

SUPPLEMENTARY BENEFIT

Overpayments—failure to disclose whether expenditure was in consequence of that failure.

The claimant was a married man in receipt of supplementary benefit. He disclosed that his wife was receiving maternity allowance. When payment of that allowance ceased the adjudication officer reviewed the award of supplementary benefit and increased it. He was not told that the claimant's wife had meanwhile claimed and received unemployment benefit. A social security appeal tribunal allowed an appeal against a decision of the adjudication officer that supplementary benefit had been overpaid and was recoverable. The tribunal found that the claimant and his wife had signed together at the unemployment benefit office, that payment of unemployment benefit was a material fact which the claimant failed to disclose but that the overpayment was not recoverable because the expenditure was incurred in consequence of the decision of the adjudication officer to adjust supplementary benefit and not of the failure by the claimant to disclose a material fact. The Commissioner allowed an appeal by the adjudication officer.

On 8 December 1988 the Court of Appeal (May, Croom-Johnson and Glidewell L.J.J.) dismissed an appeal by the claimant and *held* that:

1. the Court of Appeal should not construe the Commissioner's written decision and reasons as if they were the words of a statute but must take a broader brush approach to the decisions and reasons of Commissioners,
 2. it was not open to the tribunal on the facts found by them to conclude that the overpayment was not a consequence of the failure to disclose by the claimant. Even if the adjudication officer had made a wrong assumption which was a cause of the overpayment, it was not the sole cause; the claimant's failure to disclose had as one of its consequences the overpayment of supplementary benefit;
 3. the adjudication officer is under an obligation to act fairly and to obtain any necessary information relevant to the particular claim but not to investigate the full financial position of the claimant
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1. My decision is that the decision of the appeal tribunal dated 27 January 1986 is erroneous in point of law. Accordingly I set it aside and give the decision that the appeal tribunal should themselves have given namely that supplementary allowance of £1,437.80 was overpaid for the period 28 May 1984 to 26 May 1985 and is recoverable. Section 20, Supplementary Benefits Act 1976.

2. This is an appeal by the adjudication officer with the leave of the Commissioner to the Commissioner against the unanimous decision of the

appeal tribunal revising the decision of the adjudication officer issued on 8 August 1985 and set out in Box 1 of Form AT2.

3. The claimant requested an oral hearing to which request I acceded. Accordingly on 23 March 1987 I held an oral hearing. The adjudication officer was represented by Mr. C. Gratwicke of the Solicitor's Office, Department of Health and Social Security. The claimant was represented by Mr. N. Warren, solicitor of the Birkenhead Resource Unit, to both of whom I am indebted. The claimant was present.

4. The facts are dealt with by the adjudication officer first concerned at page 2 of the case papers on which the claimant and his legal representative have had the opportunity to comment (and have so commented). No useful purpose would be served by my setting out these matters afresh here.

5. The relevant law (both statutory and otherwise) is adequately set out in the submissions of the two adjudication officers who have been involved in these appeals. Nothing is to be gained by my rehearsing that law here.

