**Failure to Disclose (Constructive Knowledge)**

1. The Court of Appeal held in Sharples v Chief Adjudication Officer [reported as **R(IS)7/94**] and in Franklin v Chief Adjudication Officer [reported as **R(IS)16/96]** that a person can not be held liable for failing to disclose what he does not know .A Tribunal of Commissioners has similarly confirmed that” a person cannot be held liable for failing to disclose what he does not know. Consequently, one cannot “fail to disclose” a matter unless one knows of it. Whether a particular person “knows” of a matter is determined by a subjective test.” [**CIS/4348/2003 para 13(ii)] [upheld by Court of Appeal as B v Secretary of State for Work and Pensions (now reported as R(IS)9/06) ]**
2. The scope for finding that a claimant had constructive knowledge of a change has been considered by a number of Commissioners and it is generally acknowledged that the threshold is high before a determination of constructive knowledge can be made. Some of the most comprehensive guidance as to the circumstances, which will put a person on notice of enquiry, or the standard of enquiries a person is expected to make can be found in **CF/14643/1996**. Mr Deputy Commissioner Jacobs as he then was held at para 29:

“29. The further one moves from actual knowledge of a material fact the stronger the justification necessary to found a recoverability decision. This is not an area of law where general statements of law in Commissioners’ decisions should be isolated from the facts of the cases in which they appear. The circumstances in which a person is to be fixed with this type of knowledge should be found by progress from precedent to precedent rather than by the statement and application of a broad principle. Like the cases considered above, the case before me is on the borders of wilful blindness and means of knowledge. This is not a case in which any redrawing of the boundaries of this type of knowledge is appropriate. I conclude that, on the present state of the authorities, the law is as follows.

(a) There must be something to put a person on notice that enquiries should be made before a person is fixed with knowledge of this type.

(b) A person will be on notice that enquiries should be undertaken only where

 (i) there is a risk that there are specific facts to be discovered and (ii) the person is either aware of that risk or the facts and circumstances of the case, as known to that person, are such that the risk was plain to any sensible person.

(c) The enquiries which a person is expected to make must be clear and obvious and be capable of being easily undertaken.

(d) Within the limits set by the above propositions, it is a question of fact whether or not a person is to be fixed with this type of knowledge.”

1. The flavour of the cases considered by Commissioners that were on the border of constructive knowledge includes CF/14643/1996 cited above. That case concerned a father whose son had stopped attending school almost a year before the decision to end child benefit entitlement. A similar case was that considered by Mr Deputy Commissioner Paines QC in **CF/699/2005** on 8 July 2005 where a girl this time had stopped attending school a year before the decision to end child benefit entitlement. In **CG/160/1999** Mr Commissioner Rowland allowed an appeal from an Invalid Care Allowance claimant who had not disclosed the fact that the person receiving care was no longer entitled to middle rate DLA. The Commissioner wrote at para 15:

“15. In considering what could reasonably be expected of the claimant, the tribunal may wish to consider whether the Invalid Care Allowance Unit made any inquiries of the Disability Living Allowance Unit during the relevant period in order themselves to check on the claimant’s mother’s entitlement to disability living allowance. If the Invalid Care Allowance Unit did not make any such enquiries, that might be considered relevant to the question whether the claimant could reasonably have been expected to make enquiries of her mother, although if the tribunal conclude that the Invalid Care Allowance Unit acted unreasonably that might not assist her because fault on the part of the Department does not absolve a claimant (Duggan v. Chief Adjudication Officer, reported as an appendix to R(SB) 13/89).”

1. It is clear from the cases I have cited that even where a claimant is intimately involved in another person’s affairs, the threshold may still be too high to be reached to the extent that the claimant can be deemed to have constructive knowledge such that he can be held to have failed to disclose a change of circumstances to the relevant authority.