

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

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

**JOBSEEKERS ALLOWANCE**

Appeals to a Social Security Commissioner  
on a question of law from a Tribunal's decisions  
dated 23 March 2018

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. The decisions of the appeal tribunal dated 23 March 2018 under references *C1/19-20 (JSA)* and *C2/19-20 (JSA)* are not in error of law. Accordingly the appeals to the Social Security Commissioner do not succeed.
2. I substitute my own decision for that of the appeal tribunal in the appeal under reference *C2/19-20 (JSA)*. My substituted decision is that the appellant is not entitled to Income Based Jobseeker's Allowance (IBJSA) from 17 January 2008 to 17 February 2014. I have determined that there is an error in the period of disallowance specified in the appeal tribunal's decision notice but that error does not go to the substance of the appeal tribunal's decision.
3. I substitute my own decision for that of the appeal tribunal in the appeal under reference *C1/19-20 (JSA)*. My substituted decision is that the appellant is not entitled to JSA from 18 February 2014 to 4 March 2014. This is because I accept a submission made by Mr Woods on behalf of the Department that the appellant's entitlement to JSA would cease on 4 March 2014, as he made a claim for Employment and Support Allowance (ESA) from 5 March 2014 due to him having limited capability for work. From 5 March 2014 he no longer met the conditions of entitlement to Jobseeker's Allowance under Article 3(2)(f) of the Jobseeker's (Northern Ireland) Order 1995, as amended. That submission was not made to the appeal tribunal below and, accordingly, it was unaware of the further claim to ESA.

## Background

4. These two appeals are from decisions of an appeal tribunal dated 23 March 2018. The decisions under appeal to the tribunal were as follows:
  - (i) a decision of the Department dated 31 October 2012, as revised on 9 January 2017, in which the decision maker decided that the appellant was not entitled to IBJSA from and including 17 January 2008; and
  - (ii) a decision of the Department dated 23 February 2014, as revised on 10 January 2017, in which the decision maker decided that the appellant was not entitled to IBJSA from and including 18 February 2014.
5. The revisions which took place on 10 January 2017 arose from the appellant's successful appeals against previous decision of an appeal tribunal – *MS v Department for Social Development (JSA)* ([2016] NICom 53) and *MS v Department for Social Development* ([2016] NICom 54). The revision decisions of 10 January 2014 altered the decisions of 31 October 2012 and 23 February 2014 to the extent of revising the basis on which the claims to IBJSA were disallowed but did not change the outcome maintaining the disallowance from and including 17 January 2008 and from and including 18 February 2014.
6. The appeal tribunal issued two decision notices as follows:
  - (i) (The appellant) is not entitled to JSA from 17 January 2008 to 13 August 2012 as he had actual capital of over £16000.
  - (ii) (The appellant) is not entitled to JSA from 18 February 2014 as he had actual capital of £50000 and notional capital of £33,628.51, subject to the diminishing capital rules.
7. As noted above, both decision notices have errors in them. In (i) the disallowance period should not have ended on 13 August 2012 but 17 February 2014. The end date of 17 February 2014 is the day before the further claim to JSA made from 18 February 2014. The error is not of substance as the appeal tribunal addressed the reasons for disallowing entitlement up to 17 February 2014 in the statement of reasons for its decision. The error in (ii) is addressed above. There should be an end date to the disallowance of 4 March 2014. Once again, the appeal tribunal is not in substantive error as it was unaware of the fact of the further claim to ESA.
8. The appeal tribunal issued a composite statement of reasons for both decisions.
9. On 8 October 2018 an application for leave to appeal to the Social Security Commissioner against both decisions of the appeal tribunal was

received in the Appeals Service (TAS). On 16 October 2018 the applications for leave to appeal were refused by the Legally Qualified Panel Member (LQPM).

### **Proceedings before the Social Security Commissioner**

10. On 14 November 2018 further applications for leave to appeal were received in the office of the Social Security Commissioners. Written observations were provided by Mr Woods of Decision Making Services on 9 January 2019 and were shared with the appellant on the same date. Written observations in reply were received from Mr Black of the Law Centre (Northern Ireland) on 21 January 2019.
11. On 28 May 2019 I granted leave to appeal giving as a reason that it was arguable that the appeal tribunal had failed to apply appropriate guidance on the issue of capital and its relevance to benefit entitlement. On the same date I directed an oral hearing of the appeal.
12. The oral hearing was first listed for 2 July 2019 but was adjourned at the request of Mr Black. The oral hearing took place on 30 October 2019. The appellant was represented by Mr Black and the Department by Mr Woods. Gratitude is extended to both representatives for their detailed and constructive observations, comments and suggestions.

