DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I grant the claimant leave to appeal against the decision of the Sutton appeal tribunal dated 16 May 2003. The necessary consents having been given, I go on to treat the application as the appeal and to give a decision on the appeal to the Commissioner (Social Security Commissioners (Procedure) Regulations 1999, regulation 11(3)). My decision is that the appeal tribunal's decision is erroneous in point of law, for the reasons given below, and I set it aside. It is expedient for me to substitute a decision on the claimant's appeal against the decision dated 23 January 2003 after making the necessary additional findings of fact (Social Security Act 1998, section 14(8)(a)(ii)). That decision is that (i) the appeal is allowed; (ii) the decision dated 3 December 2002 falls to be revised on the ground of official error; and (iii) the decision as revised is that, of the overpayment of incapacity benefit for the period from 29 March 2002 to 23 October 2002, amounting to £2,793.29, £132.02 (for the period from 29 March 2002 to 7 April 2002, both dates included) is recoverable from the claimant under section 71 of the Social Security Administration Act 1992, but none of the overpayment incurred for the period from 8 April 2002 to 23 October 2002 is recoverable under section 71. See paragraph 28 below for the circumstances in which the case could be returned for further decision.

The background

2. This is an overpayment case which has come to me at the stage of an application to the Commissioner for leave to appeal. There was an oral hearing of the application, at the request of the claimant, on 27 February 2004. An earlier refusal of leave on the papers had been set aside by the Commissioner concerned. The claimant attended the hearing and the Secretary of State was represented by Mr Jeremy Heath of the Office of the Solicitor to the Department for Work and Pensions. I am grateful to both for their assistance. In particular, Mr Heath was able to write a letter to the Central Recovery Group correcting a misunderstanding about the existing decisions on recoverability of overpayments which I hope has been helpful to the claimant (and see paragraph 9 below). At the hearing both the claimant and Mr Heath on behalf of the Secretary of State consented to my going on to decide the appeal if I granted leave to appeal.

3. After the oral hearing I gave a direction to try to obtain further information from both the Secretary of State and the claimant's employer. A legal officer to the Commissioners has also twice written directly to the claimant's employer, but no reply was received until 25 June 2004, and then the reply did not deal with the questions asked by the legal officer. However, as it turns out, I have been able to decide the case on the material before me at the oral hearing with the addition of the information in the Secretary of State's response dated 30 March 2004 and what the claimant has said in various letters. I am afraid that the process following my direction has taken a long time, but I do not need to impose further delay by contacting the claimant's employer again.

4. I first describe the circumstances as they were known to the appeal tribunal of 16 May 2003. The claimant had been entitled to invalidity benefit, followed by incapacity benefit, since December 1993. The problem causing incapacity was chronic pilonidal sinus. A Med 4 signed

by his doctor on 14 February 2002 repeated that diagnosis, advised him to refrain from his usual occupation (the tick clearly having gone in the wrong box by mistake) until further notice and mentioned multiple surgical procedures and that the claimant had to attend the dressing clinic every day. On 29 March 2002 the claimant started work as a cleaner at a local club, working for two hours a day six days a week, earning £4.80 an hour (£57.60 a week in total). The appeal tribunal accepted that he had received a notification early in 2002 informing him of the impending change in the law on working during a claim for incapacity benefit (ie the new rules on "permitted work" in effect from 8 April 2002), which he understood to mean that he could work and earn up to £66 a week. The claimant did not inform the incapacity benefit authorities of his work until a letter giving the details above was received on 12 September 2002. He was then sent a questionnaire on permitted work which was received back on 20 September 2002.

5. I do not need to set out the pre-April 2002 regulations. The general rule throughout under regulation 16 of the Social Security (Incapacity for Work) (General) Regulations 1995 (the 1995 Regulations) is that a claimant is to be treated as capable of work on each day of any week in which he does any work. There are limited exceptions, including where work is "exempt" under regulation 17 and done within the limits set in that regulation. As from 8 April 2002 the part of regulation 17 relevant in this case provided:

