JM/1/LM/JM **Commissioner's File:** CIS/157/1989

SOCIAL SECURITY ACT 1986

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Archie Belford

Social Security Appeal Tribunal: Finchley

Case No: 2:06/3695

[ORAL HEARING]

1. This is an adjudication officer's appeal, brought by leave of the chairman of the social security appeal tribunal, against a decision of that tribunal dated 4 May 1989 which reversed a decision issued by the adjudication officer on 8 November 1988. My decision is as follows:

(1) The aforesaid decision of the appeal tribunal is erroneous in point of law and is set aside.

(2) Without making fresh or further findings of fact I can give the decision which I consider that the appeal tribunal should have given; and in sub-paragraph (3) below I so do.

(3) The claimant is not, and at no time has been, entitled to have carried into the calculation of his income support, whether by way of housing costs or otherwise, any sum in respect of the cost of emptying the cess-pit at the dwelling occupied by him as his home.

2. I held an oral hearing of the appeal. The adjudication officer was represented by Mr R Buckley, of the Office of the Chief Adjudication Officer. The claimant did not attend but was represented by Mr K Lynch, of the Money Advice and Welfare Benefit Unit of the London Borough of Barnet. To both advocates I am indebted for their careful assistance in a case which has - in my view - been rendered gratuitously complex by the manner in which the relevant legislation has been drafted and enacted. The sole issue of law is simply stated: Is a claimant who is in receipt of income support entitled to any financial assistance in respect of the recurrent cost of emptying the cess-pit at the dwelling which he occupies as his home and of which he is the freeholder? One might have been excused for expecting that so basic and everyday a question could be

confidently answered after the most cursory glance at the income support legislation. Alas (as this decision demonstrates), that is not the case. Indeed, both the written submissions and the oral argument have ranged beyond that legislation into the tortuous complexities of the housing benefit legislation. At the end of the day I am reasonably confident that I have come to the correct conclusion; but it is lamentable that so elementary a question should have proved susceptible to - even demanded - such refined statutory exegesis.

3. In the days of supplementary benefit (even after the introduction of housing benefit) there was no problem. Housing requirements were the subject of Part IV of the Supplementary Benefit (Requirements) Regulations 1983. Into those requirements were carried "Miscellaneous outgoings", the subject of regulation 18 of those Regulations. In Appendix A to this decision I have set out paragraph (1) of regulation 18 as it stood on 10 April 1988 - the last day of supplementary benefit's legislative existence. It will be seen that sub-paragraph (d) read:

> "(d) recurring charges for the emptying of cess-pits and septic tanks and the cost of fluid and materials to service a chemical toilet ..... "

But, of course, all that was swept away on 11 April 1988 - and we passed to income support.

4. In the context of income support "applicable amounts" take the place which "requirements" took in the context of supplementary benefit. (The fons et origo of the phrase is section 20(3)(b) of the Social Security Act 1986.) They are the subject of Part IV of the Income Support (General) Regulations 1987 (augmented by Schedules 2 to 7). The general principle is set out in regulation 17, of which I quote so much as is directly in point in this appeal:

> "17. Subject to regulations 18 to 22 and 70 (applicable amounts in other cases and reductions in applicable amounts and urgent cases), a claimant's weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case:
>
> .....
>
> (e) any amounts determined in accordance with Schedule 3 (housing costs) which may be applicable to him in respect of mortgage interest payments or such other housing costs as are prescribed in that Schedule."

5. Schedule 3 to the Income Support (General) Regulations 1987 is, indeed, entitled "Housing Costs"; and paragraph 1 thereof provides as follows:

> "1. Subject to the following provisions of this Schedule,

the amounts which may be applicable to a person in respect of mortgage interest payments or other prescribed housing costs under regulation 17(e) or 18(f) (applicable amounts) [regulation 18 applies only in the case of polygamous marriages] are -

(a) mortgage interest payments;

(b) interest on loans for repairs and improvements to the dwelling occupied as the home;

(c) payments by way of rent or ground rent relating to a long tenancy and, in Scotland, payments by way of feu duty;

(d) payments under a co-ownership scheme;

(e) payments under or relating to a tenancy or licence of a Crown tenant;

(f) service charges;

(g) where the dwelling occupied as the home is a tent, payments in respect of the tent and the site on which it stands;

(h) payments analogous to those mentioned in this paragraph."

