DECISION OF THE SOCIAL SECURITY COMMISSIONER

CJSA 1134 2003

My decision

1. My decision is that the decision of the Stratford appeal tribunal (the tribunal) of 5 September 2002 is erroneous in point of law, and I set it aside. Exercising my power under s.14(8)(a)(i) of the Social Security Act 1998, I am able, without making fresh or further findings of fact, to give the decision which the tribunal should have given. My decision is that the claimant was not entitled to an income-based jobseeker's allowance from 20 September 1999 because he was in receipt of a student loan which is treated as income. As a consequence his income exceeded his applicable amount.

The context

2. The main issue raised in this appeal is the proper categorisation of a student loan paid to a part-time student in connection with the determination of his resources for the purposes of entitlement to an income-based jobseeker's allowance.
3. This is a Secretary of State's appeal which comes before me by leave of a tribunal chairman.
4. There was an oral hearing in this case. The Secretary of State was represented by Miss Bergmann of the Office of the Solicitor to the Department for Work and Pensions, and the claimant was represented by Mr Beckley of Tower Hamlets Law Centre. I am grateful to them both for their submissions and for their contribution to the discussion of the issues raised in this appeal.

The common ground

5. The parties accepted the material set out in paragraphs 6 to 18 as common ground.
6. The claimant, who was born on 10 April 1949, started a part-time Bachelor of Laws degree at the University of East London in September 1996. He graduated in January 2001.
7. Until February 1999 he supported himself without recourse to social security benefits though he did claim and receive housing benefit.
8. The claimant was awarded an income-based jobseeker's allowance on 7 February 1999.
9. Some time before the start of the academic session 1999-2000, the claimant decided to increase his student load for that academic session to the equivalent of a full-time load.
10. The claimant applied for and was awarded a student loan. A letter from the Student Loan Company dated 15 September 1999 advised that this was a student loan under the Teaching and Higher Education Act 1998 and Regulations made under it. The amount of the student loan was stated to be £4,900.00. The payment schedule attached to the letter indicated that the initial instalment would be paid by cheque for £1,617.00 on 20 September 1999, the second instalment of £1,617.00 would be paid by BACS transfer into the claimant's account on 10 January 2000, and the third instalment of £1,666 was also to be paid by BACS transfer into the claimant's account on 2 May 2000. These sums were paid on the due dates.
11. On 7 October 1999 the adjudication officer reviewed and revised the claimant's entitlement to a jobseeker's allowance and terminated the claimant's entitlement to the benefit on the grounds that he was a full-time student.

12. The claimant subsequently made a fresh claim for an income-based jobseeker's allowance, but the Secretary of State on 15 December 1999 decided that he was not entitled to the benefit because he was a full-time student.

13. The claimant appealed to the tribunal against both decisions.

14. On 5 April 2000 the Student Loan Company wrote to the claimant and referred to his 'recently authorised hardship loan' which is recorded as being in the sum of £500.00. This sum was paid to the claimant.

15. On 19 March 2001 a tribunal heard the claimant's appeals in respect of the decisions of 7 October 1999 and 15 December 1999 together and decided in respect of both appeals that the claimant was not a full-time student. There is no full statement of reasons for the tribunal's decisions but the summary reasons set out on the Decision Notice indicate that the tribunal relied on *O'Connor* v *Chief Adjudication Officer and another,* reported as *R(IS) 7/99, C5/98(JSA)* and *CIS/12823/1996* (now reported as *R(IS) 1/00*) in concluding that the claimant's 'course was categorised as part-time at its outset and so remained'. The Secretary of State concedes that this was a correct determination, and no question of the claimant's categorisation as a part-time student under the Jobseeker's Allowance Regulations is raised in this appeal.

16. On 5 November 2001 the Secretary of State decided that the claimant was not entitled to an income-based jobseeker's allowance because his student loan was to be taken into account as income during term time. A jobseeker's allowance was awarded from 18 December 1999 to 9 January 2000, and from 15 April 2000 to 1 May 2000 (the Christmas and Easter vacations), but refused for other periods.

