DLA reviews of life awards: AO's/DMs continue entitlement in breach of s32(4) & 33 Adm Act.
- But SoS can seek info & pass it to the AO.

THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CDLA/2375/1997

SOCIAL SECURITY ADMINISTRATION ACT 1992
SOCIAL SECURITY ACT 1998

APPEAL FROM THE DISABILITY APPEAL TRIBUNAL UPON A QUESTION OF LAW

COMMISSIONER: W M WALKER QC

ORAL HEARING

Appellant: Kay Marie Wilson — *Respondent: Adjudication Officer*

Tribunal: Durham — *Tribunal Case No: D/12/041/96/0089*

DECISION OF SOCIAL SECURITY COMMISSIONER

1. This claimant's appeal succeeds. I hold the decision of the Durham disability appeal tribunal dated 12 November 1996 to be erroneous in point of law and, accordingly, I set it aside. I remit the case to the tribunal for determination afresh in accordance with the directions which follow.

2. My first direction to the new tribunal is to allow the appeal from the review decision of an adjudication officer dated 20 February 1996 and thereby restore into effect an earlier adjudication officer's award of the middle rate of the care component of the disability living allowance made for life on 30 August 1995. My second direction is to consider the appeal before them as concerning only the mobility component, an award of either rate of which was refused by the adjudication officer in his said review decision. That consideration will be further governed by guidance below.

3. This case came before me by way of an oral hearing requested on behalf of the claimant and granted by a Nominated Officer. At that hearing the claimant was represented by Mr Guy, a welfare rights officer with Durham County Council. The adjudication officer was represented by Mr Ian Armstrong, Advocate, instructed by the Solicitor in Scotland to the Department of Social Security. At the first diet of hearing Mr Armstrong sought, and obtained without objection, an adjournment and so the matters at issue were fully canvassed only at the second diet. I refer to paragraph 15 below. At the resumed hearing Mr Armstrong immediately conceded that the tribunal decision was in error of law upon one of the grounds set out in written submissions on behalf of the claimant with the result that that decision fell to be set aside. The real issues in the case thus concerned the nature and scope of my directions to the new tribunal.

4. Nonetheless, I must first set out why the tribunal decision was in error of law. In response to a claim in July 1995 an adjudication officer had held the claimant entitled to the middle rate of the care component of disability living allowance for life. That decision was based upon satisfaction of the night needs conditions - unspecified but probably in respect of supervision. That decision also disallowed entitlement to the mobility component although, strictly so far as I can make out from the claimant's application form, that issue was not then live. By letter, documents 85 and 86 of the bundle, the claimant, further to a telephone conversation, wrote:-

> "...to enquire about mobility allowance."

That was taken to be an application for the mobility component and so a further application form came to be completed. An adjudication officer then embarked upon a review of the existing awarding decision under section 30(1) of the Social Security Administration Act 1992 - that is an "on any grounds" review. But the width of that review was cut down by section 32(4) which required that where there was an award of a component for life "on any review under section 30" an:-

> ".....adjudication officer shall not consider the question of [the claimant's] entitlement to that component or the rate of that component or the period for which it has been awarded unless -

(a) the person awarded the component expressly applies for the consideration of that question; or

(b) information is available to the adjudication officer which gives him reasonable grounds for believing that entitlement to the component, or entitlement to it at the rate awarded or for that period, or not to continue."

In the event, as the reviewing adjudication officer's decision itself demonstrates at document 96 of the bundle, the decision so far as dealing with the existing award by termination was based largely if not wholly upon a report from the claimant's general practitioner; from a hospital and from the record of a late phone call or interview with the claimant. The first two seem to have been obtained and the last was conducted by that adjudication officer himself. His stamp and name as attached to his decision at document 98 of the bundle is the same as that on the record of telephone call or interview at document 91. In light primarily of the decision by Mr Commissioner J G Mitchell QC in CSDLA/120/97 [decision "120"] that an adjudication officer's decision which was based upon material which he had deliberately obtained in regard to an award protected by section 32(4) and after he had entered upon consideration of the review was on that account invalid, so the decision in this case is also invalid. The tribunal, no doubt lacking the guidance of that Commissioner's decision, fell into the same trap as had the tribunal whose decision was before Mr Commissioner Mitchell. Accordingly and as Mr Armstrong accepted, their decision fell to be held to be in error of law. Thus far parties were in agreement and, having followed Mr Commissioner Mitchell's decision in my own decision CSDLA/121/97 [decision "121"], I see no reason not to uphold that contention.

