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FAMILY CREDIT (GENERAL) REGULATIONS 1987

SOCIAL SECURITY ADMINISTRATION ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Sheffield

Case No: 11010402

1. I dismiss the claimant's appeal against the decision of the Sheffield social security appeal tribunal dated 25 June 1993.

2. I heard this appeal at the same time as the appeal on file CIS/072/1994, which concerned a different claimant and to which I shall make no further reference. Both claimants were represented by Mr R J Bowles of The Family and Community Services Department of Sheffield City Council. The adjudication officers were represented by Mr Jonathan Coggins of Counsel, instructed by the solicitor to the Departments of Social Security and Health.

3. The tribunal found that the claimant had been overpaid family credit in respect of the period from 15 August 1989 to 12 February 1990 and that the sum of £726.44 was recoverable from her. In a separate decision, made on the same day, the tribunal found that there had been an overpayment of income support in respect of an earlier period but that it was not recoverable. The decision in respect of income support has not been the subject of an appeal. The principal issue before the tribunal, and the only issue raised in the appeal before me, was whether the claimant was living in the same household as her husband during the relevant period. If she was, she was a member of a married couple which was defined in section 20(11) of the Social Security Act 1986 (now section 137(1) of the Social Security Contributions and Benefits Act 1992) as "a man and woman who are married to each other and are members of the same household". The consequence of being a member of a married couple is that a spouse's income is taken into account for family credit purposes. The claimant's husband's income was not taken into account on her

claim. If he was not living in the same household as her, there was no overpayment. If he was living in the same household as her, she should have disclosed that fact when she made her claim but she did not do so and it is common ground that the resulting overpayment is recoverable.

4. The tribunal heard evidence and argument over three days and obviously considered the case with great care. The question whether the claimant and her husband were members of the same household was considered as a preliminary issue on the first day (17 July 1992). The tribunal recorded the following findings of fact:-

> "For the first 5 months of her marriage to her husband the Appellant resided with him and her teenage daughter Maryann at the matrimonial home. The house was tenanted by the Appellant and its furnishing belonged to her. The relationship was stormy, although not violent and on about 12 February 1989 the appellant and her daughter moved out to stay with relatives. Shortly afterwards her husband vacated the matrimonial home and the Appellant moved back in. About 2 weeks later her husband returned to live at the house, contrary to the Appellant's wishes. The Appellant and her daughter resided at the property with her husband until about 18 January 1990 when she left. During the period January 1989 to January 1990 the husband had been violent on at least 2 occasions that were documented in letters from the Appellant's GP and a Consultant, Mr Chapman. They refer to the Appellant sustaining a perforated eardrum, consistent with a blow to the face, and a fractured nose. The husband had terrorised the Appellant. She would have preferred not to live with him. She did what he told her to as she was scared of the consequences. The husband was given to picking quarrels, tried to restrict the movements and social life of the Appellant and threatened violence. He stole money from the Appellant. Nevertheless, the Appellant was able to go out to work when she had employment. The Appellant did the shopping, including food purchases for the husband. She cooked his meals for him. She did his washing. The Appellant chose not to have a social life with her husband. The house was put into a joint tenancy. The Appellant paid the rent. There was no division of the matrimonial home. At no time (before she left) did the appellant or her daughter seek help or guidance from relatives, medical personnel, or the police."

On the same day, the tribunal recorded the following reasons for their decision on the preliminary issue:-

> "The Tribunal considered R(SB) 13/82, R(SB) 4/83, CSB/463/1986.
>
> The Tribunal bore in mind its findings of fact as to the relationship between the parties, the treatment of the Appellant by her husband and her fear of him.

The Tribunal approached their decision on the basis that the existence, or otherwise, of one household at the matrimonial home was one to be reached by the application of common sense and experience, not judicial or legislative definition.

Objectively, the Tribunal could not accept that the Appellant and her husband ran separate households. The accommodation in the home was shared not only by the Appellant and her husband, but by Appellant's daughter. There was no allocation of rooms as between the Appellant and her husband. The arrangement endured for 12 months, and was therefore not of a temporary nature. The Appellant did the household shopping, purchased food, and cooked, for her husband. Meals were prepared for the parties communally. That the Appellant and her husband had no joint social life was the choice of the Appellant.

