Hearing and Decision

1. These appeals by the claimant do not succeed. I confirm the decisions of the Aldershot Tribunal made on 3rd September 2004 under references U/45/167/2003/00742 (income support) and U/45/167/2002/00806. These are to the effect that:

> (a) the claimant is not entitled to income support from and including 23rd February 1996 and that there was a recoverable overpayment of that benefit of £31,607.92 in respect of the period 23rd February 1996 to 29th September 2002 and
>
> (b) the claimant is not entitled to housing benefit from and including 26th February 1996 to 9th September 2001 and that there was a recoverable overpayment of that benefit of £35,443.27 in respect of that period.

2. The facts found by the tribunal are not totally unimpeachable, but in respect of the evidence that was before it, it is difficult to see how it could reasonably have come to any other decisions.

3. I held an oral hearing of this appeal on 8th March 2006. The claimant attended in person and was represented by Mr John Lofthouse of counsel, instructed by Edward Hayes, Solicitors. The Secretary of State and the local authority were both represented by Mr Jason Coppel of counsel, instructed by the Solicitor to the Department for Work and Pensions. I am grateful to all of them for their assistance and for the helpful written submissions received in advance. Not all of the grounds of appeal raised at earlier stages were pursued before me, and it is not necessary to make any further reference to those that were not pursued. References below to arguments put on behalf of the Secretary of State include those put on behalf of the local authority.

4. The tribunal consisted of a (full time and salaried) District Chairman of the tribunal, sitting alone. This chairman also sits as a Deputy Social Security Commissioner (part time for a few weeks each year). At the outset of the hearing I disclosed to the parties that I know the chairman involved "quite well" in a professional judicial capacity, In particular, I am the Commissioner responsible for overseeing the training and appraisal of Deputy Commissioners and for liaising with the Tribunal Service in respect of their own training. Mr Lofthouse applied for the matter to be heard by a different Commissioner or by a Deputy Commissioner. Mr Coppel was content for me to hear the case. I refused Mr Lofthouse's application on the basis that the pool of those with jurisdiction and available to hear the matter is quite limited and that the chairman in question would be known to all of them, and that by definition virtually all the matters that I deal with come on appeal from those in respect of whom I have some training involvement. Personally, I did not feel that there was a problem, but I had wanted the parties to be aware of the position.

Background and Procedure

5. The claimant was born on 25th January 1936 and at all relevant times lived at the same address. He claimed income support on 20th February 1996. He stated on the claim form that he lived with his wife (born on 17th November 1945) and his two adult student children, that none of them had savings of £2500 or more, that neither he nor his wife had any money coming in or owing to them, that nobody paid money to anybody else on their behalf, that they paid a Limited Company based in the Isle of Man [to which I shall refer as "A Ltd"] for the place where they lived, and that neither of them had ever owned their own home. He also stated that he had lost his employment in February 1990, then been unemployed until late summer 1993, when had gone abroad to do freelance work, and that he had then again been unemployed since October 1995. Unable to find work, he had attended the relevant office on 7th February 1996 to sign on as unemployed.

6. The Secretary of State awarded income support as from 27th February 1996. Income support of varying amounts remained in payment throughout the alleged overpayment period. No challenge has been made to the arithmetic or calculations of the alleged overpayments and it is not necessary to go into detail of the amounts.

7. In June 1996 the claimant applied for housing benefit and council tax benefit. He indicated that he had claimed income support, had moved into the accommodation in 1992, and paid rent of £150 weekly. This was supported by documentation appearing to come from A Ltd. The local authority awarded housing benefit and council tax benefit as from 26th February 1996. This was on the basis that he was entitled to income support, income support being a "passport" benefit for the purposes of housing benefit and council tax benefit. Housing benefit was paid directly to the claimant, who remained responsible for paying the landlord.

8. There is in the papers a copy of a certificate from the Financial Supervision Commission of the Isle of Man dated 12th December 2001 certifying that A Ltd was incorporated on 2nd November 1988 and dissolved on 24th August 1992 – which was over three years before the claimant named A Ltd as his landlord.

