SUPPLEMENTARY BENEFIT

Requirements and resources—aggregation where one of an unmarried couple is a student. Meaning of "home" where there is more than one unit of accommodation.

The claimant, who was unemployed, lived in rented accommodation. His fiancee was a University student and in receipt of a local authority education grant. She lived with the claimant in his accommodation during vacation periods but rented a bed-sitting room adjacent to the University during term times because it was impracticable to travel daily from the claimant's accommodation. The supplementary benefit officer decided they were an "unmarried couple" within the meaning of section 34(1) of the Supplementary Benefits Act 1976 and in aggregating their requirements and resources took into account a weekly amount in respect of the fiancee's education grant, but made no allowance for the rent of her bed-sitting room. The decision was, on appeal, upheld by the tribunal. The claimant appealed to a Social Security Commissioner.

Held that:

1. the concept of "living together as husband and wife" involves living in the same household, apart from any temporary absences. Such absences arise from employment etc but could include absences necessary for higher education (paragraph 4);

2. the claimant and his fiancee at all material times constituted an "unmarried couple" including periods of University term time during which she occupied the bed-sitting room (paragraph 10(2));

3. regulation 11(2)(1) of the Supplementary Benefit (Resources) Regulations 1980 as amended and in force from 24 November 1980 clearly required that the weekly equivalent of the fiancee's student grant be taken into account (paragraph 7);

4. under the Supplementary Benefit (Requirements) Regulations 1980 as amended and operative from 24 November 1980 the amounts to be attributed in respect of "housing requirements" are by regulations 15 to 20 expressed in reference to "the home" in the singular save where in reference to an assessment unit changing its home;

5. under the Requirements Regulations "the home" does *not* extend to comprise a plurality of units of accommodation in different locations, but this is not intended to prejudge cases in which *some* plurality of units—for example, two adjacent but physically separate cottages—may fairly be regarded as together constituting "the home" (paragraph 19).

The appeal was dismissed.

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1. (1) This is a claimant's appeal brought by my leave against the unanimous decision dated 23 December 1981 of a supplementary benefit appeal tribunal ("the tribunal"), upholding the decision dated 13 October 1981 by a supplementary benefit officer, that from 5 October 1981 the claimant was not entitled to a supplementary allowance.

(2) Although supported in part by the benefit officer now concerned, the appeal does not succeed. For I am satisfied that the tribunal's decision was correct, although I have, as below indicated, reached that conclusion by other reasoning than that to be found expressed in the tribunal's decision.

(3) The practical effect of my present decision is that the benefit officer's decision of 13 October 1981 continues to hold good.

2. (1) The claimant was at all material times unemployed and living in rented accommodation in Somerset. He had a fiancee, who for the academic year 1981/1982 was attending a full-time course of study at Bristol University in respect of which she was in receipt of a local authority education grant at the rate of £1535.00 for the year.

(2) The components of that grant included, it is common ground, sums intended to provide for the cost of her accommodation during her term times (totalling some 30 weeks) and her Christmas and Easter vacations (totalling some 8 weeks).

(3) It is common ground also that whilst outside her term times the claimant and his fiancee lived together as man and wife in the rented accommodation in Somerset, during her term times she rented a small bed-sitting-room in Bristol which she occupied in order to be able to conform to the University timetabling, since it was impracticable to do that by daily travel from and to the Somerset accommodation.

(4) Whilst it is, for reasons which will later appear, immaterial for me to reach a decision as to this, the claimant provided evidence to the tribunal that apart from the impracticability of his fiancee travelling to and from Bristol daily, the cost of such travel by comparison with the outlay upon the bed-sitting-room was such that the course in fact adopted was the more economic.

3. (1) The general rule under the Supplementary Benefits Act 1976 ("the Act") is that the eligibility of a claimant for supplementary allowance is determined by an assessment of his individual resources and individual requirements—see section 1(1) of the Act—as also that such allowance is (subject to satisfying other requirements not in issue in the present case) payable to the claimant if upon assessment his requirements are found to exceed his resources, the benefit being paid on a weekly basis. Eligibility is, by necessary implication, also conceptually to be determined on a weekly footing even if, as is usual, that does not in practice happen.

(2) To such general rule there is an important range of exceptions, involving the concept of aggregating the several and joint resources of a plurality of persons and of then determining eligibility (and paying supplementary allowance if payable) by reference to a global assessment, treating one only of those persons (if any) as entitled to benefit.

