

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1/64

1. The decision of the Housing Benefit Appeal Tribunal dated 15 November 2004 on Case No. U/42/157/2002/00061 is erroneous in law. I set that decision aside, and, as empowered by section 68 of the Child Support, Pensions and Social Security Act 2000 as read with paragraph 8(5)(a) of schedule 7 to that Act, I give the decision which I consider the tribunal should have given which is:-

1. The claimant is entitled to housing benefit from and including 11 March 2007.
2. The claimant is not entitled to housing benefit in respect of the period from 31 October 2001 to 10 March 2002.

2. The claimant appeals, with the leave of the tribunal chairman. The decision against which she appeals is in the following terms:-

- “1. The decision [of the local Authority] of 17/09/02 that the appellant had no entitlement to Housing Benefit, as she was treated as having capital in excess of £16,000 is confirmed.
2. Accordingly the question of backdating under the decision of 13/0/02, the refusal to backdate between 31/10/02-11/03/03 does not arise, but for the sake of completeness in relation to the decisions under appeal I confirm it; no just cause for the failure to claim earlier has been shown to me.
3. I have decided that I am not bound by the principle of res judicata in respect of the finding by [the Recorder] in November 2003 that [the claimant] had no beneficial interest in the property at [A].
4. The issue of that beneficial interest is central to any decision as to entitlement to Housing Benefit.
5. I have heard oral evidence, and read the documents from the County Court proceedings as well as the other documents in the tribunal bundle. I form a different view to the learned Recorder.
6. [The claimant] had a beneficial interest in the property from its purchase in about 1983. She divested herself of the legal title in October 2001 for no consideration. That action was wholly connected to her claim for Housing Benefit, in that in a previous application her ownership of the property had been a bar to her entitlement.
7. She has been correctly treated as having capital in excess of the prescribed amount, alternatively having deprived herself of capital with the significant operative purpose of claiming Housing Benefit.

8. The objective evidence, as to, inter alia the legal title, the joint account with her son, the fact that she was receiving rent as landlord of the property in respect of Housing Benefit payments, including for a period when she was herself claiming Housing Benefit and her failure to disclose both her and her son's interest in the property and various documents, as well as what I have found to be important inconsistencies in the evidence lead me to that view.”
3. The factual background to this case is apparent from that notice of the tribunal's decision and from the statement of the tribunal's reasons which is as follows:-

“ 1. The appeal was against 2 decisions of the Housing Authority made on 13/08/02 and 17/09/02, in respect of the appellant's claims to housing benefit and council tax benefit. The first decision was a refusal to backdate the claim made on 7/03/02 between 31/10/01-11/03/02, the second that she was not entitled to benefit from the date of claim, as she was treated as possessing capital of over £16,000, the maximum permitted amount within the regulations after which there is no entitlement.

2. The tribunal held an oral hearing at the request of the appellant. She attended together with her two sons, and her Counsel Mr Sallis. The Housing Authority was not represented. The prime concern was the later of the 2 decisions that there was no entitlement from the date of claim. The question of backdating was of secondary concern, since it was only of relevance if a potential entitlement was found, which might then be backdated.

3. The matter was heard on 15/11/04. I reserved the decision, and issued a decision notice the following day. That notice is incorrectly dated. It should be read together with the statement.

4. The background is stated more fully below in the findings of fact, but it is useful to outline the salient points at this stage.

5. The appellant had lived as a tenant of the Housing Authority at [A]. She had acquired a right to buy that property and had purchased it with her eldest son in 1983. She continued to live there for a time but then moved to accommodation provided for her in connection with her employment. After ceasing that employment she applied for and was granted a tenancy by the Housing Authority of a property at [B].

6. The issue was as to housing benefit entitlement at [B]. The Housing Authority had found that she had an interest in [A] which precluded entitlement.

7. The issue was as to whether the appellant had any beneficial interest in the property at [A].

8. There was no argument that if she did have an interest it would, if added to her declared capital, make her worth above £16,000.

