SUPPLEMENTARY BENEFIT

Administrative arrangements between the Departments of Employment and Health and Social Security and the information afforded by girocheque payments of supplementary allowance.

The claimant, who was over the age of 60, elected to discontinue registering as available for employment and became entitled to a supplementary allowance at the long-term rate. Due to an administrative oversight the amount, frequency and manner of payment of his supplementary allowance was not altered consequent upon that election. Once the oversight came to light a payment of arrears was made, but the claimant appealed contending that he was entitled to a further week's benefit. The tribunal dismissed the appeal and the claimant appealed to a Social Security Commissioner. The appeal was heard by a Tribunal of Commissioners.

Held that:

1. the tribunal had failed to give sufficient reasons for their decision and were thus in breach of rule 7(2)(b) of the Supplementary Benefit and Family Income Supplement (Appeals) Rules 1980 (paragraph 1(4));

2. the case be remitted to a differently constituted tribunal for rehearing (paragraph 1(3)).

The Tribunal considered the administrative arrangements in existence between the Department of Employment and Department of Health and Social Security in the context of supplementary allowance. In Appendix II the Tribunal has recorded;

(a) unemployment benefit is paid one week in arrears, one week in advance, whereas supplementary allowance is paid fortnightly in advance;

(b) until 15.9.83 a girocheque for "the allowance now due", which was drawn upon the account of the DHSS but issued by the computer on instructions from the Unemployment Benefit Office (UBO), bore upon it payment dates which referred to the unemployment benefit period of the claimant current at the date of issue of the girocheque whether or not unemployment benefit was in payment;

(c) after 15.9.83 where the girocheque was for a combined payment of unemployment benefit and supplementary allowance, the closing date of the supplementary allowance payment period was shown in addition to the unemployment benefit period. However, no indication was given on the girocheque of the amounts attributable to unemployment benefit and supplementary allowance;

(d) each girocheque payment should be accompanied by a computer generated letter which stated the amount of unemployment benefit, the period in respect of which it was payable, the weekly rate, and the amount of supplementary allowance contained in the compound payment, but that this did not appear to take place universally.

The Tribunal made no substantive finding on the question as to whether there was a subsisting agency agreement between the two Departments or as to disclosure of facts to the UBO being sufficient disclosure to the DHSS, but concluded that substantial evaluation of all relevant circumstances, without prior assumption would be essential where a claimant had been subject to the condition of registration or availability for employment.

1. (1) This is a claimant's appeal against the decision dated 9 November 1982 of a supplementary benefit appeal tribunal ("the tribunal") brought by a Commissioner's leave upon the contention that the tribunal's decision is erroneous in law. The tribunal's decision upheld the decision dated 17 September 1982 of a supplementary benefit officer in the terms "Supplementary Benefit determined and payable at a weekly rate of £43.24 from the prescribed pay day (Friday) in the week commencing 17 5 82".

(2) As the subject matter of this appeal appeared to involve certain factors in common with the appeal on Commissioner's File C.S.B. 397/1983, and likely to be of importance in other cases also, the Chief Commissioner directed a concurrent oral hearing of the two appeals by a Tribunal of Commissioners. The oral hearing was held on 7 December 1983, when the claimant attended but was represented by Mr. F. Lynes (the claimant on the other appeal appeared in person), the benefit officer was represented by Mrs. L. Conlon of the Solicitor's Office, DHSS, and Mr. J. H. Swainson appeared on behalf of "the Secretary of State" and confirmed that he represented, so far as material for our purposes, both the Secretary of State for Health and Social Security and the Secretary of State for Employment.

(3) The appeal succeeds. We set aside the tribunal's decision as given in error of law in the respect under-mentioned and direct that the claimant's appeal from the benefit officer's decision be re-heard by a differently constituted tribunal in accordance with our directions set out in Appendix 1 to this decision. It is not appropriate for us to give ourselves the decision which the tribunal should have given, as a proper determination will require findings of fact additional to those made by the tribunal.

(4) It was, very properly, conceded by Mrs. Conlon before us that the tribunal's decision had been given in error of law, the error consisting in failure to comply sufficiently with the requirements under Rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 ("the Appeals Rules") as to adequately stating their reasons for decision. As that is of itself a sufficient foundation for setting aside the tribunal's decision it is unnecessary for us to rule substantively upon various possible alternative grounds for setting aside, such as whether the tribunal "asked for themselves the right questions" and whether certain findings of fact made by the tribunal could properly be reached on the evidential materials before them; but our concern in those respects is reflected in our directions for the re-hearing.

(5) It is not as a general rule permissible to entertain upon an appeal on a point of law (such as is the present appeal) evidence additional to that which was before the tribunal whose decision is appealed against; but there are exceptions to that general rule. One example is where the grounds of appeal assert a breach of the rules of natural justice in the conduct of the tribunal's hearing; for, within limits prescribed by settled law, evidence is in such a case admitted as to what took place at the hearing. Another exception is, in our judgment, where amplification of the existing evidence is needed in order to ensure that all proper directions may (pursuant to Rule 10(8)(a)(ii) of the Appeals Rules) be given for the re-hearing of an appeal rendered necessary by the setting aside of a tribunal's decision; and it was in that context that we have in this case admitted additional evidence referred to later below.

2. (1) At the time of the benefit officer's decision the claimant was in his early 60's and had been out of employment and in receipt of supplementary allowance since May 1981. Down to 20 May 1982 his entitlement to supplementary allowance had pursuant to section 5 of the Supplementary Benefit Act 1976 as amended ("the Act") been subject to conditions as to his being available for employment and as to his registering for employment. In implementation of those conditions he had been registering

fortnightly at an Unemployment Benefit Office ("UBO") of the Department of Employment ("DOE").