### **Errors of law**

13. A decision of an appeal tribunal may only be set aside by a Social Security Commissioner on the basis that it is in error of law. What is an error of law?
14. In *R(I)2/06* and *CSDLA/500/2007*, Tribunals of Commissioners in Great Britain have referred to the judgment of the Court of Appeal for England and Wales in *R(Iran) v Secretary of State for the Home Department* ([2005] EWCA Civ 982), outlining examples of commonly encountered errors of law in terms that can apply equally to appellate legal tribunals. As set out at paragraph 30 of *R(I) 2/06* these are:
  - “(i) making perverse or irrational findings on a matter or matters that were material to the outcome (‘material matters’);
  - (ii) failing to give reasons or any adequate reasons for findings on material matters;
  - (iii) failing to take into account and/or resolve conflicts of fact or opinion on material matters;
  - (iv) giving weight to immaterial matters;

- (v) making a material misdirection of law on any material matter;
- (vi) committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of proceedings; ...

Each of these grounds for detecting any error of law contains the word 'material' (or 'immaterial'). Errors of law of which it can be said that they would have made no difference to the outcome do not matter."

### **The submissions of the parties**

15. At the oral hearing of the appeal, Mr Black confirmed that the grounds of appeal were those set out in his Case Summary and that he was not advancing any of the grounds of appeal which had been set out by the appellant in his application for leave to appeal. In his Case Summary Mr Black made the following submissions:

**Ground of Appeal 1. It is submitted that the tribunal has erred in law by misinterpreting the rules around 'notional capital' and deliberate deprivation of capital in order to claim a social security benefit.**

The appellant is accused of having deliberately deprived himself of capital and so is held to be treated as if he still had it. The notional capital rule is set out in Regulation 113 of the Jobseeker's Allowance Regulations (Northern Ireland) 1996.

The appellant received capital in the form of an inheritance. He claims that any capital he received from any source was spent appropriately and in the normal course of events. It was also used to pay off loans, most significantly his mortgage. The appellant felt that, given the recent economic crisis and its effects on both the property and banking sectors, it was logical and indeed prudent for him to pay off his mortgage and so mitigate the risk of ever becoming homeless. The commissioner will also be aware of the increased financial burden additional homelessness would put on the state. This point is even more pertinent, given the evidence at the tribunal of the appellant's household expenditure.

We note the Tribunal, in the Statement of Reasons, states that it is "*accepted that the evidence was of a similar pattern of expenditure both before and after receipt of his inheritance*". This suggests that the Tribunal are satisfied that the appellant has not changed his spending pattern as a result of the inheritance windfall. It therefore follows that his spending after the receipt of inheritance was not motivated by a desire to deprive himself of capital for the purposes of claiming benefit, but rather based on similar motivators as those which existed before the receipt of inheritance.

In practice, a dispute over alleged deprivation of capital may depend on whether it can be shown that a claimant would have spent the money the way they did regardless of the effects of benefit entitlement. If this is unclear, the burden of proof lies with the decision maker. Not only has the Tribunal failed in this evidential burden, they seem to have accepted that there was a similar pattern of expenditure both before and after receipt of inheritance, therefore suggesting a lack of motive by the appellant to intentionally deprive himself of capital.

We therefore submit that the legal burden of proof on alleged deprivation of capital has not been reached by the tribunal, nor have they sufficiently justified their decision in the statement of reasons. In doing so the Tribunal has erred in law.

**Ground of Appeal 2. It is submitted that the tribunal has erred in law by committing a procedural unfairness in relation to the treatment of the claimant's evidence regarding possession of capital over the threshold for entitlement to Jobseeker's Allowance.**

The tribunal found that £50,000 withdrawn from their current account had been invested elsewhere in order to benefit from entitlement to JSA. The appellant disputed this.