9. There had been a hearing in the County Court of a possession action by the Housing Authority against the appellant at her address at [B]. That had taken place after the decisions under appeal were made.
10. There had been a counter claim by the appellant, the defendant in those proceedings, seeking a declaration that she had no beneficial interest in [A]. The learned Judge did not make that declaration because he felt that it was not necessary in relation to his disposal of the case. He felt that there were complications in that the appellant's son, who had an interest in that question, was not a party. (Judgment paragraph 28). His judgment, however, makes it clear that he found as a fact that the appellant had no beneficial interest in [A].
11. The main legal question before this tribunal was whether that finding was binding on it. That interest constituted the capital over £16,000 that the Housing Authority had found she possessed. The issue of beneficial entitlement was therefore determinative of the question of Housing Benefit entitlement.
12. The learned Recorder had found the facts as to beneficial interest due to his accepting the evidence of the appellant and [the claimant's eldest son J] that there had been a family arrangement from the outset and the property would be [the son's] alone.
13. He had also made findings to the effect that the appellant had an entitlement to Housing Benefit, and that it had been wrongfully withheld from the appellant. Whilst he accepted that there had been mis-statements by the appellant in application forms in relation to the tenancy, he found that those had not reduced the tenancy. He refused to make the possession order sought.
14. The County Court decision was appealed by the Housing Authority, thus the considerable delay in hearing this appeal.
15. The Court of Appeal found, inter alia, that the learned Recorder had erred in law in purporting to decide upon the appellant's Housing Benefit entitlement, which he had no power to do. They remitted the matter to the County Court in relation to both limbs of the possession action, that is the grounds itself, and the question of whether it was reasonable to make the possession order. That hearing awaits the outcome of this appeal. This decision is relevant as it bears on the issue of rent arrears, in that these are either extinguished or very much reduced if either or both decisions are revised in the appellant's favour, which goes to the issue of whether or not it is reasonable to grant possession.
16. The Court of Appeal had not been directly seized of the question whether the appellant had a beneficial interest in [A] or not, since the Housing Authority put their case on the basis that the judge had not needed to make a finding as to this issue, since the appellant had, as a matter of law, wrongly stated that she had no interest on her application form, and this was sufficient for the Housing Authority to establish the ground alleged in relation to the possession action. They felt that the question of the beneficial interest was irrelevant. Accordingly they had not actually challenged the finding itself, but only the need to make it. (p318, local Authority's submission to Court of Appeal, paragraph 52). The Court of Appeal disagreed with this argument,

stating that it was of relevance as to the questions of whether the appellant had knowingly or recklessly made a false statement, and as to whether it is reasonable to make a possession order. The result of the lack of challenge to the finding was, however, that the Court of Appeal did not deal directly with the merits of it. They did make the point, dealt with in more detail below, that issues as to Housing Benefit entitlement were for the statutory authorities.

17. The argument of Counsel before me was that I was bound by the findings of [the Recorder] as to the appellant's lack of beneficial interest, as the principle of *res judicata* applied. Mr Sallis said that since the issue was more than peripheral to the decision I was bound by it. It was, as I have stated, conclusive of the issue of entitlement to Housing Benefit that I had to decide.

18. However, the Court of Appeal had found that the learned Judge had erred in purporting to decide the appellant's Housing Benefit entitlement. They had made the point forcefully (paragraphs 51, 54 & 55 pp359-360) that this was the function of those bodies set up to administer the statutory scheme. I was struck by a conundrum in the argument being put forward by Mr Sallis that this tribunal was bound by the judge's view, which meant that I, as the appeal body under the statutory scheme, was not able to make an independent finding as to the Housing Benefit entitlement since the judge's view was determinative of the matter I had to decide, when the Court of Appeal had clearly said that the judge was not the person to make that decision.

