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JM/EA

SOCIAL SECURITY ACTS 1975 TO 1982
CLAIM FOR WIDOWS BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Julia H Buxey (Mrs)

Local Tribunal: Southampton

Case No: 27/1

[ORAL HEARING]

1. This is a claimant's appeal, brought by my leave, against a decision of the local tribunal dated 7 April 1981 which confirmed a decision of the insurance officer dated 19 December 1980. My decision is as follows:

- (1) The decision of the insurance officer awarding to the claimant widowed mother's allowance from and including 27 June 1978 properly falls to be reviewed because there has been a relevant change of circumstances since that decision was given.
- (2) The said decision is not to be revised.
- (3) In consequence, there has been no overpayment of benefit to the claimant and the issue of repayment does not arise.

2. I held an oral hearing of this appeal. The claimant was ably represented by Mr John Douglas, Solicitor, of the Child Poverty Action Group. I am indebted both to him and to the insurance officer's representative for their considerable assistance in what I have found to be a difficult case. The central issue is whether at any time since 15 April 1980 the claimant and a man, whom I shall call "Mr H", lived together as man and wife. It must be said straight away that, on first sight, the evidence points strongly towards the conclusion that they were so living. I have had the advantage, however, of hearing a most detailed account of the relationship and, after careful consideration, I have come to the contrary conclusion.

3. The hearing took a somewhat unusual course. On the day appointed, the claimant did not attend. She had sent no message, whether by letter or by telephone, to explain this. Mr Douglas had

expected her. He had, however, been informed by Mr H that morning that the claimant had been ill and had been staying for a few days with a sister. Mr H had tried, unsuccessfully, to get in touch with her. I decided, and Mr Douglas offered no objection, that the most expedient course was to -

- (a) proceed that day with as much of the case as could be heard, and
- (b) reserve for consideration, in the light of any further information as to why the claimant had failed to attend, the question of appointing a further day upon which the claimant could attend and give evidence.

Accordingly, I heard the evidence of Mr H, on behalf of the claimant, and of two officers of the Department of Health and Social Security on behalf of the insurance officer. I also heard the submissions of the insurance officer's representative and of Mr Douglas - it being understood that those submissions could be amplified or recast in the event that there should be a further day's hearing.

4. A few days after the initial hearing day, Mr Douglas wrote to say that he had been instructed that -

- (a) the claimant had had every intention of attending the hearing;
- (b) the claimant had been taken ill with a stomach upset the day before that hearing, but had expected that she would have recovered in time to attend;
- (c) the claimant had not so recovered;
- (d) the claimant had been unable, on the morning of the hearing, to communicate with the Office of the Commissioners because -
 - (i) the telephone of her sister (with whom she had been staying) had been disconnected, and
 - (ii) she did not have with her any papers bearing the telephone number of the Office;
- (e) the claimant had also been afflicted with "nerves"; and
- (f) the claimant was anxious that her evidence should be heard.

5. In those circumstances I thought it proper that a further hearing day should be appointed. On that day the claimant attended. She gave her evidence - and the hearing was duly concluded. In the event, no one was substantially inconvenienced. It is extremely unlikely that the case could have been concluded in a single day even although all relevant parties and witnesses had

attended thereon. (I had made it clear that neither Mr H nor the officers from the Department need attend the adjourned hearing unless the representative of either party wished otherwise. None of them did so attend.)

6. Both Mr H and the claimant gave evidence at some length. In consequence of the circumstances which I related in paragraphs 3 to 5 above, neither was in court whilst the other was giving evidence. Nevertheless, their accounts were strikingly consistent one with the other. There are two possible explanations of that. Either what they were telling me was substantially true; or they had between them fabricated, and committed to memory, a detailed catalogue of half-truths and downright lies. Having observed each of them in the witness-box, I reject the latter alternative as being less probable than the former. It is to be noted, moreover, that neither of them was asked more than 4 or 5 questions by way of cross-examination. The insurance officer's representative is not to be criticised on that score. He had remarkably little material upon which to base effective cross-examination. As I have already indicated, there was little or no significant inconsistency between the accounts given, respectively, by Mr H and the claimant. And, apart from the evidence of the two officers from the Department (with which I shall deal in detail below), there was nothing in the nature of positive evidence which could be adduced to cast doubt upon those accounts.

7. It follows that, by and large, I accept what I was told by Mr H and by the claimant. My summary of the facts is, accordingly, based mainly upon their evidence. I shall indicate the few matters in respect of which I have reservations.

The background

8. The claimant is now aged 31. She married in 1970 and has a son, Gary, who was born in 1971. Tragically, her husband was killed in a road accident in December 1977. She was awarded **widow's allowance**, followed by widowed mother's allowance. The road accident had been caused by the negligence of another party. Towards the end of 1979 the claimant received £32,500 by way of damages, £2,500 of that sum being allocated to Gary.

