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LB/MB

Commissioner's File: CSB/947/88

Region:

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF A TRIBUNAL OF COMMISSIONERS

Name:

Social Security Appeal Tribunal:

Case No:

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 13 April 1987 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 13 April 1987.

3. On 9 September 1986 the claimant, who was in receipt of supplementary benefit, claimed a single payment for floor covering for her kitchen and sitting room, curtains for her three bedrooms, kitchen and sitting room, and a new kitchen table and chairs. On 2 October 1986 she added to this list a claim for £20 in respect of towels. On 7 October 1986 the adjudication officer disallowed the claim. He treated the claim as having been made under regulation 10A, but on the facts decided that, as the claimant had not become the tenant or owner of an unfurnished home within 28 days immediately before the date of claim, she was unable to satisfy the provisions of regulation 10A, and was not therefore entitled to a single payment. Moreover, as regards regulation 30, he decided that the excluding words operated to prevent its application.

3. In due course the claimant appealed to the tribunal who in the event upheld the adjudication officer. They gave as the reasons for their decision the following -

> 1. The items claimed are not listed in Reg. 9 SB Regs. as essential and therefore fall to be considered under Reg. 10A(1) as miscellaneous furniture and household equipment.
>
> 2. The overriding condition of Reg. 10A(1) SB Regs. is that the Claimant has within 28 days preceding date of claim become a recent tenant. [The claimant] has been a tenant since 1978 and therefore her appeal fails.

3. Reg. 30 is excluded".

4. This appeal was heard at the same time as that on Commissioner's file CSB/730/87 before a Tribunal of Commissioners. The claimant did not appear, nor was she represented however the Tribunal had the benefit of the submissions of Mr. Mark Rowlands, as amicus curiae, whilst the adjudication officer was represented by Mr. N. Storey of the Solicitors Office of the Departments of Health and Social Security.

5. The issues in this appeal were in all material respects the same as those arising in the appeal on Commissioner's file CSB/730/87 with the additional feature that the claimant did not satisfy the 28 day requirement and failed under regulation 10A. We do not consider that this makes any difference. A copy of our decision in CSB/730/87 is for convenience attached hereto, and it is clear from what we have there said that the Tribunal did not err in point of law.

6. Accordingly, we dismiss this appeal.

(Signed) Leonard Bromley
Chief Commissioner

(Signed) D.G. Rice
Commissioner

(Signed) J.J. Skinner
Commissioner

Date: 26 June, 1989

LB/MB

Commissioner's File: CSB/730/87

C A O File: AO 935/176343

Region: London South

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF A TRIBUNAL OF COMMISSIONERS

Name:

Social Security Appeal Tribunal:

Case No:

[ORAL HEARING]

1. For the reasons which we set out below the decision of the social security appeal tribunal given on 3 March 1987 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 3 March 1987. In view of the uncertainty as to whether the earlier decision of a Tribunal of Commissioners R(SB)10/88 was, in the light of the subsequent decision of the Court of Appeal in Northern Ireland in Carleton v. Department of Health and Social Services, correctly decided, and in view of the large number of appeals outstanding where the issues there ventilated are relevant, the Chief Commissioner decided that a Tribunal of Commissioners should be appointed to hear this matter. At the oral hearing the claimant was represented by Mr. R. Allfrey of Counsel, while the adjudication officer appeared by Mr. N. Storey of the Solicitors Office of the Departments of Health and Social Security. We also had the help of Mr. Mark Rowland of Counsel as amicus curiae. We are grateful to all of them for the assistance they gave us.

3. On 28 August 1986 the claimant, who was in receipt of supplementary benefit and is a lone parent with a son Jamie born on 22 July 1985, claimed a single payment to meet the cost of various household items, including curtains, floor covering, a wardrobe, dressing tables, a settee, a cooker guard, lampshades, a table and chairs, towels, light bulbs, dustbins and an ironing board. She had accepted the tenancy of a flat from the Wandsworth Borough Council and was moving from furnished accommodation to unfurnished accommodation. She moved into the flat on 1 September 1988, and it is accepted that she had acquired the tenancy of it within the 28 days preceding her

claim. The tribunal, who upheld the decision of the adjudication officer, accepted that the claimant was able to bring herself within Regulation 10A of the Supplementary Benefits (Single Payments) Regulations 1981 and awarded her the sum of £75 for herself and £50 for Jamie in accordance with column 2 of Schedule 1B to the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 no. 1528]. The claimant appealed on the ground that she was entitled to more, pursuant to Regulations 18 and 30 of the Single Payments Regulations. But before we deal with the actual ground of appeal we must first consider the significance for this Tribunal of Commissioners of the decision of the Court of Appeal in Northern Ireland in Carleton v. Adjudication Officer (judgments delivered 25 June 1987).