> "(1) The categories of exempt work referred to in regulation 16(1)(a) are--
> (a) work in respect of which the required notice is given, and--
> (i) in respect of which the earnings in any week do not exceed £20.00, or
> [(ii) and (iii) not relevant];
> (iv) to which paragraph (1A) below applies;
>
> (1A) This paragraph applies in the case of a person whose circumstances are specified--
> (a) in sub-paragraph (a) of paragraph (1B) below, to work which is undertaken by that person during the period specified in sub-paragraph (b) of the paragraph;
> [(b) and (c) not relevant];
>
> (1B) For the purposes of paragraph (1A)(a) above--
> (a) the specified circumstances are where--
> (i) no work to which paragraph (1A) applies has previously been undertaken by that person, or
> (ii) since the beginning of the period during which any work to which that paragraph applies was previously undertaken by him, the person has ceased to be entitled, throughout a period exceeding eight continuous weeks, to a relevant benefit;
> (b) the specified period is the period of 26 weeks beginning with the first day on which the work is undertaken."

Regulation 17(1E) contains the following definition:

> "'the required notice' means, in relation to work referred to in any of heads (i) to (iv) of paragraph (1)(a), notice to the effect that the person is undertaking, or is about to

undertake the work, given in writing to the Secretary of State by that person or by another person acting on his behalf--

(a) in the case of work referred to in paragraph (1)(a)(i) to (iii), at any time before the person ceases to undertake the work;

(b) in the case of work referred to in paragraph (1)(a)(iv), no later than the end of the period of 42 days which begins with the day on which the work begins;"

Regulation 17(2) imposes weekly limits of 16 hours for work under paragraph (1)(a)(iv) and (for 2002/2003) of £66 in earnings.

6. On 24 October 2002 a decision was made superseding the decision awarding the claimant incapacity benefit on the ground of relevant change of circumstances (starting work on 29 March 2002). The decision continued:

"As a result [the claimant] is treated as capable of work from and including 29/03/02.

This is because he has worked and that work does not fall in an exempt category.

Prior to the 08/04/02 the therapeutic earnings rules apply. The customers' employment commenced on 29/03/02 and the customer did not obtain advice/agreement from his GP before commencing employment."

7. The claimant appealed against that decision. The appeal was disallowed by an appeal tribunal on 18 February 2003. Only the decision notice is in the papers, which confirmed the decision of 24 October 2002. No doubt the appeal tribunal accepted the Secretary of State's submission that from 8 April 2002 the work was not exempt because the claimant did not give written notice within 42 days of starting work.

8. In the meantime, a decision was made on 3 December 2002 that as a result of the decision of 24 October 2002 the claimant had been overpaid incapacity benefit of £2,793.29 for the period from 29 March 2002 to 23 October 2002 and that that overpayment was recoverable from him because he had failed to disclose that he had started work on 29 March 2002 until 12 September 2002. On 23 January 2003 a further decision was made purporting to supersede the decision of 3 December 2002 on the ground that it had been based on a mistake of material fact about the date on which notification had been received from the claimant. In fact, there should have been revision for official error as there was no mistake about receipt of the claimant's letter on 12 September 2002. The superseding decision was that £2,231.51, for the period from 29 March 2002 to 11 September 2002, was recoverable and that the overpayment of £561.78 in respect of the period from 12 September 2002 to 23 October 2002 was not recoverable because it was not the result of any failure to disclose. It was the claimant's appeal against the decision of 23 January 2003 which was before the appeal tribunal of 16 May 2003. He had apparently been told by the chairman of the appeal tribunal of 18 February 2003 to appeal, with a suggestion that there might be a reduction in the amount of the recoverable overpayment because of the impact of the new permitted work rules.

9. I add as a footnote at this point that at the oral hearing the claimant produced a letter dated 24 January 2004 to him from the Central Recovery Group saying that the Balham Irene House Office had told it that the claimant was paid £561.78 too much incapacity benefit from 12 September 2002 to 23 October 2002. The letter said that the Central Recovery Group office was now responsible for getting back that money and that the claimant had to contact the office or pay back the money he owed within 14 days. There was a threat of civil proceedings. It was that letter which prompted Mr Heath to write a crystal-clear and fully-explained letter to the Central Recovery Group on 27 February 2004 pointing out that the operative decision, not affected by the appeal tribunal's decision, was that the overpayment of £561.78 for the period in question was not recoverable from the claimant. Mr Heath courteously sent me a copy of his letter. Despite that, the claimant reported in a letter received in the Commissioners' office on 29 March 2004 that he had received another threatening letter from the Central Recovery Group about the £561.78. If that is right and the second letter was also about the £561.78 and not about the £2,231.51 (unfortunately the letter was sent back to the claimant by a legal officer without keeping a copy for the Commissioner's file), that is completely reprehensible. The first letter could be put down to a misunderstanding somewhere along the way, although a misunderstanding that should not have occurred. A second letter, after Mr Heath had made the legal position plain, could not be explained in that way, and smacks of intimidation. I hope that some inquiry will be made to prevent such things happening in the future.

