

Billings 1 to

Costs

THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CSHB/615/03

SOCIAL SECURITY ACT 1998

CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000

APPEAL FROM THE APPEAL TRIBUNAL UPON A QUESTION OF LAW

COMMISSIONER: D J MAY QC

Oral Hearing

Appellant:

Respondent: Glasgow City Council

Tribunal: Glasgow

Tribunal Case No:

DECISION OF SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the appeal tribunal given at Glasgow on 29 April 2003 is not erroneous upon a point of law. The appeal fails. I dismiss it.

2. This appeal along with four other appeals by the same appellants came before me for an oral hearing on 19 February 2004. The Queen's Cross Housing Association Limited, who are the appellants, were represented by Mr Craig, a welfare rights officer employed by them. The City of Glasgow Council, who are the respondents, were represented by Mr Sutherland, Advocate, instructed by the City of Glasgow Council. Four other identical appeals with the same parties were held at the same time. They are the cases CSHB/616/03, CSHB/617/03, CSHB/618/03 and CSHB/619/03.

3. The appellants have appealed against the decision of the tribunal held on 29 April 2003 to the effect that the tribunal had no jurisdiction to hear their appeal against a determination of the respondents. The circumstances shortly put, both in this case and the other four, are that the respondents issued a determination against tenants of the appellants who had an award of housing benefit, that they had been overpaid specific amounts of housing benefit for specific periods and that the overpayments were recoverable. Having made the determination against the tenants the respondents selected as the means by which to recover the overpayments, deductions from future payments of housing benefit which in accordance with the provisions of regulation 94 of the Housing Benefit (General) Regulations 1987 were to be paid directly by the respondents to the appellants. The statutory authority for such selection for the means of recovery was regulation 102 of the above regulations.

4. The right of appeal from a determination of an authority such as the respondents to an appeal tribunal is set out in paragraph 6 of schedule 7 of the Child Support, Pensions and Social Security Act 2000. The relevant sub paragraphs of that paragraph are as follows:-

“6(1) Subject to sub-paragraph (2), this paragraph applies to any relevant decision (whether as originally made or as revised under paragraph 3) of a relevant authority which –

- (a) is made on a claim for or on an award of, housing benefit.....; or
- (b) does not fall within paragraph (a) but is of a prescribed description.

.....
(3) In the case of a decision to which this paragraph applies, any person affected by the decision shall have a right of appeal to an appeal tribunal.

.....
(6) Where any amount of housing benefit is determined to be recoverable under or by virtue of section 75.....of the Administration Act (overpayments and excess benefits), any person from whom it has been determined that it is so recoverable shall have a right of appeal to an appeal tribunal.”

5. The tribunal decided that the appellants did not fall within the scope of paragraph 6. Thus it decided that there was no jurisdiction for it to entertain an appeal made by the appellants. Mr Craig sought to persuade me that in the circumstances the appellants did have such a right of appeal. Mr Sutherland submitted, and this was not contradicted by Mr Craig that the rights of appeal under 6(1) to 6(3) of schedule 7 are separate and exclusive to the provisions contained in paragraph 6(6). In that connection I refer to paragraphs 33 and 34 of a decision by a Tribunal of Commissioners in CH/5216/2001 and two other cases. I accept that proposition. Thus the issue before the tribunal and before me is whether, in these

circumstances, the appellants fell within the scope of either paragraphs 6(1) and 6(3) or 6(6) so as to have a statutory right of appeal.

6. The difficulty for Mr Craig is that on the face of it the determinations, in respect of the recoverability of the overpayments in each of the five cases were made against the tenants who were the claimants themselves and not the appellants. It is however a fact that the respondents have chosen to effect the recovery of the overpayments by deduction of future housing benefit payments made by them to the appellants under regulation 102. This affects the amount of the payments of housing benefit made by the respondents to the appellants until the overpayment has been recovered by them. Mr Craig properly conceded that if the means of recovery of the overpayments had been effected in some other way then it would not have been arguable that the appellants had a right of appeal.

7. As far as the scheme of appeal contained in paragraphs 6(1) to (3) of schedule 7 is concerned the right of appeal is restricted to a decision to which paragraph 6 applies and the identity of those entitled to appeal is restricted to "any person affected" by the decision.

8. The phrase "person affected" is to be construed in accordance with regulation 3 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 – see regulation 2 of these regulations. So far as is relevant in this case, regulation 3 provides:-

- "3(1) For the purposes of schedule 7 to the Act and subject to paragraph (2), a person is to be treated as a person affected by a relevant decision of a relevant authority where that person is –
- (a) a claimant;
 -
 - (d) a person from whom the relevant authority determines that an overpayment is recoverable in accordance with part XIII of the Housing Benefit Regulations.....
- (2) Paragraph (1) only applies in relation to a person referred to in paragraph (1) where the right, duties or obligations of that person are affected by a relevant decision."

