

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by a claimant landlord ("the claimant"), with the leave of a legally qualified panel member, against a decision of an appeal tribunal sitting at Hartlepool on 18th December 2002 ("the appeal tribunal"). For the reasons which I give, that decision is erroneous in point of law. However, the tribunal reached the only conclusion open to it. I therefore give a decision to the same effect. Namely, that the claimant's appeal against the decision referred to in paragraph 3 below is dismissed.

2. The respondent is the Hartlepool Borough Council ("the Council").

3. The claimant appeals against a decision of the Council, given on 4th September 2001, that a recoverable overpayment of housing benefit had occurred for the period from 13th August 2001 to 19th August 2001, and that the overpayment was recoverable from the claimant to whom it had been paid directly. The sum involved is £60.

4. This appeal was heard by the appeal tribunal on 18th December 2002, together with another appeal by the claimant against another decision of the Council that he had been overpaid housing benefit. Although the two appeals related to different decisions and, indeed, different properties and tenants, they raised substantially the same legal issues – which is why they were heard together. The claimant was given permission to appeal both decisions to a Commissioner. His appeals have proceeded together and came before me. I have given a decision in the other appeal. I shall refer to it as decision CH/2741/2003. Although there is a difference in the facts, the two appeals raise the same points of law. That being so, I propose, where appropriate, to simply refer to what I said in decision CH/2741/2003, rather than setting matters out in full in this decision.

5. The claimant is the landlord of a number of properties in the Hartlepool area. This appeal relates to a property which it is convenient to call "No 31". That property was let to a Mr H. The rent was £65 per week. Mr H obtained housing benefit of £60 per week and this sum was paid direct to the claimant. It appears that, in

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August 2001, Mr H simply left No 31 without telling anyone – and in particular the claimant and the Council – and moved elsewhere. That he did so is common ground. See the claimant's letter, undated but received on 28 September 2001, stating that Mr H had abandoned No 31 without notice. There is a factual issue between the claimant and the Council as to when Mr H left. The Council took the view that Mr H left No 31 on 9th August 2001. The claimant says that he saw Mr H at No 31 on Tuesday 28th August 2001, and received no indication from him that he was going to move out. See the letter already referred to. The claimant also produced a letter from a friend of Mr H to the effect that he was still living at No 31 on 30 August 2001.

6. The significance of that factual dispute is this. The Council brought Mr H's award to a speedy end because, if he had moved out on 9th August 2001, he ceased to be entitled to benefit. Although the Council acted promptly, the claimant was left holding £60, which had been paid directly to him by the Council and which related to the week of 13th to 19th August 2001. The Council sought to recover that amount from him by means of the decision of 4th September 2001. The claimant appealed that decision but his appeal was dismissed by the appeal tribunal. Permission to appeal to a Commissioner was given by a legally qualified panel member.

7. In relation to the law, the appeal tribunal considered itself bound by the decision of Mr Commissioner Jacobs in CH/4943/2001. However, that decision was overruled on appeal by the Court of Appeal. See *Secretary of State for Work and Pensions –v- Chiltern District Council and Warden Housing Association 2003 [EWCA] Civ 508*. That, in turn, led to the setting up of a Tribunal of Commissioners. These matters are set out in my decision CH/2741/2003, and I do not repeat them here. The practical effect of the authorities is that it is not generally open to a landlord to challenge a decision to seek recovery of overpaid housing benefit paid directly to him rather than to proceed against the tenant. Of course, he may challenge factual matters such as the amount outstanding and the relevant period. He cannot, however, challenge the decision to proceed against him rather than the tenant, save on grounds that would be available to him if he sought judicial review.

8. The claimant's original grounds of appeal were in practice, first, that the appeal tribunal had been wrong to consider itself bound by CH/4943/2001 and, secondly, that it had not properly considered the evidence. As to the first ground, the claimant is correct. The tribunal did thereby err and I therefore allow the appeal. However, that does not avail the claimant because the Tribunal of Commissioners has held that it is not open to him to challenge the Council's decision to proceed against him unless he can show that it has exercised its powers improperly or unlawfully. I am not satisfied that this has been shown in the present case.

9. So far as the factual issue of when Mr H left No 31 is concerned, the tribunal did consider the evidence and decided to resolve the conflict of evidence in favour of the Council. See paragraph 3 of the statement of reasons. The resolution of conflicts of evidence is a matter for the tribunal and a Commissioner will not normally interfere. The reasoning in paragraph 3 is rather short. Had the amount involved been substantial I might have been tempted to remit the matter for rehearing. However, the amount at stake is not great. In the circumstances, I think that was said in the statement is sufficient.

10. Following the decision of the Tribunal of Commissioners, the claimant was given the opportunity to make further submissions. He has responded with an excellently presented chronology following by submissions. Those submissions raise a number of points. First, it is submitted that it has not been proven exactly when Mr H moved out. I put it that way because this is really the only factual issue in the case. However, as indicated above, this is a matter on which the appeal tribunal has reached a conclusion. I see no reason to disturb its findings. The fact that Mr H did not notify the claimant that he was moving out does not affect the matter. Nor does the fact that he left owing the claimant rent. I have sympathy for a landlord with such a situation but the position is clear. Housing benefit is not payable from the time that the tenant moves out. Further since the claimant received benefit for the period from 13th to 19th August 2001, the money is recoverable from him see section 75(3)(a) of the Social Security Administration Act 1992. The claimant also refers to regulation 101(1)(a) of the Housing Benefit (General) Regulations 1987 (SI 1987/1971). However, regard must be had to the whole of regulation 101(1). That regulation was as follows. (It has been amended with effect from 3rd October 2001).

"(1) Subject to paragraph 2 [which is not relevant for present purposes] a recoverable overpayment shall be recoverable from either –