4. Mrs. Carleton had claimed a single payment for a number of items of household furniture and equipment. Her appeal as it was before the Northern Ireland Social Security Commissioner concerned a variety of items of household furniture and equipment which did not fall within Regulation 9 and in respect of which a payment had been made under Regulation 10A; it was contended before the Commissioner that, as he put it in paragraph 7 of his decision -

> ".... need should be dealt with under the discretionary payment in regulation 30, even though there was an express exclusion of the "miscellaneous" items".

In dismissing the appeal the Commissioner said (paragraph 9) -

> "Reading the amended regulations together it is clear that the intention was to cut down the number of payments covered by the Single Payment Regulations and that there are now only two types of items relating to household furniture and equipment, namely "essential" and "miscellaneous.""

On 1 February 1988 the Commissioner stated a case, pursuant to a requisition of Mrs. Carleton, for an opinion of the Court of Appeal in Northern Ireland. The Commissioner posed two questions, of which only one is relevant for our purposes and it is as set out below:-

> "Did I err in law in holding that there are now only two types of items relating to household furniture and equipment?"

The Commissioner was referring on the one hand, to "essential furniture and household equipment" within Regulation 9 of the Supplementary Benefit (Single Payments) Regulations (Northern Ireland) 1981, [S.R. 1981 No. 369] as amended in August 1986 by the Supplementary Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 1986, [S.R. 1986 No. 262], entitlement to which depended upon the satisfaction of the provisions set out in Regulation 10 thereof, and on the other hand to "miscellaneous furniture and household equipment" within paragraph 10A of those Regulations. The Court of Appeal upheld the Commissioner, holding that he had not erred in adopting the interpretation he did.

5. Lord Lowry L.C.J. delivered a judgment in which the other members of the Court concurred. He referred to or set out regulations 9, 10A and 30 of the Supplementary Benefit (Single Payments) Regulations (Northern Ireland) 1981. His Lordship said -

> "Regulation 9 of the 1981 regulations (which was amended in 1986 so as to curtail the list of essential items):
>
> > 'In this part "essential furniture and household equipment" means the following items: (there follows a list of 12 items regarded as essential, including beds and cookers)'.
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> Regulation 10A:
>
> > (1) Subject to the further conditions of paragraph (2) a single payment shall be made in respect of miscellaneous furniture and household equipment needs (other than any item to which regulation 9 applies). (Here follow the conditions of entitlement which are not relevant to the point at issue).
> >
> > ....
> >
> > (3) The amount payable in respect of miscellaneous furniture and household equipment needs under this regulation shall be the aggregate of
> >
> > > (a) the amount specified in column 2 of Schedule 1B for the claimant; and
> > >
> > > (b) the amount specified in column 2 of Schedule 1B for each additional member of the assessment unit multiplied by the number of such additional members including such future members as the adjudication officer considers are likely to form part of the assessment unit within 28 days of the claimant or his partner having become the tenant or owner of an unfurnished or partly furnished new home.
>
> (Schedule 1B under the heading 'miscellaneous furniture and household equipment needs' provided for a payment of £75 for the claimant and £50 for each additional member of the assessment unit. Since the appellant had two children living with her the total amount was £175.)
>
> .....
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> Regulation 30:
>
> > (1) Except where a claim is for <u>miscellaneous furniture and household equipment needs</u>, where a claimant is entitled to a pension or allowance and he
> >
> > (a) claims a single payment for an exceptional need under any of the Regulations in Parts II [to] VII

(other than Regulation 10A), but fails to satisfy the conditions for that payment; or

(b) claims to have an exceptional need for which no provision for a single payment is made in any Regulation in those Parts,

a single payment to meet that exceptional need shall be made in his case if, in the opinion of an adjudication officer, such a payment is the only means by which serious damage or serious risk to the health or safety or any member of the assessment unit may be prevented."

