Bulletin 184

CH/1208/2003

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the local authority's appeal. I set aside the decision of the Wakefield appeal tribunal dated 20 November 2002 and I give the decision that the tribunal should have given, which is to dismiss the claimant's appeal against the local authority's decision dated 3 January 2002, as later revised, whereby the claimant's entitlement to housing benefit was based on a rent of £42.50.

REASONS

2. On 8 October 2001, the claimant moved in to accommodation consisting of a single room at an establishment known as the Junction Inn in respect of which he was liable to pay £147 pw. It appears that this was bed-and-breakfast accommodation. The claimant had shared use of bathrooms and toilets. On 18 October 2001, he claimed housing benefit. The claim was processed on 3 January 2002 and housing benefit was awarded at the rate of £37 pw, based on the "low indicative rent level" used by the authority as a provisional rent when it was considered that the rent would be subject to a "single room rent" restriction. The local authority made an application to a rent officer who subsequently fixed a "single room rent" at £42.50 pw. The award was revised accordingly.

3. Meanwhile, on 17 January 2002, the claimant had made a "housing needs application" at the local authority's Homelessness Unit. He was accepted as being homeless and in priority need from that day. On 20 January 2002, he left the Junction Inn and moved to other accommodation. It appears that the whole of the £21 per day payments for his accommodation at the Junction Inn was met through housing benefit from 17 January 2002 to 20 January 2002. On 20 February 2002, the claimant appealed against the decision of 3 January 2002, which restricted the amount of rent that would be met in respect of the period from 8 October 2001 to 16 January 2002.

4. Before I consider the arguments on the appeal, it is necessary to set out the relevant housing benefit legislation. Basic provision for entitlement to housing benefit is made by section 130 of the Social Security Contributions and Benefits Act 1992, which provides that a person is entitled to housing benefit if "he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home", subject to there being an appropriate maximum housing benefit in his case and subject also to the amount of his income. Section 123 provides for a scheme to be prescribed. Section 134(1) to (1B) of the Social Security Administration Act 1992 provides:

> "(1) Housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (in this Part referred to as "the housing benefit scheme") shall be funded and administered by the appropriate housing authority or local authority.
>
> (1A) Housing benefit in respect of payments which the occupier of a dwelling is liable to make to a housing authority shall take the form of a rent rebate or, in prescribed cases, a rent allowance funded and administered by that authority.
>
> The cases that may be so prescribed do not include any where the payment is in respect of property within the authority's Housing Revenue Account.

(1B) In any other case housing benefit shall take the form of a rent allowance funded and administered by the local authority for the area in which the dwelling is situated or by such other authority as is specified by an order made by the Secretary of State."

Thus, a distinction is drawn between a "rent rebate", which is a form of housing benefit payable only where the claimant is liable to make payments to the housing authority administering the scheme, and a "rent allowance" which is the form of housing benefit payable where a claimant is liable to make payments to a private sector landlord, although it is not confined to such cases.

5. The housing benefit scheme is set out in the Housing Benefit (General) Regulations 1987. Regulation 8(1) provides:

"Subject to the following provisions of this regulation, housing benefit shall be payable in respect of the payments specified in regulation 10(1) (rent) and a claimant's maximum housing benefit shall be calculated under Part VIII (amount of benefit) by reference to the amount of his eligible rent determined in accordance with regulations 10(3), (6A) and (6B) (rent) and 11 (maximum rent)."

Regulation 10 is in very broad terms and it is not in dispute that the payments the claimant made for his accommodation at the Junction Inn fell within its scope, although, if the rent had not been restricted, deductions might have been made because the payments covered the provision of breakfast and possibly other ineligible elements. Regulation 11(1) and (3A) provides:

"(1) Subject to paragraph (1A), where an authority has applied to the rent officer for a determination in accordance with regulation 12A (requirement to refer to rent officers) and a rent officer has made a determination or redetermination in exercise of the Housing Act functions, the maximum rent shall be determined in accordance with paragraphs (2) to (12).

