Late claim for sickness benefit — self-employed — ignorance of entitlement can be good cause.

CPAG

75/93.

MR/MB/1

Commissioner's File: CS/143/1992

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR SICKNESS BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. This appeal is allowed. The decision of the Leicester social security appeal tribunal dated 5 February 1992 is erroneous in point of law. I set that decision aside and substitute the decision that I consider the tribunal should have given which is as follows:

> The claimant is not entitled to sickness benefit from 27 July 1989 to 2 October 1989 (both dates included). This is because the claim was made on 3 October 1990 and no person is entitled to benefit for a period more than 12 months before the date of claim.
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> The claimant is not entitled to sickness benefit from 3 October 1989 to 5 October 1989. This is because sickness benefit is not payable in respect of the first 3 days of a period of interruption of employment.
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> The claimant is entitled to sickness benefit from 6 October 1989 to 13 January 1990. The claimant has shown continuous good cause for his delay in claiming until 3 October 1990.

2. I held an oral hearing of this appeal. The claimant attended the hearing with his wife. The adjudication officer was represented by Mr. S. Jones of the Office of the Chief Adjudication Officer. I am very grateful to both the claimant and Mr. Jones for their helpful submissions.

3. The claimant is a farmer. For many years he has paid class 2 contributions (and, doubtless, class 4 contributions) as a self-employed earner. He was taken seriously ill in late July 1989. On 7 August 1989 he was admitted to hospital for an operation and it was not until 15 January 1990 that he was able to return to work. He made no claim for sickness benefit at that time. It did not occur to him that he might be entitled to sickness benefit. He thought that his contributions entitled him only to National Health Service treatment and a retirement pension. In fact, of course, those contributions are relevant to all contributory social security benefits except unemployment benefit (see section 13(1) of the Social Security Act 1975, now section 21(2) of the Social Security Contributions and Benefits Act 1992) and entitlement to National Health Service treatment does not depend on the payment of contributions at all (although part of the contributions is allocated to the National Health Service). It was only after his accountant had alerted him to possible entitlement to sickness benefit that he claimed on 3 October 1990 in respect of the period 27 July 1989 to 13 January 1990.

4. It was not disputed that the claimant was incapable of work during the period in respect of which he claims and that he satisfied the contribution conditions for sickness benefit but the adjudication officer decided (a) that the claimant was not entitled to benefit from 27 July 1989 to 2 October 1989 because that period was more than 12 months before the date of claim and (b) that the claimant was not entitled to benefit from 3 October 1989 to 13 January 1990 because the claim was late and the claimant did not have continuous good cause for his delay. The claimant appealed. He accepted that benefit could not be paid in respect of any period before 3 October 1989 (see section 165A(2) of the Social Security Act 1975, now section 1(2) of the Social Security Administration Act 1992). However, he argued that he did have good cause for not claiming benefit earlier than he did and so was entitled to sickness benefit in respect of the period 3 October 1989 to 13 January 1990. The tribunal disagreed. They said:

> "The claimant lacked continuous good cause for his late claim. He could reasonably be expected to make some enquiry to ascertain if any benefits were available to him but he made none.
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> There seems to be no special circumstances justifying his failure to enquire.
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> The tribunal has seen the remarks of Commissioner Sanders in CS/124/1989 which indicate an opposite view. The claimant should seriously consider an appeal from the tribunal decision if only to ascertain whether the law on this subject has now undergone some change."

The claimant took the hint and the chairman of the tribunal granted him leave to appeal.

5. In his written submission, the adjudication officer now concerned with the case did not support the claimant's appeal, distinguishing CS/124/89 on its facts. However, in a very similar case (CS/353/92), a different adjudication officer had enthusiastically supported the claimant's appeal, relying on CS/124/89. I therefore directed that there should be an oral hearing at which this appeal and the appeal on file CS/353/92 could be heard together and I waited with keen anticipation to discover which approach the adjudication officers' representative would take. In the event, Mr. Jones supported the appeals of both claimants.