(3) The most general instances of that approach are those of married couples and their children under 16. But "unmarried couples" are also so treated, that term being defined by section 34(1) of the Act as meaning:—

"a man and a woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances";

and I can here briefly indicate that there are no "prescribed circumstances" to be considered here.

4. (1) What, in the foregoing context constitutes "living together as husband and wife" is not defined by the Act or regulations made thereunder, but is the subject of established case-law authority—see in particular *Butterworth v SBC,* Decisions of the Courts relating to Supplementary Benefits and Family Income Supplements legislation (SB)38 and R(SB) 17/81.

(2) Important ingredients in evaluating the practical application of that formulation are the presence or absence of a stable relationship, of a "common purse", and of "living in the same household". The evaluation proceeds in reference to the circumstances of the particular case and with each material ingredient carrying its ordinary everyday connotation. Thus by way of general guidance the current edition of the Supplementary Benefits Handbook says of "living in the same household":

"The man must be living in the same household as the woman and will usually have no other home where he normally lives. This implies that the couple live together, apart from absences necessary for the man's employment, visits to relatives etc."

However, that is not a legal formulation, and is so framed as to indicate that it is not intended to be an exhaustive exposition. And I, for my part, would find no difficulty in regarding the state of "living in the same household" as subsisting if the Handbook's exposition was altered to transpose each reference to "man" and "woman", or indeed if, so transposing, references to the woman's absences were rendered to include absences necessary for the woman's higher education.

5. What, however, clearly emerges is that this concept of "living together" does not fall to be ascertained on a day-to-day or week-to-week basis under which temporary absences will occasion a break in the

continuity of so living for the purposes of supplementary benefit status; and one may readily contemplate occupational circumstances—e.g. those of foreign-going merchant seamen, or export salesmen making regular sales tours overseas—where what will properly be regarded as a temporary absence will be of no shorter duration than is a university term.

6. The benefit officer who gave the decision of 13 October 1981 upon the claimant's claim for supplementary allowance made his assessment upon the footing that the claimant and his fiancee together fell within the definition in section 34(1) of the Act of an "unmarried couple". So proceeding, he treated them as a single assessment unit and aggregated as the *resources* of such unit the claimant's unemployment benefit and a weekly sum in respect of the fiancee's student grant. Co-relatively, in assessing the *requirements* of the assessment unit their normal requirements were taken at the "married rate", including an element in respect of the fiancee. Amounts were allowed by way of *housing requirements* in respect of the accommodation in Somerset, but no allowance by way of housing requirements (or otherwise) was made in respect of the rented bed-sitting-room in Bristol.

7. One of the contentions advanced by the claimant is that his fiancee's student grant should have been excluded from the computation. I will later below deal with that contention in so far as it raises the issue as to whether there should have been aggregation at all, but I can here dispose quite shortly of such contention in so far as it contends that even if aggregation is otherwise applicable the grant should have been excluded: for that submission in my judgment fails, since, in my view, regulation 11(2)(1) of the Supplementary Benefit (Resources) Regulations 1980 as amended and in force from 24 November 1980 clearly bore to require inclusion of the appropriate weekly equivalent of such grant. Indeed, whilst it is unnecessary for me so to decide, I am inclined to the view that the benefit officer was over-generous to the claimant in arriving at the amount of the weekly income resources so to be attributed which his calculations indicate he did.

8. However, the main force of the claimant's contentions on this appeal, as before the tribunal, is that if aggregation applied at all the aggregated requirements should have included an amount by way of housing requirements in respect of the bed-sitting-room in Bristol.

9. The tribunal recorded as a finding of fact that the claimant and his fiancee "live as an unmarried couple"—but in the relevant context that was not a pure question of fact but a mixed question of fact and law, since its determination depends in part upon what is meant by living as an unmarried couple. It may well be that the claimant conceded that he and his fiancee were so living—but this is not an adversarial jurisdiction, and whilst it is quite clear that in the periods during which the claimant and his fiancee were living under the same roof in the accommodation in Somerset they *were* "living together" in the relevant sense, I consider that I have to treat as the first question of critical importance to the appeal one which may or may not have occurred to the tribunal, but at any rate is not reflected by any identifiable reference in their findings or reasons for decision—namely whether the claimant and his fiancee were "living together" during the periods of her University term times also. As to that, the clear and unchallenged evidence before the tribunal was that the claimant and his fiancee never lived together at the bed-sitting-room in Bristol, he continuing to live at the accommodation in Somerset at all material times, and she living apart from him during the periods of University term time during which she occupied the bed-sitting-room.