6. At this point it is instructive to compare paragraph 1 quoted immediately above with regulation 18(1) of the erstwhile Requirements Regulations (set out in Appendix A hereto). Such an extent of common ground is shared as to put it beyond a peradventure that the draftsman of paragraph 1 had regulation 18(1) (indeed, the whole of Part IV of the Requirements Regulations) firmly before him. Into paragraph 1 he has imported mortgage interest payments and interest on loans for repairs and improvements, which were, respectively, the subjects of regulations 15 and 17 of the Requirements Regulations. But sub-paragraphs (c), (d), (e), (f) and (g) of paragraph 1 are unmistakable reflections of (although not in p r e c i s e l y t h e s a m e o r d e r a s) sub-paragraphs (b), (c), (e) and (ff) of paragraph (1) of regulation 18. Conspicuously absent from paragraph 1 of Schedule 3 is any reflection of sub-paragraph (d) of regulation 18(1):

"(d) recurring charges for the emptying of cess-pits and septic tanks and the cost of fluid and materials to service a chemical toilet ..... "

The whole of this appeal turns upon whether a recurring charge for the emptying of a cess-pit is "analogous" to "service charges". Statutory construction involves the ascertainment of the intention of the legislature. That intention must, of course, be sought within - and exclusively within - the four

corners of the language of the relevant enactment. But it is, surely, permissible to ask why, if the legislature really intended that recurring charges for the emptying of a cess-pit should qualify as an "applicable amount", they were left to creep in by way of analogy to service charges when the whole issue could have been put beyond doubt by the simple repetition in paragraph 1 of Schedule 3 of sub-paragraph (d) of the erstwhile regulation 18(1).

7. In the papers is a copy of the relatively recent decision in case on Commissioner's file CIS/17/1988. In that case the appeal tribunal had held that -

(i) the cost of house insurance, and

(ii) water charges,

were each analogous to service charges. The Commissioner held those decisions to be erroneous in law and reversed them. Much of his reasoning will be reflected in what I myself say below. He might well have added - but, no doubt, considered to be superfluous - comments similar to those which I have made in paragraph 6 above. The cost of insurance of the structure of the home was expressly provided for by regulation 16 of the Requirements Regulations. Water charges were provided for by regulation 18(1)(a). But express reference to either item is conspicuously absent from paragraph 1 of Schedule 3 to the Income Support (General) Regulations.

8. What, then, <u>is</u> a "service charge"? (For until that is ascertained, it is idle to speculate as to what is or is not analogous thereto.) The term is not, in fact, defined in the Income Support (General) Regulations; but, by way of guiding me to an answer, a wealth of material has been laid before me. I intend no disrespect (let alone ingratitude) to those who have sought thus to assist me when I say that I can deal relatively briefly with much of that material.

9. The adjudication officer now concerned submits that -

> "'service charge' ..... carries the same meaning as that given in regulation 18(1)(e) of the former Supplementary Benefit Requirements Regulations wherein examples of such charges are given." (See Appendix A hereto)

That, no doubt, is true - but it does not really assist in the ascertainment of the relevant meaning. The four examples given do not much help towards an understanding of the overall meaning of "service charge" - the less so since it is not entirely clear whether "of common areas" qualifies only "cleaning" or is to be read as qualifying also "maintenance", "insurance" and "management". In common with the Commissioner who decided CIS/17/1988, I derive no assistance from regulation 18(1)(e).

10. Mr Buckley drew my attention to para 258 of Volume 27 of the 4th edition of Halsbury's Laws of England. That paragraph

is subtitled "Distinction between true rent and service charge". I quote therefrom:

> "The nature of a rent as a payment (or thing) reserved from and notionally issuing out of the demised premises has already been mentioned. In contrast to rent strictly so called, other sums of money are frequently payable by the tenant to the landlord by reason of the tenant's covenants in the lease. For example, often the tenant will covenant to reimburse the landlord the cost of insuring the premises, or, in a lease of a flat, to reimburse the landlord a proportionate part of the landlord's expenditure in carrying out repairs to the building of which the flat forms a part. These covenanted sum are not rents unless they are expressly reserved as rents .....
>
> In modern conveyancing, by far the most usual and most important covenanted sum (or additional rent) is that which refers to the cost or value of repairs, maintenance and services provided to the tenant, and those sums are here referred to compendiously as 'service charges', whether reserved as a rent or not."