6. Regulation 19(1) and (2) of the Social Security (Claims and Payments) Regulations 1987 provides:

> "(1) Subject to the provisions of Schedule 5 the prescribed time for claiming any benefit specified in column (1) of Schedule 4 shall be the appropriate time specified opposite that benefit in column (2) of that Schedule.
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> (2) Where the claimant proves that there was good cause, throughout the period from the expiry of the prescribed time for making the claim, for the failure to claim a benefit specified in column (1) of Schedule 4 before the date on which the claim was made the prescribed time shall, subject to section 165A of the Social Security Act 1975 (12 months' limit on entitlement before the date of claim) and paragraph (4), be extended to the date on which the claim is made."

Where a claimant has previously claimed sickness benefit, as this claimant did in 1950 and 1956 before he became self-employed, the time for claiming sickness benefit prescribed in Schedule 4 to the 1987 regulations is six days. It is to be noted that <u>continuous</u> good cause must be shown from the end of that short period right up to the date of claim.

7. The meaning of "good cause" has been considered by Commissioners (and, before 1948, by Umpires) in countless cases. The approach taken has consciously and, I suspect, sometimes unconsciously become more liberal over the years. Greater emphasis is now placed on the need to investigate the facts surrounding each individual case. In C.S. 371/49 a railway clerk delayed her claim for sickness benefit because she assumed that she would receive her wages in full. The Commissioner said:

> "'Good cause' means, in my opinion, some fact which, having regard to all the circumstances (including the claimant's state of health and the information which he had received and that which he might have obtained) would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did. The claimant did not state why her expectation that no deduction would be made from her wages led her to decide to make no claim for benefit. It may be that she thought that she was not legally entitled to receive sickness benefit as well as

wages; if so, she was making an assumption as to the provisions of the Act without making any inquiry into the matter. Her omission would thus have been due to ignorance, which would not itself constitute good cause."

The first sentence of that passage is often quoted and was expressly approved by a Tribunal of Commissioners in R(S)2/63. It is perhaps less often remembered that the rest of that passage, dealing with the duty imposed on claimants to make inquiries, was expressly overruled in R(S)2/63. The Tribunal said:

> "13. Ignorance of one's rights is not of itself good cause for delaying claiming. It is in general the duty of the claimant to find out what they are, and how and when they should be asserted. But an examination of numerous Commissioners' decisions shows that over the years there has been a gradual but appreciable relaxation of the strictness with which problems of good and reasonable cause have been approached. The Commissioner has long recognised a wide variety of circumstances, in which it would not be expected that a reasonable person would make inquiries or think that there was anything to inquire about; see e.g. Decisions R(S)18/52, where a school-master in perfect health was prevented from working because he had been in contact an infectious disease and did not know that in those circumstances he was entitled to receive sickness benefit; R(P)5/58, where a widow who had emigrated to America in 1946 did not learn of her right to a retirement pension until 15 months after she attained pensionable age in 1955; R(S)10/59, where a woman who contributed as a non-employed person knew that, as such, she was not entitled to sickness benefit but did not know she had certain residual rights derived from former employment which entitled her to sickness benefit; see also Decisions R(S)11/59 and R(I)25/61. In all these cases a claimant has been held to have had good cause for delay in claiming because the right to benefit was unlikely and not such as to provoke inquiry into its existence.
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> 14. We think too that claims for sickness benefit have special features. A person approaching the age of retirement can reasonably be expected to inquire about his right to retirement pension. A person becoming unemployed can reasonably be expected to go to the employment exchange and find out about unemployment benefit. Sickness, however, may come on anyone suddenly, and its nature may be such as to present great practical difficulties about making inquiries; and we think it is putting the test too high to expect a reasonable person, as opposed to an abnormally pessimistic one, to study literature about sickness benefit claims whilst he is still in good health (cf. Decisions C.S. 42/50 (reported) and R(P)5/61, paragraph 12). Whilst however the law has been developing in other directions, it has been impossible in view of the decisions referred to in paragraph 12 for it to develop in a way to affect the

present case. The reason for the hearing of these five appeals by the tribunal was to consider whether any modification of the existing law would be justified.