6. Lord Lowry L.C.J. then went on to apply those regulations to the facts of the case before him. He said as follows

"It will be seen that Regulation 9 defines the essential furniture and household equipment. Regulation 10A was introduced in August 1986 to cover 'miscellaneous furniture and household equipment needs other than any item to which Regulation 9 applies'. The furniture and equipment which can be supplied under this Regulation is limited as to amount by the sums set out in Schedule 1B. In the appellant's case the amount was £175. Regulation 30 gives a discretionary power to make a payment in the circumstances described and the introductory words, "except where a claim is for miscellaneous furniture and household equipment needs", were added in August 1986.

It appears that the appellant, being unable to satisfy all her requirements, in addition to three beds and a cooker, within the £175 limit imposed by Schedule 1B, wished to obtain further furniture and household equipment under Regulation 30, but the adjudication officer, the appeal tribunal and the Commissioner held that, by reason of the words of exception in that regulation, she could not do so.

The argument before the Commissioner and advanced in this court by Mr. Kerr Q.C., who appeared with Miss Davison for the appellant, was that the word "miscellaneous" was not exhaustive of furniture and household equipment and that Regulation 30 therefore permitted further furniture and household equipment to be paid for under that regulation if the prescribed circumstances were satisfied. To support this argument he relied on examples of the hardship which would arise if this were not the right interpretation, such as the long-standing tenant who had all his furniture stolen. Mr. Kerr also contended that, by reason of the word "miscellaneous", Regulation 10A(1) did not contemplate a claim for a single item of furniture or equipment, or even for a number of items of the same kind, such as six identical chairs: therefore Regulation 30 must deal with furniture and household equipment. (This argument loses its force if the correct construction is "miscellaneous needs for furniture and household equipment".)"

7. Lord Lowry L.C.J., continued and explained how he considered the regulations operated:

"The answer to the appellant's contention, however, is in my opinion plain. The words "except where a claim is for miscellaneous furniture and household equipment needs", which were added to Regulation 30 at the same time as Regulation 10A was introduced, are obviously meant to exclude the possibility of obtaining under Regulation 30 furniture and household equipment which could have been obtained under Regulation 10A, so far as financial resources enabled this to be done. The scheme of the regulations seems clear. Regulation 9 deals with essentials, while Regulation 10A deals with all other furniture and household equipment and imposes a financial limit on its availability. The appellant's objection to this construction is that the phrase 'miscellaneous furniture and household equipment needs' is vague. I agree that it is not the most elegant or precise expression which could have been thought of, but, in order to make sense of it, Regulation 10A must cover all the furniture and household equipment which is not comprised in Regulation 9; otherwise the words of exception in Regulation 30 can have no meaning. Before Regulation 10A came into existence and Regulation 30 was amended, the latter could apply to furniture and household equipment, but the effect of the changes introduced in August 1986 is to make Regulation 30 no longer apply".

8. Lord Lowry L.C.J. later continued -

"The question posed for our decision by the Commissioner is -

> "Did I err in law in holding that there are now only two types of items relating to household furniture and equipment, namely, essential and miscellaneous?"

I would answer that question "No", but would also add the words "because Regulation 30 no longer permits a payment to be made under it in respect of furniture or household equipment". Accordingly I would dismiss the appeal."

It will be noticed that Lord Lowry L.C.J. did not limit the non applicability of Regulation 30 to "miscellaneous furniture and household equipment needs, within Regulation 10A but held that Regulation 30 no longer applied in relation to all forms of furniture and household equipment. Counsel in the case subsequently drew His Lordship's attention to the apparent ambit of this part of his judgment. On a later occasion when the proceedings were again before the Court Lord Lowry L.C.J. said this:-

"It has been suggested that, when indicating at the end of my judgment the form of answer which I would propose to give to the first question, I may have made a slip by omitting the word 'miscellaneous' before the word 'furniture' in the phrase 'because Regulation 30 no longer permits a payment to be made under it in respect of furniture or household equipment'. I think it will be helpful if I say that the omission was not accidental, since my view, in which the

other members of the Court concurred, is that Regulation 30 does not apply to <u>any</u> furniture or household equipment".

