SUPPLEMENTARY BENEFIT

Conditions of entitlement—"attending for not more than 21 hours a week a course of education".

The claimant, then aged 16, left school in July 1981 and registered with his local careers office Having failed to find work, he returned to school in September 1981 to study for 2 further 'O' level examinations He remained willing to accept immediately any suitable vacancy which might become available to him. Child benefit was paid in respect of him at all material times When he claimed supplementary benefit in September 1981 the supplementary benefit officer disallowed the claim On appeal, the Tribunal awarded benefit on the grounds that the claimant complied with regulation 7(2) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980 The supplementary benefit officer appealed to a Social Security Commissioner

Held that.—

1 The exclusion from supplementary benefit (in section 6(2) of the Supplementary Benefits Act 1976) of a person under 19 applies only if he is in receipt of full-time education by attendance at an establishment recognised by the Secretary of State as being, or as comparable to, a college or school; unless his attendance is full-time the claimant has no need to invoke the 21 hour exception in regulation 7(2) (paragraph 16),

2 Whether the education is full-time must be determined by reference to the hours of compulsory attendance, a person may be compulsorily attending the establishment during hours when he is not attending a course of education at that establishment, but a person cannot be attending such a course during hours when he is not physically present there or participating in some compulsory activity directly controlled by it (paragraph 18);

3 In calculating the hours involved in attending a course of education, account should be taken only of time spent:—

(1) *in the class room under the instruction or supervision of a teacher;*

(2) on certain activities off the school premises which are an integral part of the course and are conducted or supervised by a teacher;

(3) on compulsory and predetermined periods of private study on the premises of the establishment (paragraph 24)

The appeal was dismissed

1. This is a supplementary benefit officer's appeal, brought by leave of the Commissioner, from a decision of the supplementary benefit appeal tribunal ("the appeal tribunal") dated 11 December 1981 which unanimously allowed the claimant's appeal from a decision of the benefit officer issued on 29 October 1981. The general question in issue is whether the claimant was entitled to a supplementary allowance pursuant to his claim therefor made on 29 September 1981. This involves the specific question of the construction to be put upon the phrase "attending for not more than 21 hours a week a course of education".

2. We held an oral hearing of this appeal on 6 April 1982. The benefit officer was represented by Mr R. Birch, of the Solicitor's Office of the Department of Health and Social Security. The claimant was represented by Mr D. Wurtzel of counsel. To each of these gentlemen we are indebted for the economy and lucidity with which they presented their respective submissions.

3. The claimant, then aged 16, left school in July 1981. He had obtained one "O" level—in English language. He registered with the local careers office of his grammar school and sought work. He did not find work. He decided to return to school in September 1981 in order to study for the "O" level examinations in art and English literature. He did so return, but he

continued to scan the job advertisements and remained at all times willing to accept immediately any suitable vacancy which might become available to him. He lived as a member of his parents' household. At all material times child benefit was paid in respect of him. On 29 September 1981 he claimed supplementary benefit.

4. Section 1(1) of the Supplementary Benefits Act 1976 provides as follows:

> "1.—(1) Subject to the provisions of this Act, every person in Great Britain of or over the age of 16 whose resources are insufficient to meet his requirements shall be entitled to benefit as follows—
>
> (a) a supplementary pension if he is one of a married or unmarried couple of whom one is or both are over the age of 65 or if he is not one of such a couple and has attained pensionable age; and
>
> (b) a supplementary allowance in any other case;
>
> and to such benefit by way of a single payment to meet an exceptional need as may be determined under section 3 of this Act."

5. Section 5 of the 1976 Act provides as follows:

> "5. Except in prescribed cases the right of any person to a supplementary allowance shall be subject to the condition that he is registered for employment in such manner as may be prescribed and is available for employment; and regulations may make provisions as to—
>
> (a) what is and is not to be treated as employment for the purposes of this section; and
>
> (b) the circumstances in which a person is or is not to be treated for those purposes as available for employment."