In regards to disputes over capital in benefit's cases I refer to the decision of Commissioner Mullan in *C8/12-13(IS)*. At paragraphs 19-22 the Chief Commissioner stated:

*"19. In my view, the approach taken by the appeal tribunal to the 'capital' issue is problematic in two ways. Firstly, it is arguable that the appeal tribunal has confined itself to addressing questions (i) to (iv) in R2/09(IS) and has concluded that the appellant, at the date of claim to IS had actual capital of £279,360.01. It is clear that an adjudicating authority is entitled to conclude, after a rigorous examination of the relevant evidence, that a claimant retains a capital asset despite a submission by that claimant that the capital asset had gone. In such a case the capital asset remains actual capital. In the instant case, it is important to recall that the decision by the decision-maker dated 7 January 2010 makes reference to the applicability of regulation 45 of the Income Support (General) Regulations (Northern Ireland) 1987, as amended. What is required, however, for such a conclusion to be rational is that it is based on a thorough examination of the relevant evidence and is supported by that evidence and that primary facts found from the evidence justify the conclusion.*

20. In this regard I am reminded of the judgment of Carswell LCJ in *Chief Constable of the RUC v Sergeant A* [2000] NI 261 at 273f as follows: -

*'A tribunal is entitled to draw its own inferences and reach its own conclusions, and however profoundly the appellate court may disagree with its view of the facts it will not upset its conclusions unless—*

*(a) there is no or no sufficient evidence to found them, which may occur when the inference or conclusion is based not on any facts but on speculation by the tribunal (Fire Brigades Union v Fraser [1998] IRLR 697 at 699, per Lord Sutherland); or*

*(b) the primary facts do not justify the inference or conclusion drawn but lead irresistibly to the opposite conclusion, so that the conclusion reached may be regarded as perverse: Edwards (Inspector of Taxes) v Bairstow [1956] AC 14, per Viscount Simonds at 29 and Lord Radcliffe at 36.'*

21. In the instant case, the appeal tribunal had before it copies of statements relating to the appellant's wife's current account with the First Trust Bank. Those statements are in the file of papers which is before me. From those statements it is clear, as the appeal tribunal concluded, that the sum of £385,000 was deposited in the appellant's current account on 8 November 2005. On 14 November 2005 the sum of £270,000 was transferred to a fixed term account. Statements relating to the fixed term account from 14 November 2005 are also in the file of papers which are before me. Returning to the current account, the transfer on 14 November 2005 of the sum of £270,000 to the fixed term account left a balance in the current account on 14 November 2005 of close to £40,000. There then followed a systematic dissipation in the funds within the current account, by various methods – cheques, withdrawals, direct debits – such that by 24 November 2005 the level of funds was reduced to just under £4,000. On 24 November 2005 the sum of £10,000 was transferred into the current account and there is a parallel entry from the statement of the fixed term account to confirm that this was the source for the transferred-in funds. Thereafter a pattern emerged of regular dissipation of the funds in the current account

*followed by what I might term 'top-ups' from the fixed term account. The funds in the fixed term account were also dissipated by separate direct withdrawals. This pattern continued until by 25 March 2009 there were no remaining funds in the fixed term account. The last entry which I have for the current account is for 1 October 2008 when the available funds were just short of £5,000.*

*22. The only possible conclusion which can be drawn from the evidence set out in the preceding paragraph is that by October 2009 the bulk of the £385,000 was no longer in the appellant's wife's bank accounts. For the appeal tribunal to conclude, if that was its conclusion, that the appellant, as of the date of claim to IS, that is 19 October 2009, had actual capital of £275,467.43 would mean a finding, as a primary fact, that the basis of the actual capital, monies in the amount of £275,467.43, and which were no longer in the appellant's wife's bank accounts, were being retained or held elsewhere. I regard that to be highly improbable. It seems to me that by 19 October 2009 the bulk of the £385,000 was gone. Accordingly and to utilise the language of Carswell LCJ cited above, in the instant case '...the primary facts do not justify the inference or conclusion drawn but lead irresistibly to the opposite conclusion, so that the conclusion reached may be regarded as perverse ...'. To that extent, the decision of the appeal tribunal is in error of law."*

The tribunal in this case have accepted that the appellant received £103,788.61 in inheritance in January 2008. They also accepted that the appellant spent all this inheritance money, bar the sum of £50,000. Despite the appellant claiming that this £50,000 had been spent on home improvements, new furniture and jewellery etc., they concluded that "*on balance he had not shown what had happened to the £50,000 and was to be treated as still in possession of it throughout the period. It remained part of his actual capital*". The tribunal therefore made a positive finding that the appellant still possessed the £50,000 without indicating where he held this money, stating "*it is not up to the tribunal to speculate as to where the money had gone*".