17. On 5 December 2001 the claimant appealed against this decision on the grounds that the Secretary of State had acted *ultra vires* in treating the student loan as income.

18. The appeal came before the tribunal on 5 September 2002. The tribunal allowed the appeal and determined that the student loan was not income to be taken into account in determining the claimant's entitlement to an income-based jobseeker's allowance. A statement of reasons for the decision was subsequently provided.

The tribunal's reasons

19. The summary statement of reasons on the Decision Notice reads,

> A student loan is not income in any sense save that Chapter IX of the JSA Regs defines it as such for full-time students. [The claimant] is a part-time student.
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> In this case the Tribunal is asked to regard the student loan which is repayable with interest as income under Reg. 93 and others. It is a liability taken out because JSA was not paid when it was due. It is not income but a liability similar to a Barclaycard facility. The Appeal succeeds. The loan shall not be taken into account in calculation of JSA.

20. The heart of the tribunal's reasoning in its full statement of reasons is as follows:

> 13. This is therefore a wholly unusual if not unique set of circumstances. In order to determine the correct way forward, one has to resort to basic principles and analysis.
>
> 14. A student loan ... is not in the ordinary sense of the word income. It can only become income if the regulations make it so. Otherwise, it is no more income than is a bank loan or expenditure on a credit card. It is merely a form of borrowing that has to be repaid and therefore, does not have any true value to the recipient. It may enable the recipient to acquire goods or services that he or she would not otherwise be able to afford but it has to be repaid. Neither the ordinary use of English nor the regulations make borrowings into income albeit the ability to borrow is relevant in certain emergency situations. As a general rule, borrowings are not income.

> 15. In the absence of a specific provision stating that the borrowings in this matter are income, the Tribunal is unable to go against common sense and the ordinary use of English and hold that such borrowing is income.
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> 16. In these very specific circumstances, [the claimant's] borrowings are not made income by the regulations. This is not a case where it is appropriate to deal with matters by analogy or comparison. The Students Regulations are very specifically drawn for particular and targeted purposes. It would in the Tribunal's judgement be wrong to extend the scope of what is a restricted regulation beyond the language of that regulation, if the regulations are intended to apply to circumstances such as [the claimant's] then they would say so.
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> 17. In the absence of such language, [the claimant's] borrowings are not income and he is therefore entitled to have his application for jobseeker's allowance determined and any entitlement of jobseeker's allowance calculated without reference to the student loan.

Is the tribunal's decision erroneous in law?

21. The Secretary of State has appealed against the tribunal's decision on the grounds that the tribunal erred in concluding that resources in the form of loans are not income unless the regulations specifically provide that they are to be so treated.

22. The claimant's representative accepts that the tribunal erred in law in stating that a loan can only become income if the regulations make it so, noting that such a statement runs contrary to the authorities cited by the Secretary of State in his grounds of appeal.

23. I agree and for this reason I set aside the decision of the tribunal.

The Secretary of State's submission

24. Income-based jobseeker's allowance is a means-tested benefit. Though Regulation 136 (which provides that for those students categorised by the regulations as full-time students a student loan must be treated as income) only applies to full-time students, it does provide some assistance in deciding how to categorise resources in the form of a student loan for someone who is not a full-time student.

25. The authorities clearly establish that where resources in the form of loans are in issue, the correct approach is to analyse the nature and purpose of the payments in order to determine whether such resources are in the nature of income or capital.

26. *R(SB) 14/81, R(SB) 7/88, R(IS) 8/92* and *R(IS) 16/95* were cited in support of this proposition together with the decisions of the Court of Appeal in *Leeves* v *Chief Adjudication Officer,* reported as *R(IS) 5/99,* and *Morrell* v *Secretary of State for Work and Pensions,* [2003] EWCA Civ 526.

27. The purpose of a student loan is to provide support for a student's living expenses for a period and so it should be categorised as income. Since the loan is not earnings, it will be considered by applying the provisions in the regulations relating to 'other income'.