15. Since the decisions referred to in paragraph 12 above [which included C.S. 371/49] were given between 1949 and 1952 a very large number of appeals have come before the Commissioner where the circumstances were similar to those of the present case. We have been greatly concerned to note that it is the most scrupulous claimants who have had to be disqualified by virtue of those decisions. We are satisfied from the evidence of the claimant in this case and that of the four other claimants concerned, and that of claimants in numerous other cases, that there is a very widespread belief that it is either illegal or wrong to claim sickness benefit when one is receiving full wages. This is in accordance with general notions of insurance, in many branches of which it would be regarded as dishonest to claim where one has not suffered a loss. We think too that it may be contributed to by the other rules relating to sickness benefit and unemployment benefit already referred to in paragraph 7 above. The prescribed forms of medical certificate do not in any way indicate that a person may claim benefit whilst receiving wages. The form Med. 1 contains a clear warning against false statements and an indication that certain other forms of benefit cannot be received with sickness benefit.

16. Having fully considered the matter and taken into consideration the fact that the rules hitherto applied are of long-standing, we feel justified in holding that cases of the present type may be regarded as special cases. We do not doubt that the earlier decisions were justified when they were given, but we think that experience over later years justifies modification of them. We think that in considering how a reasonable person should have behaved, it is permissible and right to pay regard to the way in which numerous apparently reasonable persons have behaved, as has been shown by the evidence in many appeals before the Commissioner. The insurance officer's representative did not in any way oppose some modification, and we are indebted to her for her help, though we have not felt able to accept an alteration precisely as she formulated it."

In R(P)1/79, the Commissioner said:

"5. In their submissions on late claim cases insurance officers conscientiously quote the principle that a person's ignorance of his rights - or of the time limits for claiming - is not <u>of itself</u> good cause for a late claim. But all too often they fail to apply it. They fail to appreciate that the words I have underlined invite a further enquiry, namely whether there are facts leading to a conclusion that the claimant's ignorance was reasonable. In <u>Wall's Meat Co Ltd v Khan</u> [1979] I.C.R. 52 the Court of Appeal was concerned with an employee's delayed complaint of unfair dismissal

made to an industrial tribunal. Lord Denning MR said (at page 56) "ignorance of his rights - or ignorance of the time limit - is not just cause or excuse, unless it appears that he or his advisers could not reasonably be expected to have been aware of them." And in the same case Brandon LJ pointed out that there could be good cause for delay if the delay was due to a mistaken belief reasonably held.

6. It is no good quoting a principle unless you go on to apply it. In the present case the insurance officer quoted the principle that ignorance is not of itself good cause but seems to have acted on a different and wholly erroneous one, namely that ignorance is of itself fatal to a plea of good cause. And local tribunals sometimes fall for this fallacy. ... That submission is a frequently used formula. The trouble with it is that it impliedly suggests that even if a claimant could not reasonably have been expected to have been aware of his rights, or even if his failure to assert them was due to a mistaken belief reasonably held, his failure to make enquiries of itself defeats a plea of good cause for delay. That suggestion is wrong in law."

8. It seems to me that, where ignorance is alleged, the question must be whether it is reasonable to expect the claimant to have made enquiries. As Mr. Jones submitted, a person who believes that he is not entitled to benefit cannot be expected to make enquiries if his belief is based upon solid grounds. In such a case, the question becomes whether his mistaken belief was reasonably held. The cases quoted in paragraph 13 of R(S)2/63 were all cases were a claimant could reasonably believe that there was nothing to enquire about. It follows that in the present case the question is whether this claimant's mistaken belief that his class 2 contributions did not entitle him to sickness benefit was reasonably held. On that question, different views have been taken but the predominant view has been against claimants. In R(S)1/73, the facts were indistinguishable from those in the present case. The Commissioner said:

"5. The tribunal disallowed the appeal, following a long line of Commissioners decisions. But they added - 'The dictum of MacKenna J in Eley v Bedford (1971) is in direct conflict with these decisions and the claimant has been advised to appeal.' They also recorded ' ... It would be reasonable to find good cause for his late claim had there not been Commissioners' decisions that ignorance of an entitlement to benefit does not provide good cause for failing to make a timeous claim.'"