9. On 30th January 1998 the claimant completed an income support review form. In addition to confirming other details, he stated that neither he nor his wife was self-employed, a company director, trading or working as a company director, working for an employer, or in receipt of any non-benefit income.

10. On 1st February 1999 he completed another such form showing no change except that he was now in debt for £231, that the children no longer lived with them, and that their landlord was a company with a slightly different name and a different postal address (a PO Box number), although still on the Isle of Man. I shall refer to this company as "B Ltd".

11. On 29th November 2000 the claimant signed a credit agreement with Sainsbury's Bank. This agreement stated that he had been employed as a management consultant with 30 years length of service, that he was employed by a firm to which I shall refer as "JCCM" (which is not stated to be a limited company), and that his total monthly

income was £4000. These details were presumably based on those given when he applied for credit, but in any event he signed the agreement containing them.

12. On 6th September 2001 the local authority informed the claimant that a query had arisen in respect of his claim for benefit, and that it required proof of rent paid in respect of his accommodation. Until this had been supplied, payment was being suspended. The claimant supplied a number of documents that appeared to show payments from the claimant's own Abbey National account into a Barclays Bank account of "The Directors" of another limited company, to which I shall refer as "C Ltd", with £600 being paid by standing order on the 1st of each month from that account to a named person (to whom I shall refer as "Mr D").

13. A number of bank statements were also supplied in respect of a personal postal account in the claimant's name with Barclays Bank on the Isle of Man. These covered the period from 19th January 1996 to 23rd May 2001, when the account was closed. During this period the account was overdrawn for amounts of between £6000 and £10,000 but the tribunal calculated that over £60,000 had been paid into the account. The overdraft was settled by a personal loan from Barclays Bank. That loan was repaid by monthly payments by C Ltd, the company through which the claimant had appeared to be paying his rent.

14. The file includes bank statements in respect of a current account held by C Ltd, also with Barclays Bank on the Isle of Man, covering the period 12th December 1995 to 22nd July 2002, when the account became an International Business Account, the statements continuing to 18th March 2003. The statements show the claimant and another man ("Mr E") were trading as ("T/A") C Ltd, they were marked for the attention of the claimant at C Ltd, and they show payments from the account being made to the claimant and to other people with the same (relatively uncommon) surname. There is in the file a copy of a letter of 19th November 2002 on the headed notepaper of C Ltd, which is signed by the claimant.

15. Thus, the evidence to which I have so far referred shows the claimant stating that he was paying rent to a company that had in fact been dissolved, then claiming to be paying rent to a company of which he was a Director (or, at least, which was his trading vehicle), and this same company repaying the loan that he had taken out to settle an overdraft, meanwhile he having found £60,000 to pay into a bank account and stating that he had been working as a management consultant earning £4000 monthly (at least by November 2000), while claiming to have no non-benefit income and not to be self-employed or a company director or trading or working as a company director. The papers include documents in relation to other accounts and commercial and other activities, but for the purposes of this stage of the proceedings it is not necessary to go into any further detail.

16. On 26th November 2001 the claimant was interviewed under caution in the presence of his solicitor by an officer of the local authority. He stated that the "ultimate owner" of the property where he lived was Mr D, whom he did not know but with whom there were mutual friends. He stated that the rent had always been paid through C Ltd although the arrangement had been set up through A Ltd. He said that it was arranged though friends rather than as a formal arrangement. He conceded that it all looked complicated and I am bound to say that his answers to

straightforward questions did very little to throw any light on it. He said that C Ltd was a company set up in the United States with which he had had dealings many years previously and which as far as he knew was still trading and of which his son was a director or Vice President and that it did not have an office in the United Kingdom. There was also some discussion about C Ltd topping up his housing benefit to pay the rent and a discrepancy between monthly figures and four-weekly figures. He said that the only connection he had with C Ltd was through his son. I observe at this point that the son to whom he had referred on the claim form had a different first name with a different initial letter from his own. He conceded that he was a Director of JCCM, which was involved in setting up and managing small commercial property maintenance contracts, but denied that he was receiving any financial remuneration for this although he hoped that in due course it would yield some benefit. At this stage it emerged that it was in fact a Limited Company and he said that it had been set up in spring 2000. I am bound to observe that there was never any evidence, other than the statements of the claimant, to show that Mr D was in fact the owner of the property and/or entitled to the rent.