...

(3A) Subject to paragraph (3B), in the case of a young individual –

(a) except where sub-paragraph (b) applies, where the rent officer has determined a single room rent and is required to notify the authority of it, the maximum rent shall not exceed that single room rent;
(b) ..."

By regulation 2(1), a "young individual" is a single claimant under the age of 25, although there are exceptions. It has not been suggested that the claimant in the present case was not a "young individual". Regulation 12A(1) provides:

"Subject to the following provisions of this regulation, a relevant authority shall apply to a rent officer for a determination to be made pursuance of the Housing Act functions where it has received –

(a) a claim on which rent allowance may be awarded; or
(b) ...; or
(c) ..."

It is important to note that there is no duty to make an application to a rent officer where a rent rebate, rather than a rent allowance, would be awarded on the claim.

6. By regulation 2(1), "Housing Act functions" has the same meaning in regulation 12A(1) as in section 136(1) of the Social Security Administration Act 1992, which has actually been repealed for most purposes but referred, in England and Wales, to functions conferred on rent officers by section 121 of the Housing Act 1988, which has also been repealed. Presumably, one must look instead at section 122 of the Housing Act 1996 which permits the Secretary of State by order to require rent officers to carry out such functions as may be specified in the order. I cannot help feeling that it would be simpler if regulation 12A referred one straight to the order, which is the Rent Officers (Housing Benefit Functions) Order 1997. In any event, article 3 of the 1997 Order provides for determinations to be made in accordance with Part 1 of Schedule 1 to the Order, including a "single room rent" under paragraph 5 in a case where the local authority has stated that the claimant is a "young individual" within the meaning that term has in the 1987 Regulations (see article 6(3)).

7. It was the local authority's case before the tribunal that the claimant was a "young individual" and that his claim was for a rent allowance because his liability to make payments in respect of his dwelling was to the landlady of the Junction Inn. Therefore, it was submitted, regulation 12A(1) required the local authority to apply to the rent officer for the determination of a "single room rent" and regulation 11 then required that figure to be treated as the claimant's maximum rent so that, under regulation 8, that was his eligible rent for the purpose of calculating his maximum housing benefit and thus his actual entitlement to housing benefit. It was accepted that, as the claimant was in receipt of income support, the amount of his entitlement to housing benefit was in fact the full amount of the "single room rent".

8. However, the claimant's case was that he had gone to the Civic Centre on 8 October 2001, had told a housing needs officer that he was homeless and had been referred by that housing needs officer to the Junction Inn. He also said that he was specifically told that his rent at the Junction Inn would be met in full through housing benefit. He argued that, if the local authority had accepted that he was homeless and had referred him to accommodation on that basis, the whole of his rent had to be met through housing benefit.

9. The local authority denied that there had ever been a referral to the Junction Inn on 8 October 2001 or that the claimant had made any claim to be homeless on that date or at any time before 17 January 2002. They further submitted, in paragraph 10 of their submission –

> "If [the claimant] has any grounds for appeal than they should surely be against the date that the Housing Needs Section has treated him as being accepted as homeless. Such an appeal would need to be directed at, and dealt with by, the Housing Needs Section and is not a matter for Housing Benefit nor Housing Benefit Tribunal to decide. (If he was able to persuade the Housing Needs Section to treat him as homeless from an earlier date, then a backdated claim for housing rent rebate could be considered.)"

10. On 20 November 2002, the Wakefield appeal tribunal accepted the claimant's arguments and allowed his appeal. He described the sentence in parenthesis at the end of paragraph 10 of the local authority's submission as "an affront to common sense". The local authority now appeals with the leave of a full-time tribunal chairman. The principal ground of appeal is –

"Irrespective of the tribunal's decision as to what happened in October 2001, the fact remains that [the claimant] did not have any rental liability to the housing authority."