9. The claimant, her husband and Gary had lived in a small maisonette, rented from the local authority. The claimant and Gary continued to live there until the compensation had been negotiated and paid. Prior to the death, the claimant had worked full-time. After the **death she worked mornings only.**

10. Mr H is a single man, now aged 33. He has, however, a son, Jamie, born in 1976 to a woman with whom Mr H was then living. Mr H struck me as being a rather self-centred man, much wrapped up in his own affairs. Until 1981 he worked as a welder on containers - a job which would take him from his home for spells of two or three days. Since 1981, however, he has been a self-employed market trader. At the time when he first met the claimant (see paragraph 11 below),

he was living by himself in a small flat, which he described to me as "a bleak bed-sitter". He did not at that time have any rights of access to his son. Proceedings were pending in the local County Court. There were, however, problems for Mr H. The court welfare officer was unenthusiastic about the prospect of Mr H's taking Jamie to stay at the "bleak bed-sitter"; and was (for reasons unconnected with Mr H) totally opposed to Jamie's being taken to the house of Mr H's father.

11. The claimant and Mr H first met at a party which was given by the claimant's sister to celebrate the birthday of Mr S, to whom the claimant's sister was then married and with whom she was then living. At that time Mr H and Mr S were on very friendly terms and saw a great deal of each other. Mr H, with some confidence, gave the year of that meeting as 1978. The claimant gave it as "1979, I think". I am satisfied by reference to other aspects of the chronology, as related by both the claimant and Mr H, that 1978 is the correct year. This is one of the few obvious inconsistencies in their evidence. I attach no significance to it, however. (Nor, let it be said, did the insurance officer's representative.) Many people are poor at putting the correct calendar year to a past event in their lives, no matter how important that event may have been. Moreover, if the narrative with which I was **presented was, in fact, a fiction**, carefully prepared and rehearsed by the claimant and Mr H, it seems improbable in the extreme that one of them would have forgotten the date which was the agreed starting-point for the whole concoction.

12. I ought to stress at this point that I am satisfied that Mr H never met or knew the claimant's husband.

13. In 1978 the claimant was paying frequent visits to her sister's house. Mr H was doing likewise, for the purpose of speaking with his friend Mr S. Accordingly, the claimant and Mr H saw a certain amount of one another, but on a casual basis. After some 6 or 9 months of this, Mr H took to paying visits to the claimant's flat on occasions when he went there in the company of Mr S (who was, of course, the claimant's brother-in-law). Mr H told me, and I accept it as probably true, that on no occasion was he ever alone with the claimant in her flat and on no occasion did he spend the night there.

14. Early in 1979 an agreement was reached in respect of access by Mr H to Jamie. This came up in conversation between the claimant and Mr H. It disclosed something in the nature of a common interest. The claimant was looking after a son who was fatherless. Mr H was, during the periods of access, looking after a son who was, during such periods, effectively motherless. At this stage there was no provision for "staying" access. All interested parties were agreed that the first step should be to get Jamie acclimatised to being with his father. The upshot was that once in every 4 to 6 weeks, or so, Mr H would take Jamie on an outing, accompanied by the claimant and Gary. The court welfare officer was well satisfied with that - and I am not surprised. The presence of another boy and of that boy's mother would obviously help to dispel the tension between Jamie and the father whom he had hardly ever seen before.

5. Later in 1979, access terms were embodied in a court order. Staying access was provided for - but it was an express term that Jamie was not to be taken to the house of Mr H's father. The court appears to have expressed the view, moreover, that it would be better if the claimant did not take Jamie to his own flat.

The house

16. Very wisely, the claimant consulted her solicitor as to the use to which she should put the £32,500 which she had received by way of damages for her husband's death. Her solicitor advised her that she should invest a proportion of that sum in property. This accorded with the claimant's own wishes. She wanted a better home for Gary. She was minded to buy a house. The problem, however, was that she could not afford to lock up more than about half of her capital in a house. She did not, accordingly, have available sufficient ready cash to buy an acceptable house outright; nor did she have sufficient income resources adequately to service a mortgage.

17. For his part, Mr H was anxious to find something better than his "bleak bed-sitter", to which he could bring Jamie for staying access. He had the income resources to service a mortgage; but he did not have the capital to make the inevitable down-payment.