17. On 28th December 2001 the local authority revised its award of housing benefit and decided that there had never been any entitlement on the basis that the tenancy had been contrived to take advantage of the housing benefit scheme. It further decided that there had been a recoverable overpayment of £35,443.27 in respect of the whole payment period from 26th February 1996 to 9th September 2001. On 6th August 2002 the claimant appealed to the tribunal against this decision of the local authority.

18. On 8th March 2002 there was a further interview of the claimant under caution in the presence of his solicitor, with a different officer, although the interviewing officer from 26th November was also present. Apart from asking questions of his own and complaining, the claimant said that he was not prepared to discuss his personal affairs on that occasion and replied "no comment" to a series of questions put to him.

19. On 6th November 2002 there was another interview under caution in the presence of his solicitor, this time by an officer of the Department or Work and Pensions, with the interviewing officer from 26th November again present. Apart from giving his details and answering some formal questions, the claimant again replied "no comment" to a series of questions put to him in an interview lasting 43 minutes (other than to request copies of documentation).

20. On 15th January 2003 the Secretary of State revised the income support decision. This was subsequently further revised but that is of little significance. The effective decision was that the claimant was not entitled to income support for the period 23rd February 1996 to 29th September 2002 because he had been in receipt of income as a management consultant/company director, he had failed to disclose this and there was therefore a recoverable overpayment of £31,607.92 in respect of the whole of the payment period (this was in addition to the recoverable overpayment of housing benefit).

21. On 3rd March 2003 the local authority informed the claimant that it had superseded (although it may well have meant revised) its decision of 28th December 2003 in the sense that it had changed the reason for this decision. This was now that there was no entitlement to housing benefit over the same period because there was no

entitlement to income support. Its decision could have been expressed in more technically accurate language, but that is of little consequence because the appeal was still going ahead and the claimant had ample time to prepare his appeal on the basis of the new reason.

22. However, at some stage the whole matter became the subject of criminal proceedings and the same letter also stated:

> "The Department of Work and Pensions lawyers take the view that criminal proceedings take precedence over an appeal tribunal. Your tribunal will therefore be adjourned until such time as the criminal proceedings have been concluded".

I observe that the local authority had no legal power to make the statement in the final sentence or to give any such undertaking or reassurance (neither did the Secretary of State) and no practical way of enforcing it. This was a matter solely for the tribunal or one of its legally qualified panel members (subject to the supervision of the High Court).

23. On 23rd July 2003 the claimant appealed to the tribunal against the decision of the Secretary of State. There were several procedural determinations occasioned by the fact that there were two pending appeals in relation to substantially the same facts but I do not need to go into the details. However, in relation to the criminal proceedings an initial plea hearing was listed for 16th February 2004. On 15th January 2004 the Secretary of State asked the tribunal to consider postponing the hearing. On 10th February 2004 the local authority wrote to the clerk to the tribunal to similar effect.

24. I have seen a draft indictment in the criminal proceedings, which are still pending. It is undated but has been drafted by counsel and contains 10 counts. Nine counts relate to the dishonest falsification of benefit claim forms contrary to section 17(1)(a) of the Theft Act 1968. The other count relates to making a false representation contrary to section 111A(1A) of the Social Security Administration Act 1992. The particulars indicate that the prosecution covers the same ground as reasons given by the Secretary of State and the local authority for there being a recoverable overpayment.

25. On 14th May 2004 the District Chairman of the tribunal directed that there be no further postponement and that the matters be listed together before him, sitting alone. On 27th July 2004 and 20th August 2004 he refused further requests by the claimant for a postponement.