It is we think clear from Lord Lowry's initial judgment (in which it will be noted he referred to "the scheme of the regulations" by reference to Regulations 9 and 10A), from the answer framed by him to the question posed by the Commissioner in the case stated, and from his subsequent confirmation of what he had earlier said, that the conclusion (effectively of the Court) extended to all items of furniture and household equipment, whether essential under Regulation 9 (and subject to the conditions in Regulation 10) or miscellaneous needs within Regulation 10A. In the appeal before us we are only concerned with miscellaneous furniture and household equipment needs falling within regulation 10A.

10. The difficulty that confronts us in the appeal we have to determine is that the opinion of the Court of Appeal in Northern Ireland is at variance with what was said by a Tribunal of Commissioners in Decision R(SB)10/88. For in a statement made in paragraph 43 of that decision, albeit such statement was <u>obiter</u>, it was contemplated that a claim for miscellaneous furniture and household equipment needs might be successfully brought under Regulation 30, provided such claim related to one single item. The Tribunal of Commissioners observed as follows:-

> "We should emphasise that nothing that we have written precludes the claim from being made for an individual item under Regulation 30 (Part VIII) of the Single Payments Regulations on the ground that without it there is a serious risk to health or safety. Such a claim is not a claim for miscellaneous furniture and household equipment needs. Where more than one item is requested, that is in fact a separate claim in respect of each item. Tentative suggestions were made in argument that one could 'dress up' what is in reality a claim for miscellaneous furniture and household equipment needs in this way. It will be for the adjudicating authority, in each case, to determine the nature of the claim or claims in this connection. A claim for example, for a cooker guard (not being a fireguard within regulation 9) on the ground that it was needed for safety of small children, would clearly be outwith Regulation 10A and could be entertained under regulation 30. On the other hand, the miscellaneous collection of items listed by Mr. Goddard at paragraph 23 above, if included in one claim, or a series of contemporaneous claims, might well be concluded to fall within the excepting words in Regulation 30. 'Claim', in the excepting words of regulation 30 clearly includes, in this context, a number of such claims: see section 6(c) of the Interpretation Act 1978. On which side of the line the claim falls will be a matter for the adjudication authority, in the exercise of commonsense and in the light of the particular facts, to decide".

Manifestly, this approach is at variance with what was said by the Court of Appeal in Northern Ireland. It has also, we were told, proved difficult for adjudication officers to apply in practice. Which authority are the Commissioners in Great Britain

to follow?

11. We were informed that, immediately before judgment was given by Lord Lowry L.C.J., the decision in R(SB)10/88 was bought to the Court's attention, but it appears fairly clear that the merits of the decision were not argued; the Court did not require that to be done. However, be that as it may, does a decision of the Court of Appeal in Ireland operate to bind the Commissioners in England and Scotland?

12. The Commissioners in Great Britain, exercise their function under legislation which applies to England, Wales and Scotland, but not to Northern Ireland. However, even within Great Britain, there are two different adjudication systems, one in England and Wales and one in Scotland. But, as far as social security adjudication is concerned, the same statutory provisions apply. Nevertheless, the question arises whether the Court of Session in Scotland binds all Commissioners, those resident in England as well as those resident in Scotland, and likewise whether the Court of Appeal in England binds all Commissioners, those resident in Scotland as well as those resident in England. This question was considered by the Commissioner in paragraph 18 of R(U)8/80. After stating that he accepted the reasoning of a superior Scottish Court in Watt v. Lord Advocate [1979] SLT 137, he went on to say as follows