18. The claimant and Mr H discussed their respective problem (as set out in paragraphs 16 and 17 above). It hardly required an Einstein to see a possible solution. They decided to buy a house which they could share. The claimant put the proposition to her solicitor. (Mr H told me that, for his part, he had his own solicitor throughout.) Her solicitor advised that such an arrangement could be put upon a sound legal footing. The claimant and Mr H could purchase as tenants in common. That would obviate the right of survivorship inherent in a purchase as joint tenants. Each party, and each party's estate, would retain a separate and severable interest in the property. Accordingly, the claimant and Mr H looked round for a suitable purchase.

19. In the event, the claimant and Mr H found a comparatively new house which accorded with their requirements. With the help of the claimant's solicitor they bought it. The total price was £25,250. The claimant furnished the down-payment of £15,000. The balance was secured by way of mortgage, repayable over (I think) 25 years. It was formally agreed that the claimant would bear one-third of the mortgage repayments and Mr H two-thirds. It was also agreed that, for the time being, the claimant should have the larger interest in the house. Mr H told me that the split was three-fifths to two-fifths. The claimant told me that it was two-thirds to one-third. Owing to the two months interval between the first and the second day of the hearing before me, neither the insurance officer's representative nor myself noticed this discrepancy at the time. Accordingly, it remains unresolved. I attach no significance to that, however. The precise arrangement is, I am sure, well known to, and recorded by, the parties' solicitors. Both the claimant and Mr H were at one in saying that -

- (a) the claimant at present enjoys the larger interest in the house, but

- (b) the ratio would be 50:50 by the time when the mortgage was fully repaid.

20. The claimant's solicitor was at all material times fully aware that the claimant was in receipt of widowed mother's allowance. The claimant specifically raised with him the question of whether the purchase of the house, as a tenant in common with Mr H, would prejudice her entitlement to that benefit. The solicitor (very properly, in my view) advised her that she would not be prejudiced provided that she was not planning to marry Mr H and/or was not going to live with Mr H as husband and wife.

21. I attach considerable significance to the role of the claimant's solicitor in this matter - and not merely because he correctly explained to the claimant the position in respect of her widowed mother's allowance. An enlightened observer, having been acquainted with the facts set out in paragraph 19 above, might well wonder whether a building society would have granted a mortgage to a man and a woman without being first satisfied that they were either married or living as husband and wife. The answer in this case is that the building society must have so done. The conveyancing, including the mortgage transaction, was effected through a solicitor. That solicitor had been instructed that Mr H and the claimant did not intend to live as husband and wife. It is, accordingly, inconceivable that he would have allowed to go before the building society documents which purported to disclose a wholly different situation.

22. Mr H told me that both the claimant and he realised that the aforesaid transaction represented "quite a big step". Before committing themselves, they discussed it together for about 6 weeks.

23. When the claimant moved into the house she notified the Department of Health and Social Security of her change of address. In view of what her solicitor had told her about her entitlement to benefit, she did not think it incumbent upon herself to mention Mr H.

Accommodation in the house

24. The claimant had one bedroom in the house and Mr H had another. Mr H had a key to his room. He frequently, but not invariably, kept that room locked. The claimant did not have a key to Mr H's bedroom - and did not consider herself as having access thereto without his permission. She never locked her own bedroom. The third bedroom in the house was allocated to the two boys. Gary, of course, used it constantly. Jamie appears to have used it on one night in every four weeks. (The access arrangements at that time alternated on a fortnightly basis. One fortnight access was from 10 00 am to 7 00 pm on Sunday. The next fortnight it was for Saturday and Sunday).

25. The rest of the house was shared between the claimant and Mr H. At that stage, of course, Mr H was frequently away on work (cf paragraph 10 above). He seems, moreover, to have spent a good deal of time at his father's. He spent, at most, a couple of evenings a week in the house which he shared with the claimant.

Furniture

26. Most of the furniture in the house was provided by the claimant. Some came from her maisonette. Some she bought out of the damages which she had received. Mr H furnished his own bedroom, including the bedding. The claimant provided nothing therefor. He also brought a desk, which was put in the dining-room.

Decorating

27. The house was only 3½ years old when the claimant and Mr H bought it. It was, accordingly, in reasonably good condition. Mr H, however, did some work by way of improvements to the outside. He then turned his attention to the inside. The claimant and her sister, however, redecorated the claimant's bedroom and the sitting-room.

Housework

28. There was no specific arrangement about this. The claimant, however, never cleaned Mr H's bedroom. She never made his bed or, even, changed his sheets. Those chores he performed for himself.

Washing

29. The claimant had a washing machine. She did not as a rule, however, do Mr H's washing. The bulk of that washing was done, in the house of Mr H's father, by the woman with whom Mr H's father lived. Both the claimant and Mr H agreed, however, that, if the claimant were doing a wash, Mr H might throw an item or two (say, a pair of jeans) into the claimant's machine - and such items would, accordingly, be washed along with the claimant's items.

