

CG 10/1978

JSW/PF

SOCIAL SECURITY ACTS 1975 TO 1977
CLAIM FOR WIDOW'S BENEFIT
DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: Joyce Marie Clark (Mrs)

Local Tribunal; Hastings

Case No. 21/1

[ORAL HEARING]

1. My decision is that -

(a) the decisions of the insurance officer awarding widow's allowance and earnings-related addition to the claimant for the inclusive period 23 September 1975 to 22 March 1976 and widow's pension from and including 23 March 1976 were properly reviewed under section 104(1)(a) of the Social Security Act 1975 because they were given in ignorance of a material fact, namely that the claimant was cohabiting and continued to cohabit with a man as his wife as provided by section 26(3) of the said Act;

(b) widow's benefit is not payable to the claimant from and including 23 September 1975;

(c) as a result there has been an overpayment of benefit to the claimant of £967.24 which the claimant is required to repay to the Secretary of State for Social Services as I am not satisfied that in the obtaining and receipt of that benefit she throughout used due care and diligence to avoid overpayment as provided by section 119(1) and (2) of the said Act.

2. At the oral hearing before me, the claimant was represented by Mr M Rowland of the Citizens' Rights Office and the insurance officer was also represented.

3. The claimant's husband died on 22 September 1975 and she claimed and was awarded the benefits stated. She claimed widow's benefit in her married name. On 9 March 1976 she changed her surname by statutory declaration to the name of a man with whom she was living in the same house, to whom I shall refer as "Mr C". She said that she changed her surname

on the advice of her solicitor. Subsequently she informed the Department of Health and Social Security that she had changed her name and on 22 September 1976 she was visited by an inspector of the Department to whom she made a statement. Mr A. Noble, who was the inspector concerned at that time, gave evidence before me as to his interviews with the claimant and with Mr C from whom he also obtained a written statement. The statements and records of the interviews are contained in the case papers. The report of the proceedings of the local tribunal are commendable in this case as they recorded their findings fully and in detail. The factual evidence was not in dispute before me, except for some details which are not of any consequence, and I shall therefore refer to the evidence only briefly to be read against the background of evidence contained in the case papers.

4. Mr Noble's evidence was not in dispute as to the main details. As regards his first report, dated 25 September 1976, it was pointed out that there was an error in the 6th and 7th paragraphs with reference to the house 33 Summerdown Road, which was in fact rented by Mr C and was not bought by the claimant. The claimant lived at that address which she later vacated and bought a house, her present address, at 7 Rodney Close. The claimant and Mr C also did not set up in business as Cs' school of dancing as at first it was Mr C's school and the claimant said she was in the nature of an employee initially. In evidence before me she said that initially for tax purposes she was employed by Mr C and the business became a legal partnership in 1974. Mr Noble agreed that there was misunderstanding on his part and said he was not corrected as to Cs' school of dancing. I have no doubt that he was a conscientious and truthful witness, indeed his evidence, except for those details, was unchallenged. I would add that it is vital when reports are made and statements are taken that there should be no doubt or mistake as to what an inspector was told. Errors as to some details might cast a vital reflection on the evidence as a whole, or as to matters of substance, in a case in which there is a dispute as to virtually the whole of such evidence.

5. Dealing in outline with the claimant's evidence before me, she first met Mr C in 1963 at a dancing school at which he was teaching. He was a professional dancer and they entered into partnership for competitions. In 1964, at her husband's suggestion, Mr C came to live at their house in Beckenham. Subsequently, she and Mr C obtained employment as professional dancers and cabaret performers with Union Castle Line and, in those capacities, made voyages to and from South Africa. The claimant said that they occupied separate cabins and her relationship with Mr C was as a friend and partner, which had her husband's approval. Between voyages they lived at Beckenham in the same house as her husband. In 1969 they finished with Union Castle Line and Mr C opened a school of dancing in Eastbourne. The claimant related how they both came to live at Summerdown Road. She said that at that address Mr C paid the household bills and she provided the food, which

worked out at about equal sharing of expenses. She also did the household chores and it was said before the local tribunal that Mr C did the washing up. They subsequently moved to the present address where the claimant said that Mr C was a lodger paying her £12.50 a week, now increased to £15.00. She also stated that, after her husband's death, she sold the house at Beckenham in July 1976 and bought her own house at her present address. The claimant said that while her husband was alive she visited him weekly at Beckenham and that he used to stay at the house in Eastbourne at weekends and during holidays.

6. The claimant said that when the dancing school was opened in Eastbourne she used, and was known by, her married name. As the school became to be known as Cs' school of dancing, people telephoning used to ask for Mrs C. Generally, she and Mr C were known by their christian names to pupils. Cheques were sometimes made out in the name of C which was a nuisance. The claimant did not discourage people from calling her, and referring to her as, Mrs C as it was more convenient. At Summerdown Road and subsequently, all her household bills were made out in the name of C. Indeed, confirmation of the fact that the claimant was known in Eastbourne as Mrs C was obtained by an inspection of the electoral roll for 33 Summerdown Road. Every year from 1970 to 1976 the occupants were shown in the names of Mr C and the forenames of the claimant with the surname of C. The qualifying date for inclusion in the 1970 electoral register was 10 October 1969, which indicates that shortly after moving to Eastbourne the claimant was using the name of, and was known as, Mrs C.