9. It can thus be seen that for the appellants to be a person affected, they must be a person from whom the relevant authority determines that an overpayment is recoverable. By virtue of the terms of paragraph 6(6) the same considerations would apply for the operation of it.

10. In order to bring the appellants within the scope of paragraph 6 Mr Craig submitted that as a matter of fact the respondents had determined that the overpayment of housing benefit was recoverable from the landlord's income, namely the future payment of housing benefit. He said that it was not possible to ignore that the intended method of recovery was from the landlord. In effect he was submitting that the determination against the claimant was an indirect determination against the landlord. It was his submission that a right of appeal by the appellants subsisted under both paragraphs 6(1) and (3) and (6).

11. Mr Sutherland on the other hand set out a somewhat different proposition in his written and oral submissions. In his written submission he said:-

- "20. The provisions of Paragraph 6(3) and Paragraph 6(6) of Schedule 7 to the 2000 Act are distinct from each other. Any right of appeal under Paragraph 6(6) is a right of appeal from a decision made under Section 75 of the Administration Act. It is an appeal only

available to the person from whom the payment is to be recovered. A decision under Section 75(3) of the Administration Act is excluded from the right of appeal under Paragraphs 6(1)-(3) of Schedule 7 to the 2000 Act. Reference is made to paragraphs 33 and 34 of the Decision of the Tribunal of Social Security Commissioners in files CH 5216/01, CH 841/02, CH3880/02, dated 8 October 2003 ('the Tribunal of Commissioners decision').

21. Where the relevant decision taken is to recover an overpayment under Part XIII of the 1987 Regulations, it is submitted that the words of Regulation 3(1)(d) of the 2001 Regulations make it quite clear that the 'person to be treated as a person affected by a relevant decision' is that person from whom the Council decides the overpayment is recoverable. That person must be the same person as the one whom the landlord made a decision to go against under Regulation 101(2) of the 1987 Regulations. Where a decision is made that there has been an overpayment, a landlord who received direct payment and who is at risk of having payment recovered from them would be a person affected by the decision and should be notified of the separate right of appeal. Reference is made to paragraph 50 of the Tribunal of Commissioners decision.
22. It is submitted that if the person that the Council choses (sic) to seek recovery from under Regulation 101 of the 1987 Regulations is a person other than the landlord, then the landlord cannot fall within the meaning of 'relevant person' because they are not the person against whom it has been decided to make recovery of the overpayment from. Since Regulation 102 of the 1987 Regulation expressly permits recovery of overpayment by way of deduction from other housing benefit payments to which that person is entitled, and since entitlement under Section 130 of the Contributions Act is personal to the claimant, 'entitlement' can only refer to a claimant. It is submitted that this must mean that a landlord cannot claim they are the person whom the relevant authority has chosen to make the recovery from simply because the chosen method of recovery is against future payments of housing benefit."

He then went on to say:-

- “23. It is further submitted that in any event, in terms of Regulation 3(2) of the 2001 Regulations the Association has no 'right' of its own to receive payment of housing benefit of any particular amount. It is not the person entitled to receive payment. Following a decision to make payment directly to the landlord rather than the claimant, the Association can only have (at best) an expectation that it will continue to receive such payments of whatever amount in benefit the claimant is found to be entitled to.”

12. Mr Craig has not persuaded me that the appellants are within the scope of those who are given a right of appeal under paragraph 6. There is in my view a clear distinction between a determination that there is a recoverable overpayment from a named person, in this case the claimant and tenant, and the means by which the respondents effect that recovery. 1 Whilst the effect of the means by which the recoverable overpayment is to be recovered may have consequences on the amount of the payments received by the appellants in the form of future payments of housing benefit from the respondents, that can by no means be regarded as a determination by the respondents that there is a recoverable overpayment of housing benefit from them. Mr Craig's submission involves reading into the legislation a meaning which is not expressed. The benefit is still that of the claimant and the obligation to pay rent to the appellants still subsists with the claimant. The appellant can no doubt seek to recover any shortfall in rent by virtue of the

deduction of the overpayment from future housing benefit payments from the tenant. I am fortified in the view I have reached by virtue of the concession made by Mr Craig recorded in paragraph 8 above. It can thus be seen that I am persuaded by the submissions made by the respondents. That is sufficient to dispose of the appeal. I should perhaps indicate that whether, if I had accepted Mr Craig's submission, the other conditions for a right of appeal by the appellants to the tribunal contained in paragraphs 6(1) to 6(3) and (6) were satisfied is not something to which I have addressed my mind.

13. The appeal fails.

(Signed)
D J MAY QC
Commissioner
Date: 23 February 2004