 1(g), that that sub-paragraph could not apply when one of the earlier sub-paragraphs specified a charge as not ineligible as well as when one specified the charge as ineligible. Otherwise, the specific exceptions to ineligibility in sub-paragraphs (a)(iv), (c) and (f) would be deprived of any practical effect. She referred in particular to sub-paragraph (f), in both its original and its substituted form. If there was an overriding condition of a connection with the provision of adequate accommodation that would mean that the specific allowance in some circumstances of charges for counselling or other support services not related to the provision of adequate accommodation could never operate. If her construction of sub-paragraph (g) were wrong that would have meant that the decision of the Divisional Court in the North Cornwall cases could not have gone the way it went. There was no suggestion in that decision that, if a charge fell within sub-paragraph (f), an additional question had to be asked about connection with the provision of adequate accommodation.

11. On the question of the scope of the accommodation which can be considered under paragraph 1(g), Miss Findlay submitted that where the right to use buildings, gardens or grounds was granted in the lease, all those areas formed part of the claimant's

accommodation. Where Schedule 1 to the Housing Benefit Regulations was used as part of the income support scheme it was proper to refer to the definition of "dwelling occupied as the home" in regulation 2(1) of the Income Support Regulations. There was nothing in that definition to suggest that gardens or buildings should be excluded because they were used communally. It was wrong to try to identify parts of gardens which were in the immediate vicinity of a claimant's self-contained dwelling or to ask whether or not areas were actually used by any individual. Since the individual had the right to use those areas, it could not be said that they were not normally occupied by the claimant any more than it could be said that an unused room or floor in a house was not normally occupied. Even if that was wrong, the right to use the communal areas could not practicably be sold separately from the claimant's self-contained dwelling and so would come within the definition of dwelling occupied as the home. It was clearly envisaged within paragraph 1 of Schedule 1 as a whole that service charges in respect of communal areas could be eligible (see sub-paragraph (a)(ii) and (iv)).

12. On the meaning of connected with the provision of adequate accommodation, Miss Findlay submitted that there were a number of indications in paragraph 1 of Schedule 1 that the personal needs of claimants could be considered as well as the physical use of the accommodation. Thus in sub-paragraphs (a)(iv) on window-cleaning and (c) on emergency alarm systems, the eligibility of a service charge depends specifically on the personal circumstances of the claimant. She accepted that a line had to be drawn between expenditure which could properly be included as a housing cost and expenditure which was part of the personal expenses of living, intended to be met through standard income support personal allowances and premiums. However, she submitted that the apparent endorsement by Sedley J in the North Cornwall cases of the distinction between services relating to the physical needs of residents and services relating to the proper enjoyment of their accommodation (stemming from the Court of Appeal's decision in R v Department of Social Security, ex parte Chiltern District Council (17 October 1991)) gave insufficient attention to the difference in the terms of the legislation considered in the two cases. In paragraph 17 of the appendix to R(IS) 3/91 and R(IS) 4/91 it was held that the provision of adequate accommodation is a question of fact for an appeal tribunal.

13. Miss Findlay submitted that the Touchstone service charge described in paragraph 5 above should be treated as follows.

(a) The whole amount for reserves for maintenance and minor repairs covering the site and common areas should be allowed, because the charge was connected with the provision of adequate accommodation to the claimant. Nor was any amount excluded by paragraph 9(2)(c) of Schedule 3 to the Income Support Regulations, because the reserves were not to cover major repairs or improvements.

(b) The whole amount for maintenance of the scheme gardens should be allowed, with no restriction in respect of

gardens in the immediate vicinity of the claimant's self-contained dwelling.

(c) The allowance of amounts for maintenance of fire equipment was agreed.

(d) The amount for heating, lighting and cleaning of communal areas should be allowed. The cleaning of communal areas was specifically made eligible by paragraph 1(a)(iv) of Schedule 1 to the Housing Benefit Regulations. Since the charge for heating and lighting was a charge for fuel, it fell not within paragraphs 1 to 3 of Schedule 1, but within paragraph 4, which makes a service charge for fuel ineligible except for charges in respect of communal areas. Therefore the charge for heating and lighting should be allowed and was not excluded by paragraph 9(2)(a) of Schedule 3 to the Income Support Regulations. Paragraph 9(2)(b) does not apply at all to service charges for fuel.

(e) The whole of the amount for the scheme manager service should be allowed. The appeal tribunal had found that the work of the scheme manager was to ensure a continued adequate provision of accommodation for the elderly and frail residents in the scheme, and that was a finding which the it was entitled to make on the evidence and the breakdown of duties in the job description.

(f) The amount for replacement of fixtures and fittings in the communal lounge should be allowed for the same reason as in (a).

(g) The allowance of amounts for insurance of the structure of the claimant's self-contained dwelling was agreed.

(h) The whole amount for administrative costs should be allowed as all of the rest of the service charge was eligible

The Commissioner's conclusions of law

14. I reject Mr Scoon's submissions where they differ from Miss Findlay's. I consider that her general approach to the construction of paragraph 9(1) and (2) of Schedule 3 to the Income Support Regulations and of paragraph 1 of Schedule 1 to the Housing Benefit Regulations is soundly based in law. I endorse her submissions and her reasoning, subject to a qualification on element (e) of the service charge as set out in the previous paragraph. That is dealt with in paragraph 9 of the decision in the appeal on Commissioner's file CIS/1460/1995. The consequences in the other appeals is dealt with in the individual decisions.