The appeal tribunal's decision

10. The appeal tribunal disallowed the claimant's appeal after a hearing which he attended. It decided that there was a recoverable overpayment of £2,231.51 for the period from 29 March 2002 to 11 September 2002. I have set out above the essence of the factual situation as accepted by the appeal tribunal. Its reasons in the statement of reasons were as follows:

> "The tribunal carefully considered the evidence before it, both written and oral. It accepted that [the claimant] was not acting in any way dishonestly and that he had acted as he did due to a misunderstanding. [The claimant] feels aggrieved that he is being asked to pay back benefit to which he considered that he was entitled, as except for four weeks at the beginning, he was working within the limits set out in the new regulations for permitted work as he had been notified. However, he did not dispute that he had not notified the commencement of his work nor that he was working, at the correct time. The tribunal was quite satisfied that throughout the period in question, [the claimant] could not bring himself within either the old rules or the new rules in relation to his work. This had been considered by another tribunal and therefore was not at issue before this tribunal.
>
> The only question at issue before this tribunal was whether any resultant overpayment of benefit was recoverable from [the claimant] because of his failure to disclose.
>
> The tribunal understood that [the claimant] considered that there was no overpayment once the new rules applied. However, as notification is an essential element under the new regulations and he agrees that he did not notify until September, the new rules do not in fact apply to him to enable him to have entitlement to benefit. The tribunal was

satisfied that there was an overpayment throughout the period of the revised decision and that it was recoverable by the Secretary of State."

The application for leave to appeal

11. The claimant's application for leave to appeal was refused by the chairman. The application has been renewed to the Commissioner. At the oral hearing, Mr Heath accepted that there was an arguable case that the appeal tribunal gave inadequate reasons in relation to the question of whether the claimant had failed to disclose a material fact. As the appeal tribunal had accepted that the claimant had received a notification about the new permitted work rules, from which he understood that he could work if did not earn over £66 a week, that raised a question of whether disclosure was reasonably to be expected. It was held in paragraph 4(2) of Commissioner's decision R(SB) 21/82 that that condition would have to be met for a person to be said to have "failed" to disclose (followed in R(SB) 28/83 and R(SB) 54/83). Having received that notification, could the claimant reasonably have thought that from 8 April 2002 he did not need to tell the incapacity benefit authorities about doing work from which he earned less than £66?

12. I agree that it is arguable that the appeal tribunal should have dealt expressly with that question instead of proceeding on the basis that there was a failure to disclose merely by virtue of the claimant not having notified the incapacity benefit authorities of his work until 12 September 2002. The appeal tribunal's conclusion that the claimant acted due to a misunderstanding exposes the gap in its reasoning, as that conclusion immediately raises the questions whether the claimant's misunderstanding was reasonable and was such as to make disclosure not reasonably to be expected. Those questions were not answered by the appeal tribunal. For that reason I grant the claimant leave to appeal against the appeal tribunal's decision.

The appeal to the Commissioner

13. The necessary consents having been given, this is plainly a proper case for me to treat the application as the appeal and decide the appeal. I conclude that the appeal tribunal did err in law for the reason given in paragraph 12 above for granting leave to appeal. I am satisfied that the absence of express explanation on a key element in the test of failure to disclose amounted to an error of law that was material to the decision. Accordingly, I set aside the appeal tribunal's decision as erroneous in point of law.

14. It is expedient for me then to give the decision on the claimant's appeal against the decision of 23 January 2003. I have had the opportunity to see and hear from the claimant and I have had additional documentary evidence. As it turns out, it does not matter that further evidence which I was trying to get has not been forthcoming.

