

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

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

Application by the above-named claimant for  
leave to appeal to a Social Security Commissioner  
on a question of law from a tribunal's decision  
dated 27 November 2019

**DETERMINATION OF THE SOCIAL SECURITY COMMISSIONER**

**Background**

1. This appeal is against a decision of an appeal tribunal dated 27 November 2019 which disallowed an appeal against a decision of the Department, itself dated 24 October 2018 which decided that an overpayment of State Pension Credit (PC) amounting to £1487.80 for the period from 10 April 2015 to 14 February 2016 had been made which was recoverable from the late applicant.
2. The appeal was listed for oral hearing on 23 March 2023.
3. The correspondence of 1 March 2023 informing the late appellant of the date and time of the oral hearing was returned to the office of the Social Security Commissioners with a note which stated that the appellant had passed away '14 months ago'.
4. On 14 March 2023 I issued a direction setting out certain relevant principals, repeated below, and which directed the Department to make careful enquiries to determine whether there is a personal representative of the late appellant who is willing to continue with the appeal.
5. In email correspondence dated 24 March 2023, Mr Donnan stated that he had that day forwarded correspondence to the late appellant's wife asking whether there is a personal representative wishing to take his appeal forward.
6. In further email correspondence dated 20 April 2023, Mr Donnan stated that he had not received a reply to the correspondence of 24 March 2023 to the late appellant's wife and noted that '... and I would imagine we have to treat that nil response as an indication that (the late appellant's wife) does not wish to arrange appointment of a personal representative for her late husband's appeal.'

## To repeat the principles which now apply

7. In *R(I) 2/83* the background was that a claimant appealed to the Commissioner against the disallowance of his claim for special hardship allowance but died before his appeal could be heard. His widow was unwilling to be appointed to act in respect of the outstanding appeal and the Official Solicitor declined to become involved. The Commissioner said the following, at paragraphs 5 and 6 of his decision:

'In Decision *R(S) 7/56* where the appeal of a claimant since deceased was an appeal against a decision requiring repayment of benefit overpaid, the Commissioner dismissed the appeal without there being any representative of the deceased or his estate on an assurance by the insurance officer that no attempt would be made to enforce repayment. This was a practical solution to the problem in that the assurance made it virtually certain that no one would ever seek to have the decision dismissing the appeal set aside. No comparable assurance has been offered or indeed can readily be devised that would achieve an equivalent effect in the present case. I note that in Decision *R(P) 2/62* the Commissioner left open the question whether it would be proper to dismiss an appeal in a case where there was neither a personal representative nor an appointment under the then equivalent of regulation 29. I have reached the conclusion that it is better not to dismiss such an appeal in circumstances such as the present but merely to declare it abated. In my judgment when in such circumstances an appeal is declared abated by the Commissioner (or in the case of an appeal to the local tribunal by that tribunal) the matter can for practical purposes be regarded as closed. It is true that there remains a faint possibility of its being revived; but, even if the appeal were dismissed in the absence of anyone to represent the claimant, there would remain the possibility of an application to have the dismissal set aside.

I have discussed with several other Commissioners the practice recommended in this Decision and they have authorised me to say that they agree that it is appropriate for adoption in comparable cases, that is to say in cases where the claimant is the appellant and has died since his appeal has been launched and where (1) there is no person willing to be appointed a representative under regulation 29, (2) there is no personal representative or the equivalent functionary in Scotland and (3) the case is not amenable to the procedure adopted in Decision **R(S) 7/56**. It is not appropriate where the appellant is the insurance officer and if the insurance officer is in such a case unwilling to withdraw his appeal some other procedure must be devised.'

8. The reasoning in *R(I) 2/03* has never been doubted and has been applied in other decisions of the Social Security Commissioners. In *R(SB) 25/84*, the Commissioner said the following at paragraph 3:

'In these circumstances I have reached the conclusion that the reasons given by the Commissioner in Decision *R(I) 2/83* for following the procedure adopted in that decision are equally applicable to supplementary benefit cases. It is better not to dismiss a deceased claimant's appeal in a case where there is neither a personal representative nor an appointee under regulation 28. In circumstances such as the present it is preferable merely to declare that the appeal is abated. The matter can then for practical purposes be regarded as closed. I have discussed with several other Commissioners the practice recommended in this decision and they have authorized me to say that they agree that it is appropriate for adoption in comparable cases. It is not appropriate where the appellant is the supplementary benefit officer and if that officer is in such a case unwilling to withdraw his appeal some other procedure must be devised.'

9. In *R(IS) 6/01* the Commissioner stated the following at paragraph 41:

'In cases where a claimant dies after making an appeal against a decision on a claim, but there is no personal representative of the estate or an appointee under regulation 30(1) of the Claims and Payments Regulations (but now see regulation 34 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999), it was settled that the appeal is a nullity (*R(SB) 8/88*) or, I think more properly, abates (*R(I) 2/83* and *R(SB) 25/84*). Where there is no duly constituted person with a right of appeal at the time when the appeal is purportedly made, I think there can be no question of abatement, but it must be the case that there has never been a valid appeal in being. In *R(SB) 8/88*, the Commissioner, having decided that the appeal to the appeal tribunal in that case was a nullity, as there was no validly constituted party to the appeal, set the appeal tribunal's decision aside. But there was no validly constituted party to the appeal to the Commissioner either, so that I am not at all sure that he had the statutory power to set the appeal tribunal's decision aside.'

10. So far as I need to, I adopt and accept the reasoning and analysis of the Commissioners in each of these decisions which, in my view, properly reflect the law in Northern Ireland.

## **Appointee**

11. As far as I am aware, there is no Departmental appointee in this case.
12. In any event, an appointee is not appropriate for the following reasons.
13. Regulation 30(1) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987, as amended, ('the 1987 Regulations') provides:

'30. (1) On the death of a person who has made a claim for benefit, the Department may appoint such person as it may think fit to proceed with the claim and any related issue of revision, supersession or appeal.'

14. In *CIS/1423/1997*, the Social Security Commissioner was considering the equivalent of Regulation 30(1). At paragraph 21, he stated the following:

'In my judgment, the plain words of regulation 30(1) do not allow the Secretary of State to appoint a person to represent the claimant or their estate in the context of a decision for the recoverability of an overpayment from the claimant's estate. And if they had purported to allow that, they would not have been within the powers granted by primary legislation.'

15. Regulation 34 (1) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999, as amended, ('the 1999 Regulations'), provides:

'34. (1) In any proceedings, on the death of a party to those proceedings, the Department may appoint such person as it thinks fit to proceed with the appeal in the place of such deceased party.'

16. In regulation 1(3) of the 1999 Regulations, 'appeal' is defined as 'an appeal to an appeal tribunal'.

## **Personal representative**

17. I directed the Department to make careful enquiries to determine whether there is a personal representative of the late appellant who is willing to continue with the appeal. The Department's response is noted in paragraphs 4 to 6.
18. I have determined that there is no personal representative wishing to take his appeal forward.

## Disposal

19. In these circumstances the appropriate disposal is to declare that the appeal is abated.
20. I have appended an electronic signature to this determination to facilitate its promulgation.

A handwritten signature in black ink on a light grey rectangular background. The signature reads "Kenneth Mullan" in a cursive script.

K MULLAN

CHIEF COMMISSIONER

8 November 2023