(2) Being, it is common ground, then eligible so to do, the claimant elected to discontinue registering for employment as from 21 May 1982, whilst continuing to claim supplementary benefit. In consequence (and subject to continuing to satisfy other qualifying requirements, which in fact he did) he became entitled to receive supplementary allowance at the "long term rate" for normal requirements, instead of at the "ordinary rate" at which he had previously been paid.

(3) However, due to administrative error the need for alteration both to the amount of his supplementary allowance and in the manner of its payment consequential upon his election to cease registration was for a time overlooked.

(4) Apart from the necessary change in rate, what should have ensued was:

(i) a change, required by law (see paragraph 7 below) in the periods by reference to which his supplementary allowance was paid *from* a payment fortnightly in advance on a day—in his case *Saturday*—linked to the day (Thursday) on which he had been registering for employment once a fortnight, *to* payment fortnightly in advance on a *Monday;* and—as we learned at the hearing—

(ii) an administrative change in the mode of payment *from* payment made by girocheque drawn on a DHSS account with the National Giro but issued under the operation of internal arrangements between the DHSS and the DOE *to* payment by dated payable order issued by the DHSS in the form of an "order book"; and

(iii) an adjustment payment to bridge the change of payment period.

3. (1) Due to the oversight, the claimant continued into September 1982 to receive payment only at the ordinary rate and still by girocheques issued under the internal arrangements last mentioned. But in September the over-sight came to light and steps were taken to regularise the position for the future and to make good to the claimant (by way of an arrears payment) the non-payment for the period since his discontinuance of registration for employment of the excess of "long-term rate" over "normal rate" entitlement.

(2) In such behalf a direct DHSS payment was made to him of £139.18, which he duly received, and which he was told, by notification on a form FF260 dated 17 September 1982, was referable to the decision of a supplementary benefit officer that:

> "You are entitled to supplementary pension/allowance of £139.18 for the period from 1.10.82 to 3.10.82 as arrears from 21.5.82–30.9.82 (long term addition awarded)."

The tribunal have made no finding as to this payment, and it is unnecessary for us to do so. But it was suggested before us that it represented the aggregate of the arrears of long term addition *plus* the "bridging" amount needed to bridge entitlement down to the new payday.

(3) At or about the same time he received also a girocheque for £73.78 as to which also the tribunal made, and we have no need to make,

a finding—but which it was suggested represented two weeks benefit at "normal" rate.

4. Equipped with the information so afforded, together with his own records of payments he had received since early May 1981, the claimant endeavoured to verify whether or not his due entitlement of supplementary allowance had now been paid. He took into consideration various changes in the amounts properly payable which he knew had since May 1981 intermediately occurred by reason of changes in his matrimonial circumstances, changes in the amount attributable to his rent and rates, and a general uprating in November 1981. But upon so checking it appeared to him that he was still due one further week's supplementary allowance.

5. He therefore appealed against the benefit officer's decision we have cited in paragraph 1(1) above, indicating:

"I wish to appeal to the Supplementary Benefit Appeal Tribunal because I am being refused payment of supplementary allowance for the period 23.9.82 to 29.9.82—or if this is not the week, I claim that I have not been paid for some other week since May 1981 (possibly the week 8.10.81 to 15.10.81). The last part of the previous paragraph is necessary because I was informed by a member of your staff earlier this week—that the dates used by the DHSS and the dates used by the Dept of Employment (who have been paying me for the most part) are not the same week. I may add that I have a record of every payment since May 1981."

6. In due course the claimant's appeal came before the tribunal. On the form LT205 before the tribunal the tribunal were told the position as to the claimant ceasing to register for employment and becoming entitled to the higher rate, and as to the administrative oversight, and were told also that:—

"[The claimant] continued to be paid via the unemployment benefit office, the final payment being made from there was for 2 weeks allowance paid on 17.9.82 for the period 17.9.82 to 30.9.82. Arrears of benefit to include the long term rate of normal requirements for the period 21.5.82 to 30.9.82 were sent to the appellant on 22.9.82. Along with this payment was sent his allowance for the period 1.10.82—3.10.82. Payment from week commencing 4.10.82 continues to be paid to [the claimant] via order book now that he no longer registers for employment."

7. (1) Regulation 7(2) of the Supplementary Benefit (Determination of Questions) Regulations 1980 ("the DQ Regulations"), made under the Supplementary Benefits Act 1976 as amended ("the Act") provided at all material times that the "benefit week" applicable to a person not receiving unemployment benefit but to whom Section 5 of the Act (right to allowance subject to condition of registration and availability for employment) applied should be the day of the week on which if he had been entitled unemployment benefit would have been payable.

(2) Regulation 7 further so provided that, in cases other than those (such as the last-mentioned) specially provided for therein, the applicable benefit week should be a week commencing on a Monday.

(3) We would here mention that, consequent upon a general waiver of the condition as to registration for employment as from 18.10.82, Regulation 7 has since been amended in terms which have the effect that payment of supplementary allowance is

aligned with unemployment benefit payment dates only for claimants in receipt of unemployment benefit. But such amendments, whilst reducing the number of cases now affected by such alignment, continues to bear as last indicated—moreover what we have later to say about the arrangements where such an alignment is or has been operative will continue to be of relevance in "repayment cases" under Section 20 of the Act for many years to come, and may well be relevant to pending and future criminal proceedings under the Act also.

