

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is as follows. It is given under paragraph 8(4) and (5)(c) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000.
 - 1.1. The decision of the Bedford appeal tribunal under reference U/42/022/2002/00301, held on 8th August 2002, is erroneous in point of law.
 - 1.2. I set it aside and remit the case to a differently constituted appeal tribunal.
 - 1.3. I direct that appeal tribunal to conduct a complete rehearing of the issues that arise for decision.

The appeal to the Commissioner

2. As far as I can tell, the issue in this case is whether the claimant is entitled to housing benefit and council tax benefit from and including 7th May 2001. Specifically, the issue is whether his capital exceeds the threshold at which an award may not be made. The claimant is the respondent on the appeal. His local authority, Bedford Borough Council is his local authority.

3. The case is before me as an appeal to a Commissioner against the decision of the appeal tribunal brought by the local authority with my leave. The claimant has made a 'no comment' response to the appeal.

The grounds of appeal

4. The local authority made four criticisms of the tribunal in its grounds of appeal.

Grounds 1 and 3 – failure to evaluate the evidence

5. These two grounds of appeal express similar criticisms in slightly different terms, both related to the solicitor's evidence at page 67.

6. I accept that the tribunal went wrong in law in neglecting to explain how it dealt with this important evidence. It shows the dispersal by the solicitor of money received in settlement of the claimant's claim for damages in respect of an accident. That evidence must surely be reliable. On the basis of it, there was a significant amount of money paid or available to, the claimant over a short period. The tribunal should have explained how it dealt with that evidence. It did not. That made its reasons for decision inadequate. It thereby went wrong in law.

Ground 2 - the tribunal's refusal to adjourn

7. In its decision, the tribunal commented on the absence of a copy of the local authority's supersession decision. The second ground of appeal is that the tribunal should have adjourned in order to allow the local authority a chance to remedy this deficiency. I reject this ground of appeal.

8. The extent to which a refusal to adjourn may amount to or involve an error of law is the subject of the recent decision of the Court of Appeal in *Carpenter v Secretary of State for Work and Pensions* [2003] EWCA Civ 33. The tribunal in this case was entitled to refuse to adjourn, because an adjournment would have been futile. The local authority's presenting officer, who attended the hearing, told the tribunal that the decision was computer generated and could not be produced. The tribunal was entitled to rely on that statement as showing that no useful purpose would be served by an adjournment.

9. I note that the reason given by the officer was that the information was generated by computer and could not be provided. I have, however, seen other cases in which the local authority has been able to provide sufficient evidence to show both that a decision has been made and its terms, despite the inability of the computer system to produce a copy of the actual decision. The local authority will have to consider whether this is possible for the rehearing.

Ground 4 - the verification framework

10. The final ground of appeal is that the tribunal accepted evidence in a form that did not comply with the verification framework. This is a set of rules laying down which documentary evidence is acceptable as proving particular facts. I reject this ground of appeal.

11. The verification framework is an administrative arrangement. I understand that it was introduced to reduce the amount of fraud in housing benefit claims. I am sure that it provides a sensible approach to decision-making by officers of local authorities on the basis of documentary evidence provided by claimants. It reduces the element of judgment and discretion allowed to the officers by substituting rigid rules about the evidence that is acceptable. It reduces or eliminates the variation that judgment and discretion inevitably produce. It enhances the certainty for claimants that their evidence will be sufficient and accepted if it proper form.

12. However, tribunals must follow the approach to evidence laid down by the law. That law is found in the decisions of Commissioners. The approach they lay down is inconsistent with the framework. The Commissioner have held that there are no limitations on admissibility of evidence other than relevance and that proof of relevant facts may be made in any form. A claimant's oral evidence is acceptable, even if it is not corroborated, although the lack of corroboration is relevant in assessing the evidence, as is the failure to provide documentary support that should be available.

13. There is no reason for a different approach in housing benefit. There is nothing inconsistent in the use of the verification framework by decision-maker and the different approach authorised by the Commissioners which is currently followed by appeal tribunals. The decisions are being made in different contexts. The tribunal has the power to conduct an oral hearing and it has legal questioning and evaluating skills that the officers may not possess.

14. At the rehearing, the tribunal must take the normal approach to evidence and proof laid down by Commissioners and will not be bound by the verification framework.

Summary

15. I allow the appeal and direct a rehearing.

Signed on original

**Edward Jacobs
Commissioner
26th February 2003**