5. As already noted, the real issue before me centred upon the directions to be given to the new tribunal. Very simply, Mr Armstrong, following written submissions lodged on behalf of the adjudication officer, contended that Mr Commissioner Mitchell's conclusion in paragraph 13 of his decision was correct, namely that the improperly sought evidence was nonetheless "available" to the new tribunal so they might consider whether it afforded reasonable grounds for believing that the life award ought not to continue - echoing the words of section 33(6) of the Act which, in turn, provide a mirror image of the restriction upon the adjudication officer in respect of appeals to the tribunal. In decision 121 I had noted that whether or not the evidence in question could be regarded as "available" before the new tribunal was a view which was <u>obiter</u>. I also noted that without detailed submissions I was hesitant to come to a final view but expressed some concern about the apparently circular position which arose if evidence tainted by illegality because obtained by one level of the adjudication system dealing with an application could lose that taint if put before a higher level on appeal. That seemed to me to detract from the practical value of the restrictive provisions. I noted an attraction to the simplistic view that evidence once tainted remains so for all purposes in respect of the same application and any appeal thereon and that such a view might better equate with the principle that a tribunal on an open appeal is rehearing the whole matter with the powers and in the position of the adjudication officer below - paragraph 11 of 121.

6. Mr Armstrong's first submission started with a consideration of section 33(4) of the Act, the mirror image of the provision for an adjudication officer in section 32(2) and (3). Briefly these provisions say that where there is an award of one component and the review is concerned with the other component of the allowance then the adjudicating authority "need not" consider the existing entitlement. That is because a review otherwise would open up all aspects of the decision under review, both so far as not awarding and awarding. Mr Armstrong pointed to Mr Commissioner Williams' decision CDLA/1400/97 where a tribunal under section 33(4) was held to have had a discretion to be exercised judicially as to whether to consider an already awarded component. The Commissioner quoted CSDLA/180/94 as laying down that the exercise of such discretion depended upon there being some "evidence of substance" and noted that in a case where the tribunal "need not" consider an award they should give proper notice to the claimant of any doubt felt to entitle them to enter upon consideration of it. Mr Armstrong then sought to persuade me that the "need not" and "shall not" provisions before me fell to be considered cumulatively so that if a tribunal had available evidence such as to suggest to them that the awarded component required to be reconsidered then, provided they exercised a judicial discretion, they could look at it. I am not persuaded that the "need not" and "shall not" provisions fall to be considered and construed together.

7. As I view the scheme of sections 32 and 33 of the Act there is a limited prohibition upon consideration of an existing award other than a life award which requires the approach distilled and set out by Mr Commissioner Williams. But if the award is a life-time one, as here, then there is a total prohibition upon its consideration upon a section 30 review except where the specified and limited conditions apply. It was common ground that the evidence in documents 87 to 94 of the bundle had not properly been "available" to the adjudication officer. And the sole issue argued before me was as to whether that information then came to be "available" to the tribunal. There was no suggestion that section 33(6)(i) could be satisfied, namely that "the appeal expressly raises that question".

8. Mr Armstrong then turned to deal with my concerns as expressed in decision 121. He submitted that the concept of a taint suggested some illegality - thus evidence obtained without a warrant in the criminal sphere. He submitted that there was nothing illegal about the obtaining of the material: what was illegitimate was what happened thereafter and so it was the decision, and it alone, which had been tainted. I cannot accept that. In decision 120 it was clearly stated that in the judgment of Mr Commissioner Mitchell the adjudication officer:-

> "...was not entitled to deliberately to seek further evidence upon the... component for which a life award was in existence."

He contrasted that with evidence which might have been obtained "inadvertently". The words 'not entitled' indicate to me that the adjudication officer was being held to have acted illegally in its strict sense of acting contrary to legal rules. Mr Armstrong next submitted that so far as I was concerned about a possible circular position, only the Secretary of State realistically would be liable to appeal a section 30 review decision by an adjudication officer. It was improbable, he contended, that the Secretary of State would not abide by the spirit of the adjudication system and appeal solely upon a proper basis. He would not be likely, said Mr Armstrong, to contend that there was information which was not available to an

adjudication officer's consideration because he had himself sought it only in order to have it brought before and for consideration by a tribunal and so avoid, in effect, the prohibition of section 32(4). That may well be so but I understand my responsibility to be to seek to interpret the legislation by and from its words rather than by how responsibly anyone might be expected to abide by its spirit.