19. I found the issue an interesting but difficult one, and did not feel able to decide it at the hearing on the basis of Mr Sallis' submissions alone. I was reluctant to adjourn the matter to deal with this as a preliminary issue owing to the age of the case, and the fact that the County Court proceedings were awaiting this decision. Since all the witnesses were present I decided to hear evidence so that, were I later to decide that I was not bound by the earlier decision, I could decide the case without a further hearing. Mr Sallis was content with me taking that course. I then reserved my decision.

20. After the hearing I deliberated, initially as to the *res judicata* point. The Recorder had himself implicitly rejected a similar point in relation to the findings of the housing review board, referred to below, on the same issue. The Court of Appeal in paragraph 52 of their decision (p359), while stating that the judge was entitled to decide the beneficial interest point due to its relevance said 'that said, the conclusion which had been reached on evidence in court was not one which it can be said that the Authority was bound to come to in the course of its investigations. In the circumstances the judge's conclusions that the Authority had acted wrongfully cannot stand'. I was conscious that these, whilst being proceedings between the same parties, were different in their nature and purpose, as well as in their legal framework. I formed the view that in order to comply with my statutory function under the housing benefit scheme I would be bound to make findings myself and decide the issue according to those findings.

21. I made the following findings.

22. In about 1978 the appellant, then widowed, moved with her 3 children, that is her son's [J] and [D] and her daughter [S], to [A], local authority accommodation.

23. The appellant was working at that time, and she was paying the rent at the property.

24. [J] was working in the building trade.

25. Under the 'Right to Buy' legislation the appellant and her son [J] bought the property on 7/02/1983. The value was then £24,000, and the price paid £14,880, the discount being 38%. The discount was due to the appellant's status as tenant. This discount gave the appellant an interest in the property from the outset irrespective of whether or not she made any subsequent contribution.

26. The mortgage was in joint names, and the house was conveyed into the joint names of the appellant and [J].

27. There was no document with the conveyance stating the terms upon which the property was held.

28. At that time the appellant had an account at the Co-Op Bank in [], into which her wages were paid. She and [J] opened a joint account at the same branch, from which the mortgage was paid. Money was paid into that account specifically for the mortgage payment and household bills, usually by the appellant who would put money in for [J] when he was paid in cash.

29. She lived rent free in the property after the purchase, until she moved out in about 1988 to live in accommodation that was provided for her in connection with her employment as a warden in sheltered housing. At that time [J] was not living in the property either, but it was let to the appellant's son [D], and other tenants. For most of this period the rent was paid by Housing Benefit. It was paid by cheque to the appellant who was named as the landlord on Housing Benefit applications. She put those cheques into the joint account which was used to fund the mortgage. This was the case in respect of [D] or other tenants at least between 1/04/1996 and 29/05/2000. Prior to that time the appellant in her evidence accepts that she acted as landlord, receiving rent and looking after the property.

30. In 1994 the appellant had to retire from her employment due to ill-health. She applied for local authority housing completing an application form on 18/01/1995. In that form she was asked to give details of her last 2 previous addresses. She did not put down the property at [A].

31. She said in the same form that she wanted [J] to be rehoused with her. This was because she wanted a 2 bed roomed property. He had not been living with her at her residential job, since he stayed substantially with his girlfriend. Although [J] stayed with her at [B] for a period when she was unwell, he continued to live substantially with his girlfriend, and in 1998 took on a position with residential accommodation. Nonetheless he continued to appear on the appellant's Housing Benefit renewal forms as a resident at [B]. Further in the form at question 12

she was asked 'Do you or anyone on your application form own the freehold or leasehold of any properties?' she ticked the 'No' box, although she and [J] were at that time joint owners of, and receiving rent by way of Housing Benefit payments in respect of, [A].

32. She continued to maintain in an interview with the visiting officer of the housing authority that she did not own any property.

33. After having been granted the tenancy of [B] she applied for housing benefit. In that application form she did not disclose either her interest in, or the rental from [A]. Housing benefit was granted from 6/05/1996.

