

## INTRODUCTORY NOTE

### *The Commissioners*

**Note:** with effect from 3 November 2008 the functions of the Social Security Commissioners were transferred by statute to the Administrative Appeals Chamber of the newly created Upper Tribunal, and the Social Security and Child Support Commissioners became Judges of the Upper Tribunal. However, all the cases in the current (2007/2008) series of Commissioners' decision were decided before that change.

The Social Security, Child Support and Pensions Appeal Commissioners are members of the judiciary whose status is equivalent to that of circuit judges. They hear appeals against decisions of tribunals on matters relating to social security benefits, tax credits, child support maintenance, war pensions and the armed and reserve forces compensation scheme. They also determine questions arising under the Forfeiture Act 1982 in relation to social security benefits.

The Commissioners have jurisdiction throughout Great Britain. They have two offices: one in London run by the Ministry of Justice and one in Edinburgh run by the Justice Department of the Scottish Executive.

The Upper Tribunal (Administrative Appeals Chamber)  
3rd Floor  
Procession House  
55 Ludgate Hill  
London  
EC4M 7JW

The Upper Tribunal (Administrative Appeals Chamber) in Scotland  
George House  
126 George Street  
Edinburgh  
EH2 4HHTel: (0131) 271 4310

Tel: (020) 7029 9850

Further information about the Upper Tribunal Judges and about the procedure for appealing to the Upper Tribunal may be obtained from the appropriate office or from the Internet: [www.osspsc.gov.uk](http://www.osspsc.gov.uk).

### *Reported Commissioners' Decisions*

Commissioners' decisions on questions of legal principle are treated as binding on tribunals and on decision-makers acting on behalf of Government departments and local authorities. This means that the principles of law laid down in the decisions must be applied in other cases. Reported decisions are those decisions that are published in this official series to give them greater prominence. Relevant decisions of the courts on appeal from, or on reference by, Commissioners are published with them.

An editorial board of Commissioners selects those decisions that are to be reported. They take into account the views of other Commissioners and of anybody else who has commented on the suitability of a decision for reporting. (Any such comments should be sent to the secretary of the editorial board at the London office of the Commissioners, [jill.walker@justice.gsi.gov.uk](mailto:jill.walker@justice.gsi.gov.uk)) See the Chief Commissioner's

Practice Memorandum No 2, dated 31 December 2004, on the publication and citation of Commissioners' decisions, reproduced at the end of this note.

New guidelines for selection of decisions for reporting were issued in 2006 and are also reproduced after this note.

Each reported decision is given a headnote in which the decision is summarised and which identifies the Commissioner or Court who gave the decision, the date of the decision and the original file number. The headnotes are not part of the decisions and do not share the authority of the text. They are written by the Legal Information Officers and Legal Officers in the Commissioners' offices.

The Legal Information Officers, Miranda Bayliss and Maggie Phelps, have acted as editors of the text supplied by the Commissioners' offices for this volume.

### *The Numbering of Commissioners' Decisions*

All Commissioners' decisions have file numbers beginning with a "C", eg CIB/1664/2002. Scottish cases are identified by an "S" after the "C", eg CSIB/877/2001. When there was a separate Commissioners' office in Wales, Welsh cases were identified by a "W" after the "C". The other letters indicate the type of case, generally by reference to the benefit under consideration. The first set of numbers represents the individual file number. The final digits identify the year in which the file was opened at the Commissioners' office.

The following letters are, or have been, used to indicate the type of case:

A	Attendance allowance
AF	War pensions and the armed and reserve forces compensation scheme
CR	Compensation recovery
CS	Child support
CTF	Child trust fund
DLA	Disability living allowance
DWA	Disability working allowance
F	Family allowance (now child benefit)
FC	Family credit
FG	Forfeiture – general (bereavement benefit and widow's benefit)
FP	Forfeiture – pension (retirement pension)
G	General (bereavement benefit, carer's allowance, child's special allowance, death grant, guardian's allowance, invalid care allowance, maternity benefit and widow's benefit, including forfeiture cases before 2003)
H	Housing benefit and council tax benefit
HR	Home responsibilities protection