6. In the light of the view I take of the matter I do not propose to set out the submission made before me at the hearing by Mr. Gratwicke. In his able address to me Mr. Warren referred me to the appellant's observations on the adjudication officer's appeal dated 28 August 1986. He submitted that the case had been dealt with under two heads before the tribunal first that notice to the Unemployment Benefit Office was disclosed by conduct or imputed notice (the claimant and his wife had turned up at the same time and signed on together and were paid together). The second head was that the overpayment was not in consequence of any failure to disclose. It is a matter of fact, so submitted Mr. Warren, for the tribunal in particular circumstances to have come to a conclusion about whether overpayment is in consequence of failure to disclose. He referred me to paragraphs 18 and 21 of decision R(SB) 21/82 and to a report by the local ombudsman dated 21 January 1987 in respect of an investigation of maladministration. He submitted that an attack on the tribunal's decision could only succeed on the basis of some complete irrationality in that decision. It was accepted that the claimant had acted innocently and although this does not save him in contradistinction to a person who has acted fraudulently, the claimant can take advantage of an argument based on causation. Mr. Warren referred me to paragraph 5A sub-paragraph 3 at page 2 of the case papers as a unilateral act by the adjudication officer which the tribunal were entitled to take into account. The adjudication officer, Mr. Warren submitted, took the matter into his own hands without reference to the claimant or the claimant's wife. The tribunal are a jury who know how people behave and they are entitled to conclude that the extraordinary action by the adjudication officer was of such causative effect that the overpayment was not in consequence of the failure to disclose. The tribunal took a commonsense view and was weighing the balance between the citizen and the State bearing in mind the public interest to avoid overpayment would be as well served by the adjudication officers checking facts with the claimant rather than acting unilaterally. Mr. Warren submitted that they were entitled to conclude as they did on the issue of consequence. Mr. Warren then turned to the relationship between the Unemployment Benefit Office and the Department of Health and Social Security. This he said was an unnecessary argument if his first argument was correct. He submitted that on the authority of decision R(SB) 36/84 the starting point is that the Unemployment Benefit Office is the agent of the Department—that is the start and the end. He referred me to decision R(SB) 54/83 at paragraph 12. Mr. Warren then referred me to regulation 69 of the Social Security (Adjudication) Regulations 1984 under which a tribunal has no

jurisdiction to consider certain questions on supplementary benefit until the adjudication officer's decision has been made. He referred me to an extract from the adjudication officer's manual 6548. Mr. Warren further referred me to R(SB) 36/84. With regard to imputed notice he referred me to Halsbury's Laws of England Volume 1 4th Edition at paragraph 833, a paragraph approved by the Commissioner at paragraph 17 of decision R(SB) 54/83. It is true of actual notice but is not true of imputed notice. Mr. Warren then submitted that if his argument on the consequence point was wrong and the tribunal was wrong on the consequence point then the tribunal did not deal properly with the agency argument and should have held that the notice that the unemployment benefit office had (the husband and wife signing on at the same time) was imputed to the Department. Finally Mr. Warren in opening referred to the unreported decisions in the case papers in respect of Departmental negligence. He referred me to decision CWSB 15/85 and to decision CSB 712/1985 in particular at paragraph 10 thereof. In conclusion he referred to paragraphs 26 to 30 of the decision of a Tribunal of Commissioners CSB 966/1985 and submitted that that decision assisted the claimant.

7. In my judgment the decision of the appeal tribunal is erroneous in point of law for the reasons given in this paragraph. There are two questions to consider: the first was there in fact a misrepresentation or failure to disclose a material fact and secondly, if there was such a misrepresentation or failure to disclose was there an overpayment in consequence of it? There is no suggestion of misrepresentation here. Looking at the decision of the tribunal they found there had been a failure to disclose a material fact but they went on to say despite that there had not been an overpayment in consequence of the failure to report. There was an overpayment in that the area officer was not aware of the claimant's wife's receipt of unemployment benefit. *I do not accept the argument that this is the kind of case of whether this was due to failure to inform or whether or not due to the adjudication officer's failure to make enquiries which he should do.* What it comes down to in respect of overpayment is that the adjudication officer was not aware of that fact. The question is in the circumstances where the tribunal had found no disclosure whether it is right given their findings that they should take the view that they did, that "the expenditure was incurred in consequence of the decision by the Adjudication Officer to adjust supplementary benefit and not to failure by the claimant to disclose a material fact" as set out in Box 4 of the tribunal's record. The onus throughout is on the claimant to notify. That is the rationale behind section 20 of the Supplementary Benefits Act 1976 and the reasoning behind numerous Commissioners decisions and in respect of documents in the supplementary benefit system when the claimant is advised he should notify any change in circumstances. To put the onus on the adjudication officer to establish the facts is in my judgment turning matters upon their head. The adjudication officer did that which he ought to have done. He assumed nothing. He determined benefit on the basis that maternity allowance had ceased. The claimant's wife's claim was for unemployment benefit. The benefit in question for which the claimant was in receipt was supplementary benefit. There was no requirement for either the Unemployment Benefit Office or the Unemployment Benefit Officer to inform the Department of Health and Social Security or indeed a supplementary benefit officer of claims for unemployment benefit made by someone not claiming supplementary benefit. I find some support for this at paragraph 10 of decision CSB 712/1985. If in the instant case the adjudication officer was not negligent (and I find no grounds to support a view that he was negligent) in not making an enquiry in relation to the claimant's wife's means that does not in any event assist the claimant as it