34. When the housing authority discovered her connection with [A] a decision was made that the appellant was not entitled to housing benefit. An overpayment was found to be due and owing. The appellant appealed to the then appeal body, a housing review board. The matter was heard in April 2001 (p121). The appellant was represented by an employee of a firm of solicitors. It is unclear whether he was a solicitor or a legal executive. That board found that she did have a beneficial interest in [A]. It confirmed her lack of entitlement to housing benefit, and stated that the overpayment should be recovered.

35. There was no appeal against that decision.

36. It was that decision as to the overpayment which confirmed the deficit on the appellant's rent account, which led to the possession proceedings before the County Court. That Court found that the appellant had been entitled to housing benefit, and that the arrears were therefore wholly due to the wrongful refusal of the housing authority to pay or backdate housing benefit. As the Court of Appeal stated this conclusion was not one that the judge had jurisdiction to make.

37. Following the decision of the review board in April 2001 the [claimant] instructed solicitors to have her name taken off the title deeds of [A]. On 30/10/01 she signed over her share of that property to [J] for no consideration. This was expressly so that she could claim housing benefit. There is no argument that she deprived herself of the legal interest in order to be able to pursue her housing benefit claim, but the question is as to whether she had any beneficial interest and either deprived herself of it in order to claim housing benefit, rendering her unable to qualify for housing benefit as having, or being treated as having capital in excess of £16,000.

38. There has been no issue as to whether, if the appellant had a beneficial interest in the property its worth was less than £16,000. The matter was not raised in the appeal, and I did not formally have to consider it. The property is a valuable one, and was sold in January 2003. After the cost of sale and redemption of the mortgage the sum of £162,658.97 was released to [J]. Of course I am dealing with the value as of the date of her application, but the value has not been a point of argument, simply the principle as to her interest.

39. In contrast to the learned Recorder I formed a poor view of the appellant as a witness of truth, due to her account itself, and the manner of her giving it. There were

significant inconsistencies, both in her own account, and between her account and that of her son [J], some of which are detailed below. Overall I found that the appellant knew the import of the matters in respect of which she had given false information in the tenancy application and housing benefit forms. She had experience of the housing benefit scheme at that stage as a landlady, and her son [D] had been claiming the benefit for some years. I was in no doubt that she deliberately tried to mislead the housing authority in respect of both her own connection with [A] as well as that of [J]. I do not believe that this was simply due to her reluctance to prolong the process, or answer further questions about [A], while honestly believing that she had an entitlement.

40. The appellant's account of the circumstances of the purchase differed from [J's]. Whilst I accept that after so many years there would be differences of recollection, I found that the combination of their different recollections was no basis upon which I could conclude that they had come to a decision, contrary to the written evidence, that the appellant would have no interest in the property from the outset, nor that she had divested herself of any beneficial interest at any time prior to her housing benefit claims. Both accounts were woolly as to detail, including whose idea it had been to purchase the property and the steps taken. I did not find the assertion that there had been an agreement from the outset convincing. There is no evidence of this having been raised prior to a County Court hearing. It is unlikely to have been explained to the original conveyancing solicitor, since no deed of trust appears to have been drawn up, which would have been routine in 'right to buy' cases where various family members were involved, and the beneficial interest differed from the legal interest. Further had the appellant wished to clarify the ownership matter she could have acted earlier, after the discount period under the right to buy had ended, to remove her name from the deeds. The claim made on 7/03/02 requesting backdating "as far as possible" (p23) dealt with the transfer to [J's] sole name in 2001, but did not say anything to indicate that the appellant had never had an interest in [A].

41. The appellant's evidence that she had no wish to purchase a property as she did not want the responsibility attached to ownership did not tally with the fact that on her own account she put money into the joint account each week from [J's] wages, that she looked after the property whilst living there and following her move, being named as landlord, receiving the rent and banking it and, on her own account being responsible for repairs and emergencies.