The claimant's submission

28. The claimant's representative argued that a student loan is neither income nor capital. The authorities do not go so far as to say that resources must always be treated as income or capital.

29. Regulation 136 of the Jobseeker's Allowance Regulations can have no application to the claimant because he was not a full-time student.

30. An essential feature of the Jobseeker's Allowance Regulations is to treat those who are full-time students entirely separately from those who are not full-time students. The former are in virtually all circumstances outside the protection of social security benefits because they are expected to support themselves either from their own resources or through the use of student loans. By contrast, part-time students have access to social

security benefits. This, it was argued, suggests that the student loan received by the claimant should not be taken into account as income.

31. The claimant's representative raised a secondary argument to the effect that the Secretary of State is estopped in the circumstances of this case from treating the student loan as income. I address this argument later on in a separate section of my decision.

The proper categorisation of the student loan in the claimant's circumstances

32. There is no express provision in the Jobseeker's Allowance Regulations[1] relating to the treatment of a student loan payable to a student who is not a full-time student. In the rest of this decision I refer to such a student (and indeed to the claimant) as a part-time student since Regulation 1(3) defines a part-time student as a person who is attending or undertaking a course of study and who is not a full-time student. Chapter IX of Part VIII of the Jobseeker's Allowance Regulations applies only to full-time students.

33. I do not regard Chapter IX as providing much assistance since it sets out a specific regime for full-time students including, for example, the provision in Regulation 136(3) which treats a person as possessing a student loan in circumstances where no application for a loan has been made but where a person could acquire such a loan by taking reasonable steps to do so.

34. I think the parties accepted that if a student loan paid to a part-time student counts as income it will have to be treated as 'other income'. That must be right, but the first question is to establish whether the student loan in the circumstances of this case constitutes income.

35. In my view (at least in relation to means-tested benefits), resources are either capital or income. Determining whether a resource is income or capital is easy in some cases, but surprisingly complex in other cases. Neither the Income Support General Regulations nor the Jobseeker's Allowance Regulations offer any *general* definition of income and capital. But there is a clear line of case law in the context of means-tested benefits which provides considerable assistance.

36. *R(SB) 14/81* concerned an unsecured loan from the claimant's father-in-law made to enable the claimant to rebuild and improve the bungalow in which he lived. The Commissioner concluded that this was a capital resource and did not fall within the disregard in the regulations because it was not secured on the property.

37. *R(SB) 20/83* concerned a student who had been made a repayable loan by his local education authority. The Commissioner concluded that this was income to the student, though the reasoning was that the proper construction of the supplementary benefit regulations compelled this.

38. *R(SB) 23/84* reports a decision of a Tribunal of Commissioners, which concerned the treatment of back pay made on the termination of employment. In the course of his dissenting opinion, Commissioner Rice said,

> Supplementary benefit is the benefit of last resort. Its purpose is to safeguard everyone from falling below a standard of living accepted by society at large as being the minimum subsistence level, and it is paid out of public funds without any contribution on the part of the beneficiaries. Not surprisingly, safeguards have been built into the system, so as to ensure that a claimant does not need to have resort to supplementary benefit if he already has adequate income or capital resources of his own. Accordingly, if on ceasing to be in full-time employment a claimant receives back pay, albeit such back-pay indisputably

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[1] All references to the Jobseeker's Allowance Regulations are to those regulations as in force at the material time in relation to this appeal, namely, the last quarter of 1999. Subsequent amendments have made significant changes to the regulations insofar as they apply to students.

> relates to work which he has done in the past pursuant to his contract of service, nevertheless for the purposes of supplementary benefit it will be treated as an income resource available to him for a period in the future. The philosophy behind the legislation is that, if a claimant has resources (regardless of the period during which they were earned), which he can for a period in the future employ to meet his living expenses, he will to this extent be independent of any need for supplementary benefit. Public funds are not to be distributed where they are not properly required. (para. 30).