I	Industrial accidents and diseases and industrial injuries benefits (injury benefit, disablement benefit, reduced earnings allowance and industrial death benefit)
IB	Incapacity benefit
IS	Income support and social fund payments
JSA	Jobseeker's allowance
M	Mobility allowance
P	Pension (retirement pension, including forfeiture cases before 2003)
PC	Pension credit
S	Sickness benefit, invalidity benefit and severe disablement allowance
SB	Supplementary benefit
SSP	Statutory sick pay
TC	Tax credits
U	Unemployment benefit

When a decision is selected for reporting it is given a new number beginning with an "R": eg CH/4306/2003 is reported as R(H) 2/05. The letters in brackets again identify the type of case. Scottish decisions are not expressly identified as such. Until 1999, the final digits identified the year in which the decision was selected for reporting. Since 2000, they have identified the year in which the decision was published by the Department for Work and Pensions (formerly the Department of Social Security).

Decisions are usually listed alphabetically by type of case, and then numerically by year.

### *Guidelines for Reporting*

#### **When should decisions be reported**

Decisions should be reported if (i) they decide difficult issues, (ii) contribute to the coherent development or operation of the law or (iii) give practical guidance to decision-makers or appeal tribunals.

#### **Decisions of single Commissioners**

A decision may be reported–

- if it is of value as a precedent. This requires that the decision commands the broad assent of a majority of the Commissioners. Relevant factors include: whether the decision decides an issue for the first time; whether it modifies a reported decision; whether the decision resolves a conflict or settles a doubtful point; whether it has been overtaken by amendments to the legislation; and the number of cases in which it is likely to be relevant.
- if it extends existing principles to new areas of the Commissioners' jurisdiction.

- for comments that are not essential to the decision if they contribute to the coherent development of the law.
- as an illustration of how the law applies if the issue commonly arises and there is no other reported decision.
- if it gives practical guidance to decision-makers or appeal tribunals.

### **Decisions of Tribunals of Commissioners**

A decision of a Tribunal of Commissioners should be reported in the absence of exceptional reasons for not doing so.

### **Court decisions**

Court decisions should be reported if (i) they satisfy the criteria for reporting a decision by a single Commissioner, except the broad assent of the Commissioners and (ii) deal with an area of law within the Commissioners' jurisdiction. They should not be reported if they deal with other areas of law, even if they relate to the Commissioners' jurisdiction.

Decisions on permission to appeal are only reported if they contain useful analysis.

### **Editing**

This is permissible, provided severance is possible.

## **CHIEF COMMISSIONER'S PRACTICE MEMORANDA DATED 31 DECEMBER 2004**

### **PRACTICE MEMORANDUM No 1**

#### **Revocation of Practice Memoranda etc**

1. Guidance on various aspects of Commissioners' procedure has been given from time to time in a variety of Practice Memoranda and Practice Directions. The present status of some of these is unclear, whilst others are redundant (their subject-matter having been effectively replaced by guidance notes issued to claimants by the Commissioners' Office).
2. It is important that parties before Commissioners are aware of the guidance they are expected to follow, and that that guidance is current and clear.
3. For these reasons, all previous Practice Memoranda and Practice Directions are hereby revoked.
4. The Commissioners' Offices will continue to distribute general guidance to claimants in the form of guidance notes. Where more formal guidance is appropriate, this will be issued in Practice Memoranda which in future will be consecutively numbered and dated (with version number and date of re-issue, where appropriate). They will be issued by the Chief Commissioner (or, in the case of Practice Memoranda affecting only Scottish cases, by the Chief Commissioner and the Senior Scottish Commissioner) after consultation with the Commissioners.
5. Upon issue, Practice Memoranda and guidance notes will be published on the websites of the Commissioners' Offices.