26. On 3rd September 2004 the District Chairman, sitting as the tribunal, heard and dismissed both appeals. He confirmed the decisions of the Secretary of State and the local authority. He issued separate Decision Notices and Statements of Reasons in each case, but they must really be read together. The claimant did not attend the hearings and was not represented at them. I am satisfied that he had proper notice and must be taken to have deliberately decided not to attend. The tribunal considered whether to adjourn, but decided not to.

27. The tribunal made an odd and inaccurate finding that the claimant was receiving a retirement pension. Mr Lofthouse invited me to say that on the basis of this error, the whole of the tribunal's fact finding should be regarded as suspect. I do not accept that. The other findings are rooted in the evidence and, disregarding any possible income from a retirement pension, the income found by the tribunal was greatly in excess of the level below which there would or might be entitlement to the relevant benefits.

28. The particularly relevant findings of the tribunal were those to which I have referred above and that in his claims the claimant had misrepresented the name of his landlord, failed to disclose the Isle of Man bank account, was a Director of both JCCM and C Ltd, and had given accurate details in his application for the credit agreement with Sainsbury's Bank. There had been no true entitlement to either income support or housing benefit and the specified overpayments had been caused by the claimant's misrepresentation and failure to disclose the true circumstances.

29. On 25th January 2005 the District Chairman refused applications by the claimant to set aside the decisions of the tribunal and on 22nd March 2005 he refused to grant leave to appeal to the Commissioner against the decisions of the tribunal. Leave to appeal was granted by Mr Commissioner Howell on 3rd August 2005 so that the case could be more fully considered, specifically indicated that he was expressing no view on whether any of the grounds of appeal had any prospect of success.

30. As I understand it there is no dispute that, if the facts found by the tribunal were properly found, as a matter of law the decisions made by the tribunal would follow. Recoverability of overpayments is governed mainly by section 71 of the Social Security Administration Act 1992 in relation to income support and regulations 98 to 105 of the Housing Benefit (General) Regulations 1987 as amended. Nothing in these appeals turns on the wording or meaning of these provisions.

Refusal to Adjourn

31. Mr Lofthouse's first set of arguments related to the refusal of the tribunal to adjourn the hearings pending the conclusion of the criminal proceedings. He argued that the refusal to do so undermined the claimant's rights under Article 6(2) of the European Convention on Human Rights ("the Convention"), his right of silence as a defendant, and the fairness of a subsequent criminal trial. He also attacked the reasons given for the refusal and argued that no reasonable tribunal could have refused to adjourn.

32. The reasons given by the tribunal for the refusal were that the issue of entitlement was different from the question of whether the claimant had dishonestly falsified a document or failed to report a change of circumstances, that dishonesty was relevant neither to entitlement nor to recoverability under the social security and housing benefit provisions, that the judge at the criminal trial would be able to withhold from the jury any evidence from the appeals that would be unfairly prejudicial, that therefore nothing in the tribunal decisions would undermine the presumption of innocence in the criminal trial, that the claimant would have been entitled to decline to answer any question from the tribunal if the answer might incriminate him (and would have been so advised had he attended the hearing), that it would not be proper to adjourn for the sole purpose of giving the claimant the tactical advantage of

surprise in the criminal proceedings, and that it could be useful for the purposes of any necessary mitigation that the matters before the tribunal had already been settled.

33. Regulation 49(4) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 empowers the tribunal to proceed in the absence of a party who fails to appear if it has had regard to all the circumstances including any explanation offered for the absence. Regulation 51(3) provides that:

> 51(3) An oral hearing may be adjourned by the appeal tribunal at any time on the application of any party to the proceedings or on its own motion.

These regulations confer discretionary powers on the tribunal, which must of course be exercised judicially. The tribunal in this case gave a cogent, reasonable explanation for its decision to proceed, and in the absence of any error of law, there is no basis for a Commissioner to interfere with the exercise of its discretion. Whether I or another Commissioner or a different tribunal would have exercised the discretion in the same way is irrelevant in this case. It certainly cannot be said that the reasoning was arbitrary or inconsistent or unreasonable, but was the decision to proceed made in error of law?

