

CAS

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

JM/SH/3

Commissioner's File: CIS/307/1992

SOCIAL SECURITY ACT 1986

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

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: L..

Social Security Appeal Tribunal: ---

Case No: ..

1. This is a claimant's appeal, brought by leave of the chairman of the social security appeal tribunal, against a decision of that tribunal dated 21 October 1991 which confirmed a decision issued by the adjudication officer on 15 July 1991. My own decision is as follows:

- (1) The aforesaid decision of the appeal tribunal is erroneous in point of law and is set aside.
- (2) Pursuant to section 23(7) of the Social Security Administration Act 1992, the case is referred to the appeal tribunal for determination in accordance with the principles of law set out and referred to in this decision.

2. The claimant's representative requested an oral hearing of the appeal before the Commissioner. But that request was made before the adjudication officer now concerned made his submission - undated, but received in the Office of the Social Security Commissioners on 5 June 1992. In that submission the adjudication officer now concerned supports the claimant's appeal upon grounds which -

- (a) to a significant extent echo the grounds of appeal which the claimant's representative set out in a letter dated 12 November 1991; and
- (b) with one qualification which I set out later in this

decision, I consider well founded.

In the circumstances, no useful purpose would be served by an oral hearing before the Commissioner. The claimant's representative has stressed that there is urgency about the claimant's present position - and he hoped that a hearing before the Commissioner could finally dispose of the factual as well as the legal issues arising in the appeal. But both the claimant and her representative live in the Wirral. It is manifestly more practicable that the rehearing of this matter should take place in that area; and the congestion of appeals awaiting hearing in the one week per month which is available to the Commissioner who travels to Liverpool renders it highly improbable that this case could be listed in Liverpool for any day earlier than that upon which it is likely to be heard by a fresh appeal tribunal. Formally, accordingly, I hereby refuse the request for an oral hearing before the Commissioner. Moreover, since the whole of the papers now before me will be before the fresh appeal tribunal, I do not intend to go into this matter exhaustively. In particular, I do not intend to discuss the many decisions of the Commissioner which are referred to in the papers. Those decisions are self-explanatory - and there is not, so far as I am aware, any conflict between them. I intend here to say no more than will suffice to render intelligible the guidance which I give to the fresh tribunal.

3. The issue is whether, as from 1 July 1991, the claimant possessed - or fell to be treated as possessing - capital in excess of £8,000. The basic facts are not in dispute and can be shortly stated. The claimant was born in 1946. She is divorced. From about 1971 until the end of June 1991 she was in continuous receipt of supplementary benefit followed by income support. At about the end of 1986, for a price of £11,950, she bought a house in Birkenhead to which I shall refer as "No 52". She did that with the assistance of a mortgage, the sum advanced being only £600 less than the purchase price. (I treat this aspect of the case in more detail below.) The claimant has a daughter and two sons. It appears that all three of those children moved into No 52 with the claimant. The two sons moved out in about the middle of 1990. The daughter, however, continued to live with the claimant until No 52 was sold. It is that sale which is central to this case. Although there is in the papers a copy of the completion statement in respect of that sale, I do not think that the papers reveal the precise date thereof. However, the sale must have been in or about June 1991 - for it was on 14 June 1991 that the claimant and her daughter moved house. I do not know the respective ages of the three children; but the appeal tribunal was told that, at the time of the sale of No 52, all three were in receipt of income support.

4. The completion statement shows that the sale price of No 52 was £27,000.00. Of that sum, £11,901.27 was disbursed by way of redemption of the mortgage. The solicitors' charges amounted to £117.50. That left a balance of £14,981.23. Since the claimant had been the sole beneficial owner of No 52, it might reasonably have been expected that the whole of that balance would be paid

to her. Not so, however. The completion statement shows that the balance of £14,981.23 was divided into four equal parts - each of £3,745.33 - and that the claimant and each of her children received one such part. I do not wish to appear over-cynical. It cannot, however, escape notice that -

- (a) each of the four recipients was in receipt of income support; and
- (b) the distribution of the proceeds of sale left each recipient with a sum which was not much larger than the sum specified in regulation 53(1) of the Income Support (General) Regulations 1987 as being the sum above which "tariff income" was attracted.

5. Unsurprisingly, the local adjudication officer sought an explanation of this division of the proceeds of sale. I think that the claimant gave two explanations, namely that -

- (a) the children had contributed to the mortgage repayments; and
- (b) the claimant felt a moral obligation to share the proceeds equally with her children.

It may well be, however, that what appear to be two explanations are merely two sides of the same coin. In any event, I turn now to the mortgage.

6. The mortgagees were the Anglia Building Society. It appears that a firm of estate agents acted for the claimant in the negotiations leading up to that mortgage. The papers contain a copy of a letter dated 20 October 1986 written by the estate agents to the Advances Department of the Building Society. I quote one paragraph therefrom:

"We also enclose a letter from [the claimant's] three children saying they are quite willing to help their mother with the mortgage repayments."