It is also argued that the tribunal had no jurisdiction as to the local authority's obligations to homeless people and that the comments in paragraph 10 of the submission to the tribunal, far from being an affront to common sense, were intended to identify the proper course by which a solution might be found. The claimant's representative in effect supports the tribunal's decision, although somewhat tentatively.

11. In my view, the tribunal was entitled to consider the local authority's obligations to homeless people to the extent that that was relevant to determining the claimant's entitlement to housing benefit. However, the tribunal failed to identify the statutory question that had to be determined. As the local authority argues, the crucial issue was whether the claimant's liability to make payments in respect of his accommodation was to the local authority or to a private landlord. If the former, his claim for housing benefit was for a rent rebate and the local authority had no power to apply to a rent officer for the determination of a "single room rent" and his housing benefit should not have been restricted; if the latter, his claim was for a rent allowance and there was a duty to make such an application and restrict the amount of benefit payable in the light of the determination.

12. If the tribunal considered that a finding that the local authority owed a duty under Part VII of the Housing Act 1996 to the claimant as a homeless person was sufficient to establish a liability on his part to make payments for accommodation to the authority, the tribunal was mistaken. It was necessary for the tribunal to go further and find that the duty had been fulfilled in a manner that created such a liability. In the decision notice, it was said –

"He should then have been registered as homeless, that clearly did not occur. The tribunal accept his evidence that he was verbally referred by the officer of the local authority to the Junction Inn, temporary accommodation often used by the authority."

That is not enough and the statement of reasons did not take matters substantially further.

13. If a local authority are satisfied that an applicant for housing is homeless, is eligible for assistance and has a priority need and they are not satisfied that he became homeless intentionally or has other suitable accommodation available or should be referred to another local authority, the local authority have a duty under section 193(2) of the Housing Act 1996 to "secure that accommodation is available for occupation by the applicant". While the necessary enquiries are being carried out, section 188 places on a local authority an interim duty to "secure that accommodation is available for [the applicant's] occupation" pending a decision as to the duty (if any) owed to him under Part VII of the Act. Section 206 provides:

"(1) A local housing authority may discharge their housing functions under this Part only in the following ways –

(a) by securing that suitable accommodation provided by them is available,
(b) by securing that he obtains suitable accommodation from some other person, or
(c) by giving him such advice and assistance as will secure that suitable accommodation is available from some other person.

(2) A local housing authority may require a person in relation to whom they are discharging such functions –

(a) to pay such reasonable charges as they may determine in respect of accommodation which they secure for his occupation (either by making it available themselves or otherwise), or
(b) to pay such reasonable amount as they may determine in respect of sums payable by them for accommodation made available by another person."

14. Plainly, if a local authority acts under section 206(1)(a) – whether by letting to the applicant a house or flat from their own stock, or by placing the applicant in a hostel owned by them or by sub-letting to the applicant a house or flat leased by them from another landlord – the applicant will incur a liability to pay the local authority for the accommodation and those payments may be met through a rent rebate. Equally, where a local authority merely provides advice under section 206(1)(c), it seems inevitable that the only liability incurred by the applicant will be to the provider of the accommodation, so that any housing benefit claim would be for a rent allowance, rather than a rent rebate. Accommodation to which a claimant is referred under section 206(1)(c) is unlikely to be "suitable" if the applicant cannot afford it because the amount of housing benefit is restricted but, if the rent allowance were restricted, the local authority might make payments under the Discretionary Financial Assistance Regulations 2001 or it might be possible for the local authority to obtain consent under section 25 of the Local Government Act 1988 to make additional payments to the landlord to cover any rent not met due to the restriction.