8. Under the head of "Reasons for the SBO's decision" the tribunal were further informed that the SBO had regarded Regulation 7(2)(b) of the DQ Regulations as applicable to the claimant up to 21.5.82 and that it had the effect that the claimant's supplementary allowance was payable on a Friday, being the day in the week on which unemployment benefit would have been payable; that the final payment "by the unemployment benefit office" had been made "from there" on 17.9.82 and represented 2 weeks supplementary allowance covering his entitlement until 30.9.82; that the "gap" which fell to be bridged on making the change to a Monday payment date was as to entitlement for the period 1.10.82 to 3.10.82 (calculated as 3/7ths of a weekly entitlement of £43.24 and amounting to £18.53); that such payment along with the arrears of long term rate for normal requirements had been sent to the claimant on 22.9.82. Also that "the SBO is satisfied that supplementary allowance has been paid continuously to [the claimant] since 17.5.81."

9. The tribunal in deciding that the SBO's decision be upheld gave as their reasons for decision:—

"The appellant's requirements had been correctly assessed under Regulation (9)2" (*sic*) "of the Resources regulations and that his payment which he received on 17.9.82 was sufficient for his needs until 30.9.82". The tribunal's findings on questions of fact material to their decision, after referring to the claimant's age, his unemployment and his receipt of supplementary benefit from 17.5.81, continue:—

"The First payment of £138.30 comprising 2 weekly payments £56.02 + 5 days. The appellant produced photostat copies of his last giro payment for £43.24" [This figure appears to have been overwritten on some earlier figure] "& the book bearing the legend/Allowance Now Due/9 Sep to 22 Sep 82 and a copy of form FF260 dated 17.9.82 showing allowance (inter alia) for period 1/10/82–3/10/82. The Tribunal found as a fact that the dates on the unemployment girobook referred to the unemployment period but in fact covered the period up to the 29 September."

10. Though it is unnecessary for us to pursue these matters to a conclusion, the above cited findings give rise to a number of questions. To begin with, the case file contained no document identifiable as a last or any giro payment for £43.24. That figure appeared only in the photostat of an "order book" payable order dated 4 October 1982. Nor is there any "book" bearing the legend cited—that legend appears only on the photostat of a girocheque with issue date 20 September. Nor does the form FF260 identify any amount as referable to the period 1.10.82–3.10.82.

11. (1) We are in no doubt that in the circumstances the tribunal's stated reasons for decision fail (as Mrs Conlon conceded they fail) to constitute a sufficient compliance with rule 7(2)(b) of the Appeals

Rules. For, as is indicated in Decision R(SB) 6/81, the criterion is that

> "The claimant, looking at the decision should be able to discern on the face of it reasons why the evidence has failed to satisfy the authority";—

and that in our judgment, the present claimant plainly could not do on the materials so provided.

(2) Whilst that failure suffices to found our decision we were, with a re-hearing in prospect, troubled also as to the status and circumstances of the tribunal including as a finding of fact:

> "the Tribunal found as a fact that the dates on the unemployment giro book referred to the unemployment period but in fact covered the period up to 29 September".

As to that, and even assuming that they were intending to refer to the girocheque which the claimant had produced and upon which was indicated the legend "allowance now due 9 Sept to 22 Sept 82", the tribunal have failed to explain how it was that they took such payment as satisfying his entitlement to supplementary allowance for a period ending 29 Sept 1982. For that is a date out of alignment with the benefit officer's attribution on form LT205 of a girocheque payment having covered entitlement down to 30 September, but suggestive of an attribution, on grounds not apparent to us, of 7 days next following the legend's reference to 22 Sept 82.

12. (1) The proposition with which (on DHSS evidence) the tribunal were grappling was that a claimant might be sent in payment of supplementary allowance due to him a payment instrument bearing upon its face a clear representation of the dates in respect of which payment was being made, but which dates were when issue was taken as to the claimant having received or not received his proper entitlement, disclaimed by the DHSS as being incorrect. That appeared to us so startling (unless attributable to an isolated oversight) as to merit inquiry by us of potential relevance both to and beyond the re-hearing of the present case. We had in mind in the wider context *first* that in many cases brought within our own jurisdiction under section 20 of the Act (recovery of benefit overpaid in consequence of misrepresentation or non-disclosure of a material fact) the critical issue is as to whether before encashing a particular payment of benefit a claimant has disclosed a material change in his circumstances and *secondly* that (although no part of *our* jurisdiction) claimants are exposed to substantial criminal penalties upon conviction of the offence of making a false declaration for the purposes of obtaining benefit.

Thus in both those contexts it is of major importance that a claimant be duly furnished with the means of knowing the benefit period to which a particular payment relates. For both girocheques and payment orders can be encashed only when indorsed by signature above a declaration on the instrument that the claimant is entitled to the benefit so payable. But whilst it will be material to a claimant's benefit for a period in which 1 October is comprised to disclose that he or his wife has earned on that date it will not be material to his benefit for 30 September that he or she has worked, or is expecting to work, on 1 October—so he needs to know, in the contexts both of disclosure

and of entitlement, the dates to which the benefit payment truly relates.

13. (1) Our concern was not allayed by the written submissions of the benefit officer on the present appeal adopted by Mrs Conlon. These, after explaining the effect of regulation 7 of the DQ Regulations, included in regard to the dates shown on the girocheques of which the claimant had been in receipt, the frank but—to us disturbing—acknowledgement:

> "... it is accepted that the dates recorded on the girocheque bore no relation to the period the payment covered [by virtue of the administrative arrangements between the DHSS and the DE]".

(2) We therefore considered it material to explore what was the tenor of the "arrangements" which produced such a result. As to that, the written submissions before us indicated that "when a person is unemployed and he is entitled to Supplementary Benefit arrangements exist for his Supplementary Benefit to be paid to him via the Unemployment Benefit Office (UBO). The girocheques issued by the UBO show the relevant Unemployment Benefit paydays and these days are quoted on the girocheque even when Supplementary Benefit is the only benefit in payment."; that the issuing system was computerised; and that the computer was not equipped to distinguish between the relevant dates applicable for unemployment benefit and supplementary benefit respectively.