is well established that negligence on the part of the Department does not itself exonerate a claimant from his or her obligation under the relevant legislation and in this regard I refer to paragraph 7 of decision CSB 1221/1985. Even if the adjudication officer were carrying out his duties negligently that does not take the matter any further in favour of the claimant as it does not enable the claimant to say that if that be the case then in some way or other the claimant not having disclosed a material fact it exonerates him from so doing and the overpayment was not made in consequence of his failure to disclose. I turn to the question whether or not there was a failure to disclose a material fact. The tribunal held that there had been. That was a perfectly satisfactory decision to come to on the facts they found as to the question of disclosure of a material fact. There is nothing in the papers before me where the claimant says something on the lines that he ought to give information that his wife is receiving supplementary benefit but on 24 May 1985 the claimant said that the unemployment benefit his wife had been receiving was due to cease that week. It was the claimant's case that there had been disclosure by conduct i.e. the signing on of the claimant and his wife together. It is the claimant's case that the unemployment benefit officer knew that the claimant's wife was in receipt of unemployment benefit and that knowledge was imputed to the Department. Two questions follow from this. First is the Unemployment Benefit Officer or Office the agent of the Department of Health and Social Security so that its knowledge is imputed to the Department and secondly even if the Unemployment Benefit Office is not the agent of the Department can it be said that the Office's knowledge can be imputed to the Department? In this connection I refer to decision R(SB) 36/84 at paragraph 31 of the decision where the role of the Department as that of an agent was left open. Regulation 3 of the Supplementary Benefit (Claims and Payments) Regulations does not assist the claimant as to knowledge being imputed, in relates to forms being sent to the Unemployment Benefit Office for forwarding to the Department. Regulation 69 of the Adjudication Regulations does not affect the matter. All it goes to is the question of functions—they do adopt an agency standpoint but the agency standpoint is limited to the carrying out of functions other than being placed in the position of being imputed to have knowledge in relation to the claim the Supplementary Benefit Office might have. There is no suggestion that there is any direct notice. I turn therefore to the position in relation to imputed notice. In respect of decision R(SB) 21/82 at paragraph 4(2) if that is right as regards actual notice the decision must be the same for imputed notice. I derive support from paragraphs 5 and 6 of the decision CSB 184/1985. Paragraphs 26 to 30 inclusive of a decision of a Tribunal of Commissioners CSB 966/1985 on the question of imputed knowledge are consistent with the evidence before the tribunal. The tribunal erred in considering it the duty of the adjudication officer to elicit the facts of the claimant's circumstances.

8. In accordance with my jurisdiction set out in regulation 27 of the Social Security (Adjudication) Regulations 1984 my decision is as set out in paragraph 1 of this decision. As the facts were found by the tribunal I find it expedient for me to give the decision they themselves should have given.

9. Accordingly the adjudication officer's appeal is allowed.

Commissioner's File No: CSB 544/86

(Signed) J. B. Morcom
Commissioner

D

WILLIAM DUGGAN

Appellant
(Applicant)

and

CHIEF ADJUDICATION OFFICER

Respondent
(Respondent)

E (Transcript of the Shorthand Notes of The Association of Official Shorthandwriters Limited, Room 392, Royal Courts of Justice, and 2 New Square, Lincoln's Inn, London WC2)

MR. J. HOWELL (instructed by Messrs. Bindman & Partners; London agents for Nicholas Warren, Esq., Birkenhead Resource Unit) appeared on behalf of the Appellant/Applicant.

MR. DUNCAN OUSELEY (instructed by the Solicitor to the Department of Health and Social Security) appeared on behalf of the Respondent/Respondent.