42. Her statement to me that she could not have afforded the mortgage was in direct contrast with her statement made a few moments later, that she recalled having said to [J] that the mortgage would be less than the rent (see record of proceedings); the appellant had been clear earlier that she alone had been paying the rent prior to the purchase, and this was also [J's] evidence.

43. She said that she dealt with the bank administration as [J] was poor with figures and had never had a bank account before. [J] told me that he had had another account, and that he had wanted an account in a different place in order to keep matters separate from his other finances.

44. The appellant's evidence to me was that [J] had given [D] money from the proceeds of the recent sale of the house. I had asked her why she had offered the possibility of a windfall to [J] and not to [D]. Her reply was 'it was a windfall for both of them. [J] allowed him quite a bit of money on it'. She was surprised when [J] later said that he had not given him any money. Her belief that he had given money to [D], and that reaction were inconsistent with the view that house had been [J's] from the outset, to do what he would with.

45. I was not satisfied that the appellant would wish to benefit only her son [J] by such an arrangement, particularly given her evidence as to the 'windfall' above. There was only about one year between [J] and [D], and it would be unusual in a mother to want to benefit one son alone. Further the appellant had another child. I find it more likely that the appellant would have wished to retain an interest in [A] after purchase, so that she could benefit her other children, [J] being provided for by his own interest in the property.

46. These matters all mitigate against the appellant having decided at the outset that she would have no interest, and the combination of them leads me to the conclusion that she did indeed have a beneficial interest at the relevant time.

47. On the secondary matter, the decision dated 13/08/02 as to the backdating request, the appellant's explanation to me in evidence as to the delay in claiming does not amount to good cause for her failure to apply timeously. In essence she said that she had become sick of the administrative matters, having undergone delay in relation to having her name removed from the deeds. This was not good cause for delaying her claim – if she could not cope with the administrative matters she could have sought help. She had throughout the hearing spoken of the assistance that she received from sons; they were living nearby and in regular contact with her. Her inactivity amounts to a deliberate election not to claim at the earlier time, and good cause is not made out.

48. Subject to the necessary written matters being completed by those advising the appellant I would be minded to grant leave to appeal in this matter, as it clearly raises interesting legal issues which should be aired at a higher level. To the housing authority I would say that I was sorry not to have had the benefit of their submissions as to the res judicata point, and should the matter go further these would still be of value.”.

4. The grounds for appealing the tribunal's decision to a Commissioner stated for the claimant are, in short, that the tribunal had erred in law in deciding that it was not precluded by the principle of res judicata from considering the question of whether or not the claimant had a beneficial interest in the property at [A]. That was because the same question had been decided in the claimant's favour in the County Court and the Appeal Court judgment set aside only that part of the County Court judgment which purported to determine the claimant's entitlement to Housing Benefit. The question of beneficial interest was a matter within the County Court's jurisdiction and the Court of Appeal had not set aside its judgment on that matter.

5. I heard the appeal on 7 September 2005. The claimant was represented by Mr Salis of Counsel instructed by Messrs. Garcha and Company, Solicitors, London, and the Local

Authority was represented by Ms A. Meacher of Counsel, instructed by the Solicitor to the local Authority. I am grateful to them both for their submissions. My note of those submissions is in the Appendix to this decision.

6. Despite the length of the written and oral submissions made to me in this case it seems to me that it is a comparatively short point which should inform my decision. The first question that the tribunal had to resolve was, and now on the appeal the first matter with which I have to deal with is, whether or not the issue of the claimant's beneficial interest or lack of such interest in the house at A had been rendered *res judicata* by the decision of the County Court.

7. Is there still subsisting a County Court decision to the effect that the claimant had no beneficial interest in the house at A or did the Court of Appeal quash the entire County Court decision? The Court of Appeal's order is:-

“Appeal allowed in connection with both grounds for possession. The matter to be remitted [to] a different County Court Judge to determine the question of reasonableness; - - - - -”.