The appellant put forward that he had no capital, that he maxed out his credit card, surrendered his Phoenix Life Insurance Policy and lived off charity and family assistance whilst not receiving benefits. The tribunal made no findings of fact on this evidence. As noted above in C8/12-13(IS), all the evidence should be taken into account so that the facts found from that evidence can justify the conclusion. In failing to properly address this evidence, in either accepting it or by giving reasons for rejecting it, we submit that the Tribunal has erred in law. We are grateful

to the Department for the detailed comments made in their submissions dated 9 January 2019 and confirm our mutual agreement on this point.'

16. In his Case Summary, Mr Woods made submissions on the grounds of appeal which had been advanced by the appellant in his application for leave to appeal and on which Mr Black relied. Insofar as his Case Summary addressed the substantive grounds of appeal, Mr Woods made the following submissions:

'The Tribunal in this case have accepted that (the appellant) received the sum of £103,788.61 in inheritance on 17 January 2008. They have accepted that (the appellant) has spent all of the money bar the sum of £50,000.

The tribunal considered (the appellant's) assertions that he had spent the £50,000 on home improvements, new furniture and jewellery as itemised by him on 1 March 2013 and that he had also stated that he made the withdrawal because of his concerns about the banking crisis at the time. (The appellant) did not provide any receipts / invoices or documentation to substantiate his claims. The Tribunal *"however accepted that it was reasonable that after such a period of time, he would not have complete records in relation to these items, and that the absence of receipts was not fatal to the appellant's case. It found that it was more likely than not however that the appellant would have some record or documentation of such extensive work and expenditure. Had he provided partial evidence of some of the expenditure the tribunal would have accepted his account on the balance of probabilities. He produced none in any form."* I submit that it was not unreasonable for the Tribunal to conclude on the balance of probabilities that he had not spent the money as he suggested.

The Tribunal went on to find that (the appellant) had an understanding of financial affairs given his letter of appeal and the complexity of his finances. The Tribunal went on to find that *"The tribunal found on balance he had not shown what had happened to the £50,000 and was to be treated as still in possession of it throughout the period. It remained part of his actual capital"*. Although the Tribunal have made positive finding that (the appellant) still possessed the £50,000 it has not indicated where he held this money. The Tribunal appear not to have considered that the money had been spent, but not in the ways claimed and have recorded in the reasons for decision that *"it was not up to the tribunal to speculate as to where the money had gone"*.



I further submit that the Tribunal have not made a positive finding of fact with regard to the source of the money in (the appellant's) St Andrew's account or his Halifax Ifml account. The Tribunal "*concluded that on the balance of probabilities these sums were funded by the £50000 withdrawn, or some other undisclosed source*". As such I submit they have erred in law.

I submit that although it is quite clear that (the appellant) has put forward that he had no capital, that he had maxed out his credit card, surrendered his Phoenix Life Insurance Policy early and lived off charity, food banks and family in order to survive without jobseeker's allowance, the Tribunal have made no findings of fact on this matter. I submit that the Tribunal have not stated that they have rejected this evidence or if they have, they have not given reasons for doing so and as such have erred in law. (The appellant) in his application for leave has stated that he has "*a lot more evidence which will surface at a later date,*" in relation to this matter.

I submit that the Tribunal should have followed the guidance at paragraphs 19 to 24 of NI Chief Commissioner Mullan's decision C8/12-13(IS) above in that all the circumstances/facts should be taken into account, so that the evidence and the primary facts found from that evidence justify the conclusion. By not following that guidance and the guidance in C7/11-12(IS) I submit that the Tribunal have erred in law.

### **Further observations**

The Tribunal in its decision and in its reasons for decision has stated that (the appellant's) notional capital is subject to the diminishing notional capital rule and that it accepted the figures and analysis set out in paragraphs 18-21 of the revised decision of 9 January 2017.

I submit that as the Tribunal found that (the appellant) had actual capital of £50,000, the diminishing notional capital rule would have no affect and the figures set out in paragraphs 18-21 of the revised decision of 9 January 2017 are incorrect. I submit that the diminishing notional capital rule at regulation 114 of the JSA Regulations can only start when it is his notional capital alone that prevents him from receiving an amount of benefit and as such the Tribunal have erred in law.'