F

JUDGMENT

(Revised)

A LORD JUSTICE MAY: This is a claimant's appeal from a decision of the Social Security Commissioner of 14th April 1987, brought with the leave of this court pursuant to the provisions of section 14 of the Social Security Act 1980. The other relevant statutory provisions in this appeal are limited. We have, first, section 20 of the Supplementary Benefits Act 1976, which reads as follows:

B "20(1) If, whether fraudulently or otherwise, any person misrepresents, or fails to disclose, any material facts, and in consequence of the misrepresentation or failure—

(a) the Secretary of State incurs any expenditure under this Act; or

(b) any sum of recoverable under this Act by or on behalf of the Secretary of State is not recovered,

C the Secretary of State shall be entitled to recover the amount thereof from that person.

(2) If, whether in connection with any legal proceedings or otherwise, any question arises whether any amount paid by way of supplementary benefit is recoverable by the Secretary of State under this section, or as to the amount so recoverable, the question shall be determined by

D [an adjudication officer]."

In addition there is section 104 of the Social Security Act 1975, or alternatively another statutory provision in precisely the same terms, namely—

"104(1) Any decisions under this Act of an [adjudication officer], a [social security appeal tribunal] or a Commissioner may be reviewed at any time by an [adjudication officer] or, on a reference from an [adjudication officer], by a [social security appeal tribunal], if—

E (a) the officer or tribunal is satisfied and, in the case of a decision of a Commissioner, satisfied by fresh evidence, that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or

F (b) there has been any relevant change of circumstances since the decision was given;"

Before turning to the brief facts of this case, it is right that I should make it clear that it has throughout been the view of the relevant departments that the claimant's actions and motives have been entirely innocent. There is no suggestion of any deliberate failure to notify a change of circumstances, or

G fraud. No-one is suggesting other than that the claimant and his wife have throughout been innocent in these matters.

- A** I ought also to add that it is nevertheless accepted on behalf of the claimant that there was in fact a failure on his part to disclose a material consideration, to which I shall refer in a moment, and further that, had that disclosure been made, the supplementary benefit which was paid to the claimant would have been reduced to the extent claimed by the Adjudication Officer.
- B** The facts are simple. Mr. Duggan, the claimant, is a married man who was aged 27 at the time these events occurred in 1984/1985, living with his wife, who was then aged 24, and a son, Stephen, who was aged about one year. He had been in employment for a substantial period, but he had been in receipt of supplementary allowance since 2nd March 1984.
- C** In a statement of his circumstances, which was dated 20th February 1984, Mr. Duggan declared that the only source of income that he or his wife then had was £25.95 per week maternity allowance which was then being paid to Mrs. Duggan. On 3rd April he signed a form which was intended to record any changes since that previous statement. He did not record any change in his wife's income as she was still in receipt of maternity allowance.
- D** Maternity allowance is paid for a limited definite period. That was no doubt in the mind of the Adjudication Officer because on 5th June 1984 he checked with the relevant section of the Department that deals with maternity allowance to see if it was still being paid and was told that it had ceased on 26th May 1984. That meant that the Duggan family was in receipt of less income than they had previously been, at any rate as it then appeared
- E** to the Adjudication Officer. He accordingly exercised his power under section 104 of the statute to which I have already referred, to review the previous decision under the Act and adjusted Mr. Duggan's supplementary allowance. He was not however told, neither did he discover at that time, that having had the child Mrs. Duggan was intending to seek employment and, failing to do so, applied for and had been awarded unemployment
- F** benefit. That increased the gross income of this family and would have had a corresponding diminishing effect upon the appropriate payment of supplementary benefit. It was not until a year later, on 24th May 1985, that Mr. Duggan told the supplementary allowance section of the local office that his wife's unemployment benefit was due to cease that week. She had been receiving unemployment benefit for a year. That was the first occasion
- G** upon which the supplementary allowance section was aware of the fact and it necessarily involved, as I have already said, that the supplementary allowance that had been paid to the Duggan family over the year had been excessive.

A On those facts the Adjudication Officer decided that Mr. Duggan had failed to disclose a material fact, contrary to his obligations under section 20 and determined that a substantial sum, amounting I think to £1,438.70, was recoverable from the claimant in respect of the overpaid supplementary benefit.