The only conclusion the Tribunal could draw from the circumstances recited in the preceding paragraph was that the Appellant and her husband lived together as one household. However, that apparently obvious conclusion was called into question by the submissions most ably advanced by the Appellant's Representative. He argued that the Appellant and her husband were not, on an objective basis, part of one household. But further he argued, as the Tribunal understood it, notwithstanding appearances, there was not truly one household. He urged the Tribunal to find that if the actual conduct of a couple was (as he said was the present case), the result of duress, or fear, that conclusion could be drawn. He argued that the Appellant would not even have resided with her husband were it not that she was afraid of the consequences of leaving him.

The arguments of the Representative lead, as the Tribunal saw it, down an unpredictable path. Relationships between married couples varied from the idyllic to the catastrophic and through all degrees of amity such couples lived together and generally shared their homes and their day to day lives. If the Representative's line of argument were valid there had to be a line to be drawn at which the relationship between a married couple was so unsatisfactory that the apparent reality of the existence of a shared household should be treated as a sham, or mere facade. The Tribunal could not accept that the legislature, in framing the definitions set out in the Act, intended that consequence. It involved a subjective rather than an objective test. The opposite conclusion would imply a near impossible task for any Adjudicating Officer, or other forum, in deciding claims in which arguments such as had been advanced by the Representative, were raised.

The Tribunal concluded that it must resolve the argument on the basis of the actual conduct of the parties, and not seek to interpret that conduct by assessing the state of mind, and motivation, of the Appellant. On that test, and

as set out above, the Tribunal was satisfied that the Appellant and her husband (with the Appellant's daughter) formed a single, if unsatisfactory, household.

The Tribunal did, however, consider what its decision should be if it were appropriate to take into account the motivation of the Appellant. It was obvious that she was unhappy, that she was ill-treated, and that she would have preferred to be separated from her husband. She was under duress in her everyday life at home. Nevertheless, she had allowed the relationship to subsist, as such, for a year. Neither she nor her daughter had sought help or advice although such help was surely available from family, medical practitioner, welfare organisations, or the police on, if stipulated, a confidential basis. The Appellant went out to work and could therefore have obtained help without the knowledge of her husband. Certainly her daughter could have done it on her behalf. The Tribunal concluded that, unhappy as she may have been the Appellant lived her life with her husband on the basis of making the best of a bad job - a situation which as, no doubt, not uncommon. On that construction also, therefore, the Tribunal remained of the opinion that there was indeed one household."

The case was adjourned for the questions of the calculation of the resulting overpayment and its recoverability to be considered.

5. On the second day of the hearing (15 January 1993), Mr Bowles adduced evidence from the claimant and her daughter as to the violence of the claimant's husband and he also produced written academic evidence as to the effect of matrimonial violence. The first piece of academic evidence was a letter to Mr Bowles from the Violence, Abuse and Gender Relations Research Unit of the University of Bradford of which paragraphs 3, 4 and 6 are most relevant to the appeal before me:-

" 3. Women in these situations have stressed the atmosphere of threat and fear in which they live and the impact of mental violence on them, which saps their self-esteem and confidence:

"He definitely sapped my confidence over the years. It's like a drip on your head ... and I got to believe by the end that I was hopeless at everything, that everything he said about me was actually true. Which is another reason why I didn't leave, because if I was that hopeless how on earth was I going to exist on my own without him ... That's the ploy of course."

"I realised I was under terrible strain the whole time ... I would be setting the table and I couldn't remember. I'd go into a blind panic about what side the spoon had to be on. It was that sort of detail everyday." (Kelly, 1988, p 130/1).

4. In many of the contexts in which sexual violence occurs women feel unable to act and/or that all the available options are likely to result in further negative consequences.

5. ....

6. It is very difficult in any case for women to approach agencies: (1) Women often lose any sense of self worth after many years of violence and abuse, and confidence in their own judgments is likely to be damaged, (2) Most women find it difficult and often shameful to talk about intimate details of a relationship. Although there is more coverage in the media on domestic violence it is still experienced as a very private and personal matter. To open this up to impersonal professional gaze takes enormous courage or sufficient desperation."

The second piece of academic evidence consisted of pages from a paper published in Canada in 1992 entitled "A Guide to More Rational Prosecutions of Men who Violate Women and Children" by M Lynn Gaudet and Paula E Pasquali. In the introduction, they say:-

"It is our observation that professionals in the criminal justice system are ill-equipped, and often unable, to understand the terror and humiliation that violated women and children experience. The feelings of powerlessness, worthlessness and dehumanization that result from physical, sexual or mental domination are generally foreign to their experience. Few men will ever know the anxiety of waiting in terror for the next inevitable beating. Few men will ever experience the humiliation of grovelling for food in their own home. Few men will ever suffer the turmoil that comes with learning that their spouse has sexually abused their child. Men's lives do not usually encompass such violations; nor does their everyday reality involve, as it does for women and children, control and devaluation by others in ways that make such excesses imaginable.