(3) It was also pointed out—as we were already aware—that the material difference as regards payment periods is that unemployment benefit is at the present day normally paid fortnightly, "week in advance, week in arrear" whilst supplementary benefit is also normally paid fortnightly but is so paid wholly in advance.

14. (1) In the circumstances we gratefully accepted Mr. Swainson's offer to adduce additional evidence, written and oral, as to such "arrangements". What we have so learned is in part re-assuring, in that since 16 September 1983 some (but not entire) improvement has been effected as to the information provided on the girocheques; but is in further part disturbing to us as it has become apparent that in addition to the problems to which "misleading official information" on girocheques give rise, and to which we have already referred, a number of Commissioner's Decisions which have been given in the past and have involved issues as to disclosure by claimants of material facts have been given without the benefit of evidence as to the true extent of the involvement of the DOE in the administration of supplementary benefit which, from what we have now been told, we conceive would have been of at lowest circumstantial relevance, and in some cases crucial.

(2) As we consider it of importance that benefit officers, appeal tribunals and Commissioners generally are in future aware of what has been the past, and is the present, tenor of such "arrangements", in order that they are all "on inquiry" as to the existence of any "arrangements" which may be operative at any times material to issues with which they are concerned, we are

setting out a summary of what we have now learned as Appendix 2 to this decision.

15. Our present decision is, however, as set out in paragraph 1(3) above.

(Signed) I. O. Griffiths
Chief Commissioner

(Signed) V. G. H. Hallett
Commissioner

(Signed) I. Edwards-Jones
Commissioner

APPENDIX I

1. The tribunal re-hearing the claimant's appeal are to be furnished with copies of our decision including both Appendices, but are to have in mind that all matters of fact will be wholly at large again before them, including all matters of that character indicated in Appendix 2 to our decision.

2. Such tribunal are to reach and express findings of fact as to all payments of supplementary allowance made to the claimant between 17.5.81 and 3.10.82 and are to express conclusions also as to:—

(a) the entitlement to which each related; and

(b) whether in aggregate they satisfied the whole or some and what lesser or greater amount than that of the claimant's correct entitlement to benefit in respect of the aggregate period above identified and what was that correct entitlement and how arrived at.

3. If and so far as it may be asserted before the tribunal that there was any payment made to the claimant on 17.9.82 the tribunal are to express a specific finding as to whether there was or was not, and if that be affirmative then also as to the amount paid and the mode of payment and as to the entitlement (if any) to which it was referable.

4. If satisfied that the benefit officer's decision dated 17.9.82 was correct the tribunal shall so record, and if not so satisfied shall substitute for it their own decision in such terms as accord with their own conclusions.

5. The tribunal shall express reasons for their decision which properly discharge the obligation imposed on them by rule 7(2)(b) of the Appeals Rules. In particular their stated reasons shall be so expressed as to enable the claimant to ascertain therefrom why, as the case may be, his contentions as to his having received a payment of less than his correct entitlement for the aggregate period identified in paragraph 2 above have been accepted or rejected.

APPENDIX II

Part 1—As to payments of supplementary allowance by girocheque produced by the DHSS computer on instructions initiated by an officer of the DOE at a local UBO:

(As indicated—save where otherwise shown—by Mr. Swainson on behalf of the Secretary of State and the evidence, accepted by the Tribunal, of his witnesses Mr. D. Jackson, a DHSS administrator, and Mr. D. Roberts, a DHSS computer expert).

1. Payment by girocheque generated by the DHSS computer on instructions from an UBO is the normal mode of payment of supplementary allowance in the case of claimants who are in receipt of unemployment benefit. For some years up to 15 September 1983 this applied also to claimants who, though not so in receipt, were registering for employment pursuant to a condition imposed under section 5 of the Act as to registration for employment. [From other sources we have reason to believe (though we do not so hold) that this procedure continues to apply also to claimants who though not subject to a condition as to registration for employment are in fact so registering, in order to demonstrate "availability for employment"].

2. Local UBOs have on-line contact with the computer and authority to access it for the production of girocheques which comprise (wholly or in part) payments in respect of supplementary allowance to such claimants.

3. The number of such girocheques issued annually is of the order of 15 million a year.

4. The girocheque is drawn upon an account of the DHSS with the National Giro and the drawer is the Accountant General of the DHSS.

5. Down to 15.9.83 the computer was programmed to produce by way of text explanatory of the entitlement to which the payment related (or purportedly related) only the legend "allowance now due" followed by 2 dates a fortnight apart e.g. "9 Sept to 22 Sept 82". The dates so specified reflected the *unemployment benefit* period of the claimant current at the date of issue of the girocheque—regardless of whether or not the claimant was in receipt of unemployment benefit. If he was, the so specified dates reflected correctly the benefit period applicable to the component of unemployment benefit comprised in the payment—but not that applicable to the supplementary allowance component also included. In the case also of a claimant entitled only to supplementary allowance the dates so shown were those of the—then quite irrelevant—unemployment benefit period.

6. A person sufficiently instructed in the modus operandi might in routine cases be able to deduce from the dates so stated an aggregate benefit period applicable in respect of the supplementary allowance entitlement somewhere within which must fall any supplementary allowance comprised in the payment. But no one could deduce from the dates indicated precisely what dates of entitlement the payment reflected. Nor was it possible for anyone to deduce from the face of the instrument what, if the payment represented elements both of unemployment and of supplementary allowance, were the respective elements and for what dates.