11. Mr Buckley relied on that passage in support of the contentions that -

(a) "service charges" is a term of art; and

(b) such charges can arise only in a landlord/tenant situation; ie they can never (properly so called) be payable by a freeholder.

And he buttressed those contentions by references to -

(i) section 18 of the Landlord and Tenant Act 1985;

(ii) section 42(1) of the Landlord and Tenant Act 1987; and

(iii) section 32 of the Housing (Financial Provisions) (Scotland) Act 1972.

12. I think that it is beyond doubt that the concept of a "service charge" is normally associated with the landlord and tenant relationship. It might be pointed out, of course, that it is in no way surprising that in each of the passages referred to in paragraphs 10 and 11 above the emphasis should be on that relationship. The quotation from Halsbury's Laws is from the title "Landlord and Tenant". The sections identified under (i) and (ii) in paragraph 11 above are from statutes expressly devoted to the landlord and tenant relationship. The section identified under (iii) is devoted exclusively to local authority housing, which is, virtually by definition, occupied by tenants.

13. But Mr Buckley did cite one section from a context less clearly restricted to the landlord and tenant relationship. I quote from section 46 of the Housing Act 1985:

> "46(1) In sections 45 to 51 'service charge' means an amount payable by the purchaser or lessee -
>
> (a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the vendor's or lessor's costs of management, and
>
> (b) the whole or part of which varies or may vary according to the relevant costs.
>
> (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the payee, or (in the case of a lease) a superior landlord, in connection with the matters for which the service charge is payable.
>
> (3) .....
>
> (4) In relation to a service charge -
>
> (a) the 'payee' means the person entitled to enforce payment of the charge, and
>
> (b) the 'payer' means the person liable to pay it."

But even here the definition does not purport to be of general application. It is explicitly confined to the interpretation and application of sections 45 to 51 of the Housing Act 1985.

14. It is well recognised, of course, that - except in the context of general rates - owner occupiers are excluded from housing benefit. But that in no way justifies the seductive corollary that the housing costs the subject of Schedule 3 to the Income Support (General) Regulations are confined to owner occupiers. Any such inference is directly refuted by the express wording of sub-paragraphs (c) and (e) of paragraph 1 of that Schedule; and sub-paragraphs (b) and (g) are obviously of application in the cases of occupiers who are not also owners. It cannot, accordingly, be assumed from the <u>mere</u> presence of sub-paragraph (f) in paragraph 1 that owner occupiers are envisaged as being capable of liability for service charges. On the other hand, I am not disposed to deny that possibility, although I find difficulty in conjuring up a clear example. (That difficulty may well stem from my total lack of expertise in the law of conveyancing.) I can, however, suggest a case of a recurring charge to an owner occupier which could readily be regarded as analogous to a service charge. Housing estates of freehold properties are not infrequently developed with common pathways, lawns or gardens. A non-profit-making management company (normally limited by guarantee) is incorporated. The

common parts of the estate vest in that company - and it deals with the maintenance, insurance and so on in respect thereof. Each of the freeholders on the estate is a member of the company; and the articles provide for the voting of annual contributions to be paid by the several freeholders so that the company may be kept in funds. If such contributions are not "service charges", they are surely "analogous" thereto. The obligation to pay is an inescapable concomitant to the acquisition and occupation of a house on the estate; the payee is clearly identified; the payer has no choice in the selection of the payee; and the payee's very existence arises from the relationship of the freeholders, one to another.

15. As I have indicated above, Mr Buckley urged upon me that it is of the essence of a service charge that it should be a charge in respect of a service rendered to a tenant by a landlord (including a superior landlord) or by an agent of the landlord. There seems to me to be much force in that submission; and, of course, when one is considering analogies the "essences" of the subjects under review are of great significance. Bearing in mind the illustration which I have set out in paragraph 14 above, I express the view that, in the case of owner occupiers, there can be no true analogy unless -

(a) the relevant payee is identified in the terms and conditions subject to which the owner occupier holds the property; and

(b) it is in those terms and conditions - and nowhere else - that the obligation to pay is to be found.

(I am not, of course, to be taken as saying that either (a) or (b) must <u>necessarily</u> be located in the relevant conveyance or transfer.)