Having taken that view and made that claim on the claimant, the latter
B appealed to the local Social Security Appeal Tribunal. They heard the appeal on 27th January 1986. The facts were put before the Tribunal. The point was taken on that occasion that to the extent that there had been no disclosure to the Department of Social Security, nevertheless there had, at any rate by implication, been disclosure to the Department of Employment who, in all the circumstances, must be deemed to have been the agent of
C the Department of Social Security. That was a point which was taken not only before the Social Security Appeal Tribunal, but also before the Commissioner on the appeal to which I shall shortly refer, but it is not now being persisted in on the claimant appellant's behalf and accordingly I say no more about it.

The Appeal Tribunal found that the over-expenditure by the relevant
D Secretary of State in the excessive supplementary benefit was not incurred in consequence of the failure to disclose a material fact by the claimant, but in consequence of the actions of the Adjudication Officer in failing to discover that Mrs. Duggan had claimed an entitlement to unemployment benefit. Accordingly they allowed the appeal on that basis, namely that the expenditure incurred by the Secretary of State was not in consequence of
E the failure by the claimant to disclose the material fact to which I have referred.

The Adjudication Officer then appealed to the Commissioner. In extended but lucid submissions, in which Mr. Howell has said everything that could possibly be said on behalf of the appellant, the court was warned to bear firmly in mind that an appeal lay only to the Commissioner from
F the Social Security Appeal Tribunal on a point of law and, even more importantly, lay only from the Commissioner to this court on a point of law also.

The Commissioner heard the appeal and decided it on 14th April 1987. Mr. Howell has taken the court through the decision and the reasons for the decision of the Commissioner, and in particular, for instance, has
G drawn the court's attention to the last sentence of paragraph 7 of the

- A** Commissioner's decision as containing the nub of that decision, or embodying the real ratio of the conclusion to which the Commissioner came.

For my part, with respect to Mr. Howell, I do not accept that that last sentence does accurately set out the basis of the Commissioner's decision on the appeal. The Commissioner allowed the Adjudication Officer's

- B** appeal from the Social Security Appeal Tribunal and if one reads the first part of paragraph 4 on page 4 of the bundle, the Commissioner found the Appeal Tribunal to have been erroneous in point of law by posing the question, in the circumstances, where the tribunal had found no disclosure, whether it was right, given their findings, that they could take the view that they did. To put it another way, whether they could properly take the view
- C** that they did on the facts that the expenditure was not incurred in consequence of the non-disclosure. The Commissioner held that the Appeal Tribunal were not entitled, on the facts that they had found, to reach that conclusion. Alternatively even if there was a duty on the Adjudication Officer to make further investigations at the relevant time but he failed to do so, the question which then arose, according to the Commissioner was,
- D** did that prevent the non-disclosure of the material facts from having as its consequence, or one of its consequences, the relevant overpayment? The Commissioner found the Appeal Tribunal to have been wrong in law in concluding that it did not.

Two points on the appeal to the Commissioner and the Commissioner's decision should be made at this stage. I confess that I felt that on occasions

- E** the court was being asked to construe the Commissioner's written decision and the reasons for his decision as if they were in effect the words of a statute. One must in my view take a broader brush approach to the decisions and reasons of Social Security Commissioners in these cases. It seems to me clear that the Commissioner in this case was holding that it was not open to the Appeal Tribunal on the facts as they found them to
- F** conclude that the expenditure was not incurred as a consequence of the non-disclosure, or as I have said, alternatively, even if there were two causes, namely the failure of the Adjudication Officer further to investigate and the non-disclosure by the claimant, that did not and could not prevent the lack of non-disclosure by the claimant from having been one of the causes of the overpayment in respect of which this litigation arises. Those were, in my
- G** opinion, questions of law which it was quite proper for the Commissioner to consider on the appeal from the Social Security Appeal Tribunal.

