Bundle 152

Extract

CH/3017/2005

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the Claimant, brought with my permission, against a decision of the Fox Court Appeal Tribunal made on 20 July 2005. For the reasons set out below I dismiss the appeal.

Introduction

2. The Claimant, who is a single woman now aged 53, lived in a hostel between March 1998 and October 2002, having been rendered homeless when she lost her tenancy of council accommodation. In October 2002 she went to live in a 3 bedroomed maisonette which was also occupied by her mother and her sister, and of which her mother was the tenant, the landlord being a housing association. The Claimant's mother was in receipt of housing benefit. The Claimant did not (according to her evidence as recorded in the Tribunal's record of Proceedings) pay her mother any rent.

3. The Claimant's mother died on 1 June 2004, and the Claimant and her sister continued to live in the property. On 2 June 2004 the Claimant submitted a claim for housing benefit. She stated in the claim form that her sister was the landlord, and lived with her rather than in a separate part of the house. She stated that the tenancy started on 2 June 2004 and that the rent was £150 per week. In answer to a question asking for details of "number of rooms used by only you and your family" she ticked boxes indicating 1 bedroom, a living room, a kitchen and a bathroom. The Claimant's sister wrote a letter confirming that the Claimant had been residing at the property at a weekly rent of £150 since 1 June 2004.

4. On 16 June 2004 a decision was made refusing the claim on the ground that the Claimant was required to be treated as not being liable to pay rent in respect of the property because her liability for rent was to a person who also resided in the dwelling and who was a close relative (regulation 7(1)(b) of the Housing Benefit (General) Regulations 1987 ("the 1987 Regulations")).

5. By a claim form signed on 9 June 2004 and received on 22 June 2004 the Claimant's sister claimed housing benefit in respect of her liability for rent to the housing association, in the sum of £103 per week. She stated that she had been liable for the rent since the death of her mother, and was due to sign a tenancy agreement with the housing association. She stated that the Claimant was occupying the property with her. She subsequently signed such an agreement on 27 August 2004, providing for a tenancy from week to week commencing on 30 August 2004, at a rent of £104.82 per week and service charge of £7.85 per week. The Claimant's sister was awarded housing benefit, but subject to a deduction of £7.40 each week by reason of the fact that the Claimant was a "non-dependant" (as defined in regulation 3 of the 1987 Regulations) residing with the sister: regulation 63 of the 1987 Regulations.

6. In her appeal against the decision of 16 June 2004 the Claimant contended that regulation 7(1)(b) of the 1987 Regulations infringed various provisions of the European Convention on Human Rights, in particular Articles 8 and 14, because its effect was to treat her less favourably, by reason of her relationship with her sister, than any other person wishing to occupy the maisonette in return for a rent would have been treated.

7. The Tribunal dismissed that appeal. It recorded that there was no dispute as to the facts. In relation to the human rights arguments the Tribunal said:

"12. However, on the assumption that the facts of this case do bring the matter within Article 8 and on the basis that Article 14 is then engaged this does still not assist the Appellant.

13. The reason is that, in my opinion, the Regulation pursues a legitimate aim and any differential treatment bears a reasonable relationship of proportionality to the aim sought to be achieved, namely the eradication of abuse.

14. I also noted the comments by Laws LJ in the case of *R (Waite) v Hammersmith and Fulham LBC* [2003] HLR 24 that "there is no room for the court to rewrite the rules relating to housing benefit upon Article 14 grounds" (see commentary at page 132 CPAG's Housing and Council Tax Benefit Seventeenth Edition 2004/5)"

The grounds of appeal

8. The Claimant has set out her contentions in this appeal at considerable length. I shall need to refer to some of them in a little more detail later, but for the moment they can be summarised in outline as follows:

(1) The chairman had attempted to slant the facts in order to imply that the Claimant and her sister had engaged in an attempt to defraud the benefit system, when that was not the case. He had relied in this respect on the facts relating to the subsequent application for housing benefit by the Claimant's sister, despite the fact that the Claimant had asked for the documents relating to that to be omitted from the Tribunal's bundle, as she contends they should have been.

(2) The Tribunal's decision was in breach of the following provisions of the Human Rights Convention:

(a) Article 3 (prohibition of torture) and 6 (fair trial) in that the Council had continually harassed the Claimant and denied her her rights;

(b) Article 5 (right to liberty and security of person), in that it is safer for her to live with her sister than with a stranger, and the denial of entitlement to housing benefit if she is living with her sister will make it impossible for her to do so.