**His Honour Judge G R Hickinbottom**  
**Chief Commissioner**  
31 December 2004

## **PRACTICE MEMORANDUM No 2**

### **The Publication and Citation of Commissioners' Decisions**

1. Decisions of Commissioners are available on notice for inspection and for the purchase of copies either at the London Office or the Edinburgh Office of the Commissioners. They are also available electronically (further details of which can be found on the Office website, at [www.osspsc.gov.uk/decisions/subscriptions.htm](http://www.osspsc.gov.uk/decisions/subscriptions.htm)).
2. Selected decisions of Commissioners are published on the website of the Commissioners' Office ([www.osspsc.gov.uk](http://www.osspsc.gov.uk)). Decisions of more general importance that have been issued in the last 12 months are highlighted on the website under "What's New?", and will also be sent by e-mail or in hard copy to subscribers. Details of the subscription service are available from either of the Commissioners' Offices.
3. Decisions are selected for reporting in the official series of reports by an Editorial Board of Commissioners, after consultation with all other Commissioners. Relevant decisions of the higher courts are published in the same series of reports. Decisions are selected for reporting because they are considered to be of general significance and to contribute to the orderly development and operation of the law. They will usually be decisions that deal with points of construction of legislation or with questions of legal principle but, where experience has shown a particular need for guidance in some area of practice, may be decisions that illustrate the application of legislation or established legal principle in that area.
4. Reported decisions of individual Commissioners may be taken to command the broad assent of at least a majority of Commissioners.
5. Suggestions as to, or comments on, the suitability of any decision for reporting and/or publication on the website may be sent to the Secretary to the Editorial Board at the London Office of the Commissioners.
6. In whatever form Commissioners' decisions are published or made available for public inspection, the anonymity of parties to decisions will be preserved so far as reasonably practicable.
7. Any decision of a Commissioner may be cited to the Commissioners in written submissions or at an oral hearing. However, reported decisions should be cited in preference to unreported decisions and, in general, unreported cases should be cited only if they decide some point of relevant principle. Citation of numerous unreported decisions that are merely illustrative of the application of a principle to similar facts is unlikely to be of assistance.
8. Where an unreported decision is relied upon by a party in proceedings before a Commissioner, a copy of that decision should be sent by that party to the relevant Commissioners' Office.
9. At least 14 days before an oral hearing, each party should send to the appropriate Commissioners' Office (i) a list of authorities relied that will be relied upon at the hearing and (ii) a copy of any unreported decision that will be relied upon, unless a copy has already been sent.
10. When citing a reported Commissioner's decision, the report number should be used (eg R(CS)1/05). When citing a decision that is not reported, the

Commissioners' file number should be given in full (eg CIS/1234/2005). The former "starred decision" numbers should not be used. For higher court decisions, the usual citation should be used but, in addition, if the case is also reported in the Commissioners' series of reports, that report number should also be used.

11. For the avoidance of doubt, the Chief Commissioner's Practice Memorandum of 25 March 2002 in respect of the publication and citation of Commissioners' decisions is revoked.

**His Honour Judge G R Hickinbottom**

**Chief Commissioner**

31 December 2004

### **PRACTICE MEMORANDUM No 3**

#### **Use of the Welsh Language in Commissioners' Cases**

1. The purpose of this Practice Memorandum is to reflect the principles of the Welsh Language Act 1993 that in the administration of justice in Wales the English and Welsh languages should be treated on the basis of equality.
2. This Memorandum applies to all Welsh cases, ie generally cases before the Commissioners in which the individual party is resident in Wales. "Individual party" means any non-government party. If there is more than one individual party in a case, then the case shall be a Welsh case if all are resident in Wales. If one is resident outside Wales, then a Commissioner (after giving the parties an opportunity to make submissions) shall decide whether the case should be classified as a Welsh case or not. If it is not so classified, then it will still be open to the Commissioner to allow the Welsh language to be used during the course of a case or in a hearing (see paragraph 10 below).
3. Welsh cases are currently dealt with administratively by the Commissioners' London Office. The Court Service Welsh Language Scheme applies to that Office. For the purposes of the Scheme, Welsh cases will be dealt with as if they are being conducted in Wales. In every Welsh case, any party has the right to use the Welsh language in communicating with the Commissioners and their Office, in accordance with the Scheme; and use of the Welsh language is welcomed.
4. In particular, in a Welsh case any party or representative may use the Welsh language in any document within the course of proceedings before a Commissioner. The Commissioner or a Legal Officer will consider whether directions are required for the translation of such documents. Any translation directed will be made without cost to any individual party.
5. Where the language of the appeal in the tribunal below was Welsh, the Commissioner or Legal Officer will make appropriate directions for the continued use of the Welsh language in the proceedings before the Commissioner.
6. Where there is an oral hearing in a Welsh case, any party has the right to ask for that hearing to be held in Wales. Any request that a hearing be in Wales should be made as soon as possible, and in any event at least 21 days before any hearing date fixed.