Eley v. Bedford [1972] 1 Q.B. 155 was a personal injury action in which the plaintiff had failed to claim certain social security benefits. The defendant argued that the plaintiff's damages should be reduced to take account of the benefits which the plaintiff had not claimed. In the course of rejecting that argument, MacKenna J said "a plaintiff who does not know that he has a right does not act unreasonably in failing to exercise it." The Commissioner in R(S)1/73 quoted a passage from the Judge's

Judgment ending with that sentence and continued:

> "8. The last sentence, taken in isolation, might indeed suggest a conflict with the ratio decidendi of a line of Commissioners decisions. The dictum is, with respect, in the nature of a generalisation. It is not, in my view, apposite in determining whether a person has good cause for delay in claiming national insurance benefit. There must be many circumstances in which it is unreasonable for a person to act (or fail to act) on the basis of ignorance or doubt which could readily be dispelled by simple inquiry. In a matter of claims for national insurance benefits it may be more apposite - and not, I hope, unduly cynical - to recall the dictum of the celebrated jurist John Selden - 'Ignorance of the Law excuses no man, not that all Men know the Law, but because 'tis an excuse every man will plead, and no man can tell how to confute him.'
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> 9. The decision of the local tribunal, to confirm disqualification, was in accordance with principles consistently applied in Commissioners' decisions; and it was in my judgment, correct."

It is not disclosed what previous Commissioners' decisions the Commissioner had in mind. In as much as he makes it clear that a mistaken belief must be reasonably held, that decision is plainly consistent with the authorities I have cited above. However, the decision contains no reason (other than a general reference to earlier unidentified decisions) for the implicit view that the claimant's belief that he was not entitled to sickness benefit because he was self-employed was not reasonably held. Furthermore, I do not agree that the dictum of John Selden is apposite in the matter of claims for social security benefits. In the context of the criminal law one might well doubt an excuse of ignorance but in the context of social security claims that excuse is very often (although certainly not always) the most likely explanation for a claimant having failed to claim valuable benefits sooner than he or she did and so may much more readily be accepted as being true.

9. The leading authority concerned with a self-employed person who did not know that he could claim sickness benefit is R(S)8/81 in which the Commissioner said:

> "9. .... In [Wall's Meat Co Ltd v Khan] Brandon LJ pointed out that there could be good cause for delay if the delay was due to a mistaken belief reasonably held. That principle has frequently been applied by the Commissioner in cases where a claimant has been unaware that he is entitled to an increase of benefit on account of his wife, due to the raising of the earnings limit to a higher figure: see, for example, Commissioner's Decision R(P)1/79. It is has also many times been applied in cases where a woman has retired from employment when expecting a child and having ceased to contribute has failed to claim maternity allowance in time, been unaware that her previous contributions made

while employed had conferred on her residual rights. In both these types of case, the claimant could not reasonably have been expected to have been aware of his or her entitlement to benefit or an increase of benefit there being nothing about which they could reasonably have been expected to make enquiry. In contrast, there is a long series of Commissioners' decisions in which a self-employed claimant's failure to claim benefit in time owing to pure ignorance of the fact that sickness benefit is available to self-employed contributors has been held to disqualify the claimant on the ground of late claim: see Decision R(S)1/73. In such cases, a claimant could reasonably have been expected to make inquiry of the Department of Health and Social Security.