6. Section 6 of the 1976 Act provides as follows:

> "6.—(1) A person who is engaged in remunerative full-time work shall not be entitled to supplementary benefit; and regulations may make provision as to the circumstances in which a person is or is not to be treated for the purposes of this subsection as so engaged.
>
> (2) A person who has not attained the age of 19 and is receiving relevant education shall not be entitled to supplementary benefit except in prescribed circumstances.
>
> (3) Regulations may make provision as to the circumstances in which a person is or is not to be treated for the purposes of the preceding subsection as receiving relevant education; and in this section 'relevant education' means full-time education by attendance at an establishment recognised by the Secretary of State as being, or as comparable to, a college or school."

(It is common ground that the school attended by the claimant was such a school.)

7. At the time material to this appeal the relevant regulations made pursuant to the powers set out in sections 5 and 6 of the 1976 Act were to be found in the Supplementary Benefit (Conditions of Entitlement) Regulations 1980 [S.I. 1980 No 1586] ("the 1980 Regulations"), as amended by

the Supplementary Benefit (Conditions of Entitlement) Amendment Regulations 1981 [S.I. 1981 No 99] and the Supplementary Benefit (Miscellaneous Amendments) Regulations 1981 [S.I. 1981 No 815]. It is, accordingly, from the 1980 Regulations (amended as aforesaid) that we quote below. On 23 November 1981 the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [S.I. 1981 No 1526] ("the 1981 Regulations") came into operation. These were consolidating regulations. They did not affect the substance of what is quoted below—although there was a measure of rewording and renumbering of regulations. What we say in this decision is as material to the current legislation as it is to the pre-23 November 1981 legislation. We have, accordingly, indicated, immediately after each quotation below, where the equivalent provision is to be found in the 1981 Regulations.

8. Regulation 7 of the 1980 Regulations provided as follows:

"7.—(1) Subject to paragraph (2) and regulation 8, a claimant shall be treated as available for employment if he is available to be employed within the meaning of section 17(1)(a)(i) of the Social Security Act (available for employment for purposes of unemployment benefit) or regulations made under it.

(2) A claimant who is attending for not more than 21 hours a week a course of education at an establishment recognised by the Secretary of State as being, or as comparable to, a college or school or a course of training or instruction analogous to a course for which a training allowance would be payable shall be treated as available for employment if—

(a) he is prepared to terminate the course immediately a suitable vacancy becomes available to him;

(b) he has not terminated an employment or a course of education which was for more than 21 hours a week for the purpose of attending the course; and

(c) either he is aged less than 21 or, in the period immediately preceding the commencement of the course, he was in receipt of an allowance and had been registered and available for employment for not less than 12 months pursuant to section 5."

(Cf regulation 7 of the 1981 Regulations.)

9. Regulation 11 of the 1980 Regulations provided as follows:

"11. For the purposes of section 6(2) (persons under 19 receiving relevant education not to be entitled to supplementary benefit) a person shall be treated as receiving relevant education for any period during which child benefit is or would, if a claim were made for it, be payable in respect of him under Part I of the Child Benefit Act 1975, or would, but for either paragraph 1(c) of Schedule 1 to that Act (children in care) or failure to satisfy conditions as to residence and presence pursuant to section 13(2) and (3) of that Act, be so payable."

(Cf regulation 10 of the 1981 Regulations.)

10. Regulation 12 of the 1980 Regulations was headed: "Circumstances in which persons receiving relevant education are to be entitled to supplementary benefit". We think it desirable to set out the whole of this regulation; although it is common ground that paragraphs (a) to (d) of the regulation have no immediate bearing upon this appeal:

"12. A claimant to whom regulation 11 applies whose resources are insufficient to meet his requirements shall be entitled to supplementary benefit if he is a person to whom one or more of the following paragraphs applies:—

(a) he is the parent of a child for whom he is responsible and who is a member of the same household;

(b) he is severely mentally or physically handicapped and by reason of that handicap would be unlikely, if he were available for employment and not receiving relevant education, to obtain employment within the next 12 months;

(c) he has no parent and there is no person acting in the place of his parent;

(d) he is living away from and is estranged from his parents or a person acting in the place of his parents;

(e) he is attending a course of education to which, and in circumstances in which, paragraph (2) of regulation 7 (part-time courses) applies and he satisfies the conditions in that paragraph."

