1. This appeal, brought with leave of a district chairman, succeeds. The decision of the tribunal on 4 8 03 was erroneous in law, as explained below, and I set it aside. At the invitation of the Secretary of State's officer, concurred in albeit unhappily by the representative, I substitute my own decision for the period 7 6 02 to 3 8 03, which is that the claimant continued to be entitled to lowest rate care component for that period. This may be academic, given that the claimant was presumably paid her lowest rate award until the tribunal removed it on 4 8 03, and that from that date a fresh claim ultimately re-awarded it. But it is important to have entitlement correctly dealt with.

2. The tribunal's error in removing the lowest rate care entitlement was to look only at the claimant's objection based on heat, whereas she had given other reasons at other times, such as bending down, dizziness and nausea. Admittedly heat was what she complained of to Dr Ogilvie, so that her marking of "cannot safely use a cooker" may have been prompted by this. But reliance purely on this did not go wide enough. I am aware of CDLA/20/94, but prefer not to comment without full argument.

3. The representative wishes me to criticise the chairman in this case for his dealings with the record of proceedings, and to "make a comment" on the whole issue of chairmen taking the only official record of proceedings.

4. As to the former, I do not know what facilities there are at the Stevenage venue for printing out or photocopying a record of proceedings, but it is certainly to be recommended that if one is taken on a computer, the chairman should send in a copy promptly if it cannot be printed out and given to the clerk on the spot. But the allegation that this chairman or any other would deliberately tamper with the record before printing it out is one of gross judicial misconduct, which should not be made without some evidence that this is what has happened. Here there was none (and indeed the representative did not suggest there was). The representative is obviously, and understandably, angry at the delay which occurred in this case, but that is not enough of itself to support such an allegation.

5. Who makes the record is prescribed by legislation. Regulation 55(1) of the Decisions and Appeals Regulations requires the record of proceedings ("sufficient to indicate the evidence taken") to be made by the chairman (or single panel member), and preserved by the clerk (in practice this will be an "indoor" clerk, to whom the outdoor clerk will give it). This can be a demanding task for a chairman sitting alone (not the case here), who must formulate and ask questions, and observe the responses, as well as keeping the record. But the representative does not suggest who else might be required to keep it. It is not for me to comment on legislation, and no comment I might

make would likely be the slightest use in influencing further legislation nor, I suspect, in requiring all tribunal hearings to be tape-recorded.

6. Where there is representation, there is nothing to stop the representative keeping his or her own record, which in the event of dispute could be put before the chairman or commissioner. When faced with the chairman's written record against what are only recollections, we often prefer the former, but this is by no means axiomatic, and every case will be considered on its merits. Having two records to compare could make our task easier. But again there is nothing in the present case which leads me to suppose that anything turned on what happened during the hearing, and the record I have seen has not been criticised, except for the delay in producing it.

7. I am very sorry to hear of the claimant's becoming entitled to a special rules award.

(signed on original) Christine Fellner
Commissioner

30 April 2004