The Commissioner's decision on the appeal against the decision of 23 January 2003

15. I start from the position that, as a result of the superseding decision of 24 October 2002, as confirmed by the appeal tribunal's decision of 18 February 2003, the claimant was not entitled to incapacity benefit from and including 29 March 2002, because of the work that he started doing. There were many defects in that decision. There might in other cases be an

argument to be made about whether the original decision awarding benefit should be superseded, rather than the currently operative decision accepting incapacity for work. More importantly, the decision did not expressly state that the superseding decision was that the claimant was not entitled to incapacity benefit from and including 29 March 2002 and did not deal with the condition which would have to have been met under regulation 7(2)(c)(ii) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 for the superseding decision to take effect from the date of the change of circumstances, rather than the date of the decision. That condition was a finding that the claimant knew or could reasonably have been expected to know that the change of circumstances should have been notified. Those defects were apparently not corrected by the appeal tribunal of 18 February 2003. However, in my view those defects are not so fundamental as to lead to the conclusion that there was no decision which could form a basis for an overpayment recoverability decision in accordance with section 71(5A) of the Social Security Administration Act 1992 (see Commissioners' decisions CIS/3228/2003 and CIB/2836/2002).

16. There was thus an overpayment of incapacity benefit for the period from 29 March 2002 down to 23 October 2002, when the authorities eventually got round to taking action to stop payment being made to the claimant. In relation to the period before the change in the law on 8 April 2002, the claimant does not really challenge the position that he ought to have informed the incapacity benefit authorities of his starting work, as instructed in his order book, and that there was nothing in what he was told about the new rules that would have suggested that they applied before 8 April 2002. I am satisfied that, in relation to that period, disclosure of the material fact that the claimant was working was reasonably to be expected. He did not disclose that fact and that was a failure to disclose within section 71 of the Social Security Administration Act 1992.

17. In relation to the period from 8 April 2002 onwards, things become much more complicated, although it is agreed that on any footing none of the overpayment incurred after 11 September 2002 is recoverable under section 71 of the Social Security Administration Act 1992. That is because from 12 September 2002 the office administering the claimant's incapacity benefit knew the material facts relevant to entitlement to incapacity benefit and could have stopped payment.

18. First, I ask what the position would be if this case fell entirely under the new permitted work rules. The claimant's evidence was that in about January 2002 he received a single-page letter saying that the rules were changing and that he could work and earn up to £66 per week without affecting his incapacity benefit. So, when the little cleaning job came up, he took it. He did not realise that he needed to inform the incapacity benefit authorities.

19. In a direction I asked for information from the Secretary of State in advance of the oral hearing about what was sent out to incapacity benefit recipients in early 2002, ideally copies or specimens of letters or forms. Information was given in the response dated 3 February 2004 that there was no trace of a notification to the claimant in January 2002, but that a mailshot was issued through the computer system to all registered incapacity benefit claimants (and the claimant in the present case was so registered) from 4 March 2002. A specimen was attached.

20. The specimen contained a short covering letter referring to "new flexible rules for people who want to try some paid work while they are getting" benefits including incapacity benefit, to the new rules starting on 8 April 2002 and to there being more details in the enclosed factsheet. The factsheet was headed "Permitted Work". It said on the first page that the new rules meant that it would be much easier for a person to try paid work without it affecting benefit entitlement. On the second page, under the sub-heading "About permitted work" it said that a person could work for less than 16 hours a week, on average, and earn up to £66 a week for 26 weeks. It went on to deal with extensions for a further 26 weeks, work earning less than £20 a week as long as the person was on benefit and "supported permitted work". The next section had the sub-heading "How does permitted work affect my benefit?" and was as follows:

> "• Permitted work will not affect your Incapacity Benefit, Severe Disablement Allowance or your right to National Insurance credits.
>
> • Permitted work will only affect your Income Support, Housing Benefit or Council Tax Benefit if your earnings are more than a set amount a week.
>
> • You can continue to get Disability Living Allowance while you are doing permitted work.
>
> • You will no longer need to get a doctor to agree that the work will help your medical condition, but you should tell the office that deals with your benefit before you start work. You should fill in an application form before you do any permitted work."

The next quite long section was about what to do if the person was doing or had recently stopped doing therapeutic work and there was an attached form to fill in in that event. In the middle of the final section on more help and advice was the sentence:

> "If you want more information about permitted work or an application form, get in touch with the Incapacity Benefit section at the office that deals with your benefit."

21. The claimant told me that he did not remember receiving such a document. He only remembered receiving a single-page letter simply referring to the £66 limit. In my view he was confused about events some years ago. All the probabilities are that he would have received all of the mailshot described above, and I consider that it was the receipt of the mailshot in early March 2002 which the claimant was remembering. I accept that what he took from the document at the time was a simple rule that he could from 8 April 2002 earn up to £66 per week without his incapacity benefit being affected.