10. The position as regards the self-employed contributor who claims sickness benefit late owing to ignorance was clearly explained in Decision No. CS 16/79 in the following passages:

> '5.... since the social security scheme was first introduced in 1948, self-employed persons have always been entitled to claim sickness benefit. There are leaflets available at social security offices dealing with every type of benefit and leaflet NI 41 gives guidance to the self-employed and lists 7 benefits to which they have title, including sickness benefit and invalidity benefit. Ignorance of entitlement, of itself, has never been held to constitute good cause for a late claim, and indeed could not be. It is not so much ignorance as the cause of ignorance, namely failure to enquire about entitlement, at any local office of the department which does not constitute good cause for a delayed claim ....
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> 6. Persons are expected to look after their own interests and to make enquiries. It may not be reasonable to expect persons to enquire about their entitlement to benefits in the abstract when they have no present reason for making a claim; but it is reasonable to expect that a person who is incapable of work owing to sickness should make a simple enquiry at any local social security office, by telephone or by any of the other normal means of communication. If a person is too ill to make enquiry that may constitute good cause for delay in claiming, depending upon the nature of the illness, the claimant's domestic circumstances and the length of the period of the delay. If a person is an in-patient in hospital, he is deemed to satisfy the provision as to good cause for delay in claiming for 13 weeks .... Persons paying national insurance contributions might also be expected to have the curiosity to find out the benefits for which they are contributing.
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> 7. While I sympathise with the claimant, her reason

for the delay in claiming is solely her ignorance of her entitlement based on a mistaken and unverified impression that as a self-employed person she was not entitled to this benefit. I do not find that she has proved there was good cause ... '

11. In considering whether a person whom it is accepted was ignorant of his rights - or ignorant of a time limit for claiming benefit - could not reasonably have been expected to be aware of them, so as to constitute good cause for the delay in claiming, the first question that should be asked is whether the claimant made any enquiries as to the position of the local, or any other, office of the Department of Health and Social Security and, if he has not done so, whether he could reasonably have been expected to make such enquiries. I am prepared to assume, as probable, for the purposes of this decision that there is a large number of self-employed persons who are totally unaware of the fact that they are entitled to claim sickness benefit, should they fall sick. When such a person does fall sick, he can reasonably be expected to make, or institute, an enquiry as to his rights at the local, or other convenient, social security office. If he fails to do so, and there are no special circumstances justifying that failure (e.g. that the claimant was too ill to make, or institute, any enquiry) it cannot be held that the claimant could not reasonably have been expected to be aware of his rights."

I note that, again, the "long series of Commissioners' decisions" is not identified, reference being made only to R(S)1/73. In CS/124/89, the Commissioner made no reference to R(S)8/81. He said:

"I think I can safely say that it is a common misconception that a person who is self-employed or perhaps retired is not entitled to sickness benefit, and I would in general be inclined to take the view that where a claimant has misconceived his entitlement in that way his ignorance of his rights is to be regarded as reasonable; as it seems to me, such a claimant is not to be penalised for not having made enquiries - it would not occur to him to do so because he would think he had nothing to make enquiries about."

The Commissioner had referred to R(S)2/63 and R(P)1/79. In CS/224/90 the same Commissioner reached the same conclusion in a case similar to the present one. This time he did refer to paragraph 11 of R(S)8/81. He said:

"In this case of course there were the additional circumstances of the claimant's severe illness and the tribunal should at least have determined, in accordance with R(S)8/81, whether the claimant was in fact too ill to make or institute an enquiry. And even that seems to me to be an over strict approach. It is one thing to be unaware of entitlement to sickness benefit; it seems to me to be another to believe positively, as seems to be the case in

this case, that there was no entitlement because of the matters to which I have referred. I dealt with that in CS/124/89 ...."

I agree with the view expressed in CU/119/92 that CS/124/89 is inconsistent with R(S)8/81. I must choose between the two approaches.