16. It follows from the foregoing that I should regard it as an abuse of language to describe as "analogous" to a service charge a recurring charge payable by a householder pursuant to an agreement with or a statutory obligation to a third party who has no connection with the terms and conditions subject to which the householder holds the relevant property. The rental in respect of a television set or a piano hired from an outside company is neither a service charge nor analogous to a service charge; nor are the general rates or the water or sewerage charges. And it follows that I take the same view of the recurring charges paid either to an outside company or to a local authority.

17. That, in my view, suffices to dispose of this appeal. But so much has, in the course of the case, been written and said about the housing benefit legislation that I cannot conscientiously refrain from entering that minefield. Indeed, both Mr Buckley and Mr Lynch relied upon passages from that legislation to give - as they contended - conclusive support to their respective cases.

18. It is, of course, common knowledge that an important part

of the thinking underlying the reformed social security system which came into effect in April 1988 was that much administrative and adjudicational time and expense would be saved by eliminating specific legislative provision in respect of various modest outlays and subsuming such outlays under the general system of personal allowances. Water rates, sewerage costs, insurance and minor building repairs were treated as falling into the category of such outlays. But, of course, it is for the adjudicating authorities - in any given case - to determine how effective the actual legislation has been in attaining the professed objective. To some extent that process can be laborious - not to say tedious. One will seek in vain, in either the income support or the housing benefit legislation, for a provision to the effect that no specific sum will be paid in benefit by way of reimbursing expenditure upon insurance. The task must be approached from the opposite direction: Is there, in the whole of the relevant legislation, any positive provision whereunder benefit can be claimed in respect of expenditure upon insurance? That - I repeat - can involve a laborious exercise.

19. In ordinary litigation, the burden of proof normally lies upon the party making a positive allegation; for negatives are notoriously difficult of proof. But this is an inquisitorial jurisdiction and the adjudicating authorities must, if necessary, satisfy themselves of a negative. After no little research on my own account, I am satisfied that nothing in the income support legislation, even when read in the light of the housing benefit legislation, entitles an owner occupier to reimbursement in respect of the recurring costs of emptying a cess-pit.

20. Both parties to this appeal seem to have treated paragraph 9 of Schedule 3 to the Income Support (General) Regulations as furnishing the entry to the Housing Benefit (General) Regulations 1987. I quote from paragraph 9:

> "9(1) Subject to sub-paragraph (5), there shall be met under this paragraph the amounts, calculated on a weekly basis, in respect of the housing costs specified in paragraph 1(c) to (h) subject to the deductions specified in sub-paragraph (2).
>
> (2) Subject to sub-paragraph (3), the deductions to be made from the weekly amounts to be met under this paragraph are -
>
> (a) [this relates to fuel charges];
>
> (b) where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 of the Housing Benefit (General) Regulations 1987 (ineligible service charges) the amounts attributable to those ineligible service charges or where that amount is not separated from or separately identified within the housing costs to be met under this paragraph,

such part of the payments made in respect of those housing costs which are fairly attributable to the provision of those ineligible services having regard to the costs of comparable services.

(3) [Not material to this appeal]

(4) [Not material to this appeal]

(5) Where an amount calculated on a weekly basis in respect of housing costs specified in paragraph 1(e) (Crown tenants) includes amounts in respect of water charges or eligible rates (or both) within the meaning of regulation 9 of the Housing Benefit (General) Regulations 1987, that amount shall be reduced by -

(a) where the amount payable is known -

(i) in respect of water charges, that amount;

(ii) in respect of eligible rates, 20 per cent. of that amount calculated on a weekly basis;

(b) in any other case -

(i) in respect of water charges, the amount which would be the likely charge had the property not been occupied by a Crown tenant;

(ii) in respect of eligible rates 20 per cent. of the amount which would be the likely eligible rates had the property not been occupied by a Crown tenant;

calculated on a weekly basis.

(6) For the purposes of paragraph (5) 'water charges' means charges or rates in respect of water and, except in Scotland, of sewerage and allied environmental services."

(I have set out sub-paragraphs (5) and (6) to show that the legislature clearly did not intend that Crown tenants in England should recover any benefit in respect of the costs of sewerage. It would be surprising - to say the least - had the legislature intended to put owner occupiers in a more favourable position.)