- A** Secondly, at this stage it is appropriate to deal briefly with the position of an Adjudicating Officer in circumstances such as those involved in the instant case. He has the power to make any appropriate enquiries when a claim is put before him, but for instance in the instant case he was entitled, if he thought it right, to make the assumption that this mother with a young child was neither going back to work nor becoming available for work and
- B** consequently would not be entitled to receive unemployment benefit, as indeed thereafter she did. He was under no duty to make that enquiry, but if the assumption which he made turned out, as it did, to have been wrong, that may well have been a cause of the overpayment as well as the failure to disclose. The wrong assumption by the Adjudication Officer may in certain circumstances have been a cause of the overpayment, but it does not
- C** follow that it was the sole cause. As a matter of common-sense, which questions of causation always are, if one poses the question: did the failure of the claimant to disclose the fact that his wife was in receipt of unemployment benefit have as at least one of its consequences the overpayment of the supplementary benefit?, the only reasonable answer that one can give is "yes". It is for that reason that, despite the submissions
- D** which were made by Mr. Howell, I take the view that this appeal is unarguable.

- Turning to the appeal to this court, again I keep firmly in mind the necessary warning that counsel gave to the court that we should only consider questions of law. In order to ensure that I did not transgress, I went to the claimant's notice of appeal. It was originally the basis upon
- E** which leave to appeal was sought, but treating it as the notice of appeal two grounds are relied on. First, that the Commissioner wrongly held that the Appeal Tribunal had erred in law on the grounds that the latter were entitled to hold that the overpayment in issue was not made in consequence of any failure to disclose by Mr. Duggan, the complainant, but was rather the consequence of the decision of the Adjudication Officer to reassess the
- F** benefit.

- In my opinion the Social Security Appeal Tribunal were not entitled so to hold. Indeed that decision was, for the reasons that I have already given, one which could properly be described in law as perverse. It was a decision to which no reasonable Social Security Appeal Tribunal on the facts as I have outlined them could have come. It may be, as I have said, that there
- G** were two causes of the consequence at the time I have outlined, but certainly one of the causes was the failure of the claimant, albeit wholly innocently, to comply with his continuing obligation under section 20 of the statute to disclose a material fact.

A The second ground upon which the appeal was presented in the notice of appeal was that the decision to adjust the supplementary benefit was made unilaterally by the Adjudication Officer making enquiries as to the cessor of maternity allowance but failing to make enquiries as to the possible receipt of unemployment benefit or any other income.

With that submission I have already dealt in this judgment and I do not propose to take the matter further.

However, I should briefly refer to the more detailed argument which Mr. Howell put before the court in his helpful skeleton argument. The submissions are contained in paragraph 10. He submitted that “The Commissioner erred in law in holding that an Adjudication Officer was under no duty to take reasonable steps to inform himself of the relevant facts before reviewing a determination”, and in support of that submission contended that in general a person to whom Parliament entrusts a decision must call his own attention to the matters which he is bound to consider. He must, he suggested, take reasonable steps to acquaint himself with the relevant information if he is to act reasonably.

In support of that submission Mr. Howell referred the court to the familiar decisions in *Board of Education v. Rice*, *Associated Picture Houses v. Wednesbury Corporation*, the *Tameside* case and *Prest v. Secretary of State for Wales*. In my view, however, all of those cases, and others like them, were decided in a very different context from that of an adjudication officer deciding upon a claim or upon a review of a claim by a claimant under the Social Security legislation. A claim to any Social Security benefit is initiated by the person contending that he or she is so entitled. I have no doubt that on receiving such a claim an adjudication officer is under an obligation to act fairly on it and to obtain any necessary information relevant to that particular claim. As Mr. Ouseley said, it may be in particular circumstances that the obligation on the adjudication officer will be wider than that, in order that he may be fully apprised of the situation and claim with which he has to deal. But I would deprecate any suggestion that when any claim is made for social security benefit there then necessarily arises an obligation on the adjudication officer investigating it effectively to investigate the full financial position of the claimant. His job is to deal fairly with the claim made and to obtain for that purpose any necessary information that he needs to do so.