## The relevant legislative provisions

17. Section 130(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, as amended, provides that:

‘No person shall be entitled to an income-related benefit if his capital or a prescribed part of it exceeds the prescribed amount’.

18. Article 14 of the Jobseekers (Northern Ireland) Order 1995, as amended, provides that:

‘14 (1) In relation to a claim for a jobseeker’s allowance, the income and capital of a person shall be calculated or estimated in such manner as may be prescribed.

(2) A person’s income in respect of a week shall be calculated in accordance with prescribed rules.

(3) The rules may provide for the calculation to be made by reference to an average over a period (which need not include the week concerned).

(4) Circumstances may be prescribed in which—

(a) a person is treated as possessing capital or income which he does not possess;

(b) capital or income which a person does possess is to be disregarded;

(c) income is to be treated as capital;

(d) capital is to be treated as income.’

19. Article 15(1) of the Jobseekers (Northern Ireland) Order 1995, as amended, provides that:

‘15 (1) No person shall be entitled to an income-based jobseeker’s allowance if his capital, or a prescribed part of it, exceeds the prescribed amount.’

20. Regulation 107 of the Jobseekers Allowance Regulations (Northern Ireland) 1996, as amended, provides that:

‘107 For the purposes of Article 15(1) and (2A) of the Order (no entitlement to an income-based jobseeker’s allowance if capital exceeds a prescribed amount), the prescribed amount is £16,000.’

21. Regulation 113 of the Jobseekers Allowance Regulations (Northern Ireland) 1996, as amended, provides that:

‘(1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to a jobseeker’s allowance or increasing the amount of that allowance ... except— ...’

22. The remainder of Regulation 113 sets out a number of exceptions, none of which apply in the instant case

### **Analysis**

23. The periods of potential benefit entitlement under consideration by the appeal tribunal were (i) from and including 17 January 2008 and (ii) from and including 18 February 2014. In relation to the second period, Mr Woods has submitted in his Case Summary that any entitlement from 18 February 2014:

‘... would cease on 4 March 2014, as he made a claim for Employment and Support Allowance from 5 March 2014 due to him having limited capability for work. From 5 March 2014 he no longer met the conditions of entitlement to Jobseeker’s Allowance [Article 3(2)(f) of the Jobseeker’s (Northern Ireland) Order 1995].’

24. I accept that submission and, accordingly the second period is from 18 February 2014 to 4 March 2014.
25. The appeal tribunal began by considering the period from 17 January 2008 to 10 December 2009. The appeal tribunal had before it details of various bank accounts held by the appellant and copies of statements relating to those bank accounts. These documents were added as ‘Tabs’ to the appeal submission prepared for the hearing before the appeal tribunal. They are presently before me. The tribunal noted the following:

‘It (the tribunal) found as a fact that the appellant received £103,788.61 in capital on 17/1/08, lodged in the Halifax account \*\*\* (Tab 5). He transferred £40,000 from this account on 4/3/08. On the same date he opened a saver account (\*\*\*) with £40,000 (tab 6). The tribunal found on the balance of probabilities this was opened with money from account \*\*\*. Consideration of account \*\*\* shows that until 10/12/09 the balance in that account stood at £26,500, reducing to £10,740, by a withdrawal of £15,760 on that date.

In addition he had £3718.41 in ISA Saver Direct \*\*\* from 6/4/09 until 28/10/10, when the balance of £3718.41 was transferred. (Tab 7).

The tribunal found therefore that the evidence in the appellant’s bank account which clearly showed that in the

period 17/1/08 until 10/12/09 it was indisputable that the appellant had actual capital in excess of £16,000, and so was not entitled to Jobseeker's Allowance.'

26. At the oral hearing before me, Mr Black did not seek to dispute the appeal tribunal's conclusions with respect to the period from 17 January 2008 to 10 December 2009. He was correct not to do so as there is no error of law in the appeal tribunal's decision with respect to this period.
27. The appeal tribunal then turned to the period from 10 December 2009 until 13 August 2012. It stated the following:

'It (the tribunal) accepted the appellant purchased a car for £15,850 on 11/12/09, providing an invoice for this (tab 12) and this was capital that he no longer actually had at that date. There was no question of this being notional capital. It disregarded the value of the appellant's ... life insurance policy throughout the period, as required by para. 20 of Schedule 7 of the JSA regulations. It disregarded itemised routine expenditure from account \*\*\*. The tribunal then considered the withdrawal of £50,000 on 23/1/08 and its impact on the appellant's entitlement after that date.