> "The question whether I am bound to follow it does not arise. Curiously I can find no authority on the question whether I would be bound to follow it assuming I disagreed with it. In Decision R(1)12/75 a Tribunal of Commissioners held in relation to the Law of England that a Commissioner on questions of legal principle is bound to follow decisions of the High Court and Superior Courts, meaning the Court of Appeal and the House of Lords. So far as I can discover there is no decision as to binding (as opposed to persuasive) effect of Scottish decisions upon the question of legal principle. In cases such as this where the same legislation applies to both England and Scotland it is clearly desirable that the laws of both England and Scotland should be uniform. So far as the High Court is concerned there is a well settled practice in revenue and taxation matters where the same statutes apply that courts of first instance keep in line with the courts of Scotland. An English court follows a unanimous judgment of a higher Scottish court where the question involved is one which turns upon the construction of a statute which extends to Scotland, leaving it to be reviewed if thought fit by the Appeal Court see Re Hartland; Banks v. Hartland [1911] 1 Ch. 459 at page 466. The reason for this is the need to avoid interpretations which result in one meaning in one country and another in the other; Commissioners for General Purposes of Income Tax for City of London v. Gibbs [1942] AC 402 at 414. The position of a National Insurance Commissioner [now Social Security Commissioner] is different from that of a High Court Judge. All Commissioners are Commissioners for Great Britain. Commissioners who sit in Scotland are sometimes wrongly referred to as Scottish Commissioners. They are not - they are Commissioners

> sitting in Scotland. Moreover the cases dealt with by Commissioners have no territorial connection. Cases occurring in Scotland are sometimes decided in London. Cases from the North of England are sometimes dealt with in Scotland particularly where oral hearings are concerned where it is easier for a claimant and his witnesses to travel to Edinburgh. It is quite obviously highly desirable that the same interpretation be applied on each side of the border.
>
> In my judgment, I would apply to this case the same practice as is applied in the courts of first instance in [the] High Court in revenue and taxation cases, that is to say, I would follow the decision of a higher Scottish Court on a question of construction of the Social Security Act 1975".

We approve those sentiments. Indeed, we would take the matter somewhat further. A decision given by a Commissioner in London on a Scottish matter referred for convenience to London for determination may, on appeal to the Court of Session, be reversed by that superior Court. Likewise, a decision given in Scotland relative to a matter arising in England may well be overturned by a decision of the Court of Appeal in England. In other words decisions given in England or Scotland may be reversed by superior courts of different countries. It would seem to us to follow from this that pronouncements on common provisions, whether made by the Court of Appeal in England or the Court of Session in Scotland, must be followed, as of necessity rather than for reasons of comity, by all Commissioners of Great Britain. If it is asked - what happens where a divergence of view is expressed between these two superior Courts, our reply is that the position is no different from that which would obtain were two different Courts of Appeal in England, or for that matter, two different Courts of Session in Scotland, to give divergent views. Commissioners would have to do the best they could, and the matter might ultimately be resolved by the House of Lords.

13. However, the position is different in respect of the superior Courts of Northern Ireland. The social security legislation applicable to that province is different from that which operates in Great Britain. There can be no question of a decision of a Commissioner in Great Britain being overturned by the Court of Appeal in Northern Ireland, nor can a decision of a Commissioner in Northern Ireland be upset by the Court of Appeal in England or the Court of Session in Scotland. The legislation and adjudicating authorities are different, even if the relevant statutory provisions applicable to Great Britain and Northern Ireland respectively may in all material respects be the same. The Commissioners of Great Britain are not bound by decisions of the Court of Appeal in Northern Ireland, and likewise the Commissioners of Northern Ireland are not bound by the decisions of the Court of Appeal in England or the Court of Session in Scotland. However, there has long been a tradition in this country that, where the same Act applies both in England and Scotland, but where, unlike the case of social security legislation, there is no interchange of function between adjudicating authorities resident in each country, then in the

interest of comity there should be uniform interpretation. Thus in Re Hartland, Banks v. Hartland [1911] 1 Ch. 459, at page 466, Swinfen Eady J. said as follows:-

> "Where the exact point has been raised by a special case, and fully argued, and decided by a unanimous judgment of the Court of Session, and where the question is simply one that turns upon the construction of a statute which extends to Scotland as well as to England, I think my duty as a judge of first instance is to follow that decision, leaving the parties, if so advised, to have it reviewed elsewhere".

In the present context, we consider that Commissioners can be equated with "judges of first instance".