21. But I return to sub-paragraphs (1) and (2) of paragraph 9 of Schedule 3 to the Income Support (General) Regulations. The first - and, in my view, most significant - point to notice is that the Housing Benefit (General) Regulations are invoked in the context of deductions from the income support payable to a claimant by way of housing costs. There is no intention - either explicit or implicit - to invoke the housing benefit legislation

in augmentation of the rights conferred by the income support legislation. Moreover, the reference in paragraph 9(2)(b) to the Housing Benefit (General) Regulations is expressly confined to a single paragraph of a single schedule. Neither in the papers before me nor in the decision in CIS/17/1988 is that paragraph set out in full. I have decided to rectify that omission in Appendix B to this decision. I defer consideration of that paragraph to my own paragraph 24 below; for I consider that attention should be directed to the basic structure of housing benefit before one gets involved in the minutiae of schedules.

22. Regulation 8 of the Housing Benefit (General) Regulations prescribes that the two basic components of housing benefit shall be -

(a) rate rebate; and

(b) rent rebate or allowance.

Rate rebate is the subject of regulation 9. "Rates" is defined, via regulation 2(1), by a short series of cross-references. Suffice it here to say that it means "general rates", exclusive of any water rates or sewerage charges. Rent rebate or allowance is the subject of regulation 10 - and here I must go into greater detail. Neither the adjudication officer now concerned nor the Commissioner who decided CIS/17/1988 appears to have attached any significance to paragraph 1 of regulation 10; but I accept Mr Buckley's submission that that paragraph is of considerable importance to the (suggested) interplay between the housing benefit legislation and the income support legislation. The paragraph opens thus:

> "10(1) Subject to the following provisions of this regulation, the payments in respect of which housing benefit is payable in the form of a rent rebate or allowance are the following periodical payments which a person is liable to make in respect of the dwelling which he occupies as his home ..... "

There then follows a list of ten types of periodical payments; and, from the point of view of rent rebate or allowance, the list is, of course, definitive. It contains no express reference to payments in respect of sewerage or the emptying of cess-pits. Service charges are the subject of sub-paragraph (e) - but that sub-paragraph contains a vital qualification:

> "(e) payments of, or by way of, service charges payment of which is a condition on which the right to occupy the dwelling depends ..... "

And paragraph (7) of regulation 10 provides thus:

> "(7) In this regulation and Schedule 1 -
>
> 'service charges' means periodical payments for

services, whether or not under the same agreement as that under which the dwelling is occupied, or whether or not such a charge is specified as separate from or separately identified within other payments made by the occupier in respect of the dwelling; and

'services' means services performed or facilities (including the use of furniture) provided for, or rights made available to, the occupier of a dwelling."

23. The Commissioner who decided CIS/17/1988 regarded only paragraphs (3), (6) and (7) of regulation 10 as relevant to his decision. Paragraphs (3) and (6) provide for the case where the rent payable by a clamant includes charges for "water, sewerage or allied environmental services". In such a case a sum equal to those charges falls to be deducted from the "eligible rent" (ie the rent by reference to which rent rebate or allowance is calculated - see regulation 8(1)(b)). That is, of course, a mechanism for giving effect to regulation 10(1) in the context of "composite" rent payments; and it is a clear indication of the legislature's attitude to charges for "water, sewerage or allied environmental services". It seems to me, however, with all respect to the Commissioner who decided CIS/17/1988, that the actual wording of regulation 10(1) provides a more direct route to the conclusion to which that Commissioner came.

24. So I return to paragraph 1 of Schedule 1 to the Housing Benefit (General) Regulations (see Appendix B to this decision). Under sub-paragraphs (a) to (f) thereof are set out a variety of specific "ineligible" service charges. Sub-paragraph (g) is couched in general terms:

"(g) charges in respect of any services not specified in sub-paragraphs (a) to (f) which are not connected with the provision of adequate accommodation."

Mr Lynch submitted vigorously that the regular emptying of the claimant's cess-pit was and is "connected with the provision of adequate accommodation". He cited the following passage from the reasons of the appeal tribunal as recorded on the relevant form AT3:

" ..... the Tribunal were quite convinced that it would be unsafe for [the claimant] to continue to occupy his premises if cesspool charges were not paid and the cesspool could not therefore be emptied - in fact not only unsafe to [the claimant] but also unsafe to his neighbouring occupiers."

That passage was clearly founded upon a letter dated 25 April 1989 and written to the appeal tribunal by the principal environmental health officer of the London Borough of Barnet. The penultimate paragraph of that letter ended thus:

" ..... and the regular emptying of the tank is a regular

maintenance/service charge necessary for the provision of adequate accommodation."