15. Where a local authority acts under section 206(1)(b) and secures that the applicant obtains accommodation from some other person, the question whether the claimant incurs a liability to pay the local authority or the landlord will be determined by the nature of the arrangements made by the local authority. They might themselves make payments to the landlord in respect of the claimant's occupation of the accommodation but levy a charge on the claimant under section 206(2), in which case a rent rebate could be claimed by the claimant (unless regulations under section 134(1A) of the Social Security Administration Act 1992 provide otherwise). Alternatively, the arrangement might be that the landlord would charge the applicant, in which case a rent allowance could be claimed. As mentioned above, if the rent allowance were restricted, it might be possible for the local authority to make payments to cover the shortfall.

16. However, I am told by Mr Julian Hobson, the policy officer of the local authority appellant, for whose helpful submissions I am very grateful, that the local authority in the present case does not secure that accommodation is obtained under section 206(1)(b). The provision of accommodation in bed-and-breakfast accommodation such as the Junction Inn is, in practice, secured under section 206(1)(a) so that the applicant is required to make payments to the local authority and may claim a rent rebate. Thus, the claimant and the tribunal were correct in their understanding that, if the claimant had been referred to the Junction Inn by the local authority pursuant to a duty under Part VII of the 1996 Act, he could have expected to have his accommodation payments met in full through housing benefit, subject to the usual deductions if the payments covered meals and other ineligible charges.

17. The difficulty with the tribunal's decision is that, even if they were entitled to determine that the claimant had made an effective application under Part VII of the Housing Act 1996 and that he was homeless and in priority need and that he had been referred by the local authority to the Junction Inn, that was not sufficient to establish that the local authority had fully complied with any duty arising under the 1996 Act. The claimant's appeal could

succeed only if the tribunal found that the local authority had made an agreement with the proprietor of the Junction Inn to pay for the accommodation and that the claimant had then agreed to pay the local authority for his right to occupy the accommodation, subject to his entitlement to a rent rebate. I do not doubt that, in the absence of any evidence to the contrary, the tribunal could properly have inferred that what they considered should have happened had probably happened, but in this case there was clear evidence to the contrary. The local authority had flatly denied entering into any agreement with either the landlady or the claimant in respect of accommodation at the Junction Inn before 17 January 2002 and their denial was supported by the claimant's evidence, which showed that he and his landlady both believed that he was under an obligation to pay her, rather than the local authority, for the accommodation. The tribunal did not in fact make a finding that the claimant was under any obligation to make payments to the local authority. Had he done so, the finding would have been perverse. On the evidence, the only finding the tribunal could properly have made was that the claimant was liable to make payments to the proprietor of the Junction Inn. In those circumstances, it is plain that the claimant's entitlement to housing benefit was to a rent allowance, rather than a rent rebate, and that the amount of the rent allowance had been properly restricted by the local authority.

18. The implication, if the tribunal was right in his finding that the claimant had made a claim under Part VII of the 1996 Act, may be that the local authority was in breach of a duty under that Act because, even though accommodation was secured for the claimant, it was not suitable because he could not afford it. I share the tribunal's view that the comment at the end of paragraph 10 of the local authority's submission to the tribunal was somewhat unrealistic, but this is because it seems to me unlikely that a breach of a duty under Part VII of the 1996 Act of the kind alleged in this case could be remedied in a way that involved the payment of housing benefit. A remedy would be more likely to involve the payment of an equivalent sum in compensation. Nonetheless, the local authority were right in submitting that the tribunal had no power themselves to remedy any breach of duty, because the mere existence of the duty (if it did exist) did not by itself create the financial liabilities that perhaps ought to have been created in order to comply with the duty and which would have given rise to entitlement to a rent rebate rather than a rent allowance.

19. I have no more power than the tribunal. Accordingly, it is unnecessary for me to express any view on the tribunal's findings as to what happened on 8 October 2001 or as to whether there was in fact a breach of duty by the local authority. I substitute for the tribunal's decision the only decision he could properly have made on the evidence before him.

(Signed)

MARK ROWLAND
Commissioner
3 September 2003