14. Moreover, the same approach would also appear to have been adopted by the Court of Appeal (see Abbott v. Philbin (Inspector of Taxes) [1960] 1 Ch. 27]). Further, when the decision of the Court of Appeal in Abbott v. Philbin came to be considered on appeal to the House of Lords [1961] A.C. 352, Lord Reid observed, inter alia, at page 373 -

> "In the present case the Court of Appeal, though not bound to do so, very properly followed the decision of the Court of Session in Forbes's Trustees v. Inland Revenue Commissioners. I say very properly, because it is undesirable that there should be conflicting decisions on revenue matters in Scotland and England".

15. Although the social security legislation governing Northern Ireland is not contained in the same Act as applies to Great Britain - and to that extent the position is different from that arising in Re Hartland and Abbott v. Philbin - we nevertheless consider that, where the relevant provisions are identical (as they are in this case), the same judicial approach should equally be adopted. At the end of the day, the legislative fount of the enactments found both in Great Britain and the province of Northern Ireland is the same, namely Parliament at Westminster. Moreover, it would be naturally expected that, where the statutory provisions operative both in Northern Ireland and Great Britain are identical, such provisions should be interpreted uniformly. Support for this contention can also be found in section 142 of the Social Security Act 1975, sub-section (1) of which reads as follows -

> "The Secretary of State may with the consent of the Treasury make arrangements with the Northern Ireland Department ("the joint arrangements") for coordinating the operation of this Act and the Social Security (Northern Ireland) Act 1975 with a view to securing that, to the extent allowed for in the arrangements, those Acts provide a single system of social security for the United Kingdom".

Regulations have been made providing for a substantial degree of assimilation; we refer to the Social Security (Northern Ireland Reciprocal Arrangements) Regulations 1976 [SI 1976 No. 1003]. Manifestly, it is in contemplation that the same social security system should within limits operate both in Northern Ireland and

in Great Britain, and in pursuance thereof, it would be natural to suppose that the same interpretation should be given throughout the United Kingdom to identically worded provisions. Accordingly, in our judgment, it is incumbent upon us, particularly as the decision of the Court of Appeal in Ireland was unanimous and notwithstanding that the Court chose not to have R(SB)10/88 argued, to follow that decision rather than that of the Tribunal of Commissioners in England in R(SB)10/88.

16. We now turn to the issues in the present appeal. Mr. Allfrey on behalf of the claimant first submitted that she was entitled to a single payment for curtains by reason of the draftproofing provisions of Regulation 18 of the Single Payment Regulations. Whether or not a single payment might be awarded under that regulation for curtains, or even possibly for carpets, was considered by a Commissioner in the unreported decision CSB/437/1987. At paragraph 7 he said as follows:-

> ".... Firstly, Mr. Stocker very fairly mentioned for my consideration the argument that curtains, and possibly carpets, might fall within the draftproofing provisions of regulation 18 of the Single Payments Regulations, which provides that a single payment shall be made for the cost of 'necessary materials' -
>
> > 'Where the home is draughty and draughts would be reduced by simple measures (for example draught-stripping of windows and doors, but not double-glazing or loft or cavity wall insulation)'.
>
> It is, I think arguable, that curtains and carpets do not in fact reduce draughts although by diffusing them, they may appear to do so. However, even assuming that they would, it seems to me clear from the context that neither can properly come within this regulation. The regulation itself comes within Part V of the Single Payments Regulations, which is headed 'Housing Expenses' and deals with such matters as removal expenses, legal fees, essential repairs and maintenance and fuel meters, whereas regulation 10A is in Part IV, 'Household Expenses' which, as one might expect, is concerned with furniture and household equipment and bedding, and it seems to me that that is where carpets and curtains properly belong. Further, and perhaps more importantly, in my judgment neither carpets nor curtains can be described as 'simple measures' to reduce draughts, particularly in view of the examples given in the regulation which clearly envisage some permanent but inexpensive treatment and specifically exclude the more elaborate procedures of loft and wall insulation".

This approach was approved by the Tribunal of Commissioners in R(SB)10/88 at paragraph 44.