7. In any hearing of a Welsh case (wherever held), any party, representative or witness has the right to use the Welsh language. However, if a party or his or her representative is intending to use the Welsh language or to refer the Commissioner at the hearing to a document in Welsh or to call a witness who may wish to give evidence in Welsh, it is the responsibility of the party or representative to notify the Commissioners' Office as soon as possible and at least 21 days before the date of the hearing, so that appropriate arrangements can be made for the management and listing of the case and for any necessary translation or interpretation facilities.

8. Where practicable, a hearing in which the Welsh language is to be used will be listed before a Welsh-speaking Commissioner and, where translation facilities are needed, at a venue with simultaneous translation facilities.

9. Whenever an interpreter is needed to translate evidence from English to Welsh or from Welsh to English, the Commissioners' Secretary will take steps to secure the attendance of an interpreter whose name is included in the list of approved court interpreters.

10. In cases which are not Welsh cases, the decision whether or not to allow Welsh to be spoken is for the Commissioner. If a party wishes to use the Welsh language in such a case, then an application should be made to a Commissioner as soon as possible, and in any event at least 21 days before any hearing.

11. In each Welsh case a copy of this Memorandum (in Welsh and English) shall be issued to every individual party with the first documents sent in that case, when an individual party is joined to the case and also when any hearing is arranged.

12. The guidance given in this Practice Memorandum is without prejudice to the use of a language other than English or Welsh where that other language is the language of an individual party. Where translation or interpretation from a language other than English or Welsh may be required, then directions should be sought from the Commissioner or Legal Officer at the first opportunity.