25. For my part, I have no quarrel with the factual conclusions reflected in paragraph 24 above, apart, of course, from the use of the phrase "service charge" in the passage last quoted. And it is upon that phrase that the whole of Mr Lynch's argument depends. For unless the costs of emptying this claimant's cess-pit rank as a "service charge" (and above I have found that they do not), paragraph 1 of Schedule 1 to the Housing Benefit (General) Regulations does not enter the picture.

26. Paragraph 9(2)(b) of Schedule 3 to the Income Support (General) Regulations demands, of course, that in certain circumstances the computation of income support will require reference to the housing benefit legislation. But I must confess to finding the correlation between the two schemes somewhat less than perfect. It would appear that, for income support purposes, once a charge has been identified as a service charge it will found an entitlement to housing costs unless - and only unless - it is an ineligible service charge "within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit (General) Regulations". Mr Buckley submitted to me that even if, in the present case, the cost of emptying the cess-pit was a service charge, it was nevertheless an "ineligible" service charge because it did not comply with the condition in regulation 10(1)(e) of the Housing Benefit (General) Regulations - "payment of which is a condition on which the right to occupy the dwelling depends". That condition is certainly not complied with in this case. The cost of emptying the cess-pit could not possibly, therefore, form a component of the "eligible rent" upon which rent rebate or allowance is based. But - so far as I can see - that would not of itself exclude such cost from the scope of income support housing costs, for the "ineligibility" would neither flow from nor be "within the meaning" of paragraph 1 of Schedule 1 to the Housing Benefit (General) Regulations. It is difficult to believe that such an anomalous result was intended.

27. In paragraph 24 above I quoted from the recorded decision of the appeal tribunal. At the cost of a measure of repetition, it will be convenient if I now set out the full text thereof:

> "The Tribunal considered that payments to empty [the claimant's] cesspool are analogous to those other payments mentioned in paragraph 1 to Schedule 3 to the Income Support (General) Regulations in that it has in common with those other items that they are all essential for the occupation of a claimant's home - the Tribunal were quite convinced that it would be unsafe for [the claimant] to continue to occupy his premises if cesspool charges were not paid and the cesspool could not therefore be emptied - in fact not only unsafe to [the claimant] but also unsafe to his neighbouring occupiers."

I appreciate that the drawing of an analogy can be regarded as

being, to some degree, a question of fact. But it is not exclusively such; otherwise the most bizarre findings of "analogy" would be beyond challenge before the Commissioner. Before me, Mr Lynch conceded that the analogy in this case must be to service charges or to nothing. But the appeal tribunal did not view the issue that way. (If it had, its collective mind might have been concentrated upon the "essence" of a service charge - cf paragraph 15 above.) The tribunal held the cess-pit charges to be analogous to all of the payments listed under sub-paragraphs (a) to (g) in paragraph 1 of Schedule 3 to the Income Support (General) Regulations upon the grounds that all those payments are "essential for the occupation of [a] claimant's home". I find that altogether too jejune a justification. It could well apply to water rates and to sewerage charges. It could well apply to a contract for the periodic sweeping of chimneys or the periodic maintenance of a gas-fired boiler. Upon a reading of the Income Support (General) Regulations as a whole, I find it impossible to accept that it was the intention of Parliament that any of those should qualify as "applicable amounts" in the context of income support. The appeal tribunal, in my view, fell into error of law.

28. Before leaving the case I should, perhaps, advert to certain of the facts which have (not unreasonably) aroused a measure of sympathy for the claimant's plight. He is a widower, aged about 76, and lives by himself. There is no outstanding mortgage upon his freehold premises. It apparently costs him about £120 every 7 or 8 weeks to have his cess-pit emptied. The task used to be done by a company based in High Wycombe. That company raised its prices; and the claimant turned to the direct labour organisation of Barnet's Technical Services Directorate. The latter is by statute obliged to charge a commercial rate. The charges incurred are, of course, far beyond anything that was ever envisaged as being payable out of a claimant's personal allowance. (Pending the outcome of this appeal, the claimant is receiving an extra-statutory payment.) The real rub of the case seems to be the somewhat extraordinary volume of sewage produced by the claimant. The cess-pit holds 4,000 gallons. I was told by Mr Buckley that such a tank, with a solitary resident, should take 9 months to 2 years to fill. But the claimant, it seems, is filling his cess-pit at the rate of about 70 gallons a day. I do not know - and it is none of my business - how many baths he takes. At all material times he has been in receipt of income support. The old supplementary benefit scheme envisaged one bath a week for a person in normal health. It is all a little baffling; but, in common with the other adjudicating authorities, I must apply the law as I find it.

