

Decision Nos: C2/18-19(IS), C3/18-19(IS),  
C3/18-19(JSA), C4/18-19(JSA) & C5/18-19(JSA)

**SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992**

**SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998**

**INCOME SUPPORT AND JOBSEEKERS ALLOWANCE**

Application by the claimant for leave to appeal  
and appeal to a Social Security Commissioner  
on a question of law from a Tribunal's decisions  
dated 15 June 2017

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. These are a claimant's applications for leave to appeal from five decisions of an appeal tribunal sitting at Belfast on 15 June 2017.
2. The applications involve common issues of fact and law, albeit that two distinct benefits are involved. For that reason, I consider that it is expedient to determine the applications together. For ease in distinguishing the individual cases, I cite the Commissioner and the Appeal Service reference in relation to each application in parenthesis below.
3. For the reasons I give below, I grant leave to appeal. I allow the appeal and I make the decisions the tribunal should have made. These are set out in full in the concluding paragraph below.

**REASONS**

**Background**

4. The appellant had claimed and been awarded jobseekers allowance (JSA) by the Department for Social Development (the Department) from 29 March 2010 to 24 June 2010 and from 8 November 2010 to 2 August 2011. On the basis of investigations and evidence, on 4 March 2013 and on 16 December 2013 the Department decided that the appellant did not satisfy the conditions of entitlement to JSA and revised the decision on entitlement for each of those periods (C4/18-19(JSA) and BE2997/17/73/L).

5. In consequence of the decision on entitlement, the Department decided on 11 April 2013 that the appellant had been overpaid JSA for the period from 1 April 2010 to 24 June 2010 in the amount of £792.61 and that this was recoverable from him (C5/18-19(JSA) and BE11293/16/73/L).
6. In consequence of the decision on entitlement, the Department further decided on 19 December 2013 that the appellant had been overpaid JSA for the period from 11 November 2010 to 2 August 2011 in the amount of £2,510.55 and that this was recoverable from him (C3/18-19(JSA) and BE11336/16/73/L).
7. The appellant had also claimed and was awarded income support (IS) from 29 July 2011 to 18 October 2012 by the Department on the basis that he was a carer. Again, on the basis of investigations and evidence, on 14 March 2013 the Department decided that the appellant did not satisfy the conditions of entitlement to IS and revised the decision on entitlement for that period (C3/18-19(IS) and BE2998/17/61/L).
8. In consequence of the decision on IS entitlement, the Department further decided on 3 April 2013 that the appellant had been overpaid IS in the amount of £2,807.51 and that this was recoverable from him (C2/18-19(IS) and BE11321/16/61/L).
9. The appellant appealed each of these decisions. In a previous cycle of adjudication they were considered by a tribunal on 20 October 2014. Those appeals then came before me on appeal and in *JS v Department for Communities* [2016] NI Com 74, I set the decisions of the appeal tribunal aside and referred them to a new tribunal for determination, with directions. The appeals were then considered together on 15 June 2017 by a tribunal consisting of a legally qualified member of tribunals (LQM) sitting alone. The new tribunal disallowed each of the appeals.
10. The appellant requested statements of reasons for the tribunal's decisions and these were issued on 20 October 2017. The appellant applied to the LQM for leave to appeal from each of the decisions of the appeal tribunal. The LQM refused leave to appeal by determinations issued on 23 November 2017. The appellant then submitted his applications for leave to appeal to the Social Security Commissioner on 22 December 2017.

(The Department had been renamed the Department for Communities from 8 May 2016).

### **Grounds**

11. The grounds of appeal submitted on the appellant's behalf by Donnelly & Wall, Solicitors, are that the tribunal has erred in law on the basis that it had relied upon inadmissible evidence from criminal proceedings in reaching its decision.

12. The Department was directed to make observations on the appellant's grounds. Mr McGrath of Decision Making Services (DMS) responded on behalf of the Department. He submitted that the tribunal had not erred in law as alleged and indicated that the Department did not support the appeal on the grounds submitted.
13. Nevertheless, he pointed out that there were errors concerning the description of the date of some of the decisions referred to by the tribunal due to errors in the Departmental submission.
14. Firstly, in C3/18-19(IS), the Departmental submission to the tribunal referred to a decision of "16 August 2011 as revised on 6 October 2014". He submitted that the tribunal had been confused by this and adopted it as part of its decision. He submitted that it should have referred to a decision of "16 August 2011 as revised on 14 March 2013 and further revised on 6 October 2014".
15. Secondly, in C2/18-19(IS) the tribunal referred to a decision "dated 16 April 2010 as revised on 8 October 2014". He submitted that the tribunal had been misled by the Department and that this should have read "dated 3 April 2013 as revised on 6 October 2014".
16. Thirdly, in C4/18-19(JSA), he submitted that, as the entitlement decision of 4 March 2013 had not been properly revised due to limitations in the Department's systems, this led to a defect in the entitlement decision before the tribunal. In short, while purporting to revise entitlement for the two periods from 29 March 2010 to 24 June 2010 and 8 November 2010 to 2 August 2011, the entitlement decision of 16 April 2010 was the only decision actually revised. Therefore the JSA decision was deficient as to the latter period.
17. Fourthly, in C5/18-19(JSA), he submitted that, as the entitlement decision of 4 March 2013 had not been properly revised due to limitations in the Department's systems, this led to a defect in the overpayment decision for the period from 8 November 2010 to 2 August 2011.
18. Fifthly, in C3/18-19(JSA), he submitted that, as the entitlement decision of 4 March 2013 had not been properly revised due to limitations in the Department's systems, this led to a defect in the overpayment decision for the period from 8 November 2010 to 2 August 2011.