(c) Article 8 (right to respect for private and family life, home and correspondence), in that the Claimant is in effect prevented from living with her sister by the denial of entitlement to housing benefit.

(d) Article 14 in conjunction with one or more of the above Articles, in that any other person living with and paying rent to her sister would be entitled to housing benefit.

(e) Articles 17 and 18.

Regulation 7

9. Regulation 7 of the 1987 Regulation provides (so far as material):

"(1) A person who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable where –

(a) the tenancy or other agreement pursuant to which he occupies the dwelling is not on a commercial basis;

(b) his liability under the agreement is to a person who also resides in the dwelling and who is a close relative of his or of his partner;

(c) his liability under the agreement is –

(i) to his former partner and is in respect of a dwelling which he and his former partner occupied before they ceased to be partners, or

(ii) to his partner's former partner and is in respect of a dwelling which his partner and his partner's former partner occupied before they ceased to be partners;

(d) he is responsible, or his partner is responsible, for a child of the person to whom he is liable under the agreement;

.....

(g) subject to paragraph (1B), before the liability was created, he was a non-dependant of someone who resided, and continues to reside, in the dwelling;

.....

(l) in a case to which the preceding sub-paragraphs do not apply, the appropriate authority is satisfied that the liability was created to take advantage of the housing benefit scheme established under part VII of the Contributions and Benefits Act.

(1B) Sub-paragraphs (e) and (g) of paragraph (1) shall not apply in a case where the person satisfies the appropriate authority that the liability was not intended to be a means of taking advantage of the housing benefit scheme."

Does the Claimant's sister "also reside in the dwelling"?

10. Regulation 7(1) provides that a person "*who is liable to make payments in respect of a dwelling*" shall be treated as if he were not so liable where ..... "(b) his liability under the agreement is to a person *who also resides in the dwelling* who is a close relative of his or of his partner."

11. I have to-day also decided an appeal by the Claimant in respect of the refusal to include the severe disability premium in her award of income support. That refusal was also based on the fact that she was living with a close relative. In that appeal I have remitted the

case to a fresh appeal tribunal for redetermination of the issue whether the Claimant is "residing with" her sister. However, the language of the governing provision in that case, which is in the definition of "non-dependant" in regulation 3 of the Income Support (General) Regulations 1987, is subtly different, the relevant reference being to a person "who normally resides with a claimant or with whom a claimant normally resides." The Claimant contended, in that appeal, that she and her sister constituted independent households and that she should not be considered as "residing with" her sister.

12. Regulation 7(1)(b) does not in terms require that the claimant "resides with" the landlord, but rather that the liability is to a person who "also resides in the dwelling". The Tribunal cannot in my judgment have erred in law in holding that the Claimant's sister did reside in "the dwelling", because the contrary was not contended by the Claimant. Indeed, the Tribunal recorded in paragraph 6 of the Statement of Reasons that "the Appellant accepted that at all material times both she and her sister resided in the Property."

13. Further, it is in my judgment clear that that was the only conclusion which the Tribunal could on the facts properly have reached. The possible argument to the contrary which might have been made was that the "dwelling" in respect of which the Claimant was liable to pay rent was her bedroom, together with use of the living room, kitchen and other common parts, whereas the "dwelling" in which the Claimant's sister was residing was the whole of the maisonette minus the Claimant's bedroom, so that the Claimant's sister did not reside in "the dwelling" in respect of which the Claimant was liable to pay rent. However, in my judgment there was no sufficient evidence to justify a conclusion that the proper analysis of the position was that the Claimant had a tenancy of a her room as a separate dwelling, rather than that there was an agreement to share the property as a whole (with each agreeing, however, to respect the other's privacy in respect of their own bedrooms). I would apply to this case the analysis in para. 11 of the judgment of Lightman J. in *R (on the application of Painter) v Carmarthenshire County Council Housing Benefit Review Board* [2001] EWHC Admin 308. Further, even if the correct analysis is that the Claimant had exclusive occupation of her room, with a right to share the living room and kitchen and common parts, I would agree with the conclusion of Miss Commissioner Fellner in para. 7 of CH/3656/2004 that the Claimant's sister should still be regarded as residing in "the dwelling" in respect of which the Claimant pays rent. Where landlord and tenant are sharing the majority of the living accommodation in the residential unit it seems to me to be plainly right to regard them, for the purposes of regulation 7(1)(b), as both residing in "the dwelling" in respect of which the Claimant pays rent.