**His Honour Judge G R Hickinbottom**

**Chief Commissioner**

31 December 2004

## COMISIYNWYR NAWDD CYMDEITHASOL A CHYNNAL PLANT

### PRYDAIN FAWR

#### MEMORANDWM YMARFER Rhif 3

##### Defnyddio'r Gymraeg yn Achosion y Comisiynwyr

1. Diben y Memorandwm Ymarfer hwn yw adlewyrchu egwyddorion Deddf yr Iaith Gymraeg 1993, sef y dylid trin y Gymraeg a'r Saesneg yn gydradd wrth weinyddu cyfiawnder yng Nghymru.
2. Mae'r Memorandwm hwn yn berthnasol i bob achos Cymreig, h.y. yn gyffredinol, achosion gerbron y Comisiynwyr lle mae'r parti unigol yn byw yng Nghymru. Ystyr "parti unigol" yw unrhyw barti anllywodraethol. Os oes mwy nag un parti unigol mewn achos, yna, bydd achos yn achos Cymreig os yw pob un ohonynt yn byw yng Nghymru. Os yw un yn byw y tu allan i Gymru, yna, bydd rhaid i'r Comisiynydd (ar ôl rhoi cyfle i'r partïon gyflwyno sylwadau) benderfynu a ddylid pennu'r achos yn achos Cymreig ai peidio. Os na chaiff ei phennu felly, yna bydd yn dal i fod yn agored i'r Comisiynydd ganiatáu i'r Gymraeg gael ei defnyddio yn ystod achos neu wrandawriad (gweler paragraff 10 isod).
3. Ar hyn o bryd, Swyddfa'r Comisiynwyr yn Llundain sy'n gweinyddu achosion Cymreig. Mae Cynllun Iaith Gymraeg y Gwasanaeth Llys hefyd yn berthnasol i'r Swyddfa honno. At ddibenion y Cynllun, trafodir achosion Cymreig yn yr un modd â phetaent yn cael eu cynnal yng Nghymru. Ym mhob achos Cymreig, bydd gan unrhyw barti yr hawl i ddefnyddio'r Gymraeg wrth gyfathrebu gyda'r Comisiynwyr a'u Swyddfa, yn unol â'r Cynllun, a bydd croeso iddynt ddefnyddio'r Gymraeg.
4. Yn benodol, mewn achos Cymreig, caiff unrhyw barti neu gynrychiolydd ddefnyddio'r Gymraeg mewn unrhyw ddogfen yn ystod achos sydd gerbron y Comisiynydd. Bydd y Comisiynydd neu Swyddog Cyfreithiol yn ystyried pa gyfarwyddiadau sydd eu hangen i gyfieithu dogfennau o'r fath. Os rhoddir cyfarwyddiadau i gael cyfieithu unrhyw beth, gwneir hynny heb gost i unrhyw barti unigol.
5. Os mai Cymraeg oedd iaith yr apêl yn y tribiwnlys is, bydd y Comisiynydd neu'r Swyddog Cyfreithiol yn rhoi cyfarwyddiadau priodol ar gyfer parhau i ddefnyddio'r Gymraeg yn yr achos gerbron y Comisiynydd.
6. Os cynhelir gwrandawriad llafar mewn achos Cymreig, mae gan unrhyw barti yr hawl i ofyn am gael cynnal y gwrandawriad hwnnw yng Nghymru. Dylid gwneud unrhyw gais am gael cynnal gwrandawriad yng Nghymru cyn gynted ag y bo modd, a fan hwyraf, o leiaf 21 diwrnod cyn pennu dyddiad unrhyw wrandawriad.
7. Mewn unrhyw wrandawriad Cymreig (ymhle bynnag y'i cynhelir), mae gan unrhyw barti, cynrychiolydd neu dyst yr hawl i ddefnyddio'r Gymraeg. Fodd bynnag, os bydd parti neu ei gynrychiolydd ef/hi yn bwriadu defnyddio'r Gymraeg neu'n bwriadu cyfeirio'r Comisiynydd yn y gwrandawriad at ddogfen yn Gymraeg neu alw tyst a all fod yn dymuno rhoi tystiolaeth yn Gymraeg, cyfrifoldeb y parti neu'r cynrychiolydd yw hysbysu Swyddfa'r Comisiynydd cyn gynted ag y bo modd a, fan hwyraf, 21 diwrnod cyn dyddiad y gwrandawriad, er mwyn gallu gwneud

trefniadau priodol i reoli a rhestru'r achos fel y gellir gwneud unrhyw drefniadau cyfieithu neu gyfieithu ar y pryd sy'n angenrheidiol.

8. Lle bo hynny'n ymarferol, bydd gwrandawriad lle defnyddir y Gymraeg yn cael ei restru gerbron Comisiynydd sy'n medru'r Gymraeg, ac, os oes angen cyfleusterau cyfieithu, mewn lleoliad lle mae cyfleusterau cyfieithu ar y pryd ar gael.

9. Lle bynnag mae angen cyfieithydd i gyfieithu tystiolaeth o'r Saesneg i'r Gymraeg neu o'r Gymraeg i'r Saesneg, bydd Ysgrifennydd y Comisiynwyr yn cymryd camau i sicrhau bod cyfieithydd ar y pryd yn bresennol sydd â'i enw ar restr cyfieithwyr ar y pryd cymeradwy'r llys.

10. Mewn achosion nad ydynt yn achosion Cymreig, y Comisiynydd sydd i benderfynu a ddylid caniatáu i bobl siarad Cymraeg ai peidio. Os bydd parti'n dymuno defnyddio'r Gymraeg mewn achos o'r fath, yna, dylid gwneud cais i'r Comisiynydd cyn gynted ag y bo modd, a fan hwyraf, o leiaf 21 diwrnod cyn unrhyw wrandawriad.

11. Ym mhob achos Cymreig, rhaid rhoi copi o'r Memorandwm (yn Gymraeg ac yn Saesneg) i bob parti unigol gyda'r dogfennau cyntaf a anfonir yn yr achos hwnnw, pan fydd parti unigol yn ymuno â'r achos, a hefyd pan drefnir unrhyw wrandawriad.