Food, cooking and meals

30. Here, again, there was no specific arrangement. In practice, Mr H ate most of his meals at his father's house. (He is not a breakfast eater). Mr H is not a good cook and does not like cooking. He did, however, prepare snacks for himself on most of the occasions when he ate at the house which he shared with the claimant. On other occasions when he was there, and the claimant was preparing a meal for herself, the claimant would invite him to join her. He would then do so - perhaps telling the claimant that he would repay her by taking her out to a meal on a future occasion. When Jamie was at the house for the weekend, the claimant would offer to cook a dinner for all four of those present.

31. There was no regular or systematic pooling of finances in respect of food. The claimant bought and paid for her own food. (Mr H, who had a car, might run the claimant to the local shops, but he did not accompany her into those shops.) Such little food as Mr H stored for himself in the shared house was usually bought and paid for by Mr H - and kept in a cupboard along with the tinned food for the claimant's dogs (i.e. separate from the food bought by the claimant).

Residual financial arrangements

32. It was a term of the original agreement, reached with the assistance of the claimant's solicitor, that all such outgoings as rates and fuel and telephone bills would be paid by the claimant and by Mr H on a 50:50 basis - and that agreement was adhered to.

Social life

33. As I have already indicated, Mr H spent relatively little of his time at the shared house. When not at work, he seems to have spent most of his time at his father's. (It is not without significance that the claimant has only once met Mr H's father - and that was at a court hearing to which I refer below.) The claimant and Mr H have never been on holiday together. The claimant has holidayed with Gary in Devon. Mr H (presumably in consonance with the access order) has been on holiday with Jamie. From the time when the claimant and Mr H moved into the shared house, the claimant very rarely accompanied Mr H when he took Jamie out. Indeed, so far as I can judge, apart from the brief car journeys to the shops, the claimant and Mr H practically never went out together. Moreover, the only real friends whom they had in common were Mr and Mrs S.

Sexual relations

34. Both the claimant and Mr H were adamant that they had never had sexual intercourse one with the other. I am satisfied that desire to establish, or to further, a sexual relationship played no part in their motives for purchasing the house as tenants in common. I am also satisfied that nothing in the way of a serious or stable sexual relationship obtained between them whilst they were making that house their respective homes. Mr H told me that in the period he had had "several girl friends on and off". With one of those he had had sexual relations over a period of about six months in 1982. To his own knowledge, the claimant had had boy friends since the house had been purchased. The claimant told me that during that period she had had unstable sexual relationships with other men - and she thought that the same was true of Mr H in respect of other women. I cannot shut my eyes to the fact that both the claimant and Mr H seem to have **moved** in an ambience which was strikingly amoral with regard to sexual matters. Apart from their own admissions, Mr H's father was living with a mistress and (as will more fully appear below) the claimant's sister left Mr S (her husband) and went to live with another man. In such circumstances, I find it a little difficult to believe that on no occasion did the claimant and Mr H (who were frequently under the same roof overnight) ever have intercourse together. Such reservations, however, do not undermine the findings which I have expressed in the second and third sentences of this paragraph.

The interview

35. In July 1980 the Department received information to the effect that the claimant and Mr H might be living together as husband and wife. Enquiries disclosed that since 11 April 1980 the ratepayers

for their house had been registered as the claimant and Mr H (the names being registered in that order). On 1 September 1980 two officers of the Department visited the claimant at her home. One ("Mr P") was a special investigating officer. The other ("Mr W") was a local officer, grade II. I readily acceded to Mr Douglas' request that Mr W should be out of the courtroom whilst Mr P gave his evidence. It transpired, however, that the only thing which Mr W could remember about the visit was that there were two alsatian dogs in the house! He knew little about the matter which was being investigated. He paid little attention to what was said. He made no notes. He could not say whether he had subsequently discussed the matter with Mr P - but he had no recollection of having done so. In short, he appears to have been there simply to bring to two the number of officers present at the interview.

36. Mr P took no notes in the course of the interview. Immediately after the interview, however, and whilst sitting in his car prior to driving off, he wrote down the following:

"I visited the claimant at her home accompanied by [Mr W]. I interviewed her at great length and later [Mr H] who turned up at the house soon after we started. They both agreed [Mr H] was living there. However they denied there was a relationship between them. They are buying the house together but its only an arrangement of convenience.

There was no way that either of them would be able to afford to buy the house separately. They both agreed that it was only the house purchase that kept them together under one roof. They were friends and had known each other via payee's deceased husband. They admitted they shared meals, she did the washing and they shared decorating and gardening duties. However in effect they said [Mr H] was really a lodger with a part share in the house. It was a three bedroomed house with [Mr H] having his own bedroom but they openly admitted that they did sleep together but not regularly.