(Cf regulation 11 of the 1981 Regulations.)

Paragraph (e) was added, with effect from 2 February 1981, by the aforesaid Supplementary Benefit (Conditions of Entitlement) Amendment Regulations 1981.

11. Regulation 11 of the 1980 Regulations was, of course, a "deeming" provision (as is its successor, regulation 10 of the 1981 Regulations). A person under 19 in respect of whom child benefit is, or if claimed would be, payable is treated as receiving relevant education. At first sight it may not be easy to understand the thinking which underlies this provision. Section 1(1) of the Child Benefit Act 1975 provides as follows:

"1.—(1) Subject to the provisions of this Part of this Act, a person who is responsible for one or more children in any week beginning on or after the appointed day shall be entitled to a benefit (to be known as 'child benefit') for that week in respect of the child or each of the children for whom he is responsible."

Section 2(1) provides thus:

"2.—(1) For the purposes of this Part of this Act a person shall be treated as a child for any week in which—

(a) he is under the age of sixteen; or

(b) he is under the age of nineteen and receiving full-time education by attendance at a recognised educational establishment."

When section 2(1)(b) above is compared with section 6(2) and (3) of the Supplementary Benefits Act 1976 (see paragraph 6 above), it may be wondered why any "deeming" was considered to be called for. Is not a person who is over 16 and in respect of whom child benefit is payable inevitably a person who is receiving relevant education?

12. One answer is, of course, that regulation 6 ("Interruption of full-time education") and regulation 7 ("Circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child") of the Child Benefit (General) Regulations 1976 [S.I. 1976 No 965], as amended by the Child Benefit (General) Amendment Regulations 1977

[S.I. 1977 No 534] and the Child Benefit (General) Amendment Regulations 1980 [S.I. 1980 No 1045], provide for specified circumstances in which a person is to be treated (in effect) as receiving full-time education during periods when, in fact, he is not receiving it. Regulation 11 of the 1980 Regulations imports these refinements into the supplementary benefit system without repeating them verbatim in the supplementary benefit legislation. (No doubt other instances could be cited to demonstrate that regulation 11 of the 1980 Regulations is an example of "draftsman's shorthand".)

13. The full-time education referred to in section 6(3) of the Supplementary Benefits Act 1976 involves attendance at "an establishment recognised by the Secretary of State as being, or as comparable to, a college or school". In section 24(1) of the Child Benefit Act 1975, however, the definition of "recognised educational establishment" includes "a university" amongst the establishments to be recognised by the Secretary of State. It might be thought, therefore, that the effect of regulation 11 of the 1980 Regulations would be that a university student who was under 19 might be deemed to be receiving relevant education. This is not, in fact, the case. Regulation 7A of the Child Benefit (General) Regulations 1976 (inserted by the aforesaid Amendment Regulations of 1977) provides as follows:

> "7A. Benefit shall not be payable in respect of a child by virtue of section 2(1)(b) of the [Child Benefit] Act (person to be treated as a child for any week in which he is aged 16 but under the age of 19 and receiving full-time education) if that child is receiving advanced education."

"Advanced education" is defined so as to include full-time education "for the purposes of a course in preparation for a degree, a diploma of higher education, a higher national diploma or a teaching qualification". For the purposes of supplementary benefit, the separate category of "student" is recognised:

> "'student' means a person under pensionable age who has ceased relevant education and is attending a course of full-time education, but he shall not be deemed to be a student during periods when he is not attending his course and is not engaged in a programme of studies." (This is the definition in regulation 2 of the 1981 Regulations. The 1980 definition referred to "a person under pensionable age who has left school and.....etc.").

14. It is to be noted that child benefit will immediately cease to be payable in respect of a person who successfully avails himself of regulation 12 of the 1980 Regulations. Regulation 7C of the Child Benefit (General) Regulations 1976 (inserted by the aforesaid Amendment Regulations of 1980) provides as follows:

> "7C. Child benefit shall not be payable in respect of a child by virtue of section 2(1)(b) of the [Child Benefit] Act for any week in respect of which that child receives a supplementary allowance under the Supplementary Benefits Act 1976."