12. Nid yw'r cyfarwyddyd a roddir yn y Memorandwm Ymarfer hwn yn rhagfarnu defnyddio iaith ar wahân i'r Saesneg neu'r Gymraeg pan fo'r iaith arall hwnnw'n iaith i barti unigol. Os oes angen cyfieithu neu gyfieithu ar y pryd o iaith ar wahân i'r Saesneg neu'r Gymraeg, yna, dylid ceisio cyfarwyddiadau gan y Comisiynydd neu'r Swyddog Cyfreithiol cyn gynted byth ag y bo modd.

**Ei Anrhydedd y Barnwr G R Hickinbottom**

**Prif Gomisiynydd**

31 Rhagfyr 2004

## **PRACTICE MEMORANDUM No 4**

### **Transcripts at Public Expense**

1. As all Commissioners' decisions and determinations must be in writing and are issued to all parties, the provision of transcripts of oral decisions and determinations is never required. This Practice Memorandum concerns the provision of a transcript of what has been said at an oral hearing before a Commissioner.

2. Where proceedings before a Commissioner are recorded, tapes shall normally be kept for six months and shall not be released to any party or other person, save for official transcribers for the purposes of transcription.

3. Where a tape of proceedings is in existence, a transcript shall be provided upon request but:

- (i) subject to the following paragraphs, only at the expense of the person making the request; and
- (ii) where the hearing was not in public, only to a party to the proceedings unless the Commissioner otherwise directs.

4. A court considering an appeal or judicial review (including an application for permission) seldom requires a transcript of any part of the proceedings before the Commissioner. However, if unusually such a transcript is likely to be required by the appropriate court, a party to proceedings may request that the transcript be supplied at public expense. The decision whether or not to grant the request shall be made by a Commissioner, usually the Commissioner who heard the case. The Commissioner shall only grant the request and direct a transcript be made at public expense if satisfied that:

- (i) a tape of the relevant proceedings is in existence; and
- (ii) the person asking for a transcript either
  - (a) has applied or intends to apply for permission to appeal from, or for permission to apply for judicial review of, the Commissioner's decision and has reasonable grounds for making that application for permission; or
  - (b) has been granted leave to appeal or leave to apply for judicial review and has brought or intends to bring such proceedings; or
  - (c) is a respondent to any such application for permission or appeal or application for judicial review; and
- (iii) the transcript is necessary for the purposes of the application for permission, appeal or application for judicial review; and
- (iv) the party's financial circumstances are such that that party cannot afford to pay for the transcript from his or her own income or funds.

In any event, the transcript of proceedings directed to be made at public expense shall be restricted to that part of the proceedings necessary for the purposes of the application or appeal proposed.

6. For the purposes of considering an application for a transcript at public expense, the Commissioner may give directions, eg requiring the applicant to disclose details of financial circumstances.

7. This Practice Memorandum does not affect the power of a court to order that a transcript of proceedings before a Commissioner be provided to any person.

**His Honour Judge G R Hickinbottom**

**Chief Commissioner**

31 December 2004

**THE  
SOCIAL SECURITY COMMISSIONERS  
AND  
CHILD SUPPORT COMMISSIONERS**

**Chief Commissioner**

His Honour Judge G R Hickinbottom

**Commissioners**

Mr D J May QC

Mr M Rowland

Mr J Mesher

Mr P L Howell QC

Mr R J C Angus (retired 1 April 2007)

Mr S J Pacey

Mr J P Powell

Mr H Levenson

Mr D Williams

Mr E Jacobs

Mr A Lloyd-Davies

Miss C Fellner (deceased 1 April 2007)

Mr E A L Bano

Mrs L T Parker

Mr C Turnbull

Mrs E A Jupp

Mr A J Gamble (appointed 25 September 2008)

Mrs S M Lane (appointed 25 September 2008)

Mr C G Ward (appointed 27 October 2008)

Mr N J Wikeley (appointed 29 October 2008)