7. As from 16.9.83 what is in most cases an improved explanatory legend became operative. Under this if the payment is a compound payment of unemployment benefit and supplementary allowance the legend indicates in relation to supplementary allowance the *closing date* of the entitlement period to which it relates (but no opening date, and no identification of the individual dates to which, within whatever period so ended, it was that the payment referred)—together with the unemployment benefit period reflected by the unemployment benefit content of the payment made, if any. Reference to the unemployment benefit period is now omitted if the payment relates exclusively to supplementary allowance.

8. Sometimes the same mode of payment is employed for payment of arrears of supplementary benefit. In that or other cases of supplementary benefit which do not fall within either of the above formulae, but for which the girocheque procedure for payment is used, the print-out legend now reads "Supp. Benefit—for period see leaflet SB9". Leaflet SB9 is a leaflet with which claimants for supplementary benefit are equipped at the inception of their claims and materially contains a brief exposition of the manner in which supplementary benefit is computed. It could be read from cover to cover by the most informed reader without his being able to detect in it anything which would enable him to identify positively to what entitlement for what dates a payment by girocheque bearing such legend in fact relates.

9. Even prior to the September 1983 change the girocheque should, we were told, have been accompanied by a computer-produced letter purporting to emanate from the UBO at which the claimant was registering. Such letters would, if the payment embraced payment of unemployment benefit, indicate the unemployment benefit period in respect of which it was payable, the weekly rate, the total of the payment of unemployment benefit, and additionally—but without attribution of any date—the amount of the supplementary allowance component. If the payment related only to

supplementary allowance then the letter would materially indicate only "supplementary allowance" and the amount in which the cheque was drawn, with no date specified. We were told also that these letters should still accompany girocheque payments. [We have, however, (from other sources) acquired the impression that they have not in all cases done so, and that this still obtains].

10. So far as our informants at the hearing were aware no further improvements in the information provided by the computerised system were in contemplation. The existing girocheque stationery would present a practical obstacle to expressing more cogent or detailed explanations, because the space on the form for expressing such was already restricted. They were, however, aware of no technical impediment to the computer producing on modified girocheque stationery additional and more cogent explanations than were at present furnished.

Part 2 As to the administrative procedures relevant to payment of supplementary allowance by computer generated girocheque issued on UBO instructions:

(Sources as for Part 1)

11. Persons registering for employment at a UBO are as a matter of normal routine furnished with a copy of the DHSS leaflet SB21—"Cash Help"—which in its current edition indicates that supplementary benefit may be claimed by persons unemployed and that a person seeking to do so should ask at the UBO for a supplementary benefit claim form, and continues "the clerk will give you:

— the claim form

— a leaflet, SB.9, and

— a prepaid envelope addressed to your local Social Security Office.

If you are in any doubt about anything

— Ask!"

[We pause here to comment that this appears to us, at least, to be an invitation to ask the clerk at the UBO about anything as to which a prospective claimant is in doubt but that we believe that some earlier editions of the form did not include that invitation]

12. The materials so identified are held in stock at UBOs and are so issued. The claim form so issued is a "Form B1" and the prospective claimant is told in the leaflet SB21 to fill in the form, at his home if he wishes, and post it to his local social security office in the prepaid envelope also issued. Earlier editions indicated that the forms could be handed in at the UBO.

13. After the Form BI has been processed at the local DHSS office there will in cases in which entitlement to supplementary allowance is demonstrated be prepared at such office a "Form A14" Assessment, constituting a benefit officer's decision upon the claim, a copy of which is furnished to the claimant.

14. There is also prepared in duplicate a "Form B2/3" order to pay. In contradistinction to the Form A14, which constitutes an adjudication, the Form B2/3 is an administrative document. The top copy (B2) contains space for an authorisation stamp and "boxes" indicating the claimant's particulars and the weekly rate at which benefit is to be paid for a stipulated initial period and for subsequent weeks, and is sent to the relevant local UBO. That copy also comprises a detachable slip for return to the local office of the DHSS by the UBO when a decision has been taken at the UBO

to "lapse" the order to pay. On the reverse of that detachable slip are boxes for completion indicating the grounds upon which such decision has been taken, e.g. that the claimant has "failed to claim" (i.e. "sign" on his due signing date) for a complete benefit pay week or more, or that there has been a change in his circumstances.

15. As a detachable part of the original Form B2/3 and with a carbon paper interleaf enabling the payment details to be carried down to it, a further sheet—the B3—is to be sent to the claimant notifying him as to his having been awarded supplementary benefit in the amounts so indicated, together with an intimation that he should read carefully the notes on the back of the B3. Those indicate such matters as that supplementary benefit will continue subject to continued signing as unemployed, as to the payment interval, as to changes to be reported, and so forth.

16. In now current form those notes indicate that changes of circumstances to be found specified in leaflet SB9 are to be reported to the social security office. In asking that the leaflet SB9 be read carefully, the notes further indicate that if a claimant has not got a copy of that leaflet he should ask for one at the social security office *or the UBO*. The notes also indicate that if a claimant does any work, paid or unpaid, while he is getting benefit he must tell *the UBO,* as also if starting full-time work.