The Tribunal of Commissioners' decision was appealed to the Court of Appeal under the name *Chief Supplementary Benefit Officer* v *Cunningham,* which upheld the Commissioner's dissenting opinion on this point.

39. *R(SB) 7/88* concerned payments made by a local authority to fund a person resident in a private nursing home. The question arose as to whether loans could constitute income under the supplementary benefit scheme. The Commissioner said,

> It follows that if a third party is prepared to lend money to a claimant, so that he is able to satisfy a particular need, the supplementary benefit fund is relieved of any obligation to render financial support in respect of that need. Accordingly, a loan constitutes income as much as earnings. As was said in paragraph 9(8) of decision R(SB) 20/83:—
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> > "... I am unable to accept the claimant's contentions as to a loan not being capable of constituting 'income' in the relevant contexts."
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> Moreover the same approach was adopted in *R* v *West Dorset District Council, ex parte Poupard* [1987] 19 H.L.R. 254, on appeal *The Times* newspaper 5 January 1988. (para. 9)

40. *R(IS) 8/92* concerned a fixed term loan of £50,000 paid to a company director in a family company who has resigned. The loan money was freely available to the claimant. The Commissioner concluded that it constituted a capital resource for income support purposes.

41. *R(IS) 16/95* is directly in point. The appeal concerned the treatment of a loan made by the Norwegian Government to support a student's higher education studies in the United Kingdom. The question was whether the loan constituted income other than earnings. The Commissioner, citing *R(SB) 7/88,* concluded that it did. A further question related to the discretionary nature of the loans; the Commissioner says,

> If a generous person decides to lend an impecunious relative a sum of money on some regular basis, twice a year, four times a year, monthly or weekly or whatever it might be, this would, in my judgment, constitute income in the hands of the recipient for the purposes of income support and it would be wholly immaterial that the indulgent relative could at his entire discretion terminate the arrangement whenever he wished. So long as the arrangement continued the recipient was in receipt of "income". (para. 12)

42. In the same decision the Commissioner comments on Regulation 66A of in the Income Support General Regulations,[2] which provides that a student loan shall be treated as income. The Commissioner notes that the provision was included 'simply for the removal of doubt' (para. 13). He expressly rejects the argument that the insertion of the provision suggests that, in the absence of the provision, loans should not be treated as income.

43. *Leeves* v *Chief Adjudication Officer,* reported as *R(IS) 5/99,* is a decision of the Court of Appeal concerning the treatment of a student grant which became repayable when the student abandoned his course. The Court of Appeal decided that monies that a claimant was under an *immediate* obligation to repay did not constitute income for the purposes of either the Social Security Contributions and Benefits Act 1992 or the Income Support General Regulations. However, at the material time, there was no immediate liability to repay and the resources constituted income under the Income Support General

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[2] Which corresponds to reg. 136 of the Jobseeker's Allowance Regulations.

Regulations. A *potential* obligation to repay as existed following abandonment of the course could give rise to no immediate liability.

44. *Morrell* v *Secretary of State for Work and Pensions,* [2003] EWCA Civ 526[3] is the decision of the Court of Appeal upholding the decision of the Commissioner in *CIS/5140/2001.* The claimant was receiving regular sums of money from her mother by way of loans which she used to cover some of her living expenses. The question arose as to whether these loans constituted income for the purpose of income support. Richards J said,

> In my judgment the issue in the present case can and should be decided by applying the guidance in *Leeves.* "Income" should be given its ordinary and natural meaning. The 1992 Act and the 1987 [Income Support] Regulations do not define it and there is no need to embark upon the elusive quest for a definition. There is nothing in the statutory scheme, including the various deeming provisions whereby certain capital is to be treated as income and *vice versa,* to compel any departure from the ordinary and natural meaning, though the statutory context, with its focus on weekly amounts available to meet outgoings, may help to inform the answer in a doubtful case. (para. 31).