### **The tribunal's decisions**

19. The tribunal has prepared a statement of reasons and a record of proceedings for each appeal. From this I can see that the tribunal considered the five appeals together in a single hearing. The appellant attended the hearing, represented by Mr Quigley. The Department was represented by Mr Yates. The tribunal had been given a written submission by the Department, including a screen print of a security company website, evidence of credits to a Northern Bank account,

applications for name changes to the UK Deed Poll Service, screen prints indicating contact details for the appellant, a VAT registration for a security firm and transcripts of statements made by the appellant in interviews under caution. The appellant gave oral evidence.

20. The tribunal accepted the submission of the Department that the appellant had been in remunerative work for the duration of his claims. It accepted the entirety of the Department's submission made in response to the appellant's grounds of appeal.
21. The Department had submitted in essence that, while claiming benefit, the appellant had been the proprietor of a security company and had received income to a bank account held under an alias. It gave evidence which tended to show that the appellant had changed name by Deed Poll on a number of occasions. It gave evidence that a bank account held in one of those names used an address that the appellant had given to the Department as his home address. It gave evidence that a previous address associated with the account was the address at which a security company was registered with HMRC. The website of the security company gave a contact telephone number that the appellant had given to the Department as his contact number when in receipt of benefits. It submitted that income paid to that account was the appellant's income and that it exceeded the applicable amount for JSA. It further submitted that credits to the same bank account and payments to an alias used by the appellant by way of Western Union Financial Services transfers during the period of his IS claim were also the appellant's income. It submitted that income paid to that account was the appellant's income and that it exceeded the applicable amount for IS.
22. The tribunal indicated that it rejected the credibility of the appellant's account given in interviews under caution and that it found it highly probable that the appellant was engaged in a course of conduct to disguise his employment and capital assets. On that basis it found that he was not entitled to JSA for the period from 29 March 2010 to 24 June 2010 and for the period from 8 November 2010 to 2 August 2011 and was not entitled to IS for the period from 29 July 2011 to 18 October 2012. It found that he had failed to disclose the material fact that he was in remunerative work and held that the sums of benefit overpaid for these periods were recoverable from the appellant.

### **Relevant legislation**

23. The main provision enabling recovery of overpaid benefit is section 69 of the Social Security Administration (NI) Act 1992. This provides:

**69.**—(1) Where it is determined that, whether fraudulently or otherwise, any person has misrepresented, or failed to disclose, any material fact and in consequence of the misrepresentation or failure—

(a) a payment has been made in respect of a benefit to which this section applies; or

(b) any sum recoverable by or on behalf of the Department in connection with any such payment has not been recovered,

the Department shall be entitled to recover the amount of any payment which the Department would not have made or any sum which the Department would have received but for the misrepresentation or failure to disclose.

(2) Where any such determination as is referred to in subsection (1) above is made, the person making the determination shall in the case of the Department or a tribunal, and may in the case of a Commissioner or a court

—  
(a) determine whether any, and if so what, amount is recoverable under that subsection by the Department; and

(b) specify the period during which that amount was paid to the person concerned.

(3) An amount recoverable under subsection (1) above is in all cases recoverable from the person who misrepresented the fact or failed to disclose it.

(4) ...

(5) ...

(5A) Except where regulations otherwise provide, an amount shall not be recoverable under subsection (1) above or under regulations under subsection (4) above unless the determination in pursuance of which it was paid has been reversed or varied on an appeal or has been revised under Article 10 or superseded under Article 11 of the Social Security (Northern Ireland) Order 1998.

## **Submissions**

24. The principal submission of the appellant, represented by Donnelly and Wall, Solicitors, is that the tribunal erred in law by relying on evidence that was obtained for the purpose of criminal proceedings in the subsequent civil tribunal proceedings. It was submitted that such evidence was inadmissible.