10. As I have mentioned, Mr. Jones submitted that CS/124/89 and CS/224/90 were rightly decided. He pointed out that CS/224/90 could be distinguished from the present case because the claimant in that case had sought advice from an organisation whom he might reasonably have expected to be competent to advise about benefits and who had not advised him to claim sickness benefit. He submitted that R(S)8/81 did impose a strict test but that it was tempered and could be reconciled with CS/124/89. One had to look to see if there were any special circumstances. He submitted that the claimant's appeal in the present case should be allowed and the case referred to a different tribunal to make findings as to whether there were special circumstances justifying the claimant's failure to make enquiries about his rights. However, he was constrained to agree that the tribunal had made a finding that there were no special circumstances and that that was quite likely as the claimant had to show that he had "good cause" for failing to claim not only while he was ill but also during a period of approximately nine months after he had recovered sufficiently to be able to return to work. The claimant himself did not suggest there were any special circumstances. Mr. Jones therefore, I think, accepted that the question in this case was whether regulation 19(2) of the 1987 Regulations required this claimant to show special circumstances justifying his failure to make enquiries (the approach taken in R(S) 8/81) or whether the claimant's simple ignorance could itself be good cause for his failure to claim in this case (the approach taken in CS/124/89).

11. He then submitted that CS/124/89 was consistent with R(P)1/79 and that R(S)8/81 was not. He suggested that the Commissioner deciding R(S)8/81 had not had his attention drawn to R(P)1/79 but he conceded that that could not be so as there was a clear reference to R(P)1/79 in paragraph 9 of the later decision. Nevertheless, he submitted that it was not easy to reconcile R(P)1/79 and R(S)8/81 and that if there was a conflict the earlier decision was to be preferred. I agree that those two decisions do not sit easily side by side.

12. The reasons for the Commissioner deciding in paragraph 11 of R(S)8/81 that, in the absence of special circumstances, a self-employed person who was incapable of work could reasonably be expected to make enquiries at a social security office appear to be drawn from C,S. 16/79 from which he quoted at length in paragraph 10 of his decision. There are two reasons. The first is the suggestion, which I suspect is derived from R(S)2/63, that a person who is sick may generally be expected to make enquiries about entitlement to sickness benefit. That is no doubt the case where a claimant believes it is possible that he or she may have

entitlement, but that is not the situation here. It was not the situation in R(S)2/63 either and in that case the claimant's failure to make enquiries when sick did not prevent him from showing "good cause" for his delay in claiming. As the Commissioner himself said at paragraph 9 of R(S)8/81, a claimant cannot reasonably be expected to enquire about something if he or she cannot reasonably be expected to have been aware of possible entitlement. The mere fact of sickness does not suggest possible entitlement to sickness benefit if one reasonably believes that one has not paid the appropriate contributions any more than the fact of pregnancy suggested possible entitlement to maternity allowance to a woman who thought that too long a period had elapsed since she had last paid any contributions (the example to which the Commissioner referred). Therefore I do not find compelling the first of the Commissioner's reasons for his decision.

13. The other point made in C.S. 16/79 and apparently adopted in R(S)8/81 is that contributors ought to make enquiries to find out which benefits they might be entitled to as a result of making their contributions. In my view this point has more force. Yet one cannot but take notice of the number of the self-employed who apparently do not realise that they could be entitled to sickness benefit when they become incapable of work. In C.S. 11/79 to which reference was made in R(S)8/81, the Commissioner said:

> "6. Mr. Hatch [representing the insurance officer] argued that 'ignorance of one's rights is not of itself good cause for delay in claiming. It is in general the duty of the claimants to find out what they are, and how and when they should be asserted' (Decision R(S)2/63, paragraph 13). A self-employed person was required to pay over £2 per week for his stamp, and it was reasonable to expect him to make the appropriate enquiries as to exactly what benefit he was deriving from this payment. It passed comprehension that a self-employed person should continue to pay this stamp without at least making enquiry of his rights at a local office.
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> 7. I asked Mr. Hatch whether it was correct, as the claimant alleged, that many self-employed persons were unaware of their entitlement to sickness benefit, and he confirmed from his experience that this was, in fact, the case. He expressed surprise that such ignorance should be so widespread, particularly as, unlike the case of maternity allowances and increases of pension in respect of a wife who was working, there had been no alterations in entitlement to benefit.
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> 8. I asked Mr. Hatch whether there had been any recent publicity sponsored by the appropriate authorities to ensure that self-employed persons were aware of their rights to sickness benefit. He had to admit that, as far as he was aware, no such campaign had in recent times been mounted, and this notwithstanding that there are always coming on to

the market new self-employed persons whose attention is apparently not drawn to the full range of their entitlement.