15. The effect of the legislation cited in paragraphs 4 to 14 above can, for the purposes of this appeal, be summarised as follows:

(1) Prima facie, a person who is under 19 and receiving relevant education is not entitled to supplementary benefit.

(2) A person is to be treated as receiving relevant education for any period during which child benefit is payable in respect of him.

(3) However, a person who is under 19 and receiving relevant education is eligible for supplementary benefit provided that—

(a) he is attending for not more than 21 hours a week a course of education (at a recognised establishment in the nature of a college or school); and

(b) he is available for employment within the meaning of regulation 7 of the 1980 Regulations (cf paragraph 8 above).

(4) If such a person is awarded supplementary benefit, child benefit will immediately cease to be payable in respect of him.

16. The point of construction facing us will now be apparent. We are dealing with an exception to the general rule which disentitles from supplementary benefit those who are under 19 and in receipt of relevant education; i.e. "full-time education by attendance at an establishment recognised by the Secretary of State as being, or as comparable to, a college or school". Unless the relevant claimant is in receipt of such *full-time* education, he does not fall within the general exclusion from which the 21 hours exception furnishes an escape. It is, accordingly, quite fruitless to construe the 21 hours exception in terms of *attendance at* the relevant establishment. That would be to deprive the exception of all effect. Unless attendance *is* full-time, the claimant has no need to invoke the exception. Manifestly, when using the phraseology "attending for not more than 21 hours a week a course of education at an establishment.....etc" the draftsman meant to draw a firm distinction between attendance at an establishment and attending a course of education at such an establishment. How, then, is this distinction to be translated into practical terms?

17. The drafting is somewhat less than felicitous. The verb "attend" bears several meanings in English. It can mean to turn the mind to something; it can mean to wait upon or accompany someone or something; or it can mean to be present at some place or function. We are in no doubt that it was in this last sense that the draftsman intended to use the word in regulation 7 of the 1980 Regulations. The difficulty is that this last sense imports physical presence at some geographically identifiable location. In ordinary English "a course" is an abstraction. One follows or pursues a course; and such following or pursuit comprises all the home study and other out-of-hours activities involved in the course. On the other hand, attending *a course of lectures* imports nothing more than physically attending the lectures referred to. This is because the lectures are given in a physical location—and the "course of lectures" assumes the nature of a place or function. But where does "a course of education" fit into the analysis?

18. We have already demonstrated that "attending a course of education at an establishment" must mean something different from merely attending at that establishment; and we stress that we are referring to the hours of *compulsory* attendance at the establishment, for it is such hours, and such only, that will determine whether the education in question is or is not full-time. In other words, a person may be compulsorily attending the establishment during hours when he is not attending a course of education at that establishment. On the other hand, we do not think that a person can be held to be *attending* a course of education at an establishment during hours when he is not either physically present at the establishment or participating in some compulsory activity directly controlled by the establishment. (In the latter category would fall such activities as a field class in botany or an organised visit to the local museum.) The draftsman's selection of the word "attend" must import the notion of place or function (cf the third meaning

set out in paragraph 17 above). He has eschewed such wider terms as "following a course of education" or "pursuing a course of education".

19. In the course of the argument we were referred to unreported Decision C.F. 3/73. This concerned the old family allowance (now, of course, replaced by child benefit). Section 2(1) of the Family Allowances Act 1965 provided, so far as material, as follows:

> "2.—(1) A person shall be treated for the purposes of this Act as a child—
>
> (a) .....
>
> (b) during any period before he attains the age of nineteen whilst he is undergoing full-time instruction in a school; ....."

Section 13(1) of the same Act conferred upon the Secretary of State power to make regulations—

> "for specifying the circumstances in which a person is to be treated for the purposes of this Act as undergoing full-time instruction in a school....."

Regulation 15(1) of the Family Allowances (Qualifications) Regulations 1969 [S.I. 1969 No 212] was made in exercise of that power and opened thus:

> "15.—(1) Subject to the provisions of paragraph (2) of this regulation a person shall be treated for the purposes of the Act as undergoing full-time instruction in a school in any of the following circumstances:—
>
> (a) If he is undergoing full-time instruction—
>
> (i) in England or Wales, at any university or college or at any school as defined by the Education Act 1944 or establishment for further education; or.....".

