SUPPLEMENTARY BENEFIT

NOTE ISSUED ON THE AUTHORITY OF THE CHIEF COMMISSIONER

Application for leave to appeal to the Court of Appeal against a ruling of the Social Security Commissioner.

On 18 June 1981 the supplementary benefit officer refused the claimant's application for a single payment under regulation 9 of the Supplementary Benefit (Single Payments) Regulations 1980.

The claimant appealed. On 27 August 1981 the supplementary benefits appeal tribunal dismissed the claimant's appeal. On 16 November 1981 the claimant applied to the Social Security Commissioner for leave to appeal on a question of law from the said decision of the supplementary benefits appeal tribunal. On 30 March 1982 the Commissioner refused leave to appeal to the Commissioner.

The claimant then applied to the Social Security Commissioner for leave to appeal to the Court of Appeal against the Commissioner's refusal of leave to appeal to the Commissioner.

On 27 July 1982 the Commissioner refused to grant leave to appeal to the Court of Appeal on the ground that the Commissioner had no jurisdiction to grant such leave to appeal to the Court of Appeal against the Commissioner's refusal of leave to appeal to the Commissioner. By notice of motion dated 13 October 1982 the claimant moved the Court of Appeal for leave to appeal from the refusal of the Commissioner dated 30 March 1982.

Held by the Court of Appeal (Sir John Donaldson, Master of the Rolls; Lord Justice Kerr and Sir Sebag Shaw) that the claimant's application be dismissed because the Court of Appeal had no jurisdiction.

The judgments of the members of the Court of Appeal are printed in the Appendix hereto.

A report of proceedings for judicial review of a Commissioner's refusal of leave to appeal appears as R(A)5/83.

APPENDIX TO R(SB)12/83

SIMON PETER BLAND V CHIEF SUPPLEMENTARY BENEFIT OFFICER

(Transcript of the Shorthand Notes of the Association of Official Shorthand-writers Ltd., Room 392, Royal Courts of Justice, and 2 New Square, Lincoln's Inn, London, W.C.2).

MR M ROWLAND (instructed by Roger Smith Esq, Child Poverty Action Group) appeared on behalf of the Appellant.

MR SIMON BROWN (instructed by The Solicitor to the Department of Health and Social Security) appeared on behalf of the Respondent.

JUDGMENT

A SIR JOHN DONALDSON MR. On this occasion the court is concerned with an application by Mr Simon Peter Bland. The application raises an interesting and important point. It is this: has the Court of Appeal any jurisdiction to give leave to appeal from the refusal of a Social Security Commissioner to give leave to appeal *to her* from a decision of the supplementary benefit appeal tribunal?

B The dispute itself arose in June 1981. In the previous month Mr Bland, who was physically disabled and in receipt of a supplementary allowance, claimed a single payment under the Supplementary Benefit (Single Payments) Regulations 1980, SI 1980/985, the basis of the claim being that he was entitled to money with which to buy a bed, a mattress and blankets and possibly also sheets. He was given £23.33 for sheets and two blankets, C but was refused any payment in respect of the bed and a mattress.

He was aggrieved with that decision, and appealed on 22 June 1981 to the Coventry Supplementary Benefit Appeal Tribunal. Two months later that tribunal rejected his appeal. He was again aggrieved, and he applied to the Social Security Commissioner for leave to appeal to her. The basis of his application for leave to appeal was a submission that the supplementary D benefit appeal tribunal had misconstrued the relevant regulations and, further or alternatively, had failed to give sufficient reasons and had failed to make sufficient findings to enable him and his advisers to know whether or not it had misconstrued the regulations. For my part, although it is not material to this appeal, I think that there is a great deal to be said for that submission. Unfortunately Mrs Heggs, the Commissioner, took a different E view, and refused leave to appeal *to her.*

At that stage the Child Poverty Action Group entered on the scene, and made a request on behalf of Mr Bland to Mrs Heggs for leave to appeal to

the Court of Appeal from her refusal of leave to appeal *to her.* Mrs Heggs considered that application, and rejected it on the ground that she had no jurisdiction to grant leave to appeal to the Court of Appeal from a decision by her that there should be no leave to appeal *to her.* I stress in each case the words 'to her' not to emphasise the fact that she is a lady commissioner rather than a male commissioner, but to point the difference between the case where the Commissioner is concerned with leave to appeal to the Court of Appeal and where the Commissioner is concerned with leave to appeal to the Commissioner from the supplementary benefit appeal tribunal.