They never went out together socially nor have they been on holiday together.

They have had the house since April 1980. They have no intention of marrying nor have they ever discussed it. They are both aware of the 'living together' rules and they both maintain they are not living together as man and wife."

37. It will be noted that Mr P himself recorded that the interview was of "great length". In evidence he said that it lasted about half-an-hour. The claimant put it at an hour to an hour and a half. Mr H thought that the part of the interview at which he was present lasted from half to three-quarters of an hour. On any account, therefore, Mr P's written record cannot have been anything but the barest summary of what he recollected as having been said.

38. Mr H and the claimant each went in some detail into the form which the interview had taken and the words used thereat. Mr P was rather less expansive; which was not surprising since the interview had taken place some two and a half years prior to his giving his evidence before me. The main conflict related to the alleged admission that "they did sleep together but not regularly". Mr H was adamant that he had answered "Yes" to the question "Do you sleep here?", and "No" to the question "Do you sleep together?". What am I to make of this? Mr Douglas, quite justifiably, pointed out that Mr P had clearly mistaken, or misreclected, what he had been told about the way in which the claimant and Mr H had first got to know one another. (See the reference to "the payee's deceased husband" in the report quoted by me in paragraph 36 above.) I am, moreover, satisfied that Mr P's summary of what was said in respect of meals, washing, decorating and gardening was an over-simplification of what he had been told about those topics. After considerable reflection, I have come to the conclusion that, on the balance of probabilities, either -

- (a) there was no unequivocal admission of intercourse by either the claimant or Mr H, or
- (b) any admission was confined to the type of infrequent and sporadic intercourse to which I referred in the penultimate sentence of paragraph 34 above.

39. In respect of that conclusion I make two comments:

- (i) I do not intend any reflection upon the integrity or competence of Mr P. The circumstances of this case are, by **any** standards, unusual. It has taken me two days of hearing and several days of reflection to analyse and unravel those circumstances. As I said in paragraph 2 above, first (even second) appearances are all against the claimant. I do not find it in any way surprising that Mr P should have come away from the interview with a less than lucid understanding of the situation which the claimant and Mr H had been trying to explain to him.
- (ii) If the insurance officer should feel somewhat aggrieved at the manner in which I have treated Mr P's report, he might well bear in mind that, if such crucially important reports are to be used in evidence, it would greatly increase their weight if -
 - (a) their contents were to be read over to, and signed by, the party or parties whose statements purport to be recorded therein, and/or
 - (b) officers in the position of Mr W were to take sufficient interest in, and pay sufficient heed to, the proceedings to enable them to give effective evidence as to what transpired in the course thereof.

40. On 7 November 1980 a lady officer of the Department visited the claimant at the claimant's home. The report of the ensuing interview (at which Mr H was not present) indicates that much of the ground covered in the interview of 1 September 1980 was re-traversed. This is a longer report than Mr P's. I cite only the following passages:

"There is no joint bank account."

"She denied ever having slept with [Mr H]. I reminded her of what they had told the officer who interviewed them both on 1 September 1980 i.e. that they had openly admitted sleeping together but not regularly. She denied that they had ever said that."

"They share the food bill. The claimant said she pays more than [Mr H] because she has her son to feed as well."

"They don't go out as a family unit and the claimant doesn't go out with [Mr H] socially. She said that he cooks for himself when he gets home."

"I questioned her again about the sleeping arrangements. She maintained that they each had their own bedrooms. I asked her if she had any objections to letting me take a look. She then made a phone call to somebody saying 'She's asking me the same questions as before.' When she'd finished on the phone I asked her again about seeing the bedrooms and she said no. I said 'well you want me to draw my own conclusions then.' She said she'd been advised to ask me to leave. I asked her if she wanted to answer any more of my questions but she declined."

41. The claimant explained to me that, after the interview of 1 September 1980, she and Mr H had gone to the local Social Security Advice Centre. A lady there had given them a book which purported to set out details of what investigating officers were and were not "allowed" to ask claimants. That book had stated that investigating officers were not "allowed" to ask outright whether a claimant and another person slept together, nor were they "allowed" to ask to see bedrooms. The lady had also told them it was "up to them" whether they answered the questions of an investigating officer and that they could, at any time, ask such an officer to leave their premises. It was to the Social Security Advice Centre that the claimant spoke by telephone near the end of the interview of 7 November 1980.

