

Widow's Benefit Claimant Must Have Been  
Married

HL/CW/ZN/4

Commissioner's File: CG/97/1997

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Ms Joanna Shackell

Social Security Appeal Tribunal: Swindon

Case No: 3 30 96 10616

1. For the reasons given below, this appeal by the claimant does not succeed. I confirm the decision given by the social security appeal tribunal on 27 June 1996 to the effect that the claimant is not entitled to widow's benefit in respect of the death of her late partner on 19 September 1995.

2. The claimant was born on 3 November 1957 and from September 1978 she regarded herself as married to the man to whom I refer as her partner, who was born on 29 March 1956 and died on 19 September 1995. They had 3 children, born in 1989, 1991 and 1994. They did not go through any ceremony of marriage but regarded themselves as committed to each other. They had joint mortgages and joint bank accounts. The tribunal records "they appeared to have been a devoted couple and there was no question of them separating".

3. On 17 February 1996 the claimant signed form BW1 claiming widow's benefit following the death of her partner. On 29 February 1996 the adjudication officer decided that benefit was not payable because there had never been a valid marriage between the claimant and her late partner and it could not be presumed that there had been one. On 19 March 1996 the claimant appealed to the social security appeal tribunal on the basis that the decision was in breach of the European Convention of Human Rights which guaranteed respect for family life. She referred to "Article S(1)" of the Convention. This was a typing error although it has been reproduced at other places in the file. The relevant Article is 8(1), to which I make further reference below. The tribunal met to consider the matter on 27 June 1996 and confirmed the adjudication officer's decision, for the same reasons, and stated that the Convention did not assist the claimant "because this is a

relationship between the National Government and the European Commission of Human Rights". The tribunal was not quite right in its comments on the Convention. The Convention is an international treaty under the auspices of the Council of Europe and it created the Commission. Individuals may take proceedings against National Governments and in some countries which are party to the Convention these proceedings may be brought in the National Courts. I refer below to the position in the United Kingdom. On 28 November 1996 the claimant applied for leave to appeal to the Social Security Commissioner. Leave was granted on 7 December 1996 by the chairman of the tribunal. The adjudication officer now concerned with the matter opposes the appeal and supports the decision of the tribunal.

4. One of the grounds of appeal put forward on behalf of the claimant is that interpretation of the Convention is not within the jurisdiction of the tribunal. However, in cases in which regard can be had to the Convention, then the interpretation of the Convention is just as much within the jurisdiction of the tribunal as is the interpretation of any other part of the law. As with other parts of the law, the tribunal might be bound by interpretations given by higher judicial authorities and, in the case of the Convention would take account of decisions of the European Court of Human Rights. However, that would not deprive the tribunal of jurisdiction.

5. Section 36 of the Social Security Contributions & Benefits Act 1992 provides for widow's payment; section 37 provides for widowed mother's allowance; section 38 provides for widow's pension. Each of these benefits is available to "a woman who has been widowed" on the basis of contributions by "her late husband". There are other conditions which are not relevant for the purposes of my decision. There is no definition of the word "widow" or of the phrase "a woman who has been widowed". Section 122 of the Act provides that in relation to a woman "who has been more than once married", then "late husband" means "her last husband". From this, it seems clear that a woman is not a widow unless she was married to her late husband. However, I assume that the claimant's argument is that she should be treated as though ~~she had been~~ married to her late partner.

6. Earlier versions of the legislation have been considered in several cases. I am not sure that the precise issue raised by the present case has been considered by earlier cases but, for example, in R(G)2/70 the Commissioner considered the case of a woman who had been through what appears to have been a bogus marriage ceremony. The Commissioner decided that the marriage between the claimant and the deceased "is not established and cannot be presumed. Accordingly, the claimant has not proved that she is the widow...and widow's benefit is not payable". Thus, it seems clear that, disregarding the

Convention, in English Law a woman is not entitled to widow's benefit unless there has been a valid ceremony of marriage and the marriage still exists at the time of the husband's death.

7. Social security legislation has recognised that many couples live together as though they were married, without being formally married. Examples of this in the present law are so numerous that it is not necessary to give any. However, the fact that sections 36 - 38 make no reference to unmarried couples or any similar such concept strengthens the conclusion to which I have come in the previous paragraph.

8. In Brind and Others v. Secretary of State for the Home Department [1991] 1 All ER 720, the House of Lords considered the application in English law of the European Convention on Human Rights. It decided that the Convention is not part of domestic English law, the Courts have no power to enforce convention rights directly, and domestic legislation must be enforced even if it conflicts with the Convention. Where domestic legislation is capable of having a meaning which conforms to the Convention and one which does not, it will be given the former meaning - but this does not make the Convention part of domestic law. Lord Bridge stated:

"When Parliament has been content so long to leave those who complain that their Convention rights have been infringed to seek their remedy in Strasbourg, it would be surprising suddenly to find that the judiciary had, without Parliament's aid the means to incorporate the convention...this would be a judicial usurpation of the legislative function".

9. The Human Rights Bill currently before Parliament will largely have the effect of incorporating the Convention into English law, and will dramatically change the legal mechanism for the enforcement of rights. However, I cannot anticipate the passage of that legislation. On the other hand, I would not want to make any decision which might be thought to be prejudicing future cases which arise for decision if and once the Bill is enacted. Accordingly, my decision is not to be taken as anticipating in any way future legal developments.

10. It seems to me that in the way in which the concepts have developed in English law there is no ambiguity in the concepts of widowhood or marriage in this context, and the words in the legislation cannot be given any meaning other than as I have indicated.

11. Article 8(1) of the Convention provides as follows:-

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of the disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

12. The jurisprudence developed under the Convention seems to be that the right to respect for family life may involve recognition by the State of the reality of family life already established and that informal matrimonial unions may constitute family life, depending on the stability and intention of the parties. Family life extends beyond formal relationships and legitimate arrangements. Within this context, I have every sympathy for the position and argument of the claimant, but I cannot see that there is anything that can be done in English law as it stands at present.

13. Accordingly, the decision of the tribunal was not made in error of law, and the appeal cannot succeed.

(Signed) H Levenson  
Commissioner

(Date) 23 March 1998