Rent ceiling

Decision C.S.B. 420/81

This decision is circulated because it deals with registrable tenancies under the Rent Act 1977 and the estimation by a benefit officer of the excess of actual rent paid over the rent which would be payable after registration (regulation 15(2)(b) of the Requirements Regulations 1980, as amended).

It deals with matters of evidence (paragraphs 8 and 9). Also with the home being located in an unnecessarily expensive area and rent being excessive in comparison with that for similar available accommodation in the area (regulation 21(2) of the said regulations).

The decision deals with the meaning of area (paragraph 12), without attempting a precise definition, and deals with other matters which an appeal tribunal has to decide on the application of regulation 21.

J S Watson

JSW/BOS

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the South London Supplementary Benefit Appeal Tribunal, dated 26 June 1981, is erroneous in law and is set aside. I direct that the claimant's appeal be reheard by the appeal tribunal, differently constituted, if practicable.

2. This is an appeal by the claimant with leave. The claimant, then aged 46, had been in receipt of supplementary benefit since 15 May 1981. He was unemployed and in receipt of £20.65 unemployment benefit. He lived alone in a privately rented furnished flat comprising 1 bedroom with kitchen and bathroom. The weekly equivalent of rent is £32. The benefit officer restricted the claimant's housing requirements to £20 a week, that being the level at which he might expect to pay for suitable alternative accommodation in the area. It was understood that the claimant had security of tenure and could, if he wished, have applied to the rent officer to have the rent registered. The tribunal found that the accommodation is a holiday let. Supplementary allowance was determined at £20.65 and paid weekly from prescribed pay day in week commencing 11 May 1981.

3. The claimant attended the hearing of his appeal by the tribunal who found facts as set out above. They upheld the decision of the supplementary benefit officer and recorded the reasons for their decision as follows:-

> "The tribunal considered all the facts of the case and are satisfied that the restriction of the rent to £20.00 is reasonable in all the circumstances and in accordance with regulation 21 of the Supplementary Benefit (Requirements) Regulations 1980 and regulation 15(2)(b) of the Supplementary Benefit (Requirements) Regulations 1980."

4. Regulation 15 of the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No 1299] as amended, provides, as far as relevant to this appeal, as follows:-

> "15 - (1) Subject to paragraphs (2) to (6) there shall be applicable under this regulation the amount, calculated on a weekly basis, of the rent payable for the home and of any additional charge made by a landlord in respect of the home because of letting of any part of the home, taking in lodgers or accommodating non-dependants.
>
> (2) No amount shall be allowed under paragraph (1) -
>
> (a) in respect of any part of the rent which is irrecoverable from the tenant by virtue of Part II, III, V, or VI of the Rent Act 1977 (rents under controlled and regulated tenancies, restricted contracts and lettings by housing associations and others) .....;
>
> (b) where the rent is registrable under Part IV or VI of the Rent Act 1977 (registration of rents under regulated tenancies and lettings by housing associations and others) or Part IV of the Rent (Scotland) Act 1971 (registration of rents under regulated tenancies) but the rent is not so registered and the benefit officer is satisfied that the rent payable exceeds the rent which would be payable after registration, in respect of the amount of the excess, as estimated by him, of the actual rent over the rent which would be payable after registration so however that this sub-paragraph shall not apply if and so long as the rent has not been registered but an application for registration has been made and not withdrawn."

Regulation 21, as amended, provides -

> "21 - (1) Where the amounts applicable under regulations 15 to 20, and subject to any reduction applicable under regulation 22, are excessive they shall be subject to restriction in accordance with this regulation.
>
> (2) Subject to paragraphs (3) and (4), the amounts so applicable shall be regarded as excessive and shall be restricted, and the excess not allowed, if and to the extent that -
>
> (a) in the case of an amount applicable under any of those regulations, the home, excluding any part which is let or is normally occupied by boarders, is unnecessarily large for the assessment unit and any non-dependants or is located in an unnecessarily expensive area; or

(b) in the case of an amount applicable under regulation 15, the rent is excessive by comparison with that for similar available accommodation in the area.

(3) Where, having regard to the relevant factors, it is not reasonable to expect the assessment unit to seek alternative cheaper accommodation no restrictions shall be made under this regulation.

(4) Where paragraph (3) does not apply and -

(a) the claimant (or other member of the assessment unit) was able to meet the financial commitments for the home when these were entered into, no restriction shall be made under this regulation during the first six months of any period of entitlement to a pension or allowance nor during the next six months if and so long as the claimant uses his best endeavours to obtain cheaper accommodation."