4. Equally difficult to understand are the complex and often contradictory feelings that a woman or child may have towards a violent man who can at other times be caring and loving, and upon whom the victim may be emotionally, socially or economically dependent. It is our impression that these complexities and contradictions are often used to invalidate or otherwise minimize a victim's terror and need for protection."

They also cite a passage from the judgment of Wilson J in Lavallee v. The Queen [1990] 1 S.C.R. 852, 871, where she said:-

"Expert evidence of the psychological effect of battering on wives and common law partners must, it seems to me, be both relevant and necessary in the context of the present case. How can the mental state of the appellant be

> appreciated without it? The average member of the public (or of the jury) can be forgiven for asking: Why would a woman put up with this kind of treatment? Why should she continue to live with such a man? How could she love a partner who beat her to the point of requiring hospitalization? We would expect the woman to pack her bags and go. Where is her self-respect? Why doesn't she cut loose and make a new life for herself? Such is the reaction of the average person confronted with the so-called "battered wife syndrome". We need help to understand it and help is available from trained professionals."

The tribunal recorded no findings of fact on the second day, but one of the grounds for adjourning further was to enable the parties to "prepare submissions to the tribunal as to the implications of duress allegedly brought to bear upon the appellant". On the third day of the hearing (25 June 1993), the tribunal dealt only with the questions of the calculation of the overpayment and its recoverability.

6. Before me, Mr Bowles' principal contention was that the tribunal had erred in law in failing to have regard to the claimant's mental attitude and that, had they done so, they should have concluded that she was not living in the same household as her husband. He argued the case with great skill.

7. He first referred me to the passage in Crake v. Supplementary Benefits Commission, Butterworth v. Supplementary Benefits Commission [1982] 1 All E.R. 498, 502 where Woolf J said:-

> ".... for the purposes of para 3 of Sch 1 [to the Supplementary Benefits Act 1976] it is not sufficient, to establish that a man and woman are living together as husband and wife, to show that they are living in the same household. If there is the fact that they are living together in the same household, that may raise the question whether they are living together as man and wife, and, indeed, in many circumstances may be strong evidence to show that they are living together as man and wife; but in each case it is necessary to go on and ascertain, in so far as this is possible, the manner in which and why they are living together in the same household; and if there is an explanation which indicates that they are not there because they are living together as man and wife, then they would not fall within para 3(1); they are not two persons living together as husband and wife."

Mr Bowles submitted that the question whether two people are living together as husband and wife is analogous to the question whether two people are living in the same household and that, if the parties' intention is relevant to the former, it must also be relevant to the latter. I derive no assistance from Crake and Butterworth. It is clear from the passage I have cited that Woolf J was concerned with the intention necessary to show that

two people, who have been found to be living together in the same household, are doing so as husband and wife. The case throws no light on the way one should approach the question whether two people are living in the same household, it having been conceded in both cases before Woolf J that there were common households.

8. Mr Bowles next referred me to Santos v. Santos [1972] Fam 247 in which the Court of Appeal reviewed a considerable number of authorities from a number of jurisdictions when construing the words "living apart" in section 2(1)(d) and (e) of the Divorce Reform Act 1969. As the court pointed out, "living together" is the antithesis of "living apart" and it is well established that the term "household" has an abstract meaning which is the same as that given to the words "living together" in a matrimonial context. The court's conclusion is expressed at page 263 as follows:-

> "Therefore 'living apart' referred to in grounds (d) and (e) is a state of affairs to establish which it is in the vast generality of cases arising under those heads necessary to prove something more than that the husband and wife are physically separated. For the purposes of that vast generality, it is sufficient to say that the relevant state of affairs does not exist whilst both parties recognise the marriage as subsisting. That involves considering attitudes of mind; and naturally the difficulty of judicially determining that attitude in a particular case may on occasions be great. But the existence of such a difficulty cannot be in point, for heads (d) and (e) are not the only ones in which the identification of an attitude of mind is required; indeed the whole concept of a breakdown being 'irretrievable' may involve coming to conclusions on attitudes of mind, when an issue is raised under section 2(3)."