The appellant's case was that he had spent this money on house improvements, new furniture and jewellery as itemised by him on 1/3/13 (tab 12). The question for the tribunal was whether the appellant had shown on the balance of probabilities that the £50,000 he withdrew was no longer in his possession. He also indicated that he had made the withdrawal because of his concerns about the banking crisis at the time. The tribunal did not find this credible. He continued to have bank accounts and investments after this date in the same economic circumstances.'

28. There is no doubt that the appellant did withdraw the sum of £50000 from one of his bank accounts on 23 January 2008. As noted above, I have before me copies of statements from the relevant bank account which confirm the withdrawal on that date in cash.
29. I observe, at this stage, that I find no fault with the appeal tribunal's primary reasoning on the issue of the appellant's credibility. In *C14/02-03(DLA)*, Commissioner Brown, at paragraph 11, stated:

'... there is no universal rule that a Tribunal must always explain its assessment of credibility. It will usually be enough for a Tribunal to say that it does not believe a witness.'

30. Additionally, in *R3-01(IB)(T)*, a Tribunal of Commissioners, at paragraph 22 repeated what the duty is:

'We do not consider that there is any universal obligation on a Tribunal to explain its assessment of credibility. We disagree with *CSIB/459/97* in that respect. There may of course be occasions when this is necessary but it is not an absolute rule that this must always be done. If a Tribunal makes clear that it does not believe a claimant's evidence or that it considers him to be exaggerating this will usually be sufficient. The Tribunal is not required to give reasons for its reasons. There may be situations when a further explanation will be required but the only standard is that the reasons should explain the decision. It will, however, normally be a sufficient explanation for rejecting an item of evidence, including evidence of a party to an appeal, to say that the witness is not believed or is exaggerating.'

31. This reasoning was confirmed in *CIS/4022/2007*. After analysing a series of authorities on the issue of the assessment of credibility, including *R3-01(IB)(T)*, the Deputy Commissioner (as he then was) summarised, at paragraph 52, as follows:

'In my assessment the fundamental principles to be derived from these cases and to be applied by tribunals where credibility is in issue may be summarised as follows: (1) there is no formal requirement that a claimant's evidence be corroborated – but, although it is not a prerequisite, corroborative evidence may well reinforce the claimant's evidence; (2) equally, there is no obligation on a tribunal simply to accept a claimant's evidence as credible; (3) the decision on credibility is a decision for the tribunal in the exercise of its judgment, weighing and taking into account all relevant considerations (e.g. the person's reliability, the internal consistency of their account, its consistency with other evidence, its inherent plausibility, etc, whilst bearing in mind that the bare-faced liar may appear wholly consistent and the truthful witness's account may have gaps and discrepancies, not least due to forgetfulness or mental health problems); (4) subject to the requirements of natural justice, there is no obligation on a tribunal to put a finding as to credibility to a party for comment before reaching a decision; (5) having arrived at its decision, there is no universal obligation on tribunals to explain assessments of credibility in every instance; (6) there is, however, an obligation on a tribunal to give adequate reasons for its decision, which may, depending on the circumstances, include a brief explanation as to why a

particular piece of evidence has not been accepted. As the Northern Ireland Tribunal of Commissioners explained in R 3/01(IB)(T), ultimately "the only rule is that the reasons for the decision must make the decision comprehensible to a reasonable person reading it".