22. The legal question, though, is whether a person in similar circumstances, having received that information, was reasonably to be expected to have disclosed that he was starting or had started work for fewer than 16 hours and with earnings below £66. Mr Heath submitted that that was so. He said that, if the mailshot had been received, there was sufficient information in it that a reasonable person would have realised that disclosure should be made to the

incapacity benefit authorities or would at least have realised that some enquiry should be made. There is plainly a great deal of force in that submission and I am sure that that is how a great many reasonable people would have reacted. However, it seems to me that if it was within the range of reasonable responses for a person to have thought that disclosure was not necessary, the accepted test under R(SB) 21/82 of "failure" to disclose has not been met. On balance, I have concluded that that was the situation in the present case.

23. Telling the incapacity benefit office before starting work was not set out in the factsheet as one of the conditions on which work was permitted. The conditions stated were merely in terms of hours and earnings, and the length of time for which the permission would continue. The very use of the term "permitted work", in the context of rules which were said to be making it easier for people to try paid work without affecting benefit, created an impression that work would be permitted, and not affect benefit, on those conditions alone. Then the instruction about telling the office was put at the end of the section on how benefit was affected, as the second part of a sentence beginning with the issue of doctors' advice about working, in terms of what "should" be done. The sentence about filling in an application form before doing permitted work did not say that work would not be permitted work if an application form or information was not submitted at the right time. In those circumstances, I conclude that a person reading the factsheet with the degree of care to be expected of ordinary people, rather than lawyers or benefit experts, could think, without going outside the boundaries of reasonableness, that it was not necessary to inform the incapacity benefit authorities of work within the hours and earnings limits for permitted work. It could reasonably have been thought that giving such information was desirable, but no more, as it could have been thought that the giving of the information was irrelevant to the question of whether or not the work would affect entitlement to benefit. It could also reasonably have been thought that the new information superseded whatever was printed in the order book.

24. I am further satisfied that there was no failure to disclose immediately before 12 September 2002. The claimant's evidence at the oral hearing was, once some confusions had been sorted out, that in August 2002 the Department for Work and Pensions asked his employers whether he was working at the club. His employers asked him to sort things out with the Department. He went to the Wandsworth office and was told the legal position. He then wrote the letter received on 12 September 2002. That more or less fits in with the dates given in the Secretary of State's response dated 30 March 2004, which include 6 September 2002 as the first date on which there was a communication with the claimant's employers, the sending out of a QB9 form asking whether or not the claimant was or had been employed and for details of earnings and hours. I am satisfied that once the claimant realised that information about his work should be given to the incapacity benefit authorities he acted promptly and properly.

25. Accordingly, I would have found, if this case was purely about the situation from 8 April 2002, that the claimant had not failed to disclose a material fact. As there has been no suggestion of any misrepresentation, a necessary condition for the recoverability of the overpayment would have been missing. However, the present case also involves a period prior to 8 April 2002 and in respect of that period I have found that the claimant did fail to disclose a material fact. Does that make irrelevant my conclusion if the case were purely about the period

from 8 April 2002? Is the whole of the overpayment down to 11 September 2002 linked to the failure to disclose on and shortly after 29 March 2002?

26. My answer is no. That follows from the nature of a failure to disclose as a continuing state of affairs and from an overpayment over a period being made up of a series of payments of benefit (I think here weekly in arrears in the light of the length of time the claimant had been entitled). It is well-established that the duty to disclose is a continuing duty. So if a claimant does something that he reasonably expects will lead to material information reaching the office dealing with his benefit, he will have fulfilled that duty. But if after a time he ought to have realised that the information had not got through, the duty to disclose would revive. I do not see why the reverse is not equally valid. One can take an example of a claimant who receives a leaflet from which any reasonable person would realise that certain information should be given to the benefit authorities, so that there would a failure to disclose if the claimant does not give the information. If the claimant does nothing and continues to receive benefit, but later receives a more specific letter which by mistake says that the information in question is irrelevant and need not be disclosed, then it seems to me that the overpayment from that point on should not be recoverable on the ground of failure to disclose. The answer to the argument that the continuing overpayment was caused by the failure to disclose in the earlier period is this. In a case where misrepresentation is not relevant, each payment of benefit must be regarded as made in consequence of the state of affairs at the time of the payment. If the state of affairs at the time of a payment is that the claimant is not in breach of the duty to disclose, then the payment is not made in consequence of a failure to disclose a material fact.