The court also held that, "an uncommunicated unilateral ending of recognition that a marriage is subsisting can mark the moment when 'living apart' commences" and Mr Bowles submitted that the evidence in the present case showed that the claimant regarded her marriage as at an end and that therefore the mental element required to show that the parties lived together was not present. He reinforced his submission by references to passages from earlier cases cited in Santos. In Collins v. Collins [1961] 3 Fed,L.R. 17, Crisp J said:-

> "the court must look for a definite termination of consortium before the physical fact of being apart can be said to constitute separation."

In Rex v. Creamer [1919] 1 K.B. 564, Darling J, delivering the judgment of the Court of Criminal Appeal, said:-

> "In determining whether a husband and wife are living together the law has regard to what is called the consortium of husband and wife, which is a kind of association only possible between husband and wife. A

husband and wife are living together, not only when they are residing together in the same house, but also when they are living in different places, even if they are separated by the high seas, provided the consortium has not been determined."

Mr Bowles also referred to Pulford v. Pulford [1923] P.18, 21 where Sir Henry Duke P said:-

"Desertion is not the withdrawal from a place, but from a state of things. The husband may live in a place, and make it impossible for his wife to live there, though it is she and not he that actually withdraws; and that state of things may be desertion of the wife. The law does not deal with the mere matter of place. What it seeks to enforce is the recognition and discharge of the common obligations of the married state. If one party does not acknowledge them, the party who has so offended cannot be heard to say that he or she is not guilty of desertion on the ground that there has been no desertion by departure from a place."

9. I do not think that any of those authorities really assists the claimant. In each case the court was concerned with the mental element necessary to show that a husband and wife were living apart in addition to the fact of physical separation. None of the passages I have cited supports the proposition that a determination to treat a marriage as being at an end is sufficient to show that the parties are living apart without there also being physical separation. There can of course be sufficient physical separation notwithstanding that the parties both occupy the same house, but in the present case the tribunal found that the claimant shopped, cooked and washed for her husband and so she was not living a life separate from him in practical terms.

10. For the same reason, I do not think that CIS/671/1992 assists the claimant. In that case, the claimant and his wife shared a room in a home for the mentally ill. Such was the state of their mental health that the tribunal found that "they do not even recognise each other as man and wife but simply as another person who is familiar". Unsurprisingly, the tribunal also found that "they do not run or control their living space" and they held that they were not members of the same household. The Commissioner dismissed the adjudication officer's appeal. Following Simmons v. Pizzey [1979] A.C.37, he held that the home as a whole could not be regarded as a single household. Considering whether the man and his wife could be said to be members of a single household within the home, he held that "the tribunal cannot be criticised let alone said to be wrong in law for concluding that [their] mere presence in the same room in the home in circumstances where they did nothing for themselves, or for each other or collectively, did not turn them into a household of their own". Thus the case turned not just on the lack of mental element of the claimant and his wife but also on the lack of any physical signs of domestic organisation between the two of them. Mr Bowles stressed that the Commissioner said

that there must be "some collectivity, some communality, some organisation" and that there must be a domestic organisation. In my view, there was such collectivity, communality and organisation in the present case, albeit that it existed only because the claimant was afraid of her husband.

11. In Bradley v. Bradley [1973] 1 W.L.R. 1291, the facts were not unlike those in the present case and the Court of Appeal held that the petitioner was entitled to argue that her marriage had irretrievably broken down and that she could not reasonably be expected to live with her husband despite the fact that there existed the physical signs of a common household. Lord Denning MR said at page 1293:-

> "The wife says that she tried to sleep on a couch downstairs herself, but she was unable to sleep properly. So, after a fortnight down there, she had no alternative but to go back to the bedroom. She said she has had no alternative but to be in that bed and in that bedroom with him, and to cook his meals and so forth. She is too frightened to do anything else. She says there was one occasion when intercourse took place because he insisted and she was frightened of what might happen if she did not submit to him. She points out that the house is a council house; they are both joint tenants. She has asked to be rehoused, but the council say that, as long as they are married, they cannot give her another house. But if she is granted a divorce, arrangements may be made by which she will have the house and the husband will not.
>
> Those facts give rise to the point of law. It is this: the wife is in fact living with the husband. How can she say that she 'cannot reasonably be expected to live with her husband' when she is in fact living with him? I think she can say so. The section does not go on to provide that she must have 'left him' and be 'living apart' from him. It simply says that she 'cannot reasonably be expected to live with him'. I think she satisfies that requirement, even though she is in the same house with him - and in fact living with him - if it be the case that she has no alternative open to her - no where else to go. It is not reasonable to expect her to live there, but albeit unreasonable, she has no option but to be there."