15. I have set out Mr Scoon's submissions in some detail, and in particular the way in which he applied his approach to what is or is not related to the provision of adequate accommodation to the circumstances of the cases before me. The convolutions into which he was forced in his attempt to support the view taken by the adjudication officer show, to my mind, that that view cannot be right in law. It is inconceivable that an adjudicating authority, in order to decide the proper extent of housing costs in cases like the present, should be forced to make determinations about the extent of a communal garden which can be said to be in the immediate vicinity of a claimant's dwelling, or how often a claimant makes use of a communal lounge or whether

a self-contained bungalow can be said to be complete or adequate as accommodation without the use of a communal lounge. Where an element of a service charge is not specified either as ineligible or eligible in sub-paragraphs (a) to (f) of paragraph 1 of Schedule 1 to the Housing Benefit Regulations, so that the test in sub-paragraph (g) has to be considered, a common sense view must be taken of the notion of adequate accommodation. In general, where the terms on which a claimant occupies a dwelling include the right to use premises (including gardens, grounds, walkways etc) beyond the dwelling exclusively occupied by the claimant, services related to the adequacy of those premises should be accepted as related to the provision of adequate accommodation. Paragraph 1 as a whole contemplates that charges for areas used in common may be eligible (see sub-paragraph (a)(ii) (laundry facilities), (iii) (children's play area) and (iv) (cleaning of communal areas)). That is reinforced by the existence of paragraph 7, in that a need was seen to give the phrase "communal area" a special meaning where those particular words are used. Paragraph 1(g) should not be interpreted so as to produce a result which is inconsistent with that approach.

16. I also take into account that the amount to be allowed to any particular claimant in housing costs, including service charges, is subject to the restrictions imposed by paragraph 10 of Schedule 3 to the Income Support Regulations, where the dwelling occupied as the home (which would include areas occupied in common with others) is too large or the area is too expensive or the outgoings are too large. It seems to me that that is the appropriate mechanism for control of service charges for excessively extensive or luxurious accommodation, not an artificial and unjusticiable rule derived from a misinterpretation of paragraph 1(g) of Schedule 1 to the Housing Benefit Regulations.

17. It is clear that paragraph 1(g) does draw a line between services which are related to the provision of adequate accommodation and services which are related purely to meeting the personal needs of residents. Miss Findlay is right that in considering whether a service is related to the provision of adequate accommodation, the question of suitability for the personal needs of the resident is relevant. I agree with her that what was said by Sedley J at page 19 of the transcript in the North Cornwall cases was limited to the context of counselling and support services for former psychiatric patients. I find his more general statement at pages 11 and 12 of the transcript helpful:

> "Paragraph 1 of Schedule 1 [to the Housing Benefit Regulations] draws a series of sharp lines between those charges which are and those charges which are not to be deemed to be connected with the provision of adequate accommodation. Thus there are excluded charges in respect of day-to-day living expenses such as meals, laundry, leisure, cleaning, transport, furniture and equipment, emergency alarms, medical expenses, nursing care, personal care, general counselling or other support services and any

other charges for services not connected with the provision of adequate accommodation. To these, however, exceptions are specified, making eligible such elements of service charges as relate to the provision of premises or equipment to enable the applicant to do his or her own laundry; television and radio relay charges; the cleaning of communal areas; cleaning which the claimant cannot manage; emergency alarm systems in sheltered accommodation for the elderly, sick or disabled; and general counselling and support services within the contentious exception in paragraph 1(f). From this paraphrase alone it is evident that the concept of rent, expanded as it is to include service charges, is not confined to the character of the accommodation but is designed at least in part to take account of the personal needs of the tenant."

Thus the question of connection with the provision of adequate accommodation under paragraph 1(g) should not be confined to the character of the accommodation, but should take account of the personal needs of the residents. Adopting the approach of paragraph 17 of the appendix to R(IS) 3/91 and R(IS) 4/91, the question of what is the provision of adequate accommodation, including how far the personal needs of residents should be taken into account, is a matter of fact for the adjudicating authority to determine in the circumstances of each case.

18. Having set out Miss Findlay's submissions in detail I do not need to go through the points contained in them again. The application of the principles of law to the individual circumstances of the six appeals is dealt with in the decisions on the appeals. There is one further general point, not dealt with in any of the submissions. The appeal tribunal found as a fact in all six cases that the claimants were residents of sheltered accommodation. That finding has been accepted by all concerned. The appeal tribunal also rightly said that there is no definition of sheltered accommodation in the income support legislation. It seems to me that the characteristics of the accommodation in the present cases which point conclusively to its being sheltered accommodation are that individual dwellings are grouped together; that accommodation is offered primarily to those with some special housing needs (in this case the elderly retired); that some communal accommodation or facilities are provided; that a warden is employed; and that an emergency alarm system is operated. It is certainly not the case that accommodation is only sheltered accommodation if all or even a majority of those characteristics are present. However, characteristics of that kind should be looked at in determining whether accommodation is sheltered accommodation.