At that stage an application was made to this court for leave to appeal from Mrs Heggs's refusal. The matter came before Slade LJ, who referred the application to the full court, and ordered that it was to follow the hearing of an appeal by a Mr Morrell and that, if leave was granted, the appeal should be heard immediately after the grant of leave. He also gave liberty to apply to vary his order.

The chief supplementary benefit officer, who was the respondent in these proceedings, now applies to this court pursuant to the leave granted by Slade LJ asking us to vary the order determining here and now whether there is jurisdiction to grant leave to appeal to this court (because, if there is jurisdiction, there is no doubt that leave would be granted) and also to vary the order that this matter shall await the hearing of Mr Morrell's appeal. There is no problem about that.

Accordingly what we have to consider is the question of jurisdiction. It is tacitly admitted that the decision of the supplementary benefit tribunal is not really satisfactory. It is further said by counsel on behalf of the respondent that once the question of jurisdiction can be got out of the way, then what is from Mr Bland's point of view the important question, namely his entitlement to a grant for a bed and mattress, can possibly be dealt with to this satisfaction without resort to courts of law. I have certainly been a little struck, listening to the appeal, by the fact that, important though this question of jurisdiction undoubtedly is, it is far removed from what these proceedings are really about, namely Mr Bland's bed and mattress. However that may be, it is an interesting and important point that we now have to decide, and I would only say that I sincerely hope that Mr Bland's application will be resolved to his satisfaction and that of the chief supplementary benefit officer in the near future.

What counsel for the respondent submits is this. He says that there is no jurisdiction in the Court of Appeal to grant leave to appeal in these circumstances, but that is not to say that Mr Bland is without a remedy. Mr

A Bland should have applied to the Divisional Court of the Queen's Bench Division claiming a judicial review of the decision of the supplementary benefit appeal tribunal with which he was aggrieved. From the way in which the submission was made, I infer that had Mr Bland done that there would not have been any very spirited opposition on the part of the chief supplementary benefit officer on the facts of this case. Nevertheless counsel
B for the respondent points out that the review jurisdiction of the Divisional Court is different in kind, in some respects more limited and in other respects less limited, than is the appellate jurisdiction of the High Court. That is right, and it is quite inappropriate in my judgment that this court should seek to define what are the limits of the review jurisdiction of the Divisional Court. That will be developed case by case, and the principles are
C already well established.

So I return to the question whether there is a right of appeal to this court. This court is the creature of statute, and it is necessary to point to some statutory right of appeal before it can have jurisdiction. On the facts of this case counsel who has appeared for Mr Bland, points to s14(1) of the Social Security Act 1980. That is in these terms:

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> 'Subject to subsections (2) and (3) of this section, an appeal on a question of law shall lie to the appropriate court from any decision of a Commissioner.'

'A Commissioner' is of course a Social Security Commissioner. 'The appropriate court' is the Court of Appeal, as is clear from sub-s (4) of s14. Subsection (3) is immaterial for present purposes since it merely defines the
E categories of persons entitled to appeal. The important subsection is sub-s (2), which reads as follows:

> 'No appeal under this section shall lie from a decision except—(*a*) with the leave of the Commissioner who gave the decision or, in a case prescribed by regulations, with the leave of a Commissioner selected in accordance with regulations; or (*b*) if he refuses leave, with the leave of
F the appropriate court.'