5. One of the principal grounds of appeal is that the tribunal erred in law in that regulation 15(2)(b) only applies where the rent is registrable under Part IV or VI of the Rent Act 1977 and a holiday let is not so registrable. Also that, if the tribunal thought that the rent should be restricted under regulation 21(2)(a), the area or areas which are thought to be unnecessarily expensive should be defined. He has stated that there was no suggestion that his housing costs could be attacked under regulation 21(2)(b). He has referred to The Ruapehu (No 2) [1929] P 305 in which Hill J (at p 309) described an area to be - ".... a plain surface the boundaries of which are defined." He complains that the tribunal ought to have made a finding on that submission of law and that he was contending that he could not be certain that he could have the rent registered and in all the circumstances it was not reasonable that he should try. He adds that the tribunal clearly failed to consider his contentions in a judicial and impartial spirit. Even though the tribunal might be wrong, I can find no basis for that general, nebulous allegation.

6. The claimant has gone into considerable detail as to the agreement he entered into for the flat and has stated that he took it as a "holiday let" and had said that he required it for a holiday, which was not true. He has given details of the lettings and stated that the third agreement was current when he claimed a supplementary allowance. He has stated that he applied to the rent officer for registration and had meetings with the rent officer and the landlord's solicitor, who referred to Buchmann v May [1978] 2 All E.R. 993 at pp 1000 - 1001. That case dealt with the intention of the parties to a letting and that the labels which parties put on a transaction are not of conclusive validity. It was held that where a tenancy agreement expressly stated the purpose for which it was made, that statement would stand as evidence of the purpose of the parties unless the tenant could establish that it did not correspond with the true purpose. That in the absence of such evidence and, since the purpose of the tenancy could properly be described as a holiday letting, there

was nothing to displace the effect of clause 6 of the agreement and show that it was a sham or was, without any intention to deceive, an untrue statement of the purpose of the letting. It followed that the defendant was not protected under the Rent Acts. The claimant continued that he had to admit that he had made a false statement in successive leases but contended that at the time he made no statement of his intention but merely paid rent demanded for a period after the holiday let had expired. He goes on to state that the landlord's agent and solicitor had offered to sell him the long lease of the flat and that, on 17 April 1982, he had made an offer of £12,000 for the long lease, subject to contract. He has explained that he is buying the flat out of money which he will get from the sale of his former matrimonial home and a mortgage. At first it was agreed to ask the rent officer to defer his consideration of the question whether the rent is registrable or not and that he had since withdrawn his application for registration. He has submitted that there was no evidence that the landlord intended a sham and no evidence of any sort about his true intention. The claimant has referred to Solle v Butcher [1950] 1 K.B. 671 (common mistake as to basis of standard rent on a contractual tenancy under the Rent Restriction Acts 1920 and 1923) and to Sharp Bros and Knight v Chant [1917] 1 K.B. 771 dealing with overpayment of standard rent on a protected tenancy under a mistake of law.

7. In so far as the claimant's statements constitute further evidence on the facts, they are not relevant to this appeal. An appeal from a decision of an appeal tribunal to a Commissioner may be brought only with leave on the ground that the decision is erroneous in point of law. The claimant has also made a number of general observations and submissions relating to registration under the Rent Act 1977 and on the provisions of the regulations and on what the benefit officer is required to do and place before the tribunal on an appeal. Circumstances of cases vary greatly and I do not intend to attempt a comprehensive explanation or interpretation of such matters. It is undesirable that a decision should deal with hypothetical cases or circumstances. I follow the advice of Diplock L J (as he then was) in Esso Petroleum Co Ltd v Harper's Garage Stourport Ltd [1966] 2 Q.B. 514 at p 580:-

> "It is a good policy to decide only the points which arise in the case before the court"

8. Supplementary benefit is a benefit to provide that a person has enough to live on and is calculated on a weekly basis. Requirements are the weekly amounts that people need to live on and resources are what people have actually got to live on. The need is immediate and the scheme is frustrated if determining the amount of a pension or allowance is unduly delayed. A benefit officer has therefore to make quick determinations, which means that recondite factors have to depend upon a superficial view. The benefit officer in this case does not have to decide whether or not a rent is registrable under the Rent Act 1977. He is entitled to estimate that the rent payable exceeds the rent payable after registration (regulation 15(2)(b)). In an appropriate case, it might be necessary for a benefit officer to view the premises but he is not obliged to do so. I agree with the submission of the benefit officer on this

appeal that a rent may be limited under regulation 21 whether or not it is limited by the application of regulation 15(2). The said regulations are not mutually exclusive and might apply conjointly or in the alternative.