Ground of appeal (1)

14. The Claimant's ground of appeal which I summarised under (1) in paragraph 8 above is in my judgment plainly unsustainable. I do not regard the Tribunal's decision as carrying any implication that the Claimant and her sister were attempting to defraud the benefit system. But in any event, Tribunal's decision would clearly have been the same even if paragraph 11 of the Statement of Reasons, which set out the facts in relation to the application for and grant of housing benefit to the Claimant's sister, had not been included. The Tribunal's decision in no way relied on those facts.

The arguments based on the European Convention on Human Rights

15. I turn to the contentions under the Human Rights Convention summarised under (2) in paragraph 8 above.

16. In my judgment the Tribunal cannot have erred in law in not finding a breach of Articles 3 or 6. I am not sure that arguments to that effect were even made to the Tribunal, but if they were the Tribunal could only have rejected them. The Tribunal's jurisdiction was limited to determining whether the Council had been right to reject the Claimant's claim for housing benefit. It had no jurisdiction to deal with complaints regarding the manner in which the Council had treated the Claimant. The decision refusing housing benefit was based on regulation 7(1)(b), which the Tribunal rightly held to be applicable, and neither that provision nor the Tribunal's decision was in breach of Article 3 or Article 6. Nor do the facts of the present case "fall within the ambit of" or "engage" either of those Articles, for the purpose of Article 14.

17. In my judgment, even on the assumption that the exclusion from entitlement to housing benefit would compel the Claimant to seek accommodation elsewhere, and that she would feel less secure in that other accommodation, regulation 7(1)(b) cannot possibly be said to be in breach of Article 5, which is concerned with matters such as deprivation of liberty by detention. It is not concerned with the effects of social security benefits not being available in particular situations. Nor does housing benefit, or regulation 7(1)(b), "fall within the ambit of", or "engage" Article 5, for the purposes of Article 14.

18. In my judgment it is clear that the non-entitlement to housing benefit in the Claimant's case cannot be argued to constitute a *breach* of the Claimant's rights under Article 8 to "respect for [her] private and family life, [her] home and [her] correspondence." I would refer in this context to paragraph 28 of the judgment of Laws LJ in *R (Carson) v Secretary of State* [2003] 3 All ER at 590-1 (which is unaffected by the judgment of the House of Lords on appeal in that case):

> 26. ".....on the Strasbourg learning art 8 does not require the state to provide a home: see *Chapman v UK (2001)* 10 BHRC 48 at 72 (para 99); nor does it impose any positive obligation to provide financial assistance to support a person's family life or to ensure that individuals may enjoy family life to the full or in any particular manner: see *Vaughan v* UK App no 12639/87 (12 December 1987, unreported), *Anderson and Kullmann v Sweden* (1986) 46 DR 251, *Petrovic* v Austria (2001) 33 EHRR 307 at 319 (para 26)."

19. However, despite the submission to the contrary of the Secretary of State for Work and Pensions (who was added as a party to this appeal at my direction), I prefer to proceed on the basis (but without deciding) that, for the purposes of Article 14, the decision not to award housing benefit in this case does "fall within the ambit of" or "engage" Article 8. The Secretary of State relies on paragraphs 24 to 29 of the judgment of Laws LJ in *Carson* for the proposition that Article 8 cannot be engaged. However, Laws LJ was there concerned, as Sedley LJ pointed out in *Langley v. Bradford Metropolitan District Council* R(H) 6/05 at para. 72, with whether a decision as to the correct amount of an award of *jobseeker's allowance* to a person under the age of 25 fell within the ambit of Article 8, and it is in that context that his comment in paragraph 28 that "they cannot, in my judgment, extend to include whole swathes of a State's social security system without embracing that system within the general duty vouchsafed by Article 8" must be read.

20. Article 1 of Protocol 1 provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

21. There cannot in my judgment have been a breach of Article 1 of Protocol 1, taken on its own. The Claimant had not, as I understand it, been in receipt of housing benefit while she was living in the property with her mother. The Claimant cannot have been "deprived" of a "possession" (i.e. housing benefit) of which she had not been in receipt for a period of nearly two years before the decision under appeal. Article 1 of Protocol 1 applies only to a person's existing possessions: it does not guarantee a right to acquire possessions: see, again, *R (Carson) v Secretary of* State [2003] 3 All ER 577 at paras 17 to 23, and the authority there cited.