As only the matter of reasonableness has been remitted to a different County Court Judge and the first Judge's decisions on the 1985 Act grounds 1 and 5 issues were informed by his decision on the beneficial interest issue, how has the Court of Appeal disposed of those three issues?

8. On the ground 1 issue the Court of Appeal decided that the County Court had exceeded its jurisdiction in deciding that the claimant was entitled to housing benefit because that was a matter for the statutory authorities (paragraphs 54 and 67 to 69 of the judgment). The Court decided also that there was, in any case, no good reason for the County Court's decision on entitlement (paragraph 51). There was, therefore, no basis for any set-off of unpaid benefit against arrears of rent nor any benefit related consideration available to the County Court which would render a possession order on ground 1 unreasonable. The Court concluded that ground 1 had been made out. That is it replaced the County Court decision on ground 1 with its own decision.

9. On the matter of the 1985 Act ground 5 the Court of Appeal decided that the County Court had misdirected itself in law on the burden of proof on the local authority landlord as to what would have been the likely result of the landlord knowing the truth about the claimant's son's interest in the house at A and the County Court had applied the wrong test as to the materiality of the claimant's misrepresentation of that interest. Also the County Court's conclusion that, had the truth been known, a tenancy would still have been granted was contrary to the evidence before that Court (38 to 43 of the judgment). In paragraph 44 of the Appeal Court's judgment it is said:-

“For the above reasons, I have concluded that the judge erred in law in his approach to the evidence of inducement. Had he applied the correct test and approach he would have been bound to conclude that the Authority had established that the false statement induced the grant of the tenancy to [the claimant].”.

I read that, together with the order, as the Court of Appeal's substitution of its own decision that ground 5 has been made out for the County Court's decision to the contrary.

10. What then has become of the County Court's decision that the claimant has no beneficial interest in the house at A? My view is that it still subsists. Firstly, in paragraph 52 of the Court of Appeal's judgment it is said:-

“Miss Meacher, counsel for the Authority, submitted that the judge was wrong to determine the beneficial interest question. In my judgment he was wrong in concluding that it provided a legitimate basis for him to decide [the claimant's] entitlement to housing benefit. In the overall context of the case, including the question of whether she knowingly or recklessly made a false statement and on the issue as to whether it would be reasonable to grant possession, I do not think the judge can be criticised for coming to a conclusion on the evidence he had heard. That said, the conclusion which had been reached under evidence of the court was not one which it can be said the Authority was bound to come to in the course of its investigations. In the circumstances, the judge's conclusions that the Authority had acted wrongfully cannot stand.”.

Secondly, in paragraph 63 it is said:-

“Although the Recorder has been criticised for making a finding as to [the claimant's] beneficial interest, I regard his conclusion, which has not been challenged, as a relevant factor in considering whether it is reasonable to grant possession. That said, consideration will have to be given to the Authority's position in the face of the non-disclosure of the true position. The facts of this case amply demonstrate that when applicants apply for housing and/or housing benefit, the law imposes upon them an obligation to be full and frank in their answers to material questions. Whatever may be the explanation for not making full disclosure, any failure to do so will be likely to bring about consequences for which they will be responsible.”.

It seems to me, therefore, that the Court of Appeal has left the County Court's determination of the beneficial interest issue unimpaired and extant even although in paragraph 52 it is said that the County Court's conclusion on the evidence heard was not one at which the Authority was bound to arrive. Contrary to what Miss Meacher argued, I do not see in the Court of Appeal Judgment any direction that the County Court's findings in fact in respect of the beneficial interest could not be used by the tribunal to determine entitlement to housing benefit.