42. I gathered from the insurance officer's representative that what the claimant had read in the aforesaid book properly represented what had by then become the officially recommended practice of the Department's investigating officers. (In fairness to Mr P it must be stressed that that practice was not in force at the time of the interview of 1 September 1980.) The claimant's reaction to the lady officer's request to see the bedrooms, and the claimant's premature termination of the interview, can, accordingly, be explained as the claimant's exercise of rights of which she had

recently been made aware. I am bound to say, however, that if the claimant had been a little more co-operative, she might have saved herself, and others, a good deal of time and effort.

Adjudication

43. On 19 December 1980 the local insurance officer decided that the claimant and Mr H had been living together as husband and wife since 15 April 1980. He reviewed and revised the decision pursuant to which widowed mother's allowance had been paid to the claimant since 27 June 1978. The result was to throw up an overpayment of benefit in the sum of £1042.10, repayment of which was required.

44. The claimant appealed to the local tribunal. Both she and Mr H gave evidence thereto. The chairman's note of evidence indicates that what they told the tribunal was entirely consistent with what they told me; although, as is only to be expected, in the more leisurely atmosphere of a Commissioner's hearing they were able to develop their narratives in much greater detail.

45. The local tribunal disallowed the claimant's appeal. It found that the relationship between the claimant and Mr H was "much more than a commercial one". On the issue of sexual intimacy, it accepted the evidence of Mr P. (Although Mr P, apparently, was examined and cross-examined before the local tribunal, the relevant form LT3 contains no record of anything which he said.) The tribunal did not believe the claimant's statements to the effect that she did not wash, cook or clean for Mr H. It noted that the claimant had not been in employment since about mid-June 1980, and recorded "... it would have been natural for her to have done some things for [Mr H]." It added: "Her total denials tainted the whole of her evidence."

46. As I have made clear, I had a longer opportunity of seeing and hearing the claimant and Mr H than did the local **tribunal**. **That** opportunity has satisfied me of the probability of what seems, at first blush, a somewhat improbable situation. I have, moreover, the advantage of knowing how matters developed subsequently to the local tribunal hearing. Those matters, to which I now turn, confirm my impression of Mr H as being "a rather self-centred man, much wrapped up in his own affairs" (cf paragraph 10 above). In short, I consider that he is, indeed, the sort of man who would prefer to see to his own washing, cooking and cleaning, rather than be beholden therefor to someone who was not a member of his own immediate family.

Later history

47. The claimant gave up work about two months after she had moved into her new home. She was influenced by the following considerations:

- (a) She was too far for convenience from her erstwhile job.
- (b) Gary (then aged 12) was having problems at school.

- (c) She could not find a suitable replacement for the person who had looked after Gary whilst she was at work.

She lived on the balance of the money which she had received by way of damages.

48. As I have already observed (paragraph 33 above), the only real friends whom the claimant and Mr H had in common were Mr and Mrs S. This community of interest came to a dramatic and disastrous end. I give only the bare bones of the story.

49. Mr H had a row with his old friend Mr S. He had lent money to Mr S. Mr S either could not or would not repay it. Mr H stopped visiting Mr S. At the date of the hearings before me Mr H was still "on distant terms" with Mr S. Mr S, who had been a cook, is now unemployed.

50. Mrs S formed a relationship with a man to whom I shall refer as "Mr R". At the date of the hearings before me, Mrs S was living with Mr R; and Mr and Mrs S were in, or had completed, the process of getting divorced.

51. When Mr H became a market trader he took to storing stocks of clothing in his bedroom at the house which he shared with the claimant. He was himself frequently absent from that house. Somewhere about the autumn of 1981 he found that articles of the stored clothing had gone missing. The quantities of missing articles were not small. Mr H knew both that Mr R was visiting the house and that Mr R had a car. Mr H was in no doubt that Mr R was habitually stealing his (Mr H's) stock. (Mr R was unemployed). According to Mr H, the police were satisfied that Mr R was the thief - but they could not prove it. Over the first six months of 1982 Mr H, on several occasions, took issue with the claimant over Mr R's taking ways. He forcefully expressed the wish that Mr R should be forbidden the house. The claimant would not assent to this. Her answer was: "He's a relative, so far as I'm concerned."

52. A substantial rift developed between the claimant and Mr H. By May/June 1982 Mr H had reached the point of announcing to the claimant his intention of withdrawing forthwith his financial contribution to the repayment of the mortgage and to the other expenses of the house. The claimant went straight to her solicitors. They wrote to the claimant a letter inviting him to come to discuss the matter with them. They added that, in default of his so doing, they would initiate proceedings for an order for the sale of the house. Mr H ignored that letter. Shortly thereafter he stopped paying anything towards the aforesaid financial contribution. He then took even more draconian action. He and the claimant each had a key to the front-door of the house. Mr H had the lock changed. Almost immediately an injunction, obtained ex parte, was served on him. The injunction restrained Mr H from debarring the claimant from the house.