20. In the case the subject of Decision C.F. 3/73 a youth of 17 was enrolled with the National Extension College, Cambridge, for correspondence courses in 'A' level history and English. The Commissioner carefully considered the meaning to be attributed to the words "undergoing full-time instruction.....at any.....establishment for further education". He drew attention to the change of preposition in the phrases "in a school" and "at any university or college or at any school.....or establishment for further education". In paragraph 19 he said:

> "The change from 'in' to 'at' seems to me significant. It can be explained by the need to take into account that a course of studies may take a student away from the premises and even the locality of the institution where his studies are organised, particularly in the case of university courses..... . In such cases, the student is not *at* his educational institution in the sense of being physically where the premises of the institution are, nor is he on vacation. Yet I would not think it wrong to speak of him as undergoing instruction at the institution."

In paragraph 20 the Commissioner expressly rejected the submission that the bare preposition "at" fell to be construed as "attending at".

21. Decision C.F. 3/73 turned on wording significantly different from that with which we are concerned in this appeal. In our view the real relevance of that decision to this case lies in the striking change of wording between section 2(1) of the Family Allowances Act 1965 and section 2(1) of

the Child Benefit Act 1975. "Undergoing full-time instruction in a school" has become "receiving full-time education by attendance at a recognised educational establishment" (cf paragraphs 11 and 19 above). Universities and colleges are now dealt with by the definition of "recognised educational establishment" in section 24(1) of the Child Benefit Act 1975 (cf paragraph 13 above). The use of the phrase "attendance at" has rendered superfluous further speculation as to the difference (if any) between "undergoing full-time instruction in" and "undergoing full-time instruction at". We do not think that this change was merely fortuitous. We think that the draftsman was at pains to obviate the effect of Decision C.F. 3/73 and to stress that physical presence was of the essence.

22. Mr Birch submitted to us that each and all of the following should be taken into account for the purpose of "totting up" the hours devoted weekly to attending a course:

(a) time spent in class whilst the relevant subject (or subjects) was being taught;

(b) official periods of study on the school premises;

(c) time spent on voluntary study, both on and off the school premises; and

(d) preparatory work, both on and off the school premises.

We are not sure that there is any substantial difference between (c) and (d). In our view, however, neither (c) nor (d) can properly be imported into the calculation of the weekly hours. When a pupil is working at home he is pursuing his course. By no reasonable stretch of the imagination can he be regarded as attending that course. Nor can this distinction be affected by the fact that home-work may be required of him. Moreover, we cannot think it material that the pupil may choose to do his "home-work" at times when he is on the school premises but would otherwise be idle. At such times he is both attending the establishment and pursuing his course; but he is not *attending* his course.

23. Mr Wurtzel initially invited us to disregard all time other than that during which the pupil was actually being taught. The presence of a teacher was, he submitted, crucial. He readily conceded, however, that if there were compulsory periods of private study on the premises of the establishment, these too should be counted. He did not, we think, challenge the view that, if a teacher was present and relevant instruction was being given, it did not matter that such instruction was being given off the premises of the establishment. It would be part of the course—and the pupil would be physically attending it.

24. In our view the correct analysis is that indicated in paragraph 23 above. In calculating the hours involved in attending a course of education the following, and only the following, should be taken into account:

(a) Time spent in a classroom (or laboratory or such like) under the instruction or supervision of a teacher.

(b) Time spent on compulsory field-work, outings, projects and the like which, although off the premises of the relevant establishment, are an integral part of the course which the claimant is following and are conducted or supervised by a teacher from the establishment.

(c) Time spent on compulsory and predetermined periods of private study on the premises of the establishment.