9. I find this case a little disquieting, in that it would appear that there is a large body of self-employed persons who do not appreciate the full extent of their entitlement, and are suffering in consequence. No positive attempt, however, is apparently being made in official quarters to disabuse them of their ignorance.

10. I cannot see why some simple action cannot be adopted such as, for example, the recital of self-employed persons' rights on the back of their National Insurance card, a suggestion made by the claimant himself. Admittedly, it is possible by careful scrutiny of the current National Insurance card to find a reference to contributions being excused 'because of incapacity for work' which hints that the self-employed have some sickness entitlement. Moreover, it is possible to find the suggestion that leaflet NI 41 be obtained. But these oblique references to possible entitlement are not what I mean and are a wholly unsatisfactory way of explaining to the self-employed that they are entitled to sickness benefit. It should also be borne in mind that even the suggestion that the full rights of the self-employed be recited in unequivocal terms on the back of the National Insurance card would be valueless where contributions are paid by the direct debit system and hence there is no card in existence.

11. Too many self-employed persons, it would appear, believe that their contribution is merely for the provision of a pension and the support of the National Health Service. Unless official attempts are made to communicate to self-employed persons the full extent of their rights, the time may well come when it would be inappropriate to disallow benefit for lateness. However, I do not think that that point has yet been reached. I consider that it was incumbent on the claimant to have made appropriate enquiry before reaching his mistaken conclusion that he was not entitled to sickness benefit."

If any attempts have been made to disabuse the large number of self-employed persons of their ignorance about their potential entitlement to benefits, they have not been very successful.

14. In R(S)8/81 the Commissioner did not accept that any failure by the authorities to give appropriate publicity to the rights of self-employed contributors to claim sickness benefit could, by itself, constitute good cause for delay in claiming. However, I return to what the Tribunal of Commissioners said at paragraph 16 of R(S)2/63.

"We think that in considering how a reasonable person should have behaved, it is permissible and right to pay regard to the way in which numerous apparently reasonable persons have behaved, as has been shown by the evidence in many appeals

before the Commissioner."

Given the clear impression of a widespread belief that class 2 contributions are not relevant for sickness benefit, I have, with some hesitation, come to the conclusion that it must now be regarded as reasonable for a self-employed person to believe that he or she cannot claim sickness benefit and, while holding that belief, not to make enquiries at a social security office when he or she becomes sick.

15. I stress that it will only be reasonable for a potential claimant not to make enquiries if he has a firm belief that he is not entitled to benefit (see paragraph 19 of R(S)2/63). In CS/353/92, which I heard with the present appeal, there was some evidence (the obtaining of a claim form which he did not complete) suggesting that the claimant might have been uncertain as to his rights. If a person is uncertain, it may not be reasonable for him or her not to make enquiries. There may also be cases where adjudication officers can show that particular claimants have been given information that should have alerted them to their rights and, if there is substantially improved general publicity of the rights of the self-employed, the approach I have taken may no longer be justified in any case. However, at present, when a claimant has a firm belief that he or she is not entitled to sickness benefit on the basis of class 2 contributions having been paid, I take the view that the claimant does have "good cause" for delay in claiming sickness benefit. I respectfully disagree with the conclusion reached in R(S)8/81.

16. I therefore allow the claimant's appeal. There being no further facts to find, I give the decision which the tribunal ought to have given and which I suspect they would have given had they not rightly considered that they were bound by the weight of authority to decide otherwise. The claimant still accepts that he is not entitled to sickness benefit for any period before 3 October 1989. He also is not entitled to sickness benefit in respect of the next 3 days which were "waiting days" (see section 14(3) of the Social Security Act 1975, now section 31(4) of the Social Security Contributions and Benefits Act 1992). In respect of the period thereafter, the claimant is entitled to sickness benefit, it having always been accepted by the adjudication officer that sickness benefit would be payable if the claimant had "good cause" for his delay in claiming.

(Signed) M Rowland
Commissioner

(Date) 24 November 1993