9. Next Mr Armstrong submitted that the State has an interest in the proprietary of awards of benefit and that such awards should be seen to be appropriate in light of any evidence which actually exists. I accept the spirit of that. It was, then submitted Mr Armstrong, a balancing process between that consideration and the ability for a tribunal to consider evidence so improperly obtained. I accept that there is a somewhat delicate balancing process involved and I further accept that it may be unrealistic to suppose that the Secretary of State when alone with power to appeal an adjudication officer's decision to a tribunal would do so solely to obviate the restriction of section 32(4). Nonetheless, I am left somewhat uneasy at the proprietary of evidence which the adjudication officer should not have obtained yet being advanced to a tribunal reconsidering his decision.

10. Mr Guy strenuously resisted Mr Armstrong's submissions. I think he was perhaps drawn unduly into consideration of the "need not" authorities because I am clear, as already indicated, that the "shall not" prohibition requires to be considered separately. Otherwise he urged me to follow my own decision 121 which built upon Mr Commissioner Mitchell's decision 120. In short, he submitted that I should reach the result set out in paragraph 2 above. I have, however, reached the conclusion that that is the correct decision for more than the reasons set out in decision 121.

11. Apart from the concerns expressed in decision 121, I have come to the view that if Mr Armstrong's submissions were correct then, strictly speaking, an adjudication officer upon a section 30(1) review, as here, would have noted that certain material which he had himself obtained after entering upon consideration of the review was not material to which he could properly have regard. He would then on that account have set that material aside with the result that here he would have considered, and no doubt refused, only the application for the mobility component and left standing the care component award. But following Mr Armstrong's approach further, when the claimant appealed to the tribunal in respect of the refusal of the mobility component the adjudication officer would himself be able to raise at his own hand an issue about the care component founding upon evidence he had not been entitled to obtain and which he had put aside. Indeed he would then have to produce it, with proper notice to the claimant according to Mr Commissioner Williams, lay it before the tribunal for consideration for the first time and found upon it as "information available to the tribunal." That may be a stricter way of putting the apprehensions which I earlier felt. I cannot accept that such a procedure was intended by Parliament. Not only would it in effect modify section 33(6) by qualifying the information referred to at (ii) as such whether legally or properly obtained or not. The inherent unfairness of any such proceeding as a matter of natural justice is further demonstrated by the consideration that any tribunal in such a situation would, as Mr Armstrong himself accepted, indeed suggested, probably and usually have to adjourn to allow the claimant to seek to rebut that material. Indeed, such a procedure in my opinion could well effectively mean the adjudication officer founding upon section 36(1) of the Social Security Administration Act 1992, which deals with questions first arising on an appeal, and such a review of the 'life award' could well be one such. At the

least it could be so regarded. Whether or not the tribunal would do so and exercise the discretion conferred by the section would always be an open question. I think, if there then had to be an adjournment, the probability from experience is that a different tribunal would be constituted and they would have to consider the whole issue anew - regulation 22(3) of the Social Security (Adjudication) Regulations 1995 - with possibly a different discretionary result. The whole concept to my mind is too complicated and confused to have been contemplated by Parliament.

12. I am, nonetheless, concerned about the balance to which Mr Armstrong drew attention and to a certain feeling that this decision might itself be thought to introduce a degree of procedural rigidity and restriction which is undesirable in proceedings designed to correct a decision which may have been wrongly made. I say nothing about whether the care award in this case was properly made. But if it had been improperly made then it might be thought that this decision meant that it would be difficult if not virtually impossible to correct it. That is far from what I either intend or think the proper result to be.