17. Claimants registering for employment are also issued by the UBO with a Department of Employment leaflet UBL18. In the July 1983 edition with which we were furnished it is headed "responsibilities of claimants while unemployed" and indicates at the outset that it "tells you about claiming unemployment benefit and supplementary benefit. Read it carefully. If you give false information, or deliberately withhold information you may be prosecuted". Apart from a concluding disclaimer as to the leaflet giving general guidance only and not being a complete statement of the law, its terminal text reads "Ask us ... if you want to know more about anything in this leaflet or if you are not sure about something. If we cannot answer your question we would tell you who can help". Under the head "so you must tell us"—i.e. *the UBO*—" at once" it indicates a number of subject matter identifiable to the informed reader as relevant primarily to unemployment benefit but of no less relevance to supplementary benefit entitlement, concluding under that head with "if there are *any* changes in your family or home circumstances which might affect your benefit". It does *not,* we observe, here indicate any separate need to tell the DHSS anything. The contents of this leaflet include an intimation "if you want to claim supplementary benefit ask us [i.e. *the UBO*] for a claim form", but it next continues "The Social Security Office will tell you in writing whether you can get supplementary benefit". It then runs on "and, if you can, they normally ask us [i.e. *the UBO*] to pay it to you". The text under this head concludes with "if you want to know more ask the Social Security Office". [We find it scarcely surprising, having regard to the tenor of that leaflet that—rightly or wrongly (and, subject to certain very limited exceptions the tenor of Commissioners' decisions in point has been in the sense "wrongly") a number of claimants have taken the view that sufficient disclosure is made by them of matters relevant to their entitlement to supplementary benefit if disclosed to an officer at the UBO which they are attending in order to register for employment.]

18. As regards a claimant for supplementary benefit in respect of whom they hold a current Form B2, the UBO procedure is, as each current unemployment benefit pay period relative to him is drawing to a close, to wait to see whether the claimant registers for employment on his due signing date or not. If he does not no action is taken to initiate the issue by the computer of his next girocheque. If (as is made clear by the text of the

detachable slip on the B2) he fails to sign for a complete "benefit week" the current B2 is treated by the UBO as "lapsed" and the local office of the DHSS is, by return of the detachable slip duly made out, notified accordingly. If, however, the claimant duly "signs", then an officer so authorised *at the UBO* gives instructions to the computer for the preparation and issue of a girocheque payment of the appropriate amount of supplementary allowance. Any necessary decision of an insurance officer authorising the payment of any unemployment benefit component in the aggregate payment is given by an insurance officer (at the computer centre, we were told) in a standard form covering a batch of girocheques.

19. The necessary authority for payment of the supplementary allowance component is constituted by the triple operation of the award of benefit under the current form A14, the authority held at the UBO of a current form B2, and an internal confirmation at the UBO of the claimant having duly signed—in combination with an understanding there [whether by necessary implication from the B2 procedure or the subject of some collateral instruction by the DHSS not before us we do not know] that the B2 authority for payment is not to be acted on unless the claimant has duly signed.

20. When the payment order is returned "lapsed" by the UBO to the DHSS office administrative procedures provide for it being added to the claimant's file there and for any requisite consequential action by way of a benefit officer's further decision to follow.

Part 3—"The arrangements" existing between the DHSS and the DOE:

21. At an early stage in the hearing before us we were told both by Mrs. Conlon and by Mr. Swainson that, according to their instructions, extensive enquiry had been made as to any documentation recording arrangements under which the DOE acted in the fields of unemployment benefit and of supplementary allowance as in fact it does—notwithstanding that (as was common ground) both those benefits are now the responsibility of the DHSS. They further told us they were instructed that no documentary record of the arrangements existed, but that "arrangements" were, as a matter of practical reality, operative. At a late stage of our hearing Mr. Swainson produced to us copies of certain documents which he indicated he had had with him throughout but which he had conceived to be of no relevance to the appeals before us, even after being apprised of our wider concerns. They are not, we should say at once, documents entered into between the DHSS and the DOE; they all date from 1945, long before either of the two present departments was constituted. Nevertheless we regard them as of considerable significance in the broader contexts we have identified. But to explain why and how that is so we must in the first instance go back over almost 40 years. [Paragraphs 22 to 28 next below deal with relevant matters of history and public knowledge compiled by us.]

22. (1) Viewed in retrospect the course of history which has led up to the present day responsibility of the DHSS for all social security benefits reflects a progressive introduction of new benefits and improvement of existing benefits in conjunction with a general progression—with some intermediate ebbs—towards centralised administration of the entire code.

(2) At the beginning of 1945 "War Pensions" were administered by the Ministry of Pensions. Health insurance (the precursor of "sickness benefit") and (in the main) contributory pensions were administered in part by the Ministry of Health and in part by the "Approved Societies", Contributory unemployment insurance

was administered by the Ministry of Labour. Certain contributory old age pensions were administered by local authority committees under the aegis of the Board of Customs and Excise, Workmens' Compensation (the precursor of industrial injury benefit) was administered under the aegis of the Home Office, Unemployment assistance, and also pensions payable under the Old Age and Widows Pensions Act 1940, were administered by the National Assistance Board; and the only public assistance available to some sections of the community remained that under the old "Poor Laws".

(3) Whilst rejecting the suggestion in the Beveridge Report of 1942 of a "Ministry of Social Security" responsible for all welfare benefits, the Government of the day in 1944 enacted the Ministry of National Insurance Act 1944 ("the 1944 Act") under the provisions of which the Ministry so named became responsible for the administration of virtually all social security benefits then operative other than war pensions and "National Assistance". But it was considered administratively undesirable to dismantle the long etablished and nationwide administrative machinery of the Ministry of Labour (or, as it then was, "Ministry of Labour and National Service") for regional and local administration of unemployment benefit and replace it by an entirely new network. And accordingly an "agency agreement" was entered into between the Minister of National Insurance and the Minister of Labour and National Service under the express authority of a provision of the 1944 Act, implemented by "the Ministry of National Insurance (Unemployment Insurance and Assistance) Order 1945", which provided both for the transfer of functions in respect of unemployment benefit *to* the Ministry of National Insurance *from* the Ministry of Labour and National Service and also authorised the practical retention of those functions by the latter—but on an agency basis. The material provision in such Order states:

> "2. The Minister of National Insurance may make arrangements with the Minister of Labour and National Service for securing that any functions transferred by this Order shall be performed on behalf of the Minister of National Insurance by the Minister of Labour and National Service."