45. Richards J rejects the argument that loans are, as a general rule, capital rather than income (para. 32).

46. At paragraph 34, Richards J says,

> Income support is a means-tested benefit designed to meet a person's essential needs on a weekly basis. These moneys were provided to the appellant, and were used by her, for the specific purpose of meeting her recurrent needs throughout the relevant period. It would be contrary to the purpose of the legislative scheme if such payments fell to be excluded from the calculation of income when determining entitlement to benefit.

47. In a concurring judgment, Thorpe LJ says,

> Whilst I accept that in the ordinary case sums borrowed will be classified as capital receipts, and perhaps invariably in the case of commercial loans, in the case of a family arrangement the classification of the sum or sums received will usually require closer scrutiny of the surrounding facts and circumstances. .... Regular recurring payments designed to meet outgoings might serve as one definition of income. (para. 57).

48. This impressive line of authority leads me to conclude that the correct approach to the categorisation of the student loan paid to the claimant as a part-time student is to consider carefully the purpose of the loans in the context of a means-tested benefit, in this case, an income-based jobseeker's allowance. The regulations relating to entitlement to an income-based jobseeker's allowance follow closely those relating to entitlement to income support. Hence I can draw support for my conclusions from the authorities relating to income support, and to some extent those relating to supplementary benefit as the means-tested benefit which was succeeded by income support.

49. I am satisfied that the principal purpose of the student loan was to enable the claimant to meet his living expenses during the academic session 1999-2000. Indeed I note that the heading to Part V of the Education (Student Support) Regulations 1999,[4] under which the student loan to the claimant was presumably made, reads 'Loans for living costs'.

50. The student loan was payable in three instalments at the start of each of three terms in the academic session 1999-2000.

51. The question arises in the context of eligibility for a means-tested benefit. I note what Richards J said in *Morrell* which is quoted in paragraph 46 of this decision.

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[3] To be reported as *R(IS) 6/03.*

[4] SI 1999 No. 496, as amended by SI 1999 No. 2266

52. Repayment of student loans made under the Teaching and Higher Education Act 1998 is income contingent and never arises prior to the April following the end of the academic year in respect of which the loan is made.[5] A student will normally start making repayments in the April after they have graduated provided that their gross income exceeds £833.33 in any month (£192.00 per week or £10,000 per year). For borrowers within the PAYE tax system, repayments are deducted from salary. For those who are self-employed or have significant unearned income, repayments are collected through the Self Assessment tax return mechanisms.

53. For these reasons, I conclude that the student loan paid to the claimant constituted income for the purposes of eligibility for an income-based jobseeker's allowance. It is 'other income' for the purposes of the regulations and so falls to be treated under Regulation 103.

54. I did seek observations from both parties as to the calculation of the claimant's income if the student loan were to be treated as income. Unfortunately neither party had considered this matter in detail prior to the oral hearing.

55. The student loan was, in my view, payable in respect of a period namely the academic session 1999-2000. This ran from 20 September 1999 to 30 June 2000. That is 41 weeks. The initial student loan was for £4,900,[6] which produces weekly income of £119.51, which is far in excess of the applicable amount of £51.40 (and of £52.20 following the uprating of benefits in April 2000) in the claimant's case. It follows that he ceased to be entitled to an income-based jobseeker's allowance from 20 September 1999.

56. I note that, if the claimant was a full-time student, Regulation 136 would require me to exclude from the calculation of income £10.00 per week, and to disregard £250 of the loan in respect of travel costs, and £303 of the loan in respect of books and equipment. At the material time, there was no provision for excluding any element of the loan constituting a hardship loan.[7] However, Regulation 136 does not apply to the claimant. He cannot therefore take the benefit of the more generous treatment that would arise if he were to be a full-time student to whom Chapter IX applied. The claimant's case falls to be treated without the application of the special rules contained in Chapter IX.

57. None of the disregards referred to in Regulation 103(2) and Schedule 7 applies to the claimant. In particular paragraph 13 of Schedule 7 does not apply because we are not concerned here with grant income but with a student loan.