17. In principle we agree with what was said in CSB/437/1987. The only caveat which we would add is that, although normally the provision of curtains (or for that matter carpets) on any significant scale could not be regarded as "simple measures" to reduce draughts within Regulation 18, it is possible to envisage

on the particular facts of a given case, for example the use of a small area of curtaining to block up a hole in a window, as something which would fall within the statutory definition. However, that is not the present case. The claim is for curtains (and carpets) throughout the flat, and in these circumstances a single payment could not be justified under Regulation 18. Accordingly, the tribunal were entitled to reject the application for an adjournment to produce evidence in support of the contention that Regulation 18 applied. Moreover, it was unnecessary for them in their decision to refer to this matter. In the circumstances, the claim could not get off the ground.

18. The second submission put forward by Mr. Allfrey was that the claimant was entitled to a single payment for carpets under Regulation 30, or, at any rate, that the question of whether or not she was so entitled was something for determination by the tribunal, and in the present instance they had not even adverted to this issue. If the reasoning of R(SB)10/88 applies, then this submission has no chance of success. For the Tribunal of Commissioners made it clear in paragraph 43 that, where a claim for a single item, such as carpets, was included in a claim for a miscellany of furniture and household equipment, the excepting words of Regulation 30 excluded the operation of that particular provision. Accordingly, as in the present instance the claimant had claimed a single payment for a variety of different articles of non-essential furniture and household equipment including carpets, she could not rely on Regulation 30.

19. However, the approach of the Tribunal of Commissioners in R(SB)10/88 might be said to be open to the criticism that properly analysed a claim for a miscellany of items under Regulation 10A is a single claim, and not a collection of individual claims for individual items constituting in toto a miscellany, and if this is right, then it could be argued that a claim for a single item, such as carpets, is something wholly distinct and separate from a claim under Regulation 10A. In accordance with this reasoning a claim, whether successful or otherwise, brought under Regulation 10A could not be to the prejudice of a claim brought under Regulation 30.

20. However, in our judgment, the fallacy of the above analysis is that, a claim for a single payment in respect of miscellaneous furniture and household equipment needs will not fall outside regulation 10A merely by virtue of the fact that the relevant need is for a single item rather than a variety of items. For, in our view, "miscellaneous furniture and household equipment needs" embrace the need for a single item as much as the need for a variety of items. In other words, the plural includes the singular. It follows that if a claim is made for a single item such as floor-covering, it will still come within regulation 10A and fall outside Regulation 30, provided, of course, it comes within the definition of "miscellaneous furniture and household equipment".

21. Mr. Allfrey endeavoured to demonstrate that carpets did not fall within that definition. In our judgment, what constitutes "miscellaneous furniture and household equipment" has to be interpreted in a broad commonsense way, and, in our view,

carpets, and for that matter curtains, are part of the furnishings of a house, and should be construed as items of "miscellaneous furniture and household equipment". But, be that as it may, the Court of Appeal in Northern Ireland in the Carleton case certainly treated them as falling within that definition, and we regard ourselves as bound by that decision.

22. Mr. Allfrey endeavoured to meet this difficulty by suggesting in effect that, although carpets can generally be regarded as items of miscellaneous furniture and household equipment, they can, in certain circumstances, be treated as something rather different, namely a means whereby serious risk to health may be avoided. He contended that in the present case the predominant reason for a carpet was the need to ensure that the claimant's child should not injure himself, e.g. from splinters, by coming into contact with a bare floor. We reject that argument. Regulation 10A is concerned with needs for miscellaneous furniture and household equipment. There may in respect of a particular item be one single need or a variety of needs. In other words, there may be more than one reason why a particular item is required, but so long as there is a need the matter falls within Regulation 10A. Applying this to the present case, it is immaterial that the predominant need of the claimant might have been to protect her son from injury. This still constitutes a need for a carpet, and it is no different in effect from other types of need, e.g. the need to walk on the floor more comfortably, the need to deaden the sound for the benefit of adjacent flat holders, the need to make the room look more pleasant, or the need to help improve the insulation of the premises. Once there is a need (whatever it might be) for a particular item falling within Regulation 10A, the claim can only be brought within that particular regulation.

23. It follows from what has been said above that the tribunal did not err in point of law in making an award under regulation 10A and in disregarding regulation 30. Accordingly, we dismiss this appeal.

(Signed) Leonard Bromley
Chief Commissioner

(Signed) D.G. Rice
Commissioner

(Signed) J.J. Skinner
Commissioner

Date: 26 June, 1989