

**SOCIAL SECURITY ACT 1986  
SOCIAL SECURITY ADMINISTRATION ACT 1992**

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW  
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

**Name:**

**Social Security Appeal Tribunal:**

**Case No:**

1. My decision is that the decision of the social security appeal tribunal is erroneous in point of law and accordingly I set it aside. In exercise of my jurisdiction I give the decision myself namely that the claimant is disentitled from receiving income support under the provisions of section 134(1) of the Social Security Contribution and Benefits Act 1992 (previously section 22(6) of the Social Security Act 1986) prior to 23 April 1991, the date upon which his property vested in the trustee in bankruptcy.

2. This is an appeal by the adjudication officer against the decision of the Battersea social security appeal tribunal, given on 14 November 1991, which decided that the claimant was not disentitled to income support under the provisions of section 22(6) of the Social Security Act 1986. I have had the advantage of reading a detailed written submission prepared by Mr D. Heath from the Solicitor's Office in the Department of Social Security.

3. The members of the tribunal found as fact that the claimant was living in his own house which was mortgaged with about £85,000.00 outstanding on the loan. He was the owner of a restaurant in Clapham High Street which he sold. An amount of £142,994.14 was paid on 10 November 1990 into his and his wife's joint building society account, which previously contained £7.45. On the same date he also had £1, 004. 00 in his current bank account. On 23 November 1990 he withdrew £2,300.00 from the building society account. On 29 November 1990 a bankruptcy order was made against the claimant in the High Court and it was still in force at the time of the hearing before the tribunal. The tribunal further found that on 29 November the claimant paid £42,281.00 off his mortgage, and on that date and subsequently disposed of monies held in the bank and building society accounts, reducing his assets in those accounts to £1,352.33. They noted that such disposals were under investigation by his

trustee in bankruptcy. They further found that these assets were owned solely by the claimant and that his wife had made no claim to them and that his estate, on his own admission and in the trustee's estimation, was insolvent. The members of the tribunal further found that the claimant had claimed income support on 28 December 1990. There was evidence before the tribunal that the claimant had been interviewed by an officer of the Department of Social Security on 28 January 1991 who was informed that the claimant had between 29 November and 11 December 1990 drawn £67,110.00 from his building society account. The claimant stated that he had gambled away much of this money and repaid loans to various family friends. The officer recorded that the claimant was not prepared to substantiate these statements as he did not wish to embarrass his friends by asking for documentary evidence. There was a further interview on 17 November 1991 and the officer reported that the claimant repeated in effect his earlier statements.

4. The tribunal allowed the claimant's appeal against the decision of the adjudication officer issued on 30 January 1991 which had rejected his claim for income support on the grounds that he was to be treated as possessing capital in excess of £8,000.00. The reasons for the tribunal's decision were as follows:

"4.1. By Section 306 of the Insolvency Act 1986 upon the Bankruptcy Order being made against Claimant, all the assets with which we are here concerned rested on Claimant's Trustee in Bankruptcy - i.e. they ceased to be his, and became the Official Receivers.

4.2. The disentitlement to Income Support under section 22(6) of the Social Security Act 1986 could not therefore apply to Claimant with respect to his claim of 28 December 1990 and the capital in evidence before us, which, on the making of the Order on 29 November 1990, ceased to be his.

4.3. The Bankruptcy order remains in force today, nearly a year later, and Claimant is insolvent. There is nothing in evidence before us to suggest that it will be annulled.

4.4. We investigated whether Claimant's wife had any claim to this capital; if she was the owner of any of it, then it would fall to be taken into account as capital of the family under s.22(5). Social Security 1986. However, we satisfied ourselves that she owns none of it.

4.5. Claimant's disposals from this capital are therefore irrelevant from our point of view: they are matters for the Trustee in Bankruptcy who is investigating them.

4.6. We are not in a position to make a quantified award; only to determine the capital question today. Other questions are to be agreed or restored to us."

5. Section 22(6) of the Social Security Act 1986 (now section 134(1) of the Social Security Contribution and Benefits Act 1992) provided for the capital limit for income support and

at the material time that was £8,000.00. Section 22(9) of the Social Security Act 1986 (now section 136(5) of the Social Security Contribution and Benefits Act 1992) provides that circumstances may be prescribed in which a person is treated as possessing capital or income which he does not possess. The material statutory instrument is the Income Support (General) Regulations 1987. Regulation 45 provides for the capital limit and regulation 51 deals with notional capital. In order for the notional capital concept to apply it has to be proved that the claimant has deprived himself of actual capital and that his purpose in doing so was to secure entitlement to or increase the amount of income support.