Article 6

34. The tribunal did not deal with the Article 6 argument, but that does not really help the claimant unless there is merit in the argument. Article 6(2) of the Convention states:

> 6(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

On the face of it, this relates to criminal proceedings. It does not relate to civil matters which do not carry criminal penalties, and it certainly does not relate to recoverability proceedings, which deal only with power to recover benefits which should not have been paid in the first place. However, Mr Lofthouse argued that the presumption of innocence is imperilled in this case by the decision of the tribunal to proceed before the criminal matters had been dealt with. Mr Coppell rejects this.

35. Both parties referred to Barnet London Borough Council v Hurst [2002] 4 All ER 457, [2002] EWCA Civ 1009, in which the Court of Appeal considered the position where there were concurrent proceedings for civil contempt and criminal offences arising out of the same incident. The Court of Appeal confirmed that such concurrent proceedings were permissible and that a court has "a discretion to adjourn contempt proceedings pending the outcome of other proceedings but only where it is satisfied that there would otherwise be a real risk of prejudice which might lead to injustice" (Lord Justice Brooke at paragraph [33]). The implementation of the Human Rights Act 1988 (and therefore of article 6) had not altered the position at all. If anything this all indicates that the preference is for the contempt proceedings not to be adjourned if that can be avoided, and does not help Mr Lofthouse's case.

36. The Court of Appeal did say that on another occasion it might be necessary for it to consider the possible effect of article 6 when a defendant in criminal proceedings

complains that there would be a real risk of prejudice which might lead to injustice if he was required to defend himself in prior contempt proceedings. However, the Court was referring to separate proceedings which in reality covered the same ground but could result in both civil and criminal penalties. A decision that an overpayment is not recoverable is not and does not result in a penalty and I do not accept that the decision of the Court of Appeal in this case takes the issue in the case before me any further.

Privilege Against Self Incrimination and the Right to Silence

37. Although during the course of argument the issues got rolled up together, this is really a separate issue from Article 6(2), which relates to the presumption of innocence. It is well established that social security tribunals are not bound by the strict rules of evidence that were developed at common law, but that does not mean that those rules have no relevance. In particular, a tribunal cannot override the privilege of a witness not to give evidence, for example in relation to legal professional privilege or the privilege against self-incrimination (CDLA/2014/2004). In general terms and subject to certain statutory provisions, the privilege of a person is against being compelled on pain of punishment to provide evidence or information that would tend to expose that person or their spouse to proceedings for a criminal offence under the law of any part of the United Kingdom.

38. In the present case the claimant did not attend the hearing so there was no possibility of the privilege against self-incrimination being breached by questioning from the tribunal. However, the parties were in dispute over whether the refusal to adjourn the hearing prejudiced the claimant by putting him in a position where in effect he would have to chose between putting his case at the tribunal proceedings (the record of which could subsequently be put in evidence by the prosecutor) and exercising his right to silence in respect of the criminal proceedings.

39. Cases to which I was referred, in so far as they are relevant at all, tend not to support the claimant's position, although none of them concerns proceedings in social security/housing benefit appeals. I deal with them in descending order of authority.

40. R v Hertfordshire County Council Ex parte Green Environmental Industries Ltd and Another [2000] AC 412 concerned the refusal of a waste management company to give information required by a local authority notice unless the local authority undertook not to use the answers in any subsequent prosecution. The House of Lords upheld the validity of the notice, holding that otherwise the purpose of the legislation would be frustrated. The company could not rely on the privilege against self incrimination. The notice did not form part of any adjudication or proceedings in which they were charged, did not provide for oral interrogation, but requested factual information for public health reasons (which could be given upon advice and at leisure) rather than for any admission of wrongdoing. The question of exclusion of any potentially incriminating answers was for the discretion of the trial judge in any subsequent criminal proceedings under section 78 of the Police and Criminal Evidence Act 1984. Even after the implementation of the Human Rights Act 1998 it would be a matter for the judge at the criminal trial to decide whether the Act obliges him or her to exercise the section 78 discretion so as to exclude any prejudicial evidence.