58. I did wonder whether it would be appropriate to determine that the sum of £303 from the student loan the claimant received should be treated as capital, but this would not assist him since the weekly amount of his income would still remain far in excess of his applicable amount.

Was the claimant properly paid a student loan?

59. The differences in the treatment of the student loan for a full-time and a part-time student troubled me. I was also puzzled as to how the claimant came to be paid a student loan

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5 See, for example, reg. 27(2) of the Education (Student Support) Regulations 1999.

6 A hardship loan of £500 was awarded in or around March 2000 in addition to this sum. However, the disentitlement in this case arose in the autumn of 1999 well before the hardship loan was made. I have accordingly not taken the hardship loan into account in making my decision on the amount of the claimant's income.

7 I note, however, that by an amendment made by the Social Security Amendment (Students and Income-related Benefits) Regulations 2000, SI 2000 No 1922 and taking effect from 28 August 2000, the amount of any hardship loan is excluded.

under the Teaching and Higher Education Act 1998 and the regulations made under it, since these so-called 'new style' loans are only paid for those starting their higher education courses on or after 1 September 1998. The claimant started his course in September 1996.

60. I invited submissions from the parties on this issue. The Secretary of State's representative indicated that she was without instructions on this point. The claimant's representative hinted that the student loan may have been paid in error. Neither party felt able to express a view on whether this would affect the treatment of the student loan in considering the claimant's entitlement to a jobseeker's allowance.

61. I have considered whether I should make directions seeking further submissions on this point, but have concluded that this is not necessary. I make no findings of fact in relation to whether the student loan was properly made, though I think it may well not have been. The issue had not been raised by the claimant's representative, and was not pursued by him in the hearing. What is not in any doubt is that he received the money by way of a student loan.

62. Regulation 25(3) of the Education (Student Support) Regulations 1999 provides,

> Any overpayment of a loan for living costs under Part V in respect of any academic year may be recovered if in the opinion of the Secretary of State—
>
> (a) the overpayment is the result of a failure of the student to provide promptly information which might affect his eligibility for a loan or the amount of loan for which he is eligible, or
>
> (b) any information which he has provided is inaccurate in a material particular
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> but otherwise it shall be treated as a loan properly made under Part V which shall be repayable in accordance with the Act and Regulations made under it.

63. Regulation 25(5) of the same regulations provides,

> Where an overpayment of loan for living costs is recoverable in accordance with paragraph (3) it shall be recovered in such one or more of the following ways as the Secretary of State considers appropriate in all the circumstances:
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> (a) by subtracting the overpayment from the amount of loan for which the student is eligible in respect of any other academic year;
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> (b) by subtracting the overpayment from any grant for which the student is eligible in respect of the academic year in question, or if necessary from any grant for which he is eligible in respect of any other academic year;
>
> (c) by taking such other action for the recovery of a payment made without statutory authority as is available to him.

64. The claimant indicated at the hearing that no question had arisen up to then as to whether the student loan had been properly made. Having regard to the above provisions, I conclude that the student loan is treated as a loan properly made unless the Secretary of State takes action under Regulation 25 to determine that there has been an overpayment. Even then, it is not clear that an immediate obligation to repay arises. If the student loan has, in fact, been made to the claimant without statutory authority, this might well explain why the application of the Jobseeker's Allowance Regulations to the claimant's circumstances produces such different results from those which would apply in the case of a full-time student. However, in the circumstances before me, I feel compelled by the regulations to treat his income in the manner set out above.

Was the Secretary of State estopped from treating the student loan as income?

65. The claimant's representative argued in the alternative that the Secretary of State was estopped from treating the student loan as income. If I have understood the argument correctly, it goes something like this. The claimant told staff at the Job Centre that he was

increasing his student load and was advised that this would make him a full-time student who was not therefore entitled to a jobseeker's allowance. This constituted encouragement to take out a student loan. This was a detriment to the claimant who incurred the liability to repay. The written submission then says,

> To pay jobseekers allowance to a person in receipt of a loan may be seen as an infringement of the Secretary of State's right not to pay jobseekers allowance to such a person. Since [the claimant] acted to his detriment he submits that the Secretary of State is estopped from complaining about the infringement of that right, namely by treating the loan as income.