53. It was not at that time Mr H's wish that the house should be sold. He was, however, adamant that Mr R was not to be afforded further opportunity of despoiling his (Mr H's) goods. Mr H sought the assistance of his own solicitor. On the day appointed for the hearing of the inter partes summons for the continuance of the injunction, Mr H attended court at Winchester. His father came along to give moral **support** - and that is the only occasion upon which the claimant has ever seen Mr H's father (cf paragraph 33 above). With the help of the lawyers, the dispute was settled at the door of the court. It was agreed that -

- (a) Mr H should furnish the claimant with a key to the new lock; and
- (b) the claimant would not permit Mr R to enter the house.

54. The claimant and Mr H are once again on a friendly basis. Indeed, were that not so, Mr H would hardly have come to give evidence before me. Living habits have, however, altered substantially since the open conflict over Mr R. Mr H still has his bedroom, and its furniture, in the house; but he sleeps there only occasionally. Apart from nights which he spends at his brother's home in London, he lives mainly with his father. Indeed, he told me that he had always regarded his father's house as his real home. He now sees little or nothing of the claimant. He told me that when he last saw the shared house it did not look lived in. Notwithstanding all that, he has no wish to have the house sold. He is, of course, still paying his share of the mortgage repayments.

55. Since August 1982 the claimant has worked as a supervisor at a branch of a well known retail grocery chain. Gary lives with the claimant's mother throughout the week during the school term. He lives with the claimant at weekends and in the school holidays. I am not entirely clear about this, but I think that the claimant spends quite an amount of time with one of her sisters. Like Mr H, she has no wish to see the shared house sold.

56. At no time since the purchase of the house has the claimant used, or gone under, any surname other than that which she took at her marriage. Mr H has always **used**, and gone under, his own **sur name**. There is no suggestion that Gary has ever looked upon Mr H **as being his** stepfather, or in any way in loco parentis to him; and the same is true of Jamie vis-a-vis the claimant.

Application of the law

57. It is clear beyond any doubt that the criteria for deciding whether two persons are living together as husband and wife are the same in respect of supplementary benefit cases as they are in respect of national insurance cases. In paragraph 6 of Decision R(G) 3/81, the Commissioner adverted to the approval which had been accorded by Woolf J to the guidance furnished by the Supplementary Benefits Handbook. In common with the Commissioner who decided R(G) 3/81, I set out the relevant passage from the Handbook:

"(a) Members of the same household The man must be living in the same household as the woman and will usually have no other

home where he normally lives. This implies that the couple live together wholly, apart from absences necessary for the man's employment, visits to relatives etc.

(b) Stability Living together as husband and wife clearly implies more than an occasional or very brief association. When a couple first live together, it may be clear from the start that the relationship is similar to that of husband and wife, e.g. the woman has taken the man's name and has borne his child, but in cases where the nature of the relationship is doubtful the Commission will be prepared to continue the woman's benefit for a short time in order to avoid discouraging the formation of a stable relationship.

(c) Financial Support In most husband and wife relationships one would expect to find financial support of one party by the other, or sharing of household expenses, but the absence of any such arrangement is not conclusive.

(d) Sexual Relationship A sexual relationship is a normal and important part of a marriage and therefore of living together as husband and wife. But its absence does not necessarily prove that a couple are not living as husband and wife, nor does its presence prove that they are. The Commission's officers are instructed not to question claimants upon the physical aspect of their relationship, though claimants may choose to make statements about it.

(e) Children When a couple are caring for a child or children of their union, there is a strong presumption that they are living as husband and wife.

(f) Public Acknowledgement Whether the couple have represented themselves to other parties as husband and wife is relevant, but many couples living together do not wish to pretend that they are actually married, and the fact that they retain their identity publicly as unmarried persons does not mean they cannot be regarded as living together as husband and wife."

(I have quoted from the Handbook as it stood at the time when Woolf J considered it - hence the references to the now extinct "Commission". With minor, and insignificant, alterations the latest edition repeats the passage).

58. I now deal briefly with the application to this appeal of each of the six criteria set out and approved as aforesaid. I do so mainly by way of expressing inferences. The findings of primary facts upon which those inferences are based have, of course, already been set out by me at no small length.