G Mr. Howell also referred the court to two decisions, *R. v. Deputy Industrial Injuries Commissioner, Ex parte Moore* [1965] 1 Q.B.456, and

A *R. v. Secretary of State for Social Services, Ex parte CPAG* so far unreported but decided in this court on 7th October 1988, in support of his submissions that insurance officers (who were the predecessors of adjudication officers) have throughout been recognised as having an investigatory role as part of the statutory machinery for investigating claims.

B In one sense I entirely agree. They have powers to make the necessary inquiries in order to deal with the claims that are put before them. It in no way follows from that, however, that they have any duty outside the ambit of that particular claim to make the further investigations for which Mr. Howell contended.

For those reasons, in my judgment the Commissioner reached a wholly correct decision in law on the appeal to him from the Social Security Appeal Tribunal. As I have said, I do not think that in the circumstances of this case any Social Security Appeal Tribunal, properly directing themselves on the facts and the law, could have concluded that the non-disclosure by the claimant of his wife's receipt of unemployment benefit could not have been at least one of the causes of the subsequent overpayment of supplementary

D benefit.

In those circumstances and for those reasons I would dismiss this appeal.

LORD JUSTICE CROOM-JOHNSON: Mrs. Duggan's entitlement to maternity benefit came to an end on 26th May 1984. It was on 5th June 1984, a little over a week afterwards, that the Adjudication Officer learnt that the maternity allowance entitlement had ceased and accordingly he adjusted Mr. Duggan's supplementary benefit. The Adjudication Officer must have been aware that Mrs. Duggan's entitlement to maternity benefit would be coming to an end and he took the trouble to check. But in between those two dates, and before the supplementary benefit was increased, an event took place which has bedevilled the facts in the present matter. That was that both Mr. and Mrs. Duggan attended together at the local offices of the Department of Employment. Mr. Duggan went there in order to indicate that he was still available for work and so still entitled to supplementary benefit and it seems that his wife went there in order to put in a claim for unemployment benefit once her maternity benefit came to an end. It was that fact which caused considerable confusion thereafter.

When the Adjudication Officer a year later found out what the true facts had been and reduced Mr. Duggan's entitlement to supplementary benefit, Mr. Duggan appealed. There was an appeal to the Adjudication Officer on

- A** 13th August 1985. When the appeal was heard by the Adjudication Officer he came to the decision that the amount of over-payment of benefit of about £1400 should be repaid under the terms of the Supplementary Benefits Act 1976. He gave as his reasons that Mr. Duggan had failed to disclose a material fact because he did not notify the Department that his wife was receiving unemployment benefit until the unemployment benefit
- B** ceased, as it did, after a year. The Adjudication Officer decided that this was a material fact because, had it been known at the proper time, the entitlement to supplementary benefit would have been reduced. He therefore confirmed his decision that the amount of benefit paid as a consequence of this failure was recoverable under section 20 of the Supplementary Benefits Act. It was against that decision that Mr. Duggan
- C** appealed to the Tribunal.

The Chairman's note of the evidence which was put in before that Tribunal began with the facts being agreed and dealt with the attendance by both Mr. and Mrs. Duggan at the same unemployment benefit office together. He then took a note of what his submissions had been.

- The representative then appearing for Mr. Duggan submitted that the
- D** Department of Employment was the agent of the Department of Health and Social Security and that the two of them, in attending together, had both signed on together. There had been no representation or failure to disclose. By attending together, said the representative, and receiving different benefits, the DHSS was imputed with notice that Mrs. Duggan was obtaining unemployment benefit. It was also submitted that the expenditure
- E** of the surplus benefit was a consequence of the Adjudication Officer's actions and that no check was made if the maternity allowance was replaced or if the wife had gone back to work.

