

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. My decision is as follows. It is given under paragraph 8(4) and (5)(a) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000.
  - 1.1. The decision of the Hounslow appeal tribunal under reference U/45/173/2001/00727, held on 6<sup>th</sup> December 2001, is erroneous in point of law.
  - 1.2. I set it aside and give the decision that the appeal tribunal should have given without making fresh or further findings of fact.
  - 1.3. My decision is that the local authority's decision, against which the claimant appealed to the appeal tribunal, is confirmed as correct in fact and law.

**The appeal to the Commissioner**

2. This case concerns the recoverability of an overpayment of housing benefit and of excess council tax benefit. The appellant is the Hounslow Council. The respondent is the benefit claimant.
3. The case comes before me as an appeal to a Commissioner against the decision of the appeal tribunal brought by the local authority with the leave of a district chairman of tribunals. The claimant has commented on the local authority's appeal. The local authority has not responded to the invitation to comment further.

**The history of the case**

4. The facts are not in dispute and can be stated briefly. The claimant was receiving housing benefit and council tax benefit when his income increased. He notified this to the local authority on 14<sup>th</sup> January 2000. However, it was not actioned until July. The local authority made recoverable overpayment and excess benefit decisions for the inclusive period from 13<sup>th</sup> December 1999 to 16<sup>th</sup> July 2000. The claimant exercised his right of appeal to an appeal tribunal. The tribunal allowed his appeal in part. It decided that the overpayment for the inclusive period from 13<sup>th</sup> December 1999 to 16<sup>th</sup> January 2000 was recoverable from the claimant, but that the overpayment for the rest of the period was not.

**Did the tribunal go wrong in law?**

5. Yes, it did. Why?
6. The relevant legislation is regulation 99 of the Housing Benefit (General) Regulations 1987 and regulation 84 of the Council Tax Benefit (General) Regulations 1992. they are in similar terms. For convenience, I set out only regulation 99:

'(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.

(2) Subject to paragraph (4), this paragraph applies to an overpayment caused by official error where the claimant or the person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or of any

notice relating to that overpayment, reasonably have been expected to realise that it was an overpayment.

(3) In paragraph (2), “overpayment caused by official error” means an overpayment caused by a mistake made, whether in the form of an act or omission, by the appropriate authority or by an officer or person acting for that authority or by an officer of the Department of Social Security or the Department of Employment acting as such, or a person providing services to either Department where the claimant, a person acting on his behalf or any other person to whom the payment is made did not cause or materially contribute to that mistake or omission.’

7. That is particularly indigestible. However, it can be broken down into some simple questions. For this case, those questions are:

*Question 1: did the local authority cause an overpayment by making a mistake?*

8. If it did not, the overpayment is recoverable. If it did, other questions arise.

9. So, did the local authority make a mistake?

10. The local authority made no mistake until it was aware of the increase in the claimant’s income. So, for the first part of the period (from 13<sup>th</sup> December 1999 to 16<sup>th</sup> January 2000), it did not cause the overpayment. The overpayment for that period is recoverable from the claimant. The appeal tribunal was correct in law for that period.

11. The overpayment for the rest of the period (from 17<sup>th</sup> January 2000 to 16<sup>th</sup> July 2000) only arose because the local authority failed to act promptly on the evidence provided by the claimant. So, it was caused by the local authority’s omission. Now question 2 arises:

*Question 2: did the claimant cause or contribute to the local authority’s omission?*

12. If he did, the rest of the overpayment is recoverable. If he did not, another question arises.

13. So, did the claimant cause or contribute to the local authority’s omission to act promptly? The answer is obviously: no. The speed with which the local authority acted was outside his control. The delay was entirely the fault of the local authority. Now question 3 arises:

*Question 3: could the claimant reasonably have been expected to realise he was being overpaid?*

14. If he could, the rest of the overpayment is recoverable. If he could not, it is not.

15. So, could the claimant have reasonably been expected to realise that he was being overpaid? The evidence shows that he could. He reported the change in his income. That suggests that he knew it might affect the amount of his benefit. His claim forms and award notices should have made that clear to him. His wife also enquired several times when the benefit would be recalculated. That showed that the couple realised that the amount of benefit was likely to be affected. The change in income involved a significant increase. The obvious

result of that would be to reduce the amount of benefit to which he was entitled. So, on the evidence, there is only one permissible decision. The claimant could, and probably actually did, realise that he was being overpaid. So, the rest of the overpayment is recoverable from him. The tribunal went wrong in law in coming to a different conclusion.

*How the tribunal went wrong in law*

16. The tribunal went wrong in law, because it did not apply regulation 99(2). I suspect that it was applying social security legislation rather than housing benefit and council tax benefit legislation. Under that legislation, the chain of causation is broken once a change has been notified. However, the housing benefit and council tax benefit legislation is different and is more favourable to local authorities.

*Fairness*

17. The claimant argues that it is not fair to make him repay the overpayment. Why, he asks, should he bear the cost of the local authority's mistake. The answer to his question is that the legislation says that he has to. I am sure he will not like the answer. But I am also sure that the legislation does not permit any other decision in this case.

**Summary**

18. I allow the appeal and give the decision that the appeal tribunal should have given. That decision is to confirm the decision under appeal.

**Signed on original**

**Edward Jacobs  
Commissioner  
10<sup>th</sup> October 2002**