6. The first question for the tribunal was whether the capital resource was the claimant's. The members decided that the claimant had no capital since, in their opinion, all his assets had vested in the trustee in bankruptcy and had ceased to be his and become the official receivers. In my judgment the reasoning of the tribunal ignored the fact that the trustee was not appointed until April 1991 and that the official receiver had not become trustee at the earlier date by operation of law. It may be that the members of the tribunal had in mind the position which arose under the Bankruptcy Act 1914. Sections 18(1) and 53(1) of that Act provided for the property of the bankrupt to vest automatically upon the making of an order of adjudication. Where a trustee had already been appointed, the property vested in him; if there had been no such prior appointment, the property vested in the official receiver. Under the Insolvency Act 1986 the property of a bankrupt does not vest in either the official receiver or the trustee in bankruptcy upon the making of a bankruptcy order. There are exceptions but they are not applicable in the instant case. Section 297(1) of the 1986 Act provides for the property to vest in the official receiver on a criminal bankruptcy petition. Section 297(2) provides for vesting in the official receiver after the issue of a certificate for summary administration under an order made on the debtor's petition. In the instant case the order was made on the creditors' petition. The official receiver did not become trustee. The trustee in bankruptcy was not appointed until after the material time. I have asked myself whether the effect of the adjudication order was to vest the property of the claimant retrospectively in the trustee, after his appointment. In *re Dennis* (a bankrupt), (1992) WLR 204 is authority for the proposition that the combined effect of section 37(1) and 38(A) Act 1914 was not to vest title in the trustee but rather to vest in the trustee, when adjudication occurred, title to property at that time which was identified by reference to the property which belonged to the bankrupt at the commencement of the bankruptcy. It seems to me that the principle enunciated in that case is equally applicable when one considers section 278A, section 284 and section 306(1) of the Insolvency Act 1986. In my judgment the bankrupt's estate did not vest in the trustee in bankruptcy until the date when the latter was appointed and at the material time had not vested in the official , receiver. I find therefore that the decision contains a false proposition of law and must be set aside.

7 This seems to me to be a proper case for me to give the decision myself. I have had regard to the provisions of regulation 51 of the Income Support (General) Regulations 1987. If paragraph (1) is to apply to the claimant I must be satisfied that he has deprived himself of actual capital and that his purpose was to secure entitlement to income support. I have had regard to section 284 of the Insolvency Act 1986. This section makes disposition of property and payment by a bankrupt, during the period from the presentation of the petition to the vesting of his estate in a trustee, void except to the extent that they are made with the consent of the court or are later ratified by the court. The property which the claimant was alleged to have disposed of was made after he had been adjudged bankrupt and its disposition was caught by section 284. Such disposal was void by statute and consequently the claimant in law could not be said to have deprived himself of it and it seems to me that regulation 51 did not apply to the claimant.

8. A further point has been taken on behalf of the adjudication officer. He submits that it is incumbent to consider whether the claimant had provided a satisfactory account as to how he had disposed of all or part of the sum of £67,100.00. He goes on to argue that if it is found that he had not so done it is open to the members to conclude that all or part of this sum was an actual resource of the claimant. I am satisfied that this submission is well founded. I have had regard to what was said at paragraph 18 of R(SB) 38/85. I have considered carefully whether the claimant has provided a satisfactory account of how he disposed of the money, namely by gambling and paying certain creditors. He has declined to name the creditors who were paid. In view of his failure to give a full explanation of the disposal and in the light of his conduct as a bankrupt I attach little weight to his evidence. I am not satisfied that he has provided a satisfactory account of how he disposed of the property and I do not accept that he did dispose of it. I find that the sum of £67,000.00 was capital possessed by the claimant up until 23 April 1991. The trustee in bankruptcy was appointed on that day and in accordance with the provisions of section 306 of the Insolvency Act 1986 the claimant's estate vested in him then. I have considered whether prior to that date the claimant was a constructive trustee of the property but I am satisfied that he was not. A constructive trust is a formula through which equity satisfies the demands of justice and good conscience and protects the property for those who are beneficially entitled to it. In my judgment all these criteria were otherwise satisfied because of the protection given to the property by the Insolvency Act.

(Signed) J J Skinner  
Commissioner

Date: 10 June 1993