41. VTFL v Clough [2001] EWCA Civ 1509 concerned a civil action for the recovery of many millions of pounds misappropriated in breach of fiduciary and other duties. The defendant argued that he could not deal with the allegations because any information he gave might assist the prosecution in any criminal proceedings and therefore to give such information would breach his privilege against self incrimination. Summary judgment was entered and that was the matter that went to the Court of Appeal. At an early stage in these proceedings the defendant was charged with the criminal offence of fraudulent trading. The Court of Appeal held that there was no absolute right for a civil defendant not to have judgment against him simply because the privilege issue is raised. It was a matter for the exercise of the court's discretion in considering the question of any stay or adjournment. The Court followed its own decision in Jefferson Ltd v Betcha [1979] 1 WLR 898 in which Lord Justice Megaw (with whom Lord Justice Brandon agreed) said at page 904:

> " The protection which is at present given to one facing a criminal charge – the so called "right of silence" – does not extend to give the defendant as a matter of right the same protection in contemporaneous civil proceedings ... Of course, one factor to be taken into account and it may well be a very important factor, is whether there is a real danger of the causing of injustice in the criminal proceedings. There may be cases – no doubt there are – where that discretion should be exercised. In my view it would be wrong and undesirable to attempt to define in the abstract what are the relevant factors. By way of example, a relevant factor telling in favour of a defendant might well be the fact that the civil action, or some step in it, would be likely to obtain such publicity as might sensibly be expected to reach, and to influence, persons who would or might be jurors in criminal proceedings. It may be that, if the criminal proceedings were likely to be heard in a very short time ... it would be fair and sensible to postpone the hearing of the civil action. It might be that it could be shown, or inferred, that there was some real – not merely notional – danger that the disclosure of the defence in the civil action would, or might, lead to a potential miscarriage of justice in the criminal proceedings by, for example, enabling prosecution witnesses to prepare a fabrication of evidence or by leading to interference with witnesses in some other way".

I observe that none of those relevant factors are present in this case.

42. I was also referred to a decision of the Employment Appeal Tribunal (EAT) in Bastick v James Lane (Turf Accountants) Ltd [1979] ICR 778. An employee of a betting shop was dismissed for dishonest conduct and complained to the industrial tribunal that his dismissal was unfair. He was also committed for trial on a criminal charge of theft. He applied for the Industrial Tribunal hearing to be adjourned pending the outcome of the criminal proceedings on the grounds that if the evidence he wanted to give to the industrial tribunal were to be heard first might be prejudicial to his case in the criminal trial. The chairman of the tribunal ruled that the issues were different and that an adjournment would cause unacceptable delay. On appeal, the EAT held that before it would interfere with the exercise of the chairman's discretion it was necessary to show either that he had improperly taken into account some matter or that he had failed to take into account a relevant matter or that his decision was perverse. This could not be shown and there was no basis to interfere.

43. I agree with that general approach and I find no such basis on which to interfere with the exercise of the tribunal's discretion in the case before me. Even if there is a working assumption that a tribunal hearing should generally be adjourned pending the conclusion of the criminal proceedings (and that was not the approach of the EAT), in this case, for a variety of reasons that are well known to the parties but that I need not go into at this stage, the criminal proceedings have been long delayed.

44. I conclude that the refusal to adjourn the hearing pending the criminal proceedings did not breach the claimant's privilege against self-incrimination or his right to silence at the criminal trial.

Adjournment and the Respondents

45. Mr Lofthouse suggested that there was some impropriety in the tribunal refusing to further adjourn the hearing without taking account of the fact that both of the respondents had previously supported this course of action. He also suggested that the claimant expected that the respondents were not willing to proceed. I reject this. As I have indicated above, it was a matter for the tribunal whether to proceed, the respondents were no longer pressing for the matters to be adjourned or postponed, it had bee made clear to the claimant that the matters would proceed and he suffered no prejudice on this basis.