32. As was noted above, Mr Black has submitted that the appeal tribunal '... made a positive finding that the appellant still possessed the £50,000 without indicating where he held this money.' Further, Mr Woods appears to have agreed asserting that although '... the Tribunal have made positive finding that (the appellant) still possessed the £50,000 it has not indicated where he held this money. The Tribunal appear not to have considered that the money had been spent, but not in the ways claimed.'
33. In the statement of reasons for its decision, that appeal tribunal have addressed the explanation which the appellant gave to the Department as to what happened to the capital which he had received by way of his inheritance. That explanation was in the form of a statement made by the appellant, dated 1 March 2013, and a copy of which was attached to the appeal submission as Tab No 10. The appeal tribunal stated the following:

'The appellant provided no receipts or invoices to substantiate his claims. Tribunal accepted that it was reasonable that after such a period of time, he would not have complete records in relation to these items, and that the absence of receipts was not fatal to the appellant's case. It found that it was more likely than not however that the appellant would have some record or documentation of such extensive work and expenditure. Had he provided partial evidence of some of the expenditure tribunal would have accepted his account on the balance of probabilities. He produced none in any form. The tribunal did not accept his account as proving that he no longer had the £50,000 he withdrew. It found him to be an evasive and unhelpful witness. He had a complex set of financial records. He give the tribunal no frank assistance in understanding these. His letter of appeal and the complexity of his finances indicated an understanding of financial affairs. His general lack of credibility was relevant to assessing whether he had spent the £50,000 as he stated.'

34. As noted above, the appeal tribunal was under no duty to provide a further explanation as to why it found the appellant's evidence to be lacking in credibility or why it had concluded that he was 'an evasive and unhelpful witness.' Nonetheless, the appeal tribunal, in light of the appellant's otherwise clear grasp of his financial affairs, has assessed the detail of the appellant's claimed far-reaching expenditure in the

statement of 1 March 2013 and the absence of a single receipt for any of a number of significant items and outlays bar one for a motor vehicle. The appeal tribunal has recognised that the appellant might not have complete records of all of the expenditure but could not accept that not a single record remained.

35. I have examined the appellant's statement of 1 March 2013. I will not set out the detail of every item and disbursement set out therein but, by way of examples, the appellant asserted that he spent £5000 on items of jewellery, £5000 on new windows, £7500 on a new kitchen and £5000 on a loft conversion. The appellant could not provide a single receipt of any of this expenditure. To repeat, these are only examples of significant spending during what was submitted to be a 12 month period.
36. I find no fault, therefore, with the appeal tribunal's conclusion that the appellant:

'... had not shown in the balance of probabilities that the £50,000 was no longer in his possession.

The tribunal found that on balance he had not shown what had happened to the £50,000 and was to be treated as still in possession of it throughout the period. It remained part of his actual capital.'

37. Both Mr Black and Mr Woods have made reference to my decision in *DMcC-v-Department for Social Development (IS)* ([2012] NICom 326, C8/12-13(IS) ('DMcC'). Mr Black set out paragraphs 19 to 22 of the decision in his Case Summary and Mr Woods also makes reference to these paragraphs. Both representatives appear to be suggesting that the cited paragraphs are authority for a principle that an appeal tribunal, faced with circumstances pertaining in the instant case, namely where a claimant has asserted that their actual capital is below the prescribed limits for entitlement to benefit, as a consequence of the dissipation of capital which, at one stage, was in excess of those limits, is under a duty to make positive findings as to where the capital has gone. The quoted passages are not authority for such a principle. The decision in *DMcC* turned on its own individual facts.
38. In paragraph 18 of his decision in *R(SB) 38/85*, Mr Commissioner Hallett stated:

'Once it has been shown that a member of the assessment unit has recently received, or otherwise been the owner of, a capital resource (income resources are not in issue in the present appeal) the onus of proving, on a balance of probability, that he no longer has that resource rests on the claimant, since it is for him to establish title to supplementary benefit. In the present case, it is not in dispute that the claimant received £18,700

(the finding of £18,500 made by the second tribunal seems to have been a clerical error) from a London Borough on the compulsory purchase of a house of his in November 1982. Supplementary benefit was in payment to him up to November 1982. From the time he received the money, his capital resources were clearly above the prescribed limit of £2,500 (13,000 from 21 November 1983) set out in regulation 7 of the Supplementary Benefit (Resources) Regulations 1981. The claimant says that he expended this sum of £8,700 in repaying loans. It is for him to prove that this is so. Failing a satisfactory account of the way in which the money has been disposed of, it will be open to the tribunal, and a natural conclusion, to find that the claimant still has, in some form or other, that resource and consequently to conclude that his actual resources are above the prescribed limit.'