11. Since the County Court's decision on the beneficial interest still subsisted at the date of the tribunal hearing did it render that matter *res judicata* for the tribunal? None of the estoppel included in the concept of *res judicata* applies in any particular case unless the parties to the second litigation are the same, and acting in the same capacities, as the parties in the first (*Townsend v. Bishop* [1939] 1 All E.R., and *Douglas v. Forrest* (1828) 4 Bing). I think that the parties were the same in this case. Miss Meacher did argue that the local authority had two separate capacities – housing authority and housing benefit authority – and that it was as the former that the authority appeared in the County Court but as the latter that it appeared before the tribunal. I agree with Mr Salis that that is an academic distinction and that the local authority was the party in both fora and was there to discharge whichever of its functions

became relevant. In this case the claimant's entitlement to housing benefit had been put in issue as a defence to the local authority's claim for a possession order. Miss Meacher said in her submissions to me that the local authority had attempted to persuade the County Court to adjourn for the housing benefit question to be determined by the appeal tribunal. It seems to me that in doing so the local authority was pointing out that its discharge of its housing benefit function could not be impugned in the County Court, only by way of appeal to the tribunal. That is different from the circumstances in *Townsend v. Bishop* where a second action concerning the same incident of negligent behaviour was not estopped because the plaintiff appeared in the second action in his own right but had been concerned in the first as his father's agent. *Douglas v. Forrest* in which the litigant appeared in his own right in one litigation and as an executor in the other might be a better illustration of the point but I do not have a copy of that case to hand. In those cases the litigant executor and the agent were standing in the shoes of the deceased and the principal respectively but the local authority in this case does not have different legal personalities as the housing authority and the housing benefit authority. It simply discharges different functions in the same legal personality.

12. Given that the parties before the County Court and before the tribunal were the same, was there any estoppel affecting the proceedings before the tribunal. There was certainly no cause of action estoppel. The County Court's decision on entitlement to housing benefit had been quashed for want of jurisdiction and refusal of housing benefit was the claimant's cause of action before the tribunal. Before the tribunal the claimant led evidence from her son, D, as to his understanding of the arrangement between the claimant and her son J for the discharge of the loan by which the purchase of the house at A had been financed. D did not give evidence to the County Court. Mr Salis dismissed D's evidence as (contrary to the authority's contention) not adding anything to what was already known at the County Court stage and, therefore, not bringing the instant case within the scope of *Hunter v. Chief Constable of West Midlands Police and Others* [1982] AC 529 by entirely changing the aspect of the case. Had the new evidence entirely changed the aspect of the case there would have been no issue estoppel. I agree with Mr Salis' view of the significance of D's evidence but in any event it is the claimant's plea of issue estoppel which is in issue and I do not think that the claimant's attempt to support with further evidence the decision which she pleads as creating the estoppel can be used to establish the fresh evidence exception to issue estoppel.

13. As Miss Meacher said in her oral submission and as is remarked in the statement of the tribunal's reasons for decision, the question raised by this appeal is whether or not a tribunal in the exercise of an exclusive jurisdiction can be inhibited in its determination of a principal issue within that jurisdiction by another tribunal or court's decision on a question relevant to that principal issue. Miss Meacher said that there were competing public policies in issue in this appeal. On the one hand there was the policy underlying *res judicata* which was the desirability of finality in litigation, fairness and the conservation of public resources. On the other hand there was the need for specialist judicial bodies with exclusive jurisdictions to be able to exercise to the full their inquisitorial role in the determination of questions within their jurisdictions. Miss Meacher referred to Commissioners' decisions indicating that there is no doctrine of *res judicata* in Social Security adjudication system.

14. To deal with Miss Meacher's last point first, I agree that there is virtually no application of the principle of *res judicata* in the determination of social security benefit and housing benefit questions. In relation to Social Security benefit determinations, section 17 of the Social Security Act 1998 enacts:-

“(1) Subject to the provisions of this Chapter, any decision made in accordance with the foregoing provisions of this Chapter shall be final; and subject to the provisions of any regulation under section 11 above, any decision made in accordance with those regulations shall be final.