9. When there is an appeal against a decision, there is more time for consideration and for taking further steps to support a decision. I observed in Decision C.S.B. 13/82, paragraph 6, that the rules of evidence do not apply to proceedings before an appeal tribunal but nevertheless there should be some statement to support a fact relied upon by a benefit officer. A benefit officer is not a witness and a statement by him unsupported by any evidence will not normally be sufficient on a contested issue. Although regulation 15(2)(b) permits the benefit officer to estimate the amount of excess of rent, some foundation for his estimate must be shown. An estimate is not a mere guess. I have remarked previously that on such matters as to there being furnished accommodation available, the benefit officer should obtain a written statement from a local authority or some other source to support his contention. Likewise in this case, the benefit officer should put some evidence before a tribunal that the rent is registrable either by producing an extract from valuation lists or a letter from a valuation officer or a local authority. It is not to be expected of a benefit officer or of an appeal tribunal that they should make a finding of the amount of rent if registered. It is sufficient that, in their judgment, on the facts the rent is registrable.

10. It is provided by section 9 of the Rent Act 1977 that a tenancy is not a protected tenancy if the purpose of the tenancy is to confer on the tenant the right to occupy the dwelling house for a holiday. Regulation 15 of the Requirements regulations deals with rent in general and sub-paragraph (2) deals with rent controlled premises and those which might be subject to control. There was evidence before the tribunal and they found - "The accommodation is a holiday let." On that finding of fact, they misapplied regulation 15(2)(b) to the case and in that respect their decision is erroneous in law.

11. The tribunal also considered and applied regulation 21 of the Requirements regulations, which applies where amounts applicable under regulations 15 to 20 are excessive. Under regulation 21(2)(a), there was no suggestion that the home is unnecessarily large but that it is located in an unnecessarily expensive area and that the claimant could move if he wished. It appears also to have been submitted that the claimant's housing requirements had been restricted to £20 a week, that being the level at which he might expect to pay for suitable alternative accommodation in the area, bringing into consideration regulation 21(2)(b). The benefit officer's statement would have been clearer by further explanation for the information of the claimant and the tribunal.

12. An area is not defined in the regulations and has several meanings given to it in the Oxford English Dictionary. In The Ruapehu case (supra) Hill J. was dealing with a docks area. He stated a few lines further on at p 309 - "The context in which the phrase 'area' is used might show that a different meaning was to be attached to it .... ."

"Area", in the context of regulation 21(2), plainly refers to housing accommodation for human habitation since the words 'home' and 'rent' are also used. "Area" connotes something more confined, restricted and more compact than a locality or a district, although it might well include them as areas. It might consist of dwelling houses or flats contiguous to a road or a number of roads, refer to a neighbourhood or even to a large block of flats. It is not capable of precise definition in the context of the regulations, which apply to the entire country with the many variations which occur in different towns and localities. It has no strictly defined boundary and is most likely to be within the knowledge of chairmen and members of appeal tribunals for the locality. I do not agree with the claimant's contention that a person restricted under regulation 21(2)(a) is entitled to be told what area or areas are too expensive or that a map should be produced and studied.

13. The claimant has raised objections that he might not have been able to find less expensive accommodation or lodgings that would have been cheaper. Neither the tribunal nor the benefit officer dealt with regulation 21(3) as to whether or not it was reasonable to expect the claimant to seek alternative cheaper accommodation and the tribunal made no finding in that regard. If they decided that paragraph (3) did not apply, they failed to deal with paragraph (4) of the regulation and, in particular, with restrictions during the first 6 months, if that was applicable. These constituted errors in point of law since the application of the regulation depends upon findings on those factors.

14. In view of the claimant's statement that he is buying the flat from money he will get from the sale of the former matrimonial home and a mortgage, a question would seem to arise in regard to the claimant's capital resources (regulations 6(1)(a)(iii) and 7, as amended, of the Supplementary Benefit (Resources) Regulations 1981 /S.I. 1981 No. 1527/). That is not a matter which the tribunal deciding this appeal can deal with since it is not a determination which the benefit officer could have made on the determination under appeal, as provided by section 15(3)(c) of the Supplementary Benefits Act 1976, as amended, neither under the current Resources regulations, which were not in operation, nor under similar provisions in the Resources regulations of 1980, since revoked.

15. For the reasons I have stated, the decision of the appeal tribunal was erroneous in law. This is not an appeal in which I can give a decision which the tribunal should have given since there are issues of fact to be decided and I therefore refer the case to another tribunal to determine the matter, subject to my directions as stated. The claimant has referred several times to the agreement

for his tenancy and he should produce the agreement current at the time for the tribunal to consider. All issues are open to the tribunal since it is to be a rehearing, including whether or not the tenancy is or was at the material time a holiday let.

16. The claimant's appeal is allowed.

(Signed) J S Watson
Commissioner

Date: 16 September 1982

Commissioner's File: C.S.B. 420/1981
CSBO File: 464/81