13. The only difficulty in this case, as in 120 and 121, was caused by the action of the adjudication officer. But an adjudication officer is only concerned with claims and questions brought before him in terms of section 20, and others, of the Administration Act. Review questions fall to be addressed to an adjudication officer by an application in writing to that officer. (Common Appendix to CSSB/297/89 and others, as endorsed by CSSB/544/89 and others). Provision to that effect applies even in the case of section 30(1) reviews by reason of sub-section (7). Persons seeking a review, other than the Secretary of State himself, will in effect do so by addressing the Department - that is the Secretary of State - and not the adjudication officer. Accordingly, the system in theory means that it is for the Secretary of State to transfer any question of a review raised by an individual to an adjudication officer together with any relevant information. The Secretary of State as much as an adjudication officer has power to investigate the circumstances of any claim or question and if there is some reason for suspicion about an existing life award in such a situation as the present then I can see no reason why the Secretary of State could and should not have instituted enquiries. When transferring the matter to the adjudication officer he would have included all the relevant material which would then undoubtedly have included information "available" to the adjudication officer prior to his entering upon consideration of the review. I am also aware, of course, that quite often, and no doubt very confusingly, one person may both be an officer authorised to act for the Secretary of State and be an adjudication officer. Indeed, it is not inconceivable that in the present case the unfortunate "C Grimshaw" was such and the enquiries complained of were conducted in the former capacity and his decision only in the latter. If that was the case then it just demonstrates graphically the confusion that such a two-hat operation produces. I have no doubt that in a case where enquiries are necessary they can properly be made by or on behalf of the Secretary of State prior to the matter being put before an adjudication officer, and be seen to be so. There should then be no difficulty under the terms of section 32(4), even as now amended. Such proper attention to the scheme of the adjudication system would have avoided the problems rehearsed above. Had it been done here it would have meant that the material could have been equally considered by an adjudication officer and the tribunal. It follows, I should note, that if the Secretary of State now obtains appropriate evidence, other than that improperly obtained by the adjudication officer of course, then that may well be "information available to" the new tribunal in which case, if need be, they will require to ensure that the claimant has adequate advance notice of it

in order to be able to seek to rebut it. Indeed, and independently, I see nothing in the adjudication scheme which would prevent the Secretary of State upon such a separate investigation immediately raising the issue before an adjudication officer as a question arising in which case, if the adjudication officer reached the same conclusion as the review adjudication officer in this case, there might be nothing for the new appeal tribunal to consider other than the mobility question. A review adjudication officer's decision upon the care component, if adverse to the claimant, would give rise to a separate right of appeal. I am persuaded that this, simpler and more pragmatic, approach not only complies better with the adjudication system but is more of the nature of what Parliament intended.

14. I must add that it will be for the claimant and her advisers to consider whether to proceed with their appeal having regard to the information available to them and the risks now made clear, one way or another. In that regard it may be that they should consider regulation 6 of the Social Security (Adjudication) Regulations 1995, as amended by regulation 7 of the Social Security (Adjudication) and Child Support Amendment (No 2) Regulations 1996. That is entirely a matter for them and I only mention it because something was said in that regard in the closing moments of the hearing.

15. On a matter of practice it is necessary, lastly, to record that the primary reason for the adjournment was that an extra written submission for the claimant had not reached the Solicitor in Scotland. Mr Armstrong consequently was not fully instructed. At the resumed hearing it was contended for the adjudication officer that the submission had been received and distributed by the Office of the Commissioners after the hearing had been arranged. It was said that it was therefore assumed that in accordance with "normal practice" copies would also have been sent to the Solicitor in Scotland and so, I take it, the Central Adjudication Services (CAS) had not done so. For my part I am not aware that there was ever a practice of copying submissions and the like to the Solicitor in Scotland as well as to CAS at any stage of a case. Having consulted my colleagues based in Scotland I can say that for the future there will be no such procedure. It may be, as in the past, that papers received in Edinburgh too soon before a hearing to be sure that they will by normal procedure be forwarded to the Solicitor in Scotland, will, but as, matter only of courtesy, be so copied. That exception is not to be relied upon. It is for CAS in accordance with normal practice to secure that his solicitor is adequately briefed for any hearing. As a minor coda I might add that even the adjourned hearing required itself a short adjournment because the adjudication officer's written response to the said written submission for the claimant had been sent by CAS to London and not to Edinburgh and so was not available at the resumed hearing until a copy had been handed in, copied and considered.

16. For the reasons set out above, the appeal must be allowed and the case remitted accordingly.

(signed)
W M WALKER QC
Commissioner
Date: 11 November 1998

DECISION OF SOCIAL SECURITY COMMISSIONER

1. This claimant's appeal succeeds. I hold the decision of the Durham disability appeal tribunal dated 12 November 1996 to be erroneous in point of law and, accordingly, I set it aside. I remit the case to the tribunal for determination afresh in accordance with the directions which follow.

2. My first direction to the new tribunal is to allow the appeal from the review decision of an adjudication officer dated 20 February 1996 and thereby restore into effect an earlier adjudication officer's award of the middle rate of the care component of the disability living allowance made for life on 30 August 1995. My second direction is to consider the appeal before them as concerning only the mobility component, an award of either rate of which was refused by the adjudication officer in his said review decision. That consideration will be further governed by guidance below.