(4) Such arrangements as are so contemplated were constituted by an exchange of letters (copies of which Mr. Swainson produced to us) respectively of offer and acceptance, together constituting an agency agreement. The offer letter proposed that subject to certain limited modifications (of no materiality to our concerns) the field over which the agency was to be operative was all work then done by Regional and Local Offices of the Ministry of Labour and National Service in the field of unemployment insurance work (an enclosure setting out the more important functions involved). Those included (in brief summary) the receipt of claims, the processing of claims, including all the necessary collateral enquiries, the determination of claims by insurance officers, the investigation and prosecution of suspected fraud, and matters as to liability to repay excess payments. The two letters are dated respectively 30 March 1945 and 7 May 1945, the latter constituting with now immaterial exceptions an acceptance of the proposals in the former.

(5) In 1946 the Ministry of National Insurance became responsible for the administration of all benefits under the National Insurance Act 1946, and of industrial injuries benefit and family allowances. The administration of all pensions was added as a further responsibility of such Ministry in 1953, and the Ministry of National Insurance was itself superseded in 1966 by the integrated Ministry of Social Security constituted by the Ministry of Social Security Act 1966 ("the MSS Act")—now usually cited as "the Supplementary Benefit Act 1966".

(6) From 1948 onwards the "Poor Law" finally dropped out, and from then until the MSS Act took effect the administration of "public assistance" was concentrated in the National Assistance Board. The MSS Act abolished the National Assistance Board and placed the responsibility for means tested benefit—in particular the "supplementary benefit", which it introduced in place of "National Assistance"—on the Ministry of Social Security. However, by the MSS Act the functions of adjudicating upon claims for supplementary benefit and of exercising certain discretionary powers with regard to it were assigned to the "Supplementary Benefits Commission" ("SBC"), also constituted by the Act. The SBC has been described by Professor de Smith, the distinguished authority on administrative law, as having the character of a "semi-autonomous public corporation".

23. It is convenient to interpose here that as from the coming into force of the National Assistance Act 1948 the National Assistance Board, (which is recognised as having had the character of a Government Department in its own right) was both the awarding entity and the paying entity as regards National Assistance, section 61 of that Act providing (inter alia) that the expenses incurred in giving assistance under the Act were to be defrayed out of monies provided by Parliament. The Board were, however, authorised to—and in practice did—exercise a discretionary power to impose conditions as to registration for employment, and though no details are before us as to the machinery adopted it is a compelling inference that in order to impose those effectively arrangements must have been operative between the Board and the Ministry of Labour whereby the Board were effectively informed as to compliance or non-compliance by claimants subject to the condition with their obligations under it.

24. Under the MSS Act the SBC had express power, which they in turn exercised, to make entitlement to supplementary allowance dependent on the condition of registration by the claimant for employment in specified cases. However, whilst the SBC became the *awarding* authority for supplementary allowance, section 15 of the MSS Act provided that any sums payable under the Act by way of benefit should be paid by the Minister out of monies provided by Parliament.

25. It is quite clear from the contemporary Supplementary Benefit Handbooks that the SBC arranged for claim forms for use by claimants required to register for employment to be available at UBOs and for the transmission of a completed claim form by UBOs to the local social security office unless a claimant wished to submit it himself; and that the Ministry of Social Security arranged also for payment of benefit awarded to claimants subject to the condition of registration to be made, normally, by the local UBO. We see nothing irregular in any of those arrangements. The power to impose the condition of registration clearly, in our judgment, imported ancillary authority to make appropriate arrangements with the Ministry of Labour (and its successor the Department of Employment) for

the effective operation of the condition in individual cases; the SBC's powers of award clearly embraced authority to make such proper arrangements for the provision and processing of claim forms as the SBC thought fit; and the power conferred on the Minister by section 15 of the MSS Act clearly conferred authority to effect payment by means of such administrative procedures as the Minister should think fit.

26. The now current practical arrangements for computerised payment of supplementary allowance are in our understanding the successors of earlier manual procedures to substantially the same effect, the Minister having arranged for authority to pay being exercisable by the Ministry of Labour (now DOE) offices at UBOs acting on "orders to pay" subject to the claimant's compliance with the condition of registration, and the SBC having likewise arranged for their awards to be so notified as to give rise to "orders to pay" and arranged also for the feedback of relevant information to the SBC via a "lapsed order" procedure of the nature now constituted by the Form B2/3 and its "tear off" portion.

27. The Ministry of Social Security was (with the Ministry of Health) abolished in 1968, and the functions of both were transferred to the Secretary of State for Social Services, this Department being styled the "Department of Health and Social Security".

28. By the Social Security Act 1980 the SBC was abolished, a new code of provisions as to supplementary benefit was enacted, the award of supplementary benefit became the responsibility (subject to appeal procedures) of supplementary benefit officers constituted under that Act, and the payment of such benefit became the responsibility of the DHSS.

29. As regards *unemployment benefit* substantially the same procedures as were arranged for in 1945 have in practice been operated down to the present time by the separate departments whose succession derives respectively from the Ministry of Labour and National Service and Minister of National Insurance, parties to the 1945 Agency Agreement—though latterly by computerised means. Neither Mr. Swainson nor Mrs. Conlon was equipped to provide us with "chapter and verse" authority for the continuance of those arrangements through the successive changes in Ministerial structure and responsibility down to the present DHSS and DOE. But, in accordance with the maxim *"omnia praesumuntur rite esse acta"* we are not disposed to conclude otherwise than that all such arrangements operative at the dates material to the appeals before us were operative pursuant to lawful authority vested in the Departments concerned. Shortly stated, it is still at local UBOs that there are to be found officers of, now, the DOE who administer the claims procedures, whose staff constitute the insurance officers whose decisions represent the core of the scheme, and whose officers have authority to direct, and to stop, payments of unemployment benefit.