29. The adjudication officer's appeal is allowed.

(Signed) J Mitchell
Commissioner

Date: 23 March 1990

Appendix A

Regulation 18(1) of the Supplementary Benefit (Requirements) Regulations 1983

18(1) The amounts, calculated in accordance with paragraph (2), of the following outgoings payable in respect of the home shall, except, in respect of those outgoings specified in sub-paragraphs (b) to (ff) of this paragraph where, in the opinion of the adjudication officer, it is impracticable to estimate the likely amount of the outgoings, be applicable under this regulation -

(a) charges or rates in respect of water and, except in Scotland, of sewerage and allied environmental services;

(b) payments by way of rent or ground rent (in Scotland feu duty) under or relating to a long tenancy as defined for the purposes of regulations 7(2) and 8(2)(c) of the Housing Benefits Regulations (no eligibility for rent rebate or allowance where dwelling occupied under long tenancy) or under or relating to a tenancy or licence to which regulation 8(2)(a) of these regulations (Crown tenants not eligible for rent allowances) applies;

(c) payments under a co-ownership scheme to which regulation 8(2)(d) of the Housing Benefits Regulations (co-owners not eligible for rent allowances) applies;

(d) recurring charges for the emptying of cess-pits and septic tanks and the cost of fluid and materials to service a chemical toilet;

(e) service charges (for example for maintenance, insurance, management and the cleaning of common areas) but subject to deduction, where the charges provide for any item which is identified in regulation 4(1) (meaning of normal requirements), of the amount which, in the opinion of the adjudication officer, is attributable to that item, and excluding any amount which is not housing benefit expenditure by virtue of paragraph 8 of Schedule 3 to the Housing Benefits Regulations (deductions for services other than charges for fuel);

(f) where the home or any part of the home is occupied under a crofting tenancy for the purposes of the Crofters (Scotland) Acts 1955 and 1961 the amount of the rent payable in respect of the home or that part of the home;

(ff) where the home is a tent, payments in respect of the

tent or the site on which it stands;

(g) outgoings analogous to those mentioned in this Part.

Appendix B

Paragraph 1 of Schedule 1 to the Housing Benefit (General) Regulations 1987

Ineligible service charges

1. The following service charges shall not be eligible to be met by housing benefit -

(a) charges in respect of day-to-day living expenses including, in particular, all provision of -

(i) subject to paragraph 1A meals (including the preparation of meals or provision of unprepared food);

(ii) laundry (other than the provision of premises or equipment to enable a person to do his own laundry);

(iii) leisure items such as either sports facilities (except a children's play area), or television rental and licence fees (except television and radio relay charges);

(iv) cleaning of rooms and windows (other than communal areas) except where neither the claimant nor any member of his household is able to clean them himself; and

(v) transport;

(b) charges in respect of -

(i) the acquisition of furniture or household equipment, and

(ii) the use of such furniture or equipment where that furniture or household equipment will become the property of the claimant by virtue of an agreement with the landlord;

(c) charges in respect of the provision of an emergency alarm system, except where such a system is provided in accommodation which is occupied by elderly, sick or disabled persons and such accommodation, apart from the alarm system, is either -

(i) specifically designed or adapted for such persons, or

(ii) otherwise particularly suitable for them, having regard to its size, heating system and other major features or facilities;

(d) charges in respect of medical expenses (including the cost of treatment or counselling related to mental disorder, mental handicap, physical disablement or past or present alcohol or drug dependence);

(e) charges in respect of the provision of nursing care or personal care (including assistance at meal-times or with personal appearance or hygiene);

(f) charges in respect of general counselling or other support services (whether or not provided by social work professionals) except those related to the provision of adequate accommodation or those provided by the landlord in person or someone employed by him who spends the majority of his time providing services for which the charges are not ineligible under the terms of this paragraph;

(g) charges in respect of any services not specified in sub-paragraphs (a) to (f) which are not connected with the provision of adequate accommodation.