THE SOCIAL SECURITY COMMISSIONERS - Commissioner's Case No: CH/5217/2001

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Watford appeal tribunal, held on 15th August 2001 under reference U/04/052/2001/00497, is not erroneous in point of law.

The appeal to the Commissioner

2. The appellant in this case is Watford Borough Council. The respondent is the council tax 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 Mr Commissioner Powell. The case was transferred to me during Mr Powell's sick leave.

The tribunal's decision

4. The claimant's appeal to the appeal tribunal was against a recoverable excess benefit decision given by the local authority. The tribunal allowed the appeal on the ground that the local authority had failed to comply with paragraph 16(d) of Schedule 6 to the Council Tax Benefit (General) Regulations 1987. That requires a local authority to notify the claimant 'how the amount of the recoverable excess benefit was calculated'. The tribunal rejected the argument that the amount could be worked out by comparing two documents. It found that the documents did not disclose the calculation either separately or together.

The local authority's grounds of appeal

5. The local authority put forward two grounds of appeal.

6. One ground was that the appeal tribunal did not deal with causation. I reject that ground of appeal. The issue of causation was irrelevant to the way that the tribunal dealt with the case. It decided that the failure to comply with paragraph 16(d) rendered the recoverable excess benefit decision of no force or effect. Once that decision was made, the issue of causation no longer arose.

7. The other ground of appeal is that the failure to comply with paragraph 16(d) did not prejudice the claimant, because she did not seek to challenge the calculation of the overpayment. I reject that argument. It is self-justifying. If the claimant did not know how the excess benefit was calculated, how could she take issue with it? She was entitled to be told how it can been calculated, precisely so that she would be able to challenge it if necessary.

The law

8. I dealt with the law in CH/4943/2001, paragraphs 12 to 16. I set them out for convenience. They refer to the comparable Housing Benefit (General) Regulations 1987, but the provisions are identical:

'12. The overpayment decision had to be notified to the landlord under regulation 77 and Schedule 6 of the Housing Benefit (General) Regulations 1987. Mr Stagg argued that the notification to the landlord was defective in a number of respects. Mr Patterson argued that if there had been any failure to comply, it had not prejudiced the landlord.

'The principles

'13. What standard of compliance with the notification provisions is required?

'14. Warwick District Council v Freeman (1994) 27 Housing Law Reports 616 concerned an attempt by the local authority to recover an overpayment from the tenant's landlord. A decision was given against the claimant and the landlord was invoiced. When the landlord asked for a review, the local authority replied that the procedure did not apply to landlords and sued for payment in the county court. The case came before the Court of Appeal, which held that there was no basis for the local authority's civil action to recover the overpayment, because the

landlord had not been notified in accordance with the legislation.

'15. Haringey London Borough Council v Awaritefe (1999) 32 Housing Law Reports 517 also concerned an attempt by a local authority to recover an overpayment of housing benefit from the tenant's landlord. The local authority sued in the county court. The landlord's defence was that the notification of the decision was defective. The Court of Appeal distinguished Freeman as a case in which the notification procedures had not been followed at all. Awaritefe, in contrast, was a case in which the procedures had been followed, but defectively. In those circumstances, the test to be applied was whether the landlord had suffered 'substantive harm' or 'significant prejudice'. (The members of the Court clearly regarded those terms as interchangeable.) If so, there had not been substantial compliance with the notification provisions. If not, there had been substantial compliance. On the facts of that case, there had been no prejudice.

'16. Freeman was an exceptional, indeed extraordinary, case. It is difficult to imagine that the facts, or anything like them, would ever be repeated. Unfortunately, it is a case that is regularly cited by those who represent claimants and landlords. It is most unlikely that it will ever apply. Representatives would be advised to save its use for those rare cases. I exempt Mr Stagg from these strictures. He relied on Freeman only if the local authority had not carried out a review. He accepted that, if a review had been carried out, the facts of this case were not so extreme as to fall within Freeman. So long as the notification procedure has been followed, the relevant test will be that laid down in Awaritefe.'

9. Freeman has no application in this case. The issue is whether the claimant suffered 'substantive harm' or 'significant prejudice'. The tribunal found that she did. The tribunal did not go wrong in making that finding. The claimant was entitled to be told how her excess benefit had been calculated. She was not. That deprived her of a possible ground of appeal against the decision. That was a significant prejudice.

10. The local authority has now produced a calculation. It is too late. The tribunal cannot have gone wrong in law on account of information that was not put to it.

The significance of my decision

11. I do not want this decision to be misunderstood.

12. I do not want its effect to be misunderstood. I have decided that the tribunal did not go wrong in holding that the recoverable excess benefit decision was of no force or effect. To that extent, the claimant has won her appeal against that decision. However, her success may only be temporary. The local authority is entitled to make a new recoverable excess benefit decision in proper form. The claimant will have a right to appeal against that decision, if it is made. If another decision is made, the claimant may wish to obtain advice. There are a number of sources of free advice that may be available, like a CAB or an advice or law centre.

13. Nor do I want the basis of my decision to be misunderstood. My decision is based on the fact that, even by the time the case came before the tribunal, the claimant had not been provided with a statement of how her excess benefit had been calculated. If even at that late stage a calculation had been provided, it could have been checked. If necessary, the tribunal could have adjourned the hearing to allow the claimant to check the calculation and obtain advice about it. I would not, in those circumstances, have found that the claimant had suffered substantive harm or significant prejudice.

14. I have made this decision with regret. It is likely to be of only temporary benefit to the claimant. However, my jurisdiction is limited to issues of law. And, given the way in which the decision was presented to the claimant and the way that is was supported before the appeal tribunal, I have no alternative but to dismiss the local authority's appeal against the tribunal's decision.

Signed on original

Edward Jacobs

Commissioner

19th September 2002