30. It is less easy to define with accuracy the status of the "existing arrangements" between the DHSS and the DOE in regard to *supplementary benefit;* and more difficult still to determine their precise boundaries. We can foresee that there will be future cases in this jurisdiction in which those matters will be directly in issue. But whilst we do not seek to prejudge their determination, we think it right to record how these matters appeared to us upon the materials available to us, as at least a starting point for concurrence—or contrary contention—in what appears to us likely to be a difficult field.

31. Having regard to the historical background we have above recapitulated we consider the "most likely starter" to be that the role of the

DOE in supplementary benefit matters is that of agent to the DHSS as principal. True it is that no such formal agency agreement has been produced to us as would correspond with the 1945 exchange of letters. But the whole tenor of the inter-relationship smacks to us of agency, and whilst some implications arising from that conclusion might be unpalatable to the Departments—notably that within the scope of agency notice is imputed to the principal of facts communicated to the agent as to which no inhibition is to be inferred upon the agent's willingness to pass the information on to the principal (e.g. a risk of self incrimination)—it is a premise which, as at present advised, appears to us both to accord with the realities and to fit neatly enough with an implementation of the *supplementary benefit scheme* in a similar fashion, as between the two Departments, as has for-now-rising 40 years past applied in regard to the *unemployment benefit scheme.* It admits, moreover, of a pragmatic analysis—under the legal umbrella of what lawyers term "a course of dealing"—as to what in fact the boundaries are; though it is attended also by prospective applications of agency law which may be less welcome to the Departments, such as the doctrines of "holding out" and of "representation of authority". We do not ourselves foresee those concomitants as giving rise to any great difficulties in practice.

32. Mr. Swainson, however, pressed upon us vigorous submissions in support of a different conclusion. His arguments started from the use in the Act of the expression "the Secretary of State" and the statutory definition of that term in the Interpretation Act 1978. That definition is "one of Her Majesty's Principal Secretaries of State" and does not for present purposes materially differ from that to be found in the Interpretation Act 1889. References in the Supplementary Benefits Act to "the Secretary of State" as having powers or duties are thus, in Mr. Swainson's contention, not limited to the Secretary of State for Social Services (but we would here observe that the latter expression is in terms used in sections 22 and 23 of the present Act)—and thus authorise every such duty and every such obligation being exercised by any one of Her Majesty's Secretaries of State for the time being (and, by necessary implication, import that the avoidance of any "free for all" is to be a matter for internal arrangement within Government). So proceeding, the argument runs, any action taken in due implementation of the supplementary benefit scheme by officers of the DOE responsible to the Secretary of State for Employment, and authorised by him so to act, are—in analysis—actions taken by the Secretary of State for Employment as *principal,* and not as agent for the Secretary of State for Social Services.

33. We are not, as at present advised, disposed to dismiss these contentions outright; but neither do they attract us. For, to our minds, if they are right then they give rise to practical consequences which, in the context of our jurisdiction, could produce little short of chaos. Apart from such local difficulties we would foresee difficulty arising also as to the boundaries between different Ministerial responsibilities, and as to Members of Parliament and the public in knowing with which department to deal. But in our own jurisdiction the crux would be as to what Department a disclosure of facts material to claims for benefit would require to be made to, in order to be effective.

34. (1) As at present advised we believe the better view to be that indicated by Commissioner Hallett in Decision R(SB) 54/83, in the tenor that (in the absence of material provision by a Transfer of Functions Order such as is exemplified by the 1945 Order above referred to) references in the Supplementary Benefit Act to "the Secretary of State" are to be read as references to such Secretary of State as is for the time being overtly accounting to

Parliament for the due implementation of the supplementary benefit scheme; and to that Secretary of State only.

(2) in so concluding we recognize that Mr. Swainson has, for the foundation of his submission, the powerful support of Professor de Smith for the proposition that, academically at least, *any* Secretary of State is constitutionally entitled to exercise any function assigned by legislation to "the Secretary of State".

However, there is to our minds a recognised convention that a "Transfer of Functions Order" is made where any significant change is to be made in what have been the antecedently established divisions of practical responsibility. Moreover, that a particular Secretary of State can, constitutionally, without formality exercise a function which another has hitherto exercised does not conclude the question whether or not a change which in fact occurs is properly to be attributed to an exercise of that liberty, since the existence of the liberty does not of itself lead to that conclusion once it is recognized that the change may alternatively reflect an agency agreement.

35. Whether the views we have above expressed are to be preferred or rejected when their subject matter arises for substantive determination, one further conclusion does, however, strike us with compelling force in the light of what we have been told in the present case. It is that, in the context of the supplementary benefit scheme *as in fact administered* it is an over simplification, to put it no higher, to proceed upon the basis that because a UBO is an organ of *the DOE* and the supplementary benefit scheme is (in the main, at least) administered by the *DHSS*, the UBO has *no* connection with, and exercises no functions in relation to, the supplementary benefit scheme, and that accordingly the general principle that notice to one Government Department does not constitute notice to another must axiomatically and universally apply. For whilst that approach may be fully justified as regards claimants subject neither to a condition of registration for employment nor to a condition for availability for employment, what we have in this Appendix set forth demonstrates clearly, to our minds, that, in cases where one or other or both of those conditions has applied and "arrangements" such as we have identified have been operative, an *ad hoc* appraisal, devoid of *a priori* presumption, will be essential on any such issue.