59. Members of the same household In my view, the claimant and Mr H were not at any time members of the same household. They did, of course, live for some time in the same house - but that is not the same thing. Since the "new" supplementary benefit scheme came into

effect on 24 November 1980, the Commissioners have had to give detailed consideration to the concept of "member of the same household". The overall context has generally been the Supplementary Benefit (Requirements) Regulations 1980 - which are complex. I have myself, however, said more than once that it is helpful to examine whether the persons under scrutiny had the same, or separate, domestic economies. In the instant case the evidence indicates strongly that the claimant and Mr H maintained separate domestic economies. The mortgage repayments were borne in different shares, the quantification of which had been agreed through solicitors. The outgoings referred to in paragraph 32 above were split 50:50; but that was a matter of practical convenience, common enough in premises which do not have more than one gas or electricity meter and which are not divided for rating purposes. It must be borne in mind, moreover, that it is unusual for members of the same household to maintain separate and individual arrangements for the purchase and preparation of meals. And it must be even more unusual that a male member of a household which **contains** an adult female should provide his own clean sheets, make his own bed and clean his own room.

60. My conclusion that the claimant and Mr H were never at any time members of the same household suffices of itself to establish that they did not at any time live together as husband and wife (see, e.g. paragraph 11 of Decision R(SB) 17/81). I deal with the other five criteria from the Handbook, however, because none of the criteria can be examined in total isolation from the others. The conclusion which I have expressed in paragraph 59 above might have been **quite** different had I taken a different view of the rest of the picture.

61. Stability This criterion, of course, begs the question: What was the relationship of which the stability is in issue? Undoubtedly there was a relationship between the claimant and Mr H; and for a time it was, and perhaps it is again, a relatively stable one. But in my view it was never, and was never intended to be, the type of relationship which subsists between those who live together as husband and wife. Fundamentally it was a commercial relationship (see paragraphs 16 to 20 above). To the extent that it was personal, the respective considerations were individual to the parties. Each wished for a better home. But the claimant wished for a better home for herself and for Gary; and Mr H wished for a better home for himself and for Jamie. I can find very little evidence that either was much concerned about the personal wishes of the other. It so happened that they were in a position to take a step whereby their individual and several aspirations could be fulfilled; and they took it. It is significant that they never went on holiday together. Indeed, **they** had virtually no social life together at all (cf paragraph 33 above).

62. Financial Support There is no evidence of financial support going beyond the minimum necessary to maintain the relationship which I have just described in paragraph 61. Each party went his or her own way in all financial matters which did not bear directly upon the

preservation and enjoyment of the house in which he and she had made a home. It is noteworthy, for example, that Mr H made no adjustment to the financial arrangements when the claimant gave up her employment (some two months after the purchase of the house). The claimant was left to fend for herself (and for Gary) out of her own resources. Indeed, it seems to me that the financial arrangements between the claimant and Mr H were very much the type of arrangements which might have been expected had the claimant fallen in, not with Mr H, but with a widowed mother who was short of capital but who had a sufficiently generous pension to service a mortgage. Both the tenancy in common (with its avoidance of the right of survivorship) and the independent catering arrangements fall more naturally into this latter type of situation than into a living as husband and wife situation.

63. Sexual Relationship It will be clear from the findings which I have made in paragraph 34 above that there is nothing under this head to lend support to the contention that Mr H and the claimant were living together as husband and wife. Indeed, the indications are to the contrary. A man and a woman living together as husband and wife may not, perhaps, be expected to take as exclusive a view of their relationship as do those who are married and living together. It would be somewhat surprising, however, to find no exception being taken, on either side, to the regular (and unconcealed) philanderings of the other party. Such indifference is incompatible with any but the flimsiest notion of stability.

64. Children There is no suggestion, of course, that the claimant has had any child by Mr H (cf paragraph 57(e) above). If, however, Mr H and the claimant had ever lived together as husband and wife, it might have been expected that whilst they were so doing there would have been some measure of father/son relationship between Mr H and Gary. There is no evidence of that at all.

65. Public Acknowledgement There is no evidence at all to suggest that Mr H and/or the claimant ever represented themselves to anyone as being husband and wife - or that anyone outside the Department of Health and Social Security ever thought that they were so living.

Conclusion

66. The facts of this case are unusual - and I have thought it necessary to deal with them at a wholly unusual length. At the end of the day, however, I am satisfied that, on the balance of probabilities, Mr H and the claimant have never at any time since 27 June 1978 lived together as husband and wife. The facts that in early 1980 they joined in the purchase of a house and then took up residence in that house undoubtedly constituted a relevant change of circumstances sufficient to justify the review of the decision by which widowed mother's allowance was awarded to the claimant. In the light of my conclusion in respect of the central issue in the case, however, no revision of that decision is called for. In consequence, there has been no overpayment of benefit to the claimant and the issue of repayment does not arise.

67. The claimant's appeal is allowed.

(Signed) J Mitchell
Commissioner

Date: 7 December 1983

Commissioner's File: C.G. 54/1981
C I O File: I.O. 1004/W/82
Region: Central Pensions Branch, Newcastle C.O.