The enclosed letter is also dated 20 October 1986. It is extremely brief. I quote the whole of the text:

"We are willing to give our mother [there follows the claimant's name] up to £15 a week each."

All three children signed.

7. That brief letter has been relied upon by both the claimant and her representative. I must confess that I do not entirely understand that limb of the claimant's case. The claimant was, of course, at that time in receipt of supplementary benefit. The letter may have been intended to enhance the Building Society's confidence in the ability of the claimant to meet her mortgage repayments. It may or may not have served that purpose; but I cannot see that it was of any real legal effect whatever.

It was certainly not an agreement to pay any sum to the Building Society. I very much doubt whether it could be construed, even, as an agreement to pay anything to the claimant. It was a declaration of a present intention; the phrase "up to £15 a week" certainly does not mean "at least £15 a week"; and there is no express restriction whatsoever upon the use to which the claimant could put whatever sums were so paid. I myself doubt whether that letter, in fact, had any effect upon the Building Society's attitude to the transaction. The papers contain a copy of the Building Society's offer of mortgage (dated 7 November 1986). That offer makes it clear that the claimant's parents were acting as guarantors. I fancy that their guarantee was considered more substantial security than the aforesaid letter, signed as it was by three young persons who may well, even then, have been wholly reliant upon supplementary benefit. Section 4 of the offer of mortgage is entitled "Special Conditions". Typed into that section are the names of the claimant's three children and the words "Subject to conditions A, P". I do not think that condition A is considered material to this appeal. Condition P does, however, appear to be relied upon - so I set it out:

"That the Solicitors will arrange for a separate Form of Agreement and Undertaking on the Society's Standard Form being completed by each person named in SECTION 4 overleaf. Solicitors please ensure that the Form(s) of Agreement and Undertaking referred to overleaf is/are completed and returned to the Society with the Title Deeds."

It seems to be suggested that the children's letter of 20 October 1986 (cf paragraph 6 above) was in some way a compliance with Condition P. That, of course, is little short of absurd. I imagine that - in all the circumstances - the Building Society took the view that it would be merely wasting money by instructing its Solicitors to prepare the relevant agreements and undertakings.

8. Nor can there be any plausible suggestion that the children, by actually contributing to the mortgage repayments, obtained some sort of equitable interest in No 52 - for it is manifest that they never made any such contributions. The claimant herself would have received benefit to meet the interest payments on the mortgage. It is clear that nothing was repaid by way of capital; for the advance specified in the offer of mortgage was £11,350 and the completion statement shows that the sum of £11,901.27 was required to redeem the outstanding mortgage when No 52 was sold. In any event, before the appeal tribunal, the claimant's daughter said that each of the children had been paying the claimant £28 per fortnight "for their keep". The claimant herself said that the children never gave her the £15 referred to in the mortgage negotiations and that such money as her children did give her "went towards bills etc".

9. In the light of the foregoing, I myself find it hard to see what "moral obligation" (cf paragraph 5 above) lay upon the claimant to share with her children the proceeds of the sale of No 52. The children appear to have enjoyed board and lodging for

£14 a week. I cannot see how they could have obtained such terms in any other accommodation. If there were any obligations either way, they would, surely, have been owed by the children to the claimant. The claimant, as a good mother, may well have been inclined to make financial provision for her children. But, as I myself and other Commissioners have said many times, neither supplementary benefit nor income support was established in order to indulge such inclinations.

10. What I have said in paragraphs 6 to 9 above is, of course, based upon the facts as they presently appear from the papers. I am in no way to be taken as attempting to fetter the fresh tribunal. It will on those aspects of the case consider all the evidence which is presented to it, make its own findings in the light thereof and draw the appropriate conclusions.

11. As the adjudication officer now concerned submits in paragraph 8 of his submission, there must be careful investigation into the advice which the claimant states that she was given when she visited the local office of the Department of Social Security. What exactly was said? Did she specify any sums of money in respect of -

- (a) the price to be obtained for No 52; and
- (b) the respective sums to be given to her children out of the proceeds of sale?

Did she make it plain that her concern was with her entitlement to further income support? If, of course, she did make it so plain, such concern would lie ill with her contention that, "She did not know possession of capital affected her entitlement at all" (see the chairman's note of evidence on the relevant form AT3). The one qualification which I have in respect of the submission of the adjudication officer now concerned relates to the final sentence of his paragraph 8. Certainly, "the adjudication authorities are ... obliged to apply the legislation as laid down by statute". But if -

- (a) the claimant adequately explained her proposals in the local office, and
- (b) was told that the fulfilment of such proposals would in no way affect her entitlement to income support,

she would not, surely, have gone through with those proposals "for the purpose of securing entitlement to income support".

12. As I indicated in paragraph 2 above, I have made no attempt in this decision to cover all the aspects of this case. Such aspects as I have not dealt with, I confidently leave to the fresh tribunal.

13. The claimant's appeal is allowed.

(Signed) **J. Mitchell**
Commissioner

(Date) 2 November 1992