Reconstructing that subsection to make it slightly more intelligible, it reads: 'No appeal under this section shall lie from a decision except with the leave of the Commissioner or, if he refuses leave, of the Court of Appeal.'

What counsel for Mr Bland says is that here there was quite clearly a decision by Mrs Heggs, namely a decision that there should be no leave to
G appeal to her. It follows, he submits, that s14(2) gives this court jurisdiction to give leave to appeal against that decision.

A What is said by counsel for the respondent is that 'decision' in s14 means an order determinative of the matter in dispute, or possibly an order determining how the matter shall be determined, the ordinary interlocutory procedural order which is made in any form of legal proceedings. But, in his submission, the grant or refusal of leave to appeal is not such a decision at all. It is by contrast merely the grant or refusal of a permission which B determines nothing at all except whether the applicant is or is not permitted to appeal.

Now that argument might at first sight seem somewhat refined, but it is well-founded in authority. The two cases on which counsel for the respondent relies are a decision of the House of Lords in *Lane v Esdaile* [1891] AC 210 and *Re Housing of the Working Classes Act 1890, ex p* C *Stevenson* [1892] 1 QB 609. For my purposes I think it necessary only to refer to the decision of the Court of Appeal in *Ex p Stevenson* which follows *Lane v Esdaile* and possibly has a wider ratio than that of *Lane v Esdaile* and is, of course, equally binding on us.

Stevenson's case concerned the Housing of the Working Classes Act 1890 whereby it was provided that where a party was dissatisfied with the amount D of compensation which he had been awarded under Part I of the Act, he—

> 'may, upon obtaining the leave of the High Court, which leave may be granted by such Court, or any judge thereof at chambers, in a summary manner, and upon being satisfied that a failure of justice will take place if the leave is not granted, submit the question of the proper amount of compensation to a jury.'

E In *Stevenson's* case a judge in chambers refused to grant that leave, and the Divisional Court held that there was no appeal to them from his decision. There was then an appeal from the decision of the Divisional Court to the Court of Appeal, that court being composed of Lord Esher MR, Fry and Lopes LJJ. Lord Esher MR said ([1892] 1 QB 609 at 610–611):

> 'It is clear that, in effect, the provision is that the party dissatisfied F may apply for the leave of the High Court to appeal from the decision of the arbitrator to a jury. The High Court may grant such leave, either sitting as a Divisional Court, or through a judge thereof sitting in chambers, on being satisfied that justice requires it. If anything further were needed to shew that the proceeding is an appeal, it is to be found in the subsequent provisions of the schedule as to costs, which G distinctly speak of it as such. I am, on principle and on consideration of the authorities that have been cited, prepared to lay down the proposition that, wherever power is given to a legal authority to grant

A or refuse leave to appeal, the decision of that authority is, from the very nature of the thing, final and conclusive and without appeal, unless an appeal from it is expressly given [then he refers to *Lane v Esdaile*].'

Fry LJ said (at 612):

'The legislature has thought fit to impose a condition in respect of this right of appeal, viz., that the leave of the High Court must be B obtained, which leave is to be granted in the manner pointed out, viz., either by the Divisional Court or by a judge at chambers. Then is the order—for such I will assume it to be—of the High Court, granting or refusing leave to appeal, subject to appeal? In my opinion it is not. I do not come to that conclusion on the ground that the word "order" is not properly applicable to it; but from the nature of the thing and the C object of the legislature in imposing this fetter on appeals. The object clearly was to prevent frivolous and needless appeals. If, from an order refusing leave to appeal, there may be an appeal, the result will be that, in attempting to prevent needless and frivolous appeals, the legislature will have introduced a new series of appeals with regard to the leave to appeal.'

D Then Lopes LJ said (at 613):

'If an appeal were allowed from the granting or refusal of leave to appeal, the result would be that, instead of checking appeals, they might be multiplied to a most mischievous extent; for an appeal from the granting or refusal of leave might be carried from the Divisional Court to this Court, and from this Court to the House of Lords. For E these reasons I think that the preliminary objection must prevail.'