It if fairly clear that Lord Denning was of the view that the petitioner would not have been able to show that she was "living apart" as would have been necessary had she been relying on section 2(1)(d) or (e) of the Divorce Reform Act 1969. As it was, she was relying on section 2(1)(b) which did not require her to show that she was living apart from her husband and therefore entitled her to succeed if an objective view of her plight suggested that she was living with her husband but could not reasonably have been expected to do so due to his unreasonable behaviour. The judgment of Scarman LJ, upon which Mr Bowles relied, is to the same effect:-

".... the mere fact that she is living with him, and was living with him when the case came to court, does not by itself establish that she should reasonably be expected to live with him. There are many, many reasons why a woman will go on living with a beast of a husband. Sometimes she may live with him because she fears the consequences of leaving. Sometimes it may be physical duress, but very often a woman will willingly make the sacrifice of living with a beast of a husband because she believes it to be in the true interest of her children."

12. It seems to me that Bradley is authority against the claimant's case and that it effectively undermines Mr Bowles' contention that a couple are not to be regarded as living together if one lives with the other only under duress. Mr Bowles submitted that the claimant's situation was indistinguishable in principle from that of a person who has been falsely imprisoned. That may be so, but that observation does not assist the claimant. A woman falsely imprisoned by her husband might well be treated as a member of his household if there were the necessary domestic organisation and neither had set up home elsewhere since the breakdown of the marriage.

13. Mr Bowles invited me to consider the purpose of the legislation as the Commissioner did in CIS/671/1992 at paragraph 5. I accept that the difficulty in ascertaining a claimant's attitude of mind, referred to by the tribunal, do not of themselves suggest the purpose of the legislation (see the passage from Santos cited above). However, I see nothing in the legislation to suggest that payments of income related benefits should be made to women so as to make it easier for them to continue to live in daily fear of violence from men who are able but unwilling to support them and their children.

14. In her written submission, the adjudication officer now concerned with the case resisted the appeal. She did not deal with the above issues in great detail. Mr Coggins, having listened to Mr Bowles, was inclined to think that perhaps the presence of duress might have some bearing on the question whether two people are living in the same household. I think he was swayed by Mr Bowles' advocacy. A determination to treat the marriage as being at an end is necessary in addition to the physical signs of separation if there is to cease to be a common household, but such a determination is not enough if there are not also the physical signs. In this case, there was quite sufficient domestic organisation to show that there remained a common household and the tribunal were entitled so to decide.

15. Mr Bowles' second contention was that the tribunal had erred in law in relying on their "commonsense and experience", a phrase which may have been derived from paragraph 19 of R(SB) 4/83. He submitted that that was inappropriate when the situation was not within the common experience of most people and he referred to the academic evidence I have set out above. He suggested that such evidence should be "incorporated into the adjudication system".

16. I do not doubt that academic evidence of the type made available in this case may be of assistance of the tribunal to supplement their commonsense and experience for the reasons suggested by Wilson J. However, I do not consider that the tribunal erred in law. What they said was that they had "approached their decision on the basis that the existence or otherwise of one household at the matrimonial home was one to be reached by the application of commonsense and experience, not judicial or legislative definition". Given that none of the three Commissioners decisions to which they had been referred concerned a case anything like the present one, and given that they did not have, on 17 July 1992, the academic evidence (so that they were not implying a rejection of such evidence), the tribunal's manner of expressing themselves seems perfectly proper.

17. Mr Bowles' remaining contentions were concerned with what he described as technical errors. The first refers to the last paragraph of the tribunal's reasons and is to some extent supported by the adjudication officer in paragraph 8 of her written submission.

> " 8. In the letter of appeal, the claimant contends that the tribunal erred in law, by making assumptions regarding help that was available to the claimant, ie welfare organisations, police etc. The contention is that as the claimant was not asked about her knowledge of such help, the tribunal were wrong to assume she knew of their existence and had failed to approach them for assistance.
>
> I submit that the tribunal had to make a decision on the basis of the actual conduct of the parties involved. They did not need to have regard to anything other than that, and in assuming that the claimant could have approached outside bodies for help, they erred in law. To this limited extent I support the claimant's appeal. This does however not change the fact that the tribunal correctly found as a fact that the claimant and her partner were living in the same household, and so does not really assist the claimant in her appeal."