27. The claimant's case is not as strong as in the example given in the previous paragraph, but in my judgment the same principle applies. From 8 April 2002 to 11 September 2002 the claimant was not in breach of the duty to disclose because of the findings I have made as to what was reasonably to be expected in the circumstances. Accordingly, I conclude that the payments of incapacity benefit made in that period were not made in consequence of a misrepresentation of or a failure to disclose a material fact and are not recoverable from the claimant under section 71 of the Social Security Administration Act 1992. My decision giving effect to that conclusion, and to the conclusion that the decision of 23 January 2003 should have been a revision of the decision of 3 December 2002, is set out in paragraph 1 above.

28. I am not sure that I have the material on which to decide when each particular payment of incapacity benefit was made in the relevant period. Since incapacity benefit is a daily benefit and the Secretary of State in the decision of 23 January 2003 made calculations on a daily basis, I have concluded that the fairest method is to divide the overall period into the portion falling before 8 April 2002 and the portion from and including 8 April 2002. I have made a calculation in giving my decision in paragraph 1 above of the amount paid in the first portion, from 29 March 2002 to 7 April 2002, which is recoverable. The rest of the overpayment made down to 23 October 2002 is not recoverable. If there is any disagreement about that specific calculation, the case may be returned to me (or, if necessary, another Commissioner) for further decision.

Postscripts

29. The conclusion which I have reached above makes it unnecessary for me to decide a

particularly tricky question of causation raised by the nature of the new rules on permitted work. I mention it briefly, and essentially as an unanswered question, because of the peculiarity of the new rules.

30. The question would have arisen if I had found that the claimant was in breach of the duty to disclose throughout the period from 29 March 2002 to 11 September 2002. Then under section 71(1) of the Social Security Administration Act 1992 the amount recoverable is the amount of payments which the Secretary of State would not have made but for the failure to disclose. If the claimant had disclosed the material fact that he was working at any time within 42 days from (it seems) 29 March 2002, the result would have been that his entitlement to incapacity benefit from and including 8 April 2002 would not have been taken away. All the conditions of regulation 17(1)(a)(iv) and (1A) would have been met throughout that period. If the disclosure had been made outside the 42 days, as it actually was, the result would have been, as confirmed by the appeal tribunal of 18 February 2003, that he was not entitled to incapacity benefit from and including 8 April 2002, as well as for the period from 29 March 2002 to 7 April 2002. In those circumstances, could it be said that the payments of incapacity benefit after 7 April 2002 would not have been made if the claimant had not failed to disclose the material fact? It is strongly arguable, and I would have been inclined to accept, that for the period of 42 days from 29 March 2002 the answer is no. If the claimant had not failed to disclose (ie had disclosed) at the time of the payments made in that period, the payments would still have been made. However, for the period after the expiry of the 42 days, the answer is the other way. A late notice would mean that disclosure would have resulted in payments not being made.

31. In paragraph 9 above, I have strongly criticised actions taken to attempt to recover an amount which had been decided not to be recoverable under section 71 of the Social Security Administration Act 1992. I add here that I am not very impressed by the history of the investigation of the claimant's case revealed in the Secretary of State's response of 30 March 2004. But as I only have very partial knowledge of the circumstances and it may be that the system had not caught up with the then very recent changes in legislation, I merely raise some queries. It is also not really anything to do with me. An anonymous telephone call was received on 29 April 2002 saying that the claimant was working at the club. It was not until 11 July 2002 that a visit was made to the club by the collusive employer investigation team and it was decided that the environs were unsuitable for undertaking observations. On 19 August 2002 the file was passed to the general investigation team and on 6 September 2002 the QB9 form was sent to the claimant's employer. Such a process does not seem entirely appropriate in the context of the new rules designed to encourage claimants to try paid work. Nor does a process which allows arrears of overpayments to build up, if benefit is wrongly in payment. The taking of a simple step (such as writing immediately to the claimant or the club to ask if he was working there) might either have limited the amount of benefit wrongly paid or enabled the claimant to follow a proper procedure that would have resulted in entitlement to benefit being confirmed.

(Signed) J Mesher
Commissioner
Date: 14 July 2004