- In reply to that submission the representative made a significant point. He pointed out that the obligation to report that Mrs. Duggan was receiving unemployment benefit was a continuing obligation. So it is under the
- F** regulations which concern the claiming of supplementary benefit. When the Tribunal came to give their decision, they found, first, that it was the Adjudication Officer of his own volition who adjusted Mr. Duggan's supplementary allowance when maternity allowance ceased, and that Mr. Duggan did not notify the Department of Social Security of this change of circumstance until the wife's unemployment benefit ceased. They then
- G** made this finding: "The payment of unemployment benefit to the wife is a material fact and the claimant failed to disclose it. The expenditure of the relevant [sums of benefit] was not incurred in consequence of the failure to

A disclose a material fact but in consequence of the actions by the Adjudicating Officer." What the Tribunal appears to have totally ignored in coming to that conclusion was the submission which had been made on behalf of the Ministry that Mr. Duggan's obligation to disclose these facts had been a continuing obligation throughout the whole of the year that his wife had been receiving the unemployment benefit.

B The Adjudication Officer appealed to the Commissioner, and in view of the submissions which had been put to the Tribunal, his grounds of appeal, very naturally, concentrated on the question whether or no one minister was the agent of the other and also upon whether, by attending and signing on together as the Duggans did, the Department of Health and Social Security should be regarded as having had imputed notice that Mrs. Duggan was

C claiming and about to receive unemployment benefit.

Those are matters which have not been argued before us and indeed the whole of the argument in this court has simply been on the basis of the point of causation.

The present skeleton argument put in on behalf of the appellant, Mr. Duggan, was first that there was an overpayment of Mr. Duggan's
D supplementary allowance in the period; second, that Mr. Duggan failed to disclose a material fact, namely that his wife was receiving unemployment benefit, and repeated the finding which had been made by the Adjudication Officer. In the circumstances it is not surprising that when the Commissioner came to give his decision, he concentrated largely on the two points, agency and imputed notice, which have not been argued before us
E today. But out of those contentions arose the question as to what was the duty of the Adjudication Officer to elicit the facts of the claim in circumstances such as the present.

The argument before us has been that at the end of paragraph 7 of the Commissioner's decision is the sentence: "The tribunal erred in considering it the duty of the adjudication officer to elicit the facts of the claimant's
F circumstances". We have heard considerable argument about that, for the purpose of indicating to us that the Commissioner had misdirected himself in law and that accordingly, because of that, his decision should be quashed and set aside.

For my own part, it does not seem to me to matter whether the Commissioner was right or wrong when he came to the conclusion he did
G as to the duty of the Adjudication Officer. Previously in the same paragraph the Commissioner had said, "it does not in any event assist the

- A** claimant as it is well established that negligence on the part of the Department does not itself exonerate a claimant from his or her obligation under the relevant legislation. . . . Even if the adjudication officer were carrying out his duties negligently [by not making more enquiries] that does not take the matter any further in favour of the claimant as it does not enable the claimant to say that if that be the case then in some way or other
- B** the claimant not having disclosed a material fact it exonerates him from so doing and the overpayment was not made in consequence of his failure to disclose.” The Commissioner had clearly addressed his mind to what in my view was the real point that matters in this case, which is whether or no the admitted failure to disclose on the part of Mr. Duggan resulted in the overpayment of benefit to Mr. Duggan.
- C** It is quite clear that the Tribunal, in wholly ignoring the fact that Mr. Duggan’s duty was a continuing duty, came to a wrong conclusion when it came to the conclusion which it did and I would agree with what my Lord has said that, even putting that on one side, their decision that the causation of the overpayment was only that the Adjudication Officer increased the supplementary benefit when he thought that maternity benefit had come to
- D** an end, was a conclusion to which no reasonable tribunal could have come. But quite apart from that, even if it could in some way be regarded as a cause of failure to reduce Mr. Duggan’s benefit, the other and real cause here was the breach of the statutory duty imposed upon Mr. Duggan by section 20 of the Supplementary Benefits Act 1976. In my view the Adjudication Officer was right, the Tribunal was wrong, and the
- E** Commissioner was right upon that simple point.

I too would dismiss this appeal.

LORD JUSTICE GLIDEWELL: For the reasons given by my Lords, I also would dismiss this appeal.

MR. OUSELEY: I ask that the appeal be dismissed. The appellant is legally aided and I make no application in respect of costs.

F LORD JUSTICE MAY: Very well. The appeal is dismissed. No order as to costs, save legal aid taxation.