7. The claimant said that her relationship with Mr C was as a friend and was also concerned with partnership in the dancing school and continued to be so. I did not find her reasons for using the name for business purposes persuasive and I regard the evidence of the electoral roll, which the claimant admitted, as particularly significant. Whatever reasons the claimant might have had for business purposes, or indeed for household bills, would not apply to the electoral roll. There was no satisfactory explanation as to why her name was not on the electoral roll at Beckenham with her husband's. Even if it was more convenient to be on the electoral roll at Eastbourne, that does not explain why she did not use her married name as the electoral roll had no connection with the dancing school whatever. The claimant said that she and Mr C had no wish to marry and that Mr C had girl friends and had had a serious affair with one of them at one time. The totality of the evidence shows, without contradiction by the claimant, that from 1969 she wished to be regarded in Eastbourne as Mr C's wife.

8. The principles formulated in Commissioners' decisions were referred to in the written submission of the insurance officer to the local tribunal and at the hearing before me. Reference is made to Decisions R(G) 3/71 and to R(G) 5/68, the latter a decision of mine, with particular reference in paragraph 7 to a man and woman living together in the same

accommodation, the woman having assumed the surname of the man. Mr Rowland sought to distinguish that case on the facts but, in my opinion, the distinctions are not material. To decide whether a woman is cohabiting with a man as his wife, it is necessary to have regard of the whole of the circumstances. The circumstances in which their relationship arose and continued may also be looked at in order to throw light on their relationship during the period in issue. Although no single aspect of their relationship is conclusive in itself, there are three main areas of their relationship to be examined as approved in Decision R(G) 3/71. I heard argument on these at the hearing and will deal with each.

9. As regards a sexual relationship, it is not necessary for the purposes of the proviso to section 26(3) of the Act that there should have been or are sexual relations. The claimant denied that there was or had been any sexual relationship between her and Mr C. When Mr Noble first visited the claimant on 22 September 1976 he did so without previous warning and was shown that she and Mr C occupied separate bedrooms. Mr C attended the hearing before the local tribunal but it is not clear from the report of the proceedings whether or not he gave evidence. I accept that he denied that there was a sexual relationship and, in a written statement, dated 19 October 1976, he agreed with the claimant's version as to the history of their relationship. He did not appear at the hearing before me. Mr Rowland submitted that there was compelling evidence that there was no sexual relationship. There is some evidence that there was no sexual relationship, but the fact that the claimant had lived with Mr C in the same house for a number of years using his name as his wife would certainly be regarded as evidence of a sexual relationship in matrimonial proceedings. There is evidence from which a sexual relationship may be inferred were it necessary to make a finding on the matter.

10. As to their financial relationship, they were partners in business when the claimant was widowed. As I commented in Decision R(G) 5/68, household and financial arrangements are personal matters not easy to ascertain. Having regard to the evidence as a whole, I find that their business partnership probably extended to their living partnership and that resources were shared. Their general relationship certainly, in my opinion, possessed all the attributes of a woman having not only assumed the surname of the man but living with him as his wife. The local tribunal enquired into the circumstances very thoroughly, as appears from the report of their proceedings. The tribunal found that at the time when the claimant claimed widow's allowance she was carrying on a common home in the manner in which husbands and wives do. They also found that she did not use due care and diligence to avoid overpayment and receipt of benefit, that she should have disclosed to the insurance office that she was living with Mr C and was using his surname and allowing herself to be known as Mrs C.

11. Mr Rowland made a number of submissions as to due care and diligence in the obtaining and receipt of the benefit.

The statutory language does not necessarily import considerations of honesty or good faith but a standard of care and diligence which it is expected will be exercised. It involves not merely refraining from carelessness, neglect, inattention or indolence in regard to the conditions and circumstances of entitlement to benefit. It signifies also positive action, such as furnishing full information to enable entitlement to benefits to be correctly ascertained and finding out by enquiry the conditions and circumstances of such entitlement. Mr Rowland submitted that the claimant would not believe that in the circumstances she could be said to be cohabiting with Mr C as his wife when she claimed benefit. Having seen and heard her, I do not accept that view of the claimant's attitude. Although for every purpose in Eastbourne she was known as, and used the surname of C, she nevertheless claimed widow's benefit in her married name without disclosing that she was known as Mrs C. I agree with the local insurance officer's submission on repayment of benefit in paragraph 10 of his submission to the local tribunal. The amount has not been disputed. I am not satisfied that the claimant used due care and diligence throughout and repayment is therefore required in terms of paragraph 1(c) above. The local tribunal saw and heard the claimant and reached their conclusions as I have indicated. I find no valid ground for disagreeing with their decision, which was unanimous.

12. The claimant's appeal is dismissed.

(Signed) J S Watson
Commissioner

Date: 10 October 1978

Commissioner's File: C.G. 10/1978
C.I.O. File: I.O. 1787/W/77
Regional File: L.S. (Unregistered Papers)