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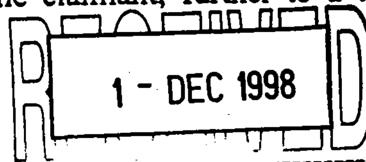

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5. As already noted, the real issue before me centred upon the directions to be given to the new tribunal. Very simply, Mr Armstrong, following written submissions lodged on behalf of the adjudication officer, contended that Mr Commissioner Mitchell's conclusion in paragraph 13 of his decision was correct, namely that the improperly sought evidence was nonetheless "available" to the new tribunal so they might consider whether it afforded reasonable grounds for believing that the life award ought not to continue - echoing the words of section 33(6) of the Act which, in turn, provide a mirror image of the restriction upon the adjudication officer in respect of appeals to the tribunal. In decision 121 I had noted that whether or not the evidence in question could be regarded as "available" before the new tribunal was a view which was <u>obiter</u>. I also noted that without detailed submissions I was hesitant to come to a final view but expressed some concern about the apparently circular position which arose if evidence tainted by illegality because obtained by one level of the adjudication system dealing with an application could lose that taint if put before a higher level on appeal. That seemed to me to detract from the practical value of the restrictive provisions. I noted an attraction to the simplistic view that evidence once tainted remains so for all purposes in respect of the same application and any appeal thereon and that such a view might better equate with the principle that a tribunal on an open appeal is rehearing the whole matter with the powers and in the position of the adjudication officer below - paragraph 11 of 121.

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8. Mr Armstrong then turned to deal with my concerns as expressed in decision 121. He submitted that the concept of a taint suggested some illegality - thus evidence obtained without a warrant in the criminal sphere. He submitted that there was nothing illegal about the obtaining of the material: what was illegitimate was what happened thereafter and so it was the decision, and it alone, which had been tainted. I cannot accept that. In decision 120 it was clearly stated that in the judgment of Mr Commissioner Mitchell the adjudication officer:-

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11. Apart from the concerns expressed in decision 121, I have come to the view that if Mr Armstrong's submissions were correct then, strictly speaking, an adjudication officer upon a section 30(1) review, as here, would have noted that certain material which he had himself obtained after entering upon consideration of the review was not material to which he could properly have regard. He would then on that account have set that material aside with the result that here he would have considered, and no doubt refused, only the application for the mobility component and left standing the care component award. But following Mr Armstrong's approach further, when the claimant appealed to the tribunal in respect of the refusal of the mobility component the adjudication officer would himself be able to raise at his own hand an issue about the care component founding upon evidence he had not been entitled to obtain and which he had put aside. Indeed he would then have to produce it, with proper notice to the claimant according to Mr Commissioner Williams, lay it before the tribunal for consideration for the first time and found upon it as "information available to the tribunal." That may be a stricter way of putting the apprehensions which I earlier felt. I cannot accept that such a procedure was intended by Parliament. Not only would it in effect modify section 33(6) by qualifying the information referred to at (ii) as such whether legally or properly obtained or not. The inherent unfairness of any such proceeding as a matter of natural justice is further demonstrated by the consideration that any tribunal in such a situation would, as Mr Armstrong himself accepted, indeed suggested, probably and usually have to adjourn to allow the claimant to seek to rebut that material. Indeed, such a procedure in my opinion could well effectively mean the adjudication officer founding upon section 36(1) of the Social Security Administration Act 1992, which deals with questions first arising on an appeal, and such a review of the 'life award' could well be one such. At the

least it could be so regarded. Whether or not the tribunal would do so and exercise the discretion conferred by the section would always be an open question. I think, if there then had to be an adjournment, the probability from experience is that a different tribunal would be constituted and they would have to consider the whole issue anew - regulation 22(3) of the Social Security (Adjudication) Regulations 1995 - with possibly a different discretionary result. The whole concept to my mind is too complicated and confused to have been contemplated by Parliament.

12. I am, nonetheless, concerned about the balance to which Mr Armstrong drew attention and to a certain feeling that this decision might itself be thought to introduce a degree of procedural rigidity and restriction which is undesirable in proceedings designed to correct a decision which may have been wrongly made. I say nothing about whether the care award in this case was properly made. But if it had been improperly made then it might be thought that this decision meant that it would be difficult if not virtually impossible to correct it. That is far from what I either intend or think the proper result to be.