22. However, it seems to me at least arguable, in the light of the recent admissibility decisions of the European Court of Human Rights in *Stec and Others v United Kingdom* (Application nos. 65731/01 and 65900/01) that housing benefit is a "possession", and thus that the facts of the present case "fall within the ambit of", or "engage", Article 1 of Protocol 1, for the purposes of Article 14. The Secretary of State submits that the *Stec* case "is of no assistance to the claimant here", but without elaborating why that is so. I proceed on the assumption, but again without positively deciding, that Article 1 of Protocol 1 is engaged.

Article 14

23. Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property birth or other status."

24. As noted above (paragraphs 19 and 22), I proceed on the assumption that, for the purposes of Article 14, the facts of the present case fall within the ambit of both Article 8 and Article 1 of Protocol 1. The Claimant is, on that assumption, entitled to complain if the provision denying her housing benefit because she is a close relative of her sister amounts to discrimination on any of the grounds specified in Article 14. As also noted above, the Claimant's contention is that there has been such discrimination because any other person sharing the dwelling with and paying rent to her sister would not automatically be excluded from entitlement to housing benefit. The Claimant therefore argues that she has been discriminated against by reason of her relationship with her sister, which (she contends) falls either within the word "birth", or if not then within the words "or other status" at the end of Article 14. The Claimant forcefully contends that the legislation is unjustified and wrong in that it

> "automatically assumes that relatives will collude and engage in fraud or abuse of the benefit system. ..... Therefore what the regulation does is to be a predetermined

verdict whereby one is automatically more likely to perpetrate abuse because of being related to one's landlord. Therefore, without any basic knowledge of the applicants or further enquiries, the applicant is automatically denied a benefit paid to non-relatives who could well be engaged in abuse of the benefit system. This is discrimination. Further, the regulation fails to prevent the misuse of the system by non-related applicants. It merely discriminates against those who are related."

25. In the *Painter* case (referred to in paragraph 13 above) Lightman J held that the exclusion from entitlement to housing benefit in regulation 7(1)(c) did not give rise to a breach of Article 14, in conjunction with Article 8. In *Tucker v Secretary of State* [2001] EWCA Civ 1646 the Court of Appeal came to the same conclusion in relation to regulation 7(1)(d).

26. Regulation 7(1)(c) and 7(1)(d) were both added by amendment with effect from 25 January 1999 in order to limit the scope for abuse of the housing benefit system. Lightman J and the Court of Appeal, after considering evidence as to the purpose of the amendments, were satisfied that that they were intended to cover situations of a type where, in the absence of the possibility of claiming housing benefit, a claimant would be likely to have been accommodated without any legally enforceable liability to pay for the accommodation, but where a local authority might well have difficulty in any particular case in proving that that would have been so and that there had in fact been an abuse of the system. Arguments along the lines of those presented to me by the Claimant in the present case were rejected in those cases.

27. The evidence considered in those cases as to the purpose of the amendments consisted of a letter from the Secretary of State for Social Security in September 1998 explaining their purpose to the Social Security Advisory Committee, a Circular issued by the Department in January 1999 explaining the purpose of the amendments, and witness statements by officials of the Department made for the purpose of the specific proceedings.

28. The substance of what is now regulation 7(1)(b) (the provision with which this case is of course concerned) was not one of the provisions introduced by amendment in 1999. It was in regulation 7 of the 1987 Regulations in its orginal form, which was as follows:

> "The following persons shall be treated as if they were not liable to make payments in respect of a dwelling –
>
> (a) a person who resides with the person to whom he is liable to make payments in respect of a dwelling and either –
>
> (i) that person is a close relative of his or his partner, or
>
> (ii) the tenancy or other agreement between them is other than on a commercial basis;
>
> (b) a person whose liability to make payments in respect of the dwelling appears to the appropriate authority to have been created to take advantage of the housing benefit scheme except someone who was, for any period within the eight weeks prior to the creation of the agreement giving rise to the liability to

make such payments, otherwise liable to make payments of rent in respect of the same dwelling;

(c) a person who is a joint occupier of a dwelling and who was, at any time during the period of eight weeks prior to the creation of the joint tenancy or other agreement giving rise to the joint liability to make payments in respect of the dwelling, a non-dependant of one or more of the other joint occupiers of the dwelling, unless the appropriate authority is satisfied that the joint tenancy or other agreement was not created to take advantage of the housing benefit scheme;

(d) a person who is a member of, and is fully maintained by, a religious order."