25. Mr McGrath of DMS responded to this point in his written observations. He submitted that the evidence referred to consisted of statements made by the appellant at interviews under caution and bank account details that were obtained by the Department. He referred to authorities in support of the proposition that evidence obtained by fraud investigation officers was admissible before a tribunal, citing reported Northern Ireland Commissioner's decision R1/01-02(DLA), and unreported Great Britain Commissioner's decision CDLA/2014/2004.
26. The appellant's solicitors were given an opportunity to respond to the submissions advanced by Mr McGrath. They submitted that it was their view that material obtained in a criminal investigation should not be used in tribunal proceedings, submitting that this practice was contrary to natural justice.

### **Assessment**

27. The submission of the solicitor for the appellant is that the rules of natural justice were breached by the tribunal. He submits that the tribunal considered material obtained in the course of a criminal investigation in determining the question before it. He submitted that question before the tribunal was a matter of civil law and that the criminal evidence was inadmissible.
28. It is well-established, and perhaps does not require to be said, that the rules of natural justice apply to tribunal hearings. However, the real issue is to what extent the rules of natural justice restrict the admissibility of evidence and have the effect that the appellant's solicitor contends.
29. This issue was considered in *R v Deputy National Insurance Commissioner ex parte Moore* [1965] 1 QB 456 by Diplock LJ in the Court of Appeal of England and Wales. He said:

“Where, as in the present case, a personal bias or *mala fides* on the part of the deputy commissioner is not in question, the rules of natural justice which he must observe can, in my view, be reduced to two. First, he must base his decision on evidence, whether a hearing is requested or not. Secondly, if a hearing is requested, he must fairly listen to the contentions of all persons who are entitled to be represented at the hearing. In the context of the first rule, “evidence” is not restricted to evidence which would be admissible in a court of law. For historical reasons, based perhaps on the fear that juries who might be illiterate were incapable of differentiating between the probative values of different methods of proof, the practice of the common law courts has been to admit only what the judges then regarded as the best evidence of any disputed fact, and thereby to exclude much material which, as a matter of common sense, would assist a fact-finding tribunal to

reach a correct conclusion; cf. *Myers v. Director of Public Prosecutions*, (1964) 3 Weekly Law Reports, page 145. But these technical rules of evidence form no part of the rules of natural justice. The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than that it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. ...”

30. In other words, while the rules of natural justice govern how evidence should be addressed by a tribunal, they have no role in restricting the nature of that evidence.

31. The authorities relied upon by Mr McGrath are consistent with the words of Diplock LJ set out above. In *R1/01-02(DLA)* Mrs Commissioner Brown heard a submission from an appellant that the references to a fraud investigation and the observations made by fraud investigation officers should have been ruled inadmissible. She disagreed and held simply that evidence is admissible if it is relevant to the questions that the tribunal had to determine. I see no reason to depart from her on this issue.

32. Furthermore, in *CDLA/2014/2004* Great Britain Social Security Commissioner Bano reiterated the principles applied in *R v Deputy National Insurance Commissioner ex parte Moore* in the context of tribunals under the Social Security Act 1998 and adjudication under the Social Security (Decisions and Appeals) Regulations 1999. The equivalent provisions are still in operation in Northern Ireland under local legislation. Therefore, I do not consider that the appellant has made out an arguable case of error of law on the grounds advanced.

33. The Department has referred to shortcomings, or perhaps more than shortcomings, in some of the decisions in the proceedings before me. These are not such as to render the decisions inchoate and, taking into account what was said by the Tribunal of Great Britain Commissioners in *R(IB)2/04*, at paragraphs 72-82, I consider that I have a power to correct the decisions made by the tribunal.

34. In the light of the submissions advanced by Mr McGrath outlined above, I find that the tribunal erred in law in a technical sense of giving decisions which did not fully address the adjudication history in the case, and I grant leave to appeal on that basis. To the extent that the tribunal erred in law on this basis, I allow the appeal. However, I adopt the findings of fact of the tribunal and I make the decisions the tribunal should have given. These are as follows:

1. In *C3/18-19(IS)*, I decide (upholding the Department’s decision of 16 August 2011 as revised on 14 March 2013 and further revised on 6 October 2014) that the appellant

is not entitled to Income Support from 29 July 2011 to 18 October 2012.

2. In C2/18-19(IS) I decide (upholding the Department's decision of 3 April 2013 as revised on 6 October 2014) that Income Support paid to the appellant for the period from 29 July 2011 to 18 October 2012 amounting to £2,807.51 is recoverable from him.

3. In C4/18-19(JSA), I decide, revising the entitlement decision of 4 March 2013 and the entitlement decision of 16 April that the appellant was not entitled to JSA for the period from 29 March 2010 to 24 June 2010 and from 8 November 2010 to 2 August 2011.

4. In C5/18-19(JSA), I decide that that JSA paid to the appellant for the period from 1 April 2010 to 24 June 2010 amounting to £792.61 is recoverable from him.

5. In C3/18-19(JSA), I decide that that JSA paid to the appellant for the period from 11 November 2010 to 2 August 2011 amounting to £2510.55 is recoverable from him.

(signed): O Stockman

Commissioner

10 April 2019