25. The foregoing seems to us to be the natural and proper construction of regulation 7(2) of the 1980 Regulations. It has, moreover, the merit of posing questions the answers to which are objectively ascertainable. Little more need be done than to refer to the claimant's school or college timetable. If benefit officers and appeal tribunals were to be called upon to assess the amount of time spent by a claimant on home-work and/or unscheduled private study on the establishment's premises they would be faced with an almost impossible task. The claimant's own evidence would be virtually incapable of effective verification. Moreover, a premium would be put on indolence. A pupil who merely went through the motions of attending the relevant classes and who did no work out of class would be better placed for obtaining supplementary benefit than would his diligent colleague who spent his spare time through the day in the school library and who spent his evenings on home-work and general reading round his subject. We cannot think that Parliament ever intended a result so inimical to the general interest. In *Lake v Essex County Council* [1979] I.C.R. 577 a question arose as to the number of hours a week for which a teacher was employed. The teacher sought to carry into the calculation work done on preparation and marking over and above that done in the 3 hours 40 minutes a week which her timetable specifically allotted to such tasks. She contended that her contract imported an implied term that her employment extended to this extra time. The Court of Appeal rejected this contention. Lawton L J said this:

> "Applying the well-known principles for the insertion of implied terms in contracts, I ask myself the question: would any local education authority have agreed to any such term? At once questions of vagueness arise because the words 'preparing the lessons he will have to give' or some such like provision in the implied term would make it impossible for the local education authority to supervise, or measure for the purposes of payment, that which would be required for the preparation of lessons." (At p 581)

Lake's case, of course, was decided under the law of contract and has no direct bearing upon the issues in this appeal. It does, however, highlight the undesirability of and the difficulties created by a method of computation which is incapable of objective verification.

26. In the course of argument we were referred to the Court of Appeal's decision in *Bloomfield v Supplementary Benefits Commission* (1979) (Decisions of the Courts relating to Supplementary Benefits and Family Income Supplements Legislation p 173, CSB23). That case turned upon the construction of section 7(1) of the Supplementary Benefits Act 1976 as it stood prior to the substantial amendments of 1980. The subsection provided thus:

> "7.—(1) A person attending a school, or receiving full-time instruction of a kind given in schools, shall not be entitled to supplementary benefit; but, where it appears to the Commission that there are exceptional circumstances justifying it, they may award supplementary benefit to a person who would be entitled to it but for this section."

The claimant in *Bloomfield's* case was enrolled at Christ's Hospital, the well-known school in Horsham. He suffered from chondrolysis, which caused him to be absent from school for prolonged periods extending, on at least one occasion, to a whole term. The Court of Appeal, upholding Sheen J, held that the claimant had at all material times been "a person attending a school":

> ".....it seems to me, as it seemed to the learned Judge, that it really cannot successfully be argued that a person who is still on the school books and who may return to complete his education at school, and does in fact continue his education at school after a period in hospital, cannot be said to be a person attending school because he is at the time when his appeal is heard, or when he applies to the Supplementary Benefits Commission, or at some earlier time, absent physically from school because he is being treated for a serious disease." (Per Stephenson L J, at pp 177–178.)

27. We do not think that *Bloomfield's* case touches the issues with which we are concerned in this appeal. We have already stressed that the 1980 Regulations require that a clear distinction be drawn between attending a school and attending a course of education thereat. In common parlance, sentences like "My son is at Greyfriars" or "My daughter attends St Trinian's" do not have a literal, hour-by-hour meaning. They would be accepted as true even if said in the middle of the summer holidays, with the respective son or daughter standing beside the speaker on a beach in Ibiza. Such a generalised meaning of "attend" cannot, however, be appropriate in a context which expressly relates attendance to a period of hours a week.

28. We return now to the narrative of the case before us. The benefit officer disallowed the claim for supplementary benefit made on 29 September 1981. He took the view that the claimant did not fall within any of the exceptions available to claimants who are under 19 and receiving relevant education. His specific approach to regulation 12(e) of the 1980 Regulations is not clear to us. In his brief submission to the appeal tribunal he wrote:

> "The Supplementary Benefits Act provides that benefit shall not be paid to a person under 19 who is receiving relevant education, unless he falls within any of the special situations governed by the Regulations, i.e. he is a parent responsible for a child, severely handicapped, an unsupported orphan or estranged from his parents."

It will be noted that, while he referred to paragraphs (a) to (d) of regulation 12 of the 1980 Regulations, he made no reference to paragraph (e), which had been in effect since 2 February 1981 (cf paragraph 10 above). Prior to making his decision, however, he had written to the claimant in the following terms:

> "In order that we may assess your claim to supplementary benefit, please obtain a letter from your Headmaster stating the number of hours you attend school each week."

