

JBM/SH/4

Commissioner's File: CFC/021/1989

FAMILY CREDIT (GENERAL) REGULATIONS 1987

**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:

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

1. My decision is that the decision of the Hounslow social security appeal tribunal dated 20 July 1989 is erroneous in point of law. Accordingly I set it aside. However the appeal tribunal arrived at the correct decision though for the wrong reasons. Accordingly my decision is that the monthly payments from the claimant's father should be taken into account in full as income for the purposes of the claimant's claim in respect of family credit.

2. This is an appeal by the adjudication officer to the Commissioner with the leave of the tribunal chairman against the unanimous decision of the appeal tribunal reversing the decision of the adjudication officer.

3. The Commissioner granted the claimant's request for an oral hearing. Accordingly on 29 October 1990 I held an oral hearing. The claimant was present and was represented by Mr A Bogan, the claimant's brother and a solicitor. The adjudication officer was represented by Mr F D'Souza of the Solicitor's Office of the Departments of Health and Social Security. To both of them I am indebted.

4. The facts of the case are dealt with in box 5 of the submission of the adjudication officer first concerned in these appeals and in the appeal tribunal's findings of fact on the face of their record dated 20 July 1989. In respect of those matters and of the submission dated 17 October 1989 of the adjudication officer now concerned in these appeals the claimant has had the opportunity to comment. No useful purpose would be served by my setting out these matters afresh here.

5. The relevant statutory provisions are referred to in

paragraph 5 of the submission dated 17 October 1989 of the adjudication officer now involved in these appeals. Nothing is to be gained by my setting out those references afresh here.

6. In his helpful submission to me Mr D'Souza made an open submission on the basis of the decision of Barclays Bank v. Quistclose Investments [1970] A.C. 567. His submission was that it could be argued on the claimant's behalf that from the moment the money is handed to her every month by her father it is impressed with the resulting trust that she should use it for the purpose of paying to the building society the amount due as part of her obligation to the building society and for no other purpose. The money is impressed with the resulting trust and the fact that she does carry out the lender's intention has no effect on the resulting trust which continues up to the moment of payment to the building society. On that submission the appeal tribunal's decision was correct though they arrived at it for the wrong reasons. Mr D'Souza addressed me on the written submission of 17 October 1989.

7. Mr Bogan in his able address to me at the oral hearing adopted the argument put forward by Mr D'Souza outlined immediately above this paragraph. He also put forward an agency argument based on the claimant being her father's agent. It is with no disrespect to the two advocates who appeared before me that I do not set out their submissions made to me at the hearing in full here.

8. In my judgment the decision of the appeal tribunal is erroneous in point of law in that although they arrived at the correct decision they arrived at that decision for the wrong reasons. In accordance with the decision of Barclay's Bank v. Quistclose Investments [1970] A.C. 567 on the facts before them it is clear that from the moment the money was handed to the claimant each month by her father it was impressed with the resulting trust that she should use it for the purposes of payment to the building society as part of her obligation to the building society and for no other purpose. Since that loan is impressed with the resulting trust then the fact that she does carry out the lender's intention has no effect on the resulting trust which continued up to the moment of payment to the building society. I find it unnecessary to pursue further the agency argument put forward by Mr Bogan at the oral hearing or the arguments based on the decisions referred to at paragraphs 7 to 12 inclusive of the submission dated 17 October 1989 of the adjudication officer now concerned in these appeals. The presumption of advancement and resulting trust are complex matters and the appeal tribunal considered the issues before them in detail and with care. I think that Mr D'Souza's open submission (adopted by the claimant's representative) based on the loan being impressed with the resulting trust and deriving authority from the Quistclose case is the correct solution.

9. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. Mr D'Souza's submission was that I should make the decision the appeal tribunal should have

made - giving the correct reasons therefore - and that I should not remit the case to yet a further appeal tribunal. Though the adjudication officer succeeds in his appeal on the basis that the appeal tribunal erred in law in giving reasons for their decision the adjudication officer does not succeed on the substantive issue.

10. Accordingly the adjudication officer's appeal is allowed in that the appeal tribunal erred in point of law in reaching their conclusion.

(Signed) J.B. Morcom
Commissioner

(Date) 6 December 1990

FAMILY CREDIT (GENERAL) REGULATIONS 1987

THE SOCIAL SECURITY COMMISSIONERS PROCEDURE REGULATIONS 1987
REGULATIONS 24(1)

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER - CORRECTION

Name:

Social Security Appeal Tribunal:

Case No:

Page 1 Paragraph 1 Line 3 Delete all from "Accordingly" to end
of paragraph. Insert: "My decision is that the £150 per month
paid by the claimant's father was not income and should be
ignored for the purpose of calculating any family credit
payment."

(Signed) J.B. Morcom
Commissioner

(Date) 26 February 1991

Commissioner's File: CFC/021/1989