I agree with both the adjudication officer and the tribunal themselves that the last paragraph of the tribunal's reasons was unnecessary for their decision. There is force in Mr Bowles' submission that the tribunal had not explored in evidence the reason why the claimant had not sought help and that therefore their comments in that paragraph were not supported by evidence. Nevertheless, as those comments were superfluous, I do not consider that the tribunal's decision is thereby rendered erroneous in point of law.

18. I can take the next three of Mr Bowles' contentions together. He submitted that the oral evidence given on 15 January 1993 conflicted with the findings made on 17 July 1992 and that the tribunal should have varied the decision given on 17 July 1992 and should have recorded findings in respect of the

evidence given on 15 January 1993. I asked Mr Bowles whether he had invited the tribunal to vary their decision of 17 July 1992 and he confessed that he had not. Technically that decision could only have been provisional. It seems to me to be probable that the tribunal thought that all the evidence given on 15 January 1993, which seems designed to show duress, was being adduced for the purpose of dealing with the question whether the overpayment was recoverable and that it never occurred to them to reconsider the decision on the question whether the claimant and her husband were living in the same household. Mr Bowles is right to say that the tribunal have not recorded any findings of fact in respect of the oral evidence given on 15 January 1993 but, again, it seems to me to be probable that that was because the tribunal not only accepted the evidence but also did not regard it as inconsistent with their findings made on 17 July 1992.

19. I am certainly prepared to determine this appeal on the assumption most favourable to the claimant which is that the tribunal did accept the evidence given on 15 January 1993. That evidence contained a detailed description of the claimant's husband's behaviour which plainly showed her to have been both physically and verbally abused. However, that seems to me only to add colour to the tribunal's findings of fact made on 17 July 1992, of which the most important from Mr Bowles' point of view was that she "did what he told her to do as she was scared of the consequences [of disobedience]". I think that to some extent Mr Bowles' argument was that the evidence given on 15 January 1993 was inconsistent with the <u>conclusion</u> drawn on 17 July 1992 that the claimant was living in the same household as her husband but in my view the tribunal had recorded sufficient findings on 17 July 1992 to support Mr Bowles' principal contention, had that been well founded in law, and the evidence given on 15 January 1993 did not add anything of significance.

20. To some extent also, Mr Bowles suggested that the evidence given on 15 January 1993 was inconsistent with the suggestion in the last paragraph of the tribunal's reasoning that the claimant could have "chosen" to go to an outside agency for help and he submitted that the tribunal should have referred to the academic evidence. There is some force in the suggestion that the tribunal might, in the light of the academic evidence, have revised their view of the significance of the claimant's failure to contact an outside agency. However, as I have already said, that paragraph was unnecessary to their decision. The academic evidence did not affect the rest of the tribunal's findings. It was unnecessary for the tribunal to refer to the academic evidence, simply because they <u>did</u> accept that the claimant had been subject to violence and that she had maintained a common household with her husband only because of such violence. That academic evidence, and particularly the Canadian study, was concerned with the tendency of jurors in criminal courts to disbelieve a victim's evidence of violence because people who have not suffered such violence may consider that the victim's failure to obtain help is inconsistent with her evidence. In the

present case, the tribunal had accepted the claimant's evidence despite her failure to obtain help. She was unsuccessful due to the tribunal's interpretation of the law rather than because they had made any material adverse findings of fact.

21. Mr Bowles' last technical contention was that the tribunal had failed to record adequate findings as to the circumstances surrounding the making of her claim for family credit. There is some force in that submission. On the other hand, I have given some thought to the relevance of duress to the question whether the claimant had misrepresented, or failed to disclose, a material fact and I have come to the conclusion that Mr Bowles was right to concede that, one way or another, the tribunal were bound to decide that, if any family credit was overpaid, it was recoverable from her. In those circumstances, I do not consider it appropriate for me to consider whether there was any technical deficiency in that part of the tribunal's decision. As the adjudication officer has not challenged the decision in respect of income support, I also propose to say nothing about that.

22. The claimant's appeal therefore fails. If the result seems harsh in the circumstances of this particular case, it is open to the Secretary of State not to enforce his right to recover the overpayment. Mr Bowles told me that he had already entered into correspondence on that point. Someone might also like to give some thought to the question whether section 71 of the Social Security Administration Act 1992 does, or should, allow recovery of overpayments from those who aid, abet, counsel or procure misrepresentations, or deliberate non-disclosure, of material facts. Such people may derive as much economic advantage, and may be at least as blameworthy, as those who actually make misrepresentations or withholder information.

(Signed) M. Rowland
Commissioner
(Date) 10 October 1994