10. (1) That is an issue which I regard as fundamental to the case, but not one which admits of great elaboration of treatment. The alternatives are either that they were "living together" throughout, her temporary absences from the Somerset accommodation being ignored in the relevant context, or that one regards their separation in the University term times as breaking the continuity of their status as an "unmarried couple".

(2) As to that, and myself applying the criteria I have already indicated, I have come to the conclusion that the tribunal's expressed conclusion, taken as it must be in the first of the above alternatives, was correct—i.e. that the claimant and his fiancee did at all material times constitute an "unmarried couple"—whether or not the tribunal reached such conclusion by appropriate reasoning.

11. It is convenient to here interpose briefly that, had I come to the opposite conclusion on the last-mentioned issue, whilst the claimant's claim for supplementary benefit in respect of periods of University term time would have fallen to be assessed upon an assessment unit comprising only himself, and without aggregation of his fiancee's resources, his requirements also would have been treated as those of a single person—whilst presumptively his fiancee would, had she also claimed, have been unable to fulfil the prerequisite requirement of availability for employment during her University term times.

12. Under the Supplementary Benefit (Requirements) Regulations 1980 as amended and operative as from 24 November 1980 ("the Requirements Regulations"):

(i) The amounts to be attributed in respect of "housing requirements" are by regulations 15 to 20 expressed in reference to "the home"—in the singular—save where, in reference to an assessment unit "changing its home" they are expressed by reference to "the old home" and "the new home";

(ii) regulation 2(1) defines "the home" as meaning:

"the accommodation.....normally occupied by the assessment unit and any other members of the same household as their home.....";

(iii) the same regulation defines "assessment unit" as meaning "the claimant and any partner and dependant of the claimant", "partner" as "one of a married or unmarried couple", and "dependant" as "a person whose requirements and resources are [under the Act] aggregated with and treated as those of the claimant";

(iv) regulation 14(2) which identifies what are to be taken as a claimant's housing requirements provides "the housing requirements of a claimant, including the requirements of any partner or dependant of his, shall be—...";

(v) regulation 14(3) which (with a here immaterial exception) prescribes that amounts in respect of housing requirements are to be applicable only where a member of the assessment unit is responsible for the expenditure to which the amount relates, and also as to who is to be treated as responsible for expenditure, includes a provision that "a claimant shall be treated as responsible for expenditure for which a dependant of his would otherwise be treated as responsible".

13. Thus the issue falling next for determination is whether in the circumstances of the case and in the light of the provisions of the Act and of the Requirements Regulations the tribunal were correct in regarding the expenses incurred upon the bed-sitting-room at Bristol as falling outside the proper application of the Requirements Regulations as to housing requirements in respect of the assessment unit comprising the claimant and his fiancee.

14. As to that, the tribunal indicated in their stated reasons for their decision:

> "As far as the housing costs are concerned, the only rent allowable, apart from a short period of overlapping rent, is in respect of accommodation normally occupied by the assessment unit, "which is in"[the accommodation in Somerset] as the bedsitter...is only occupied during term-time to avoid the cost of daily travel".

15. It is convenient to dispose here of the following minor points:—

(i) it is in my view clear that the tribunal's reference to overlapping rent was intended by way of exposition of the full potential scope of the Requirements Regulations as to housing requirements, but was not indicative of any decision that the overlapping rent provisions in fact bore in the instant case;

(ii) nothing in my decision is to be taken as approbating as a proper foundation for the tribunal's decision the passage above cited as to the bed-sitting-room—for if it represents a "value judgment" as to the bed-sitting-room being not "required" it is unsupported by a relevant finding of fact (and indeed is contrary to the weight of the evidence before them as to the "economics" in point); whilst if it does not, I have been unable to identify it as of relevance in the context of any material statutory requirement.

16. The submissions by the benefit officer now concerned focus materially on the provision in regulation 14(2) which, in addition to indicating that the housing requirements of the claimant are to include the requirements of any partner, provide for the aggregation (with an exception here immaterial) of all prescribed amounts applicable in a claimant's case in respect of housing requirements. On this foundation it is submitted that the housing requirements of a claimant and his partner "are the aggregate of their expenditure"; and that "it is not essential that the accommodation normally occupied by the assessment unit should be under the same roof. Provided that the accommodation is normally occupied by a person who is a member of the same assessment unit as the claimant it falls to be regarded as the home".