Counsel for Mr Bland, faced with this authority, seeks to distinguish it on the grounds that both in *Stevenson's* case [1892] 1 QB 609 and in *Lane v Esdaile* [1891] AC 210, and it may be in other cases which have followed *Lane v Esdaile,* what was under consideration was a refusal of leave to appeal in the exercise of discretion; and he says that it is possible to F distinguish the present case on the basis that Mrs Heggs was not, as he submits, exercising a discretion but had been led into a manifest error of law. He says that where leave to appeal is refused and that refusal constitutes an error of law, then these cases do not apply.

For my part I commend his ingenuity, but I am bound to say that I cannot find any trace in the authorities of any justification for that G submission. The reasoning of the Court of Appeal in *Stevenson's* case is not based on a refusal to interfere with a discretion. The court held that the grant or refusal of leave to appeal is a very special kind of decision from

A which prima facie there can be no appeal, and, as Lord Esher MR said for the reasons set out in the judgments, it would require express words to enable any appeal to be brought.

Section 14 does contemplate an appeal from decisions of the Commissioner, and I would accept that, in a sense, the grant or refusal of leave to appeal to the Commissioner is a decision, just as in *Stevenson's* case
B it was accepted that the grant or refusal of leave to appeal was an order of the High Court, but it is not the kind of decision which in my judgment s14 contemplates. That section relates to a decision which determines the matters in dispute.

Accordingly, following *Stevenson's* case, I would hold that there is no jurisdiction in this court to grant leave, and for that reason the application
C should be dismissed. If necessary, Mr Bland should seek judicial review but, as I apprehend, it will probably not be necessary for him to do so.

KERR LJ. I entirely agree. I would only add that when counsel for Mr Bland was asked on which provision he relies in order to seek to distinguish the decision in this case, whether to refuse or, as the case may be, to grant leave to appeal by the Commissioner to her, from the authorities to which
D Sir John Donaldson MR has referred, he relied on r8 of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, SI 1980/1605. This provides in para (1):

> 'Subject to paragraph (3) [which is irrelevant] any person who is a party to proceedings before a tribunal may appeal to a Commissioner, with the leave of a Commissioner, against any decision of the tribunal
E given in those proceedings on the ground that the decision is erroneous in point of law.'

His submission was accordingly that an appeal to the Commissioner would only lie on a point of law. With that I obviously agree. But I do not agree that the decision of the Commissioner whether to grant or refuse leave under that rule places it in a different category from the decisions whether
F to grant or refuse leave which were under consideration in the authorities to which Sir John Donaldson MR has referred.

It is clearly a sine qua non requirement of this rule that an appeal will only lie on a point of law. However, superimposed on that, it is still a matter for the decision of the Commissioner whether, given the fact that appeals can only be brought on a point of law, the Commissioner is willing to grant
G or refuse leave.

A I therefore cannot see that the fact that appeals to the Commissioner can only lie on points of law raises any ground of distinction. If; by refusing leave to appeal on a point of law, the Commissioner causes a decision of the tribunal to stand when that decision is wrong in law, then it seems to me that any remedy can only be sought by means of judicial review and not by appeal to this court. I therefore agree that this appeal must be dismissed.

B SIR SEBAG SHAW. I also agree. An appeal from a decision under s14(1) of the 1980 Act must mean an appeal from a decision on some matter of law which is the basis of the Commissioner's finding. If one included in that the refusal of leave, one would remove a valuable and important practical barrier to the pursuit of frivolous appeals. Accordingly, although I accept that a refusal may in certain circumstances be termed a decision, it is not the
C kind of decision which is contemplated by sub-s (2)(*a*) of s14. Otherwise the brake which the statute puts on the proliferation of appeals from the Commissioner would be made abortive.

I too would refuse this application.