13. The only difficulty in this case, as in 120 and 121, was caused by the action of the adjudication officer. But an adjudication officer is only concerned with claims and questions brought before him in terms of section 20, and others, of the Administration Act. Review questions fall to be addressed to an adjudication officer by an application in writing to that officer. (Common Appendix to CSSB/297/89 and others, as endorsed by CSSB/544/89 and others). Provision to that effect applies even in the case of section 30(1) reviews by reason of sub-section (7). Persons seeking a review, other than the Secretary of State himself, will in effect do so by addressing the Department - that is the Secretary of State - and not the adjudication officer. Accordingly, the system in theory means that it is for the Secretary of State to transfer any question of a review raised by an individual to an adjudication officer together with any relevant information. The Secretary of State as much as an adjudication officer has power to investigate the circumstances of any claim or question and if there is some reason for suspicion about an existing life award in such a situation as the present then I can see no reason why the Secretary of State could and should not have instituted enquiries. When transferring the matter to the adjudication officer he would have included all the relevant material which would then undoubtedly have included information "available" to the adjudication officer prior to his entering upon consideration of the review. I am also aware, of course, that quite often, and no doubt very confusingly, one person may both be an officer authorised to act for the Secretary of State and be an adjudication officer. Indeed, it is not inconceivable that in the present case the unfortunate "C Grimshaw" was such and the enquiries complained of were conducted in the former capacity and his decision only in the latter. If that was the case then it just demonstrates graphically the confusion that such a two-hat operation produces. I have no doubt that in a case where enquiries are necessary they can properly be made by or on behalf of the Secretary of State prior to the matter being put before an adjudication officer, and be seen to be so. There should then be no difficulty under the terms of section 32(4), even as now amended. Such proper attention to the scheme of the adjudication system would have avoided the problems rehearsed above. Had it been done here it would have meant that the material could have been equally considered by an adjudication officer and the tribunal. It follows, I should note, that if the Secretary of State now obtains appropriate evidence, other than that improperly obtained by the adjudication officer of course, then that may well be "information available to" the new tribunal in which case, if need be, they will require to ensure that the claimant has adequate advance notice of it

in order to be able to seek to rebut it. Indeed, and independently, I see nothing in the adjudication scheme which would prevent the Secretary of State upon such a separate investigation immediately raising the issue before an adjudication officer as a question arising in which case, if the adjudication officer reached the same conclusion as the review adjudication officer in this case, there might be nothing for the new appeal tribunal to consider other than the mobility question. A review adjudication officer's decision upon the care component, if adverse to the claimant, would give rise to a separate right of appeal. I am persuaded that this, simpler and more pragmatic, approach not only complies better with the adjudication system but is more of the nature of what Parliament intended.

14. I must add that it will be for the claimant and her advisers to consider whether to proceed with their appeal having regard to the information available to them and the risks now made clear, one way or another. In that regard it may be that they should consider regulation 6 of the Social Security (Adjudication) Regulations 1995, as amended by regulation 7 of the Social Security (Adjudication) and Child Support Amendment (No 2) Regulations 1996. That is entirely a matter for them and I only mention it because something was said in that regard in the closing moments of the hearing.

15. On a matter of practice it is necessary, lastly, to record that the primary reason for the adjournment was that an extra written submission for the claimant had not reached the Solicitor in Scotland. Mr Armstrong consequently was not fully instructed. At the resumed hearing it was contended for the adjudication officer that the submission had been received and distributed by the Office of the Commissioners after the hearing had been arranged. It was said that it was therefore assumed that in accordance with "normal practice" copies would also have been sent to the Solicitor in Scotland and so, I take it, the Central Adjudication Services (CAS) had not done so. For my part I am not aware that there was ever a practice of copying submissions and the like to the Solicitor in Scotland as well as to CAS at any stage of a case. Having consulted my colleagues based in Scotland I can say that for the future there will be no such procedure. It may be, as in the past, that papers received in Edinburgh too soon before a hearing to be sure that they will by normal procedure be forwarded to the Solicitor in Scotland, will, but as, matter only of courtesy, be so copied. That exception is not to be relied upon. It is for CAS in accordance with normal practice to secure that his solicitor is adequately briefed for any hearing. As a minor coda I might add that even the adjourned hearing required itself a short adjournment because the adjudication officer's written response to the said written submission for the claimant had been sent by CAS to London and not to Edinburgh and so was not available at the resumed hearing until a copy had been handed in, copied and considered.

16. For the reasons set out above, the appeal must be allowed and the case remitted accordingly.

(signed)
W M WALKER QC
Commissioner
Date: 11 November 1998