17. There can be no doubt that the provision in regulation 14(2) as to including the requirements of any partner must conceptually admit of the partner having housing requirements distinct from those of the other member of the couple, married or unmarried, constituted by both. But whilst on that basis the benefit officer supports the appeal and submits that an allowance in respect of the rent of the bed-sitting-room (though not necessarily in the amounts contended for by the claimant) should have been made, so making common cause with the claimant, I find myself unable to accept those arguments as a correct interpretation of the law in point.

18. (1) The benefit officer's formulation does not to my mind grapple with the crux of the problem, which I see as being whether it is or is not admissible to read "the accommodation..., normally occupied by the assessment unit and any other members of the same household as their home" as admitting the proposition so

contended for, bearing in mind that whilst "the accommodation" can without doing violence to the language be read as referring collectively to more than one unit of accommodation, (thus prospectively admitting of a totality of units of accommodation in different locations "occupied by the assessment unit") it does *not,* in my judgment, admit of any less than the totality of the assessment unit occupying any of the constituent components of such a plurality "as their home". Moreover the reference also to "and any other members of the same household" appears to me to point more strongly to a proper construction of the Requirements Regulations reflecting the concept of "one assessment unit, one household, one home".

(2) Nor do I find any assistance to the claimant in the qualifying adjective "normally" in reference to "occupied". For that, to my mind, does no more than reflect the concept that particular accommodation may be a person's "home" notwithstanding that he or she is temporarily absent from it.

(3) Thus in the light of the evidence in the instant case that the claimant's fiancee alone lived in the bed-sitting-room, even if—contrary to my own view—it was properly to be regarded as *her* "home" while she did so, it was quite clearly *not* the "home" of the claimant and his fiancee, considered as an unmarried couple—for he never lived there at all.

19. (1) Further, whilst the relevant definition of "the home" in conjunction with the expression of the provisions of regulations 15 to 19 of the Requirements Regulations as to outgoings in respect of "the home" (in the singular) might, were there no *other* explanation for the reference in regulation 14(2) to the (separate) housing requirements of a partner, necessitate acceptance that "the home" might be represented by a plurality of units of accommodation in different locations, in fact the provision in question aptly caters to the circumstance in which a claimant might otherwise be said to have no housing requirements because he is living free of charge in accommodation owned or rented by his partner.

(2) Nor can I, it seems to me, ignore the clear indication afforded by the "overlap" provisions in regulation 20 in regard to "the old home" and "the new home"—which would be unnecessary if a plurality of concurrent constituents of the "home" was already provided for.

(3) Whilst this has not influenced me in arriving at my conclusion upon the foundation of the accepted canons of construction as applied to the Requirements Regulations, it may also be observed that were a plurality of accommodations in different locations to be admitted as constituting "the home", the way would be open for the Supplementary Benefits Scheme to be saddled with the aggregate housing expenditure of any couple upon, say a town flat and a country cottage at one or other of which they were at all times living together as husband and wife. For, whilst such claimants might founder upon the separate test of "need", such possibility reinforces my view that under the Requirements Regulations "the home" does *not* extend to comprise a plurality of units of accommodation in different locations.

(4) However, I should by way of precaution make clear that nothing in my present decision is intended, by its reference to

different locations or otherwise, to prejudge cases in which *some* plurality of units—as, for example, two adjacent but physically separate cottages—may fairly be regarded as together constituting "the home" of an assessment unit of appropriate size.

20. Since the effect of my decision is to hold as a matter of law that outgoings in respect of the bed-sitting-room at Bristol in the present case are not admissible housing requirements of the material assessment unit, and that the claimant's fiancee's student grant was an aggregable resource, and since the claimant does not otherwise challenge the assessment upon which the decision of 5 October 1981 was based, it is unnecessary for me to do more than affirm the tribunal's decision.

21. I should for completeness add that since the dates material in the present case the Resources Regulations have undergone some amendment, not affecting the principle of my decision, in reference to the treatment of student grants.

22. I should also mention that I fully appreciate the core of the claimant's grievance that moneys awarded to his fiancee in express contemplation of their providing for her term-time accommodation at University should be aggregated with his resources without a co-relative aggregation of the expenditure found necessary in order so to provide; but that I have no jurisdiction to decide his appeal otherwise than in accordance with the law as I find it to be, any anomaly—if such there be—reflected by the result being within the province of the legislature alone to alter.

(Signed) I. Edwards-Jones
Commissioner