Amicus Curiae

46. Mr Lofthouse referred to CSA/0001/1990 (*36/91), an attendance allowance case in which the Commissioner expressed the view that at common law the Secretary of State had a duty to seek to identify and seek a submission on any potential and probable issue and to raise points favourable to the other side. From this unobjectionable proposition Mr Lofthouse sought to argue that because the respondents were also in effect the prosecutors, there was a conflict of interest with their role as *amicus* if the hearing were not adjourned, and the tribunal should have asked for an independent *amicus* (although I do not know under what power it is suggested this could be done). I fail to see the logic of this argument. If there were such a conflict it would also exist in any hearing of an appeal to the tribunal at which the initial decision making authority were represented, and at the criminal trial. Further, the *amicus* role is more important when a claimant is unrepresented or without legal or expert advice. In this case the claimant had legal advice and assistance from a very early stage.

Membership of the Tribunal

47. Regulation 36(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 provides that an appeal tribunal shall consist of a financially qualified panel member and a legally qualified panel member when consideration may be required of matters which are, in the opinion of the President of the tribunal, "difficult" and which relate to various specified financial documents.

48. Mr Lofthouse argued that the absence of a financially qualified member or the failure to consider whether one should be included is an error law. However, it is not clear that any of the specified documents were actually before the tribunal, and it

seems to me that the matters to be considered were not "difficult" in the sense of being outside the usual everyday experience and competence of a legally qualified member (and especially not in this case where the member was a very experienced District Chairman). This is primarily a matter for the discretion of the President. It is not practical for the President to consider personally every single appeal brought to the tribunal. The possible need for a financially qualified member would be brought to his attention by one of the parties or by the tribunal, and in this case there is no evidence that those acting on behalf of the claimant ever suggested this. This is not a matter with which Commissioners would lightly interfere and there is certainly no basis for doing so in the present case.

The Inquisitorial Function

49. Mr Lofthouse argued that there is little evidence that the tribunal exercised its inquisitorial function, which was all the more important in a case in which the claimant did not attend and the respondents were involved in prosecuting him. I must admit to finding this argument odd, coming on behalf of a claimant who, on the whole, refused to answer questions at interview, took a deliberate decision not to attend the hearing, and wanted a little as possible of the facts to come out in advance of the criminal proceedings. On the other hand, Mr Coppel went much too far in the burden he sought to place on the claimant in a recoverability case where the burden of proof is on the respondents. I do not propose to rehearse the lengthy arguments or review the cases cited to me on this matter because they do not really take it any further. The claimant was entitled not to answer any questions and not to attend the hearing, but then, if he had competent legal advice throughout, as here, he cannot complain if the tribunal proceeded on the basis that there was nothing that he wanted to add. In particular, I reject any suggestion that the tribunal should have tried to obtain further information from the claimant. The real issue that Mr Lofthouse was raising here is that the tribunal did not consider the evidence properly.

Analysis of the Evidence

50. Mr Lofthouse's arguments dealt with the pension (to which I need add nothing to what I said above), a lack of analysis of the accounts of JCCM or any request for further information about JCCM, a lack of analysis or investigation of the Isle of Man account, a lack of analysis of the Sainsbury's Bank agreement, and the drawing of allegedly unjustified inferences from the latter.

51. At the interview on 6th November 1992 the claimant declined to answer questions about the Isle of Man account, JCCM or the Sainsbury's Bank agreement. The tribunal was faced with contradictory evidence from the claimant over whether he received any income from JCCM, and the fact that he had declined to resolve the contradiction when given opportunities to do so, and therefore the tribunal was perfectly entitled to conclude that the details given on the Sainsbury's Bank agreement were correct. Even if the income figures were only precisely correct from around the date they were given, the tribunal was entitled to conclude from the combination of the other information given on the agreement, the previously undeclared income of over £60,000 going into the Isle of Man account since 1996, and the other evidence, that the claimant could not be entitled to the means tested benefits that he was receiving. Contrary to what Mr Lofthouse asserts, the tribunal

was entitled to conclude this without undertaking a more detailed financial audit. It did not need to find anything beyond the fact that there was excess income of such an amount as would extinguish entitlement, and that this had not been disclosed although it should have been disclosed.

.52. For the above reasons, neither of these appeals by the claimant succeeds.

H. Levenson
Commissioner

20th July 2006