(2) If and to the extent that regulations so provide, any finding of fact or other determination embodied in or necessary to such a decision, or on which such a decision is based, shall be conclusive for the purposes of –

- (a) further such decisions;
- (b) decisions made under the Child Support Act; and
- (c) decisions made under the Vaccine Damaged Payments Act.

I regard sub-section (1) as a limited statutory estoppel which allows claimants and the Secretary of State to revisit, by way of revision, supersession or appeal, past decisions in order to take account of mistakes and changes in the fortunes and misfortunes of claimants. Sub-section (2) provides that there is no estoppel on the redetermination of factual issues relevant to decisions except in the few cases in which regulations provide for finality of such determinations. The provision in the housing benefit legislation corresponding to section 17(1) is section 68 of the Child Support, Pensions and Social Security Act 2000 as read with paragraph 11 of Schedule 7 to that Act. There seems to be no equivalent to section 17(2). Nevertheless, in the light of those provisions I agree with Miss Meacher that decisions by the statutory authorities do not create an estoppel on later decisions except to a very limited extent.

15. However, that does not mean that decisions made by the courts in the exercise of their jurisdictions do not create an estoppel if the same issue arises between the same parties in the course of a statutory appeal. There is nothing in any of the authorities cited to me by either Miss Meacher or Mr Salis which persuades me that a determination made by a County Court in the course of deciding a matter within its jurisdiction can not create an estoppel in the statutory appeal process if the same question arises between the same parties. The considerations of fairness, finality and conservation of resources are just as cogent and the estoppel may well assist rather than inhibit the exercise of the statutory jurisdiction by providing the tribunal with a determination which relieves the tribunal of the need to deal with some difficult point of general law or of law relating to a speciality other than that of the tribunal or with difficult issues of fact more appropriate to the County Court's or the High Court's adversarial procedures.

16. My conclusion is, therefore, that in this case there was an effective estoppel on the beneficial interest question at the tribunal hearing and it was an error in law for the tribunal to redetermine the issue already determined by the County Court even although all the other elements in that Court's decision had been quashed by the Court of Appeal. That is, of course, contrary to Ms Meacher's argument that the Court of Appeal could not have intended that the tribunal should be able to do no more than simply recycle the benefit entitlement question and arrive at the same answer as the County Court and that if that was all that could be done by the tribunal the Court of Appeal could have done it itself. However, the Appeal

Court quashed the housing benefit decision on a purely jurisdictional point and there is nothing in its judgement to imply that it expected the tribunal hearing to be much more than a formality. The Court of Appeal did not itself have any jurisdiction on the benefit question as that question had not reached that Court through the statutory appeal process.

17. It follows that for the purposes of the claim for benefit made on 7 March 2002 the claimant did not have the capital represented by the value of the house at A because she had no beneficial interest in that house. The legal interest of which she disposed in order to qualify for benefit had no capital value. The tribunal has made the point that the £10,000 discount on the price of the house when it was purchased is in itself a capital asset. I assume that what the tribunal had in mind was that the claimant, by exercising her right to acquire a £24,000 house for £14,000, had immediately acquired an asset of £10,000 (£24,000 net of the loan of £14,000). I do not think that that is necessarily correct because the value of the house to the claimant would be net of that £10,000 until there had expired the period during which the discount would be recoverable by the local authority in the event of a sale. In any case the effect of the County Court's decision on beneficial interest is that that interest did not belong to the claimant. She had disposed of it to her son. It would not be practicable to try to prove now that in 1983, when the house was purchased and the claimant made the arrangement with J that as he was paying for it the house would be his, she made that arrangement in order to qualify for the benefit which she eventually claimed on 2 March 2002.

18. As to the claimant's application for entitlement to be backdated as far as possible, I agree with the tribunal that there is no vestige of evidence which would justify such a backdating. Although the claimant was in poor health she had assistance and was familiar with the housing benefit system.

19. For the foregoing reasons the claimant's appeal succeeds and my decision is in paragraph 1 above.

(Signed) **R J C Angus**
 Commissioner

(Date) **21 March 2006**