39. This principle has never been doubted – see the endorsement of it in paragraph 24 of *AB SSWP and Canterbury CC (HB)* ([2014] UKUT 0212 (AAC)). Staying with that case, and the conclusions of Upper Tribunal Judge Wikeley, on the facts of that case, in paragraphs 21 and 22, the use, by the appeal tribunal in the instant case, of the term 'treated' as being in possession of the capital, is clumsy but is negated by the very positive finding that the £50000 remained part of the appellant's actual capital.
40. Both Mr Black and Mr Woods have asserted that the appeal tribunal have not made specific findings on the appellant's further evidence that he had surrendered his life insurance policy, had 'maxed' out his limit on his credit card, had nothing to live on and had relied on charity and food banks. Further, Mr Woods has made reference to the appellant's assertion that he had '... a lot more evidence which will surface at a later date.' There is a reference in the record of proceedings for the appeal tribunal hearing to the use of a credit card. Otherwise the evidence is contained in the application for leave to appeal which was before the LQPM and which, of course, post-dated the appeal tribunal hearing and the appeal tribunal's decision.
41. The appellant had every opportunity before the appeal tribunal to adduce whatever evidence he sought to rely on in support of his appeal. The original application for leave to appeal which was before the LQPM and re-submitted to the office of the Social Security Commissioners, amounts to further submissions on factual issues rather than questions of law. I repeat what I have said very often that an appeal on a question of law should not be permitted to become a re-hearing or further assessment of the evidence, when that assessment has already been fully and thoroughly undertaken. It was correct of Mr Black not to seek to rely on those grounds.



42. Mr Woods has made reference in the statement of reasons for the appeal tribunal's decision to credits of certain sums of money and to the appeal tribunal's conclusion that '... in the absence of any other explanation ... these sums were funded by the £50,000 withdrawn, or some other undisclosed source.' In my view nothing turns on that conclusion and it does not upset the primary findings that the appellant had actual capital in the sum of £50000.
43. Accordingly, the appeal tribunal's conclusion that the appellant was not entitled to JSA from 10 December 2009 to 13 August 2012 is not in error.
44. The final period of potential benefit entitlement considered by the appeal tribunal was from and including 14 August 2012. In the statement of reasons for its decision with respect to that period, the appeal tribunal stated:

'It also considered the position from 14/8/12, which was addressed separately in the decision. It found, consistent with the analysis above that the £50,000 remained in his actual capital. He had failed to show otherwise.'
45. I have already addressed the appeal tribunal's 'analysis above' and have found no error in that analysis. Accordingly, the appeal tribunal's conclusion that in the period from and including 14 August 2012, the appellant still had actual capital of £50000, that meant that he had not entitlement to JSA for that period. The appeal tribunal's substantive reasoning was, therefore, not in error.
46. The appeal tribunal, went on to address issues of notional capital and the diminishing notional capital rules. Having found that the appellant had actual capital in excess of the prescribed limits for entitlement to JSA, for the relevant period, the appeal tribunal had no requirement to address the issue of notional capital or the diminishing notional capital rules.

### **Disposal**

47. The decisions of the appeal tribunal dated 23 March 2018 under references *C1/19-20 (JSA)* and *C2/19-20 (JSA)* are not in error of law. Accordingly the appeals to the Social Security Commissioner do not succeed.
48. I substitute my own decision for that of the appeal tribunal in the appeal under reference *C2/19-20 (JSA)*. My substituted decision is that the appellant is not entitled to Income Based Jobseeker's Allowance (IBJSA) from 17 January 2008 to 17 February 2014. I have determined that there is an error in the period of disallowance specified in the appeal tribunal's decision notice but that error does not go to the substance of the appeal tribunal's decision.

49. I substitute my own decision for that of the appeal tribunal in the appeal under reference *C1/19-20 (JSA)*. My substituted decision is that the appellant is not entitled to JSA from 18 February 2014 to 4 March 2014. This is because I accept a submission made by Mr Woods on behalf of the Department that the appellant's entitlement to JSA would cease on 4 March 2014, as he made a claim for Employment and Support Allowance (ESA) from 5 March 2014 due to him having limited capability for work. From 5 March 2014 he no longer met the conditions of entitlement to Jobseeker's Allowance under Article 3(2)(f) of the Jobseeker's (Northern Ireland) Order 1995, as amended. That submission was not made to the appeal tribunal below and, accordingly, it was unaware of the further claim to ESA.

(signed): K Mullan

Chief Commissioner

18 May 2020