29. However, looking at the scope of the original regulation 7, together with the evidence relied upon and set out in the *Painter* and *Tucker* cases, I am satisfied that the original regulation 7(a)(i) (i.e. what is now regulation 7(1)(b)) was included as an anti-abuse provision for very much the same reasons as the additional categories of exclusion added by amendment in 1999, and therefore that the reasoning in those cases is equally applicable to regulation 7(1)(b). I would refer, in particular, to the following passage from the letter to the Social Security Advisory Committee (set out in para. 6 of the *Painter* case):

"The proposed amendment does not change the policy intention on who should be treated as not liable, but it does simplify interpretation of the regulation. It attempts to achieve this in two ways. Firstly, it states the basic principle involved in the regulation, which is that HB should not be payable where the substance of the liability amounts to an abuse of the Housing Benefit scheme.

Secondly, it provides a list of situations in which such a liability can be said to have arisen. Some of these categories are already contained in regulation 7, ie those whose liability is to a close relative with whom they reside, and some joint tenants who were previously non-dependants (sub-paragraphs (b) and (g)). However, we have included additional categories to represent particular cases where a person has arranged his affairs in such a way as to be liable to make payments for his accommodation when he could have avoided such a situation and still been adequately accommodated. Such arrangements are those that were meant to be covered by the so-called "contrived tenancy" provision in Regulation 7(1)(b), and they are the sorts of cases on which housing benefit departments seek guidance from DSS Headquarters on a daily basis."

30. I would refer also to the following passages from the witness statement of Mr. Carter (set out in para. 8 of the *Painter* case):

"Regulation 7 of the Housing Benefit (General) Regulations 1987 was put in place to stop housing benefit being paid where no legal liability existed to pay rent. Such arrangements are known as contrived tenancies. It is an anti-abuse measure. It sought to cover the situation where the landlord would be unlikely to bring the tenancy to an end if the rent was not paid. In other words neither the tenant nor the landlord had any intentions of enforcing the tenancy.

.....

As a result of these problems the Secretary of State decided to introduce amendments to regulation 7(1). The purpose behind these amendments was:

- to give local authorities a clearer test as to circumstances or relationships where rent liability will not be covered by housing benefit;

- to remove the requirement in the particular circumstances listed for local authorities to form a judgment as to whether in general terms the arrangement was contrived: in the specified circumstances it is no longer necessary for the local authority to show that the arrangement was contrived or any aspect of the intention of the parties;

- to make it easier for claimants to understand what test is being applied and, if they fail the test for entitlement why they failed: this will be self evident if they fall within any of the categories set out in the regulation

The regulation was a response to the extreme difficulties local authorities had in obtaining evidence to determine whether arrangements had been contrived to take advantage of the housing benefit scheme. In the situations listed in regulation 7(1) the nature of the relationship between the parties can facilitate the contriving of documents and other evidence to indicate a bona fide tenancy. It is extremely difficult for the local authorities to rebut such evidence. An authority can have little or no evidence to weigh against that put forward by the claimant and his/her landlord and yet there may be strong doubts as to the credibility and integrity of the evidence indicating entitlement. In such situations refusals to award housing benefit are vulnerable to review. The new regulation gave local authorities a firm basis on which to decline to award housing benefit in circumstances where the risk of abuse is very considerable."

31. In the *Painter* case Lightman J summarised his conclusions as follows:

"Mr Murphy first argues that there is no abuse of the HB scheme or contrivance in this case: the position is exactly the same as it was before his relationship with his landlady: and accordingly it is irrational for the regulation to bar entitlement in his case. The answer is simply that the regulation adopted as the means of curbing abuse takes the form of a rule precluding claims by Mr Murphy so long as he remains a lodger in his current dwelling. His second argument is that the regulation should have been drafted to catch those who abused the system, and not those innocent of abuse such as himself. The answer is that the Secretary of State based on experience concluded that this was not practicable and indeed that was the reasoning behind adopting the regulation. Thirdly Mr. Murphy argues that there was no serious difficulty under the law as it existed under the earlier regulation in interpreting the regulation or in requiring the local authority to gather evidence as to the motivation of the landlord and tenant and decide whether there was an abuse. This argument is unmaintainable for a series of reasons. The authorities and literature on the subject reveal the horrendous nature of the difficulties.....Fourthly he argues that it would have been sufficient for the remedial action to take the form of a provision reversing the burden of proof of abuse and placing on the claimant the burden of

proving that there was no abuse. But this would not have solved the problems of construction and of requiring the local authority and court to delve into the question in each case whether there was abuse. ....."