It will be noted that this enquiry seems to be directed to the issue of "full-time education by attendance at an establishment ....etc", rather than to the issue of "attending for not more than 21 hours a week a course of education at an establishment....." The headmaster wrote:

> "[The claimant] is following a full-time course at St Cuthbert's. No provision has been made for part-time study."

So, although not precisely an answer to the question which had been posed, this furnished the benefit officer with an apparently valid basis for disallowing the claim. The claimant appealed to the appeal tribunal.

29. The appeal tribunal's findings of material facts are recorded thus:

> "The tribunal took note of the fact that the appellant left school in July 1981, and that he has not returned to full-time education. They also took note of the point that according to the appellant's headmaster the course is considered full-time. Child benefit is at

present in payment unless and until the appellant receives supplementary allowance. At the date of his application the appellant was studying 2 'O' level subjects which necessitated attendance at classes totalling 18½ hours weekly. The appellant also spent additional periods each day voluntarily in school. His time in the school premises thus totalling more than 21 hours. The appellant is registered with the careers office and is immediately available for any suitable vacancy and also complies with regulation 7(2)(b) and (c)."

30. The appeal tribunal unanimously allowed the claimant's appeal. Its reasons were stated thus:

"The class attendance of the appellant for his course of education at school does not exceed 21 hours weekly and the appellant therefore complies with regulation 7(2) of the (Conditions of Entitlement Regulations 1980)."

31. We have in the papers the note of evidence taken by the chairman of the appeal tribunal. We quote the following extracts:

"Sept Nov 18½ hours weekly. 30 Nov + 13½ hours weekly"

"Father states appellant attends 9 am to 4 pm. Appellant confirms that he is normally in school premises during the normal school hours but is not required to be present outside his class times..... Attends morning roll call every day 9 10 am even on days when first lesson is after 1 pm."

It will be seen that—

(a) there was ample evidence to justify the appeal tribunal's findings of material facts; and

(b) the appeal tribunal applied what we consider to be the proper construction of regulations 7(2) and 12(e) of the 1980 Regulations.

It is true that it had before it the written statement of the headmaster to the effect that the claimant was following a full-time course and that the school made no provision for part-time study. It was perfectly entitled, however, to prefer to these general statements the precise (and unchallenged) evidence given orally in respect of the actual hours of class attendance involved in the course which the appellant was following. The headmaster was not available for cross-examination. Had he been so, he might well have disagreed with the claimant's evidence that the claimant was not required to be present on the premises outside his class times. As we have demonstrated, however, this would have had no direct bearing upon the hours spent in attending *the course*. It would merely have confirmed that the claimant was receiving full-time education. In fact, the appeal tribunal's finding that the claimant was *voluntarily* on the school premises at times when he was not in class would have justified the conclusion that the claimant was not *actually* receiving relevant education at all. He could only be deemed to be receiving such education (cf regulation 11 of the 1980 Regulations). Indeed, the appeal tribunal's express reference to the fact that child benefit was in payment may well indicate that it had these points in mind.

32. The appeal tribunal did not, of course, expressly direct any enquiry as to either compulsory unsupervised study on the school premises or compulsory supervised time spent off the premises (cf paragraph 24 above). We cannot, however, regard this as vitiating its decision. The claimant's evidence was to the effect that outside class times all his time was his own. Moreover, the subjects which he was studying (art and English literature) are not such as regularly involve "off the premises" activities; perhaps an occasional visit to an art gallery or to a theatre—but nothing likely to affect

the weekly tally of hours devoted to the course. We have come to the conclusion that, in all the circumstances, nothing would be gained by our remitting this matter to a differently constituted appeal tribunal in order that the facts might be more specifically found.

33. It follows that we find no error of law in the appeal tribunal's decision and that the appeal of the supplementary benefit officer is disallowed.

(Signed) I. O. Griffiths
Chief Commissioner

(Signed) J. G. Monroe
Commissioner

(Signed) J. Mitchell
Commissioner