I have trouble following the logic of this part of the argument. The submissions of the claimant's representative at the oral hearing have not assisted me in this regard.

66. The Secretary of State's representative noted that the burden of proof where estoppel is pleaded is on the person seeking to rely upon the estoppel. She further argued that there was, in fact, no reliance by the claimant on what might have been said at the Job Centre. It could not be said that there was any encouragement to apply for the student loan. The claimant applied for a student loan but also made a fresh application for a jobseeker's allowance after he knew he had been made a student loan. Furthermore there can be no estoppel against the Crown. A number of authorities were cited to support this position.

67. This issue was not before the tribunal, and there are no findings of fact on questions relevant to this issue. However, I am able to dispose of the argument without the need for further findings of fact.

68. The authority of the Court of Appeal in *Davies* v *Social Security Commissioner,* reported as *R(SB) 4/91,* is sufficient to dispose of the claimant's argument. Woolf LJ (as he then was) said,

> ... even if the estoppel would be otherwise available the Department, in making payments to [Mr Davies], are performing their statutory functions as a Department of the Crown. It is well established that in ordinary circumstances there cannot be estoppel against the Crown in relation to a matter of this sort, and so I am afraid Mr Davies cannot rely on that matter as a basis for appealing. There is also the difficulty that, although the matter can be dressed up in a different way, what Mr Davies is contending is that the estoppel would give him a claim against the Department for benefit to which he would not otherwise be entitled. As is always said in these matters, estoppel can act as a shield but it cannot act as a sword, and in effect Mr Davies would be relying on the estoppel as a sword in order to get money from the Department to which he would not otherwise be entitled.

69. The effect of the arguments made on behalf of the claimant would be that the decision maker would be required to award the claimant a jobseeker's allowance to which he would not otherwise be entitled. The fact that estoppel is not available against a statutory decision maker is an insurmountable hurdle for the claimant and is sufficient to dispose of this argument.

Other arguments

70. The claimant had before the tribunal and in his observations to me raised a number of other arguments, in particular in relation to the validity of the regulations and to breaches of the claimant's Convention rights under the Human Rights Act 1998. The claimant's representative indicated to me that these points were not being pursued. That was, in my view, a sensible concession since I could see no merit in these arguments.

Summary

71. The tribunal's decision is set aside since it erred in law in basing its decision on the proposition that the student loan was not income unless the regulations expressly provided that it was to be so treated.

72. I have decided to substitute my own decision for that of the tribunal. A student loan paid to a part-time student constitutes income for the purposes of entitlement to an income-based jobseeker's allowance. Even if the student loan was paid without statutory authority, the position remains the same since the loan is treated as properly made until the Secretary of State for Education and Skills (as he now is) decides that there has been a recoverable overpayment of the student loan.

73. Arguments based on the equitable doctrine of proprietary estoppel cannot require a decision maker to award benefit when no such entitlement arises on the proper application of the Jobseeker's Allowance Regulations.

74. It follows that the claimant's entitlement to a jobseeker's allowance ceased when his income exceeded his applicable amount.

75. I note that the claimant was paid an income-based jobseeker's allowance for the Christmas and Easter vacations in the academic year 1999-2000. It follows from my decision that these were payments of benefit to which the claimant was not entitled. The Secretary of State's submission helpfully notes that (in the event of my accepting the submissions of the Secretary of State and determining that there was no entitlement to benefit for the vacations) 'there is no suggestion that the Secretary of State wishes to recover this amount'.

76. The Secretary of State's appeal is allowed and the formal decision I have substituted for that of the tribunal is set out at the beginning of this decision.

Robin C A White
Deputy Commissioner

18 August 2003
[Signed on the original on the date shown]