32. In the *Tucker* case Waller LJ (at para. 42), delivering the leading judgment, set out his conclusion by adopting what Kay J had said at first instance:

> "I have no doubt that it is appropriate to apply these principles in the present case and that, when that is done, it is abundantly clear that regulation 7(1)(d) is within the discretionary area of judgment on the part of the Secretary of State, subject to parliamentary scrutiny by the negative resolution procedure. I accept Miss Baxendale's submission that it is a legitimate and proportionate response to the matters set out in Mr. Singh's witness statement to which I have referred earlier in this judgment. There is a need for an anti-abuse provision. In my judgment the fact that the provision does not embrace an exemption subject to a reverse burden or proof or a saving for existing arrangements by way of transitional provision (these being the two criticisms adumbrated by Mr. Drabble) does not render the regulation in its present form disproportionate. Put another way, regulation 7(1)(d) pursues a legitimate aim and any differential treatment bears a reasonable relationship of proportionality to the aim sought to be achieved, viz the eradication of abuse."

33. The *Painter* and *Tucker* cases were among the first decided in the English courts under Article 14. There has of course been a considerable amount of domestic case law in the 5 years or so which have passed since then. However, I am satisfied that nothing in the subsequent case law has undermined the reasoning in those cases or rendered it inapplicable to the case with which I am dealing. The ground of the alleged discrimination, namely the Claimant's close relationship with her sister, whether it is properly considered (as one possibility) as falling within the word "birth", or (as the other possibility) within the words "or other status", at the end of Article 14, is not within the category of "particularly sensitive grounds" (such as race, gender or religion) which will require "very weighty reasons" to justify any discrimination. (See *R (Carson) v. Secretary of State* [2005] 4 All ER 545 at [15] to [17] (Lord Hoffmann) and [55] to [60] (Lord Walker). The alleged ground of discrimination is within the (second) category of less sensitive grounds which "merely require some rational justification" (Lord Hoffmann at para. [15]. Further, "decisions about the general public interest which underpin differences in treatment in the second category are very much a matter for the democratically elected branches of government" (Lord Hoffmann at para. 16). It is appropriate in this context to refer also to the frequently cited statement by Lord Hope of Craighead in *R v DPP ex parte Kebilene* [2000] AC 326 at 381B-D:

> "In some circumstances it will be appropriate for the courts to recognise that there is an area of judgment within which the judiciary will defer, on democratic grounds, to the considered opinion of the elected body or person whose act or decision is said to be incompatible with the Convention ....The area in which these choices may arise is conveniently and appropriately described as the "discretionary area of judgment." It will be easier for such an area of judgment to be recognised where the Convention itself requires a balance to be struck, much less so where the right is stated in terms which are unqualified. It will be easier for it to be recognised where the issues involve questions of social or economic policy, much less so where the rights are of high

constitutional importance or are of a kind where the courts are especially well placed to assess the need for protection."

34. The Claimant further contends that the fact that her occupation of the dwelling has resulted in the "non-dependant" deduction (of £7.40 a week) from her sister's housing benefit means that "the state is not opposed to my being related to my landlord when it deducts monies from any benefit that might otherwise be payable to my sibling. Yet it uses the fact that my landlord and myself are related to completely deny benefit to me. Yet a stranger applying for the same benefit for the same accommodation would not be refused."

35. If the Claimant were a person not related to her sister, (a) she would be entitled to housing benefit (provided that the tenancy was considered to be on a commercial basis and not entered into in order to take advantage of the housing benefit scheme) and (b) she would be excluded from the definition of "non-dependant" by regulation 3(2)(e)(i) of the 1987 Regulations, so that her sister would not suffer the non-dependant deduction. The rationale for the non-dependant deduction is that an adult sharing the dwelling with the claimant is considered to be able to make a contribution to the housing costs. I cannot see that the existence of that deduction can make regulation 7(1)(b) disproportionate or an unreasonable response to the potential for abuse which it was designed to avoid. I do not therefore think the existence of the non-dependant deduction assists the Claimant's argument.

36. In my judgment, therefore, for the reasons which I have given, the reasoning in the *Painter* and *Tucker* cases is equally applicable to regulation 7(1)(b). That provision is justified as a reasonable and proportionate anti-abuse measure, and for that reason does not involve discrimination in breach of Article 14.

37. I do not see that anything in Articles 17 or 18 can assist the Claimant.

38. For the above reasons, the Tribunal's decision was in my judgment not wrong in law.

(signed on the original) **Charles Turnbull**
Commissioner
17 March 2006