
Foreword

by Lord Denning PC, Master of the Rolls

When I was very young there was no Law of Social Security. There was only the Poor Law. There was no Unemployment Benefit. There was only the Workhouse. There were no Widows' Pensions or Retirement Pensions. The old folks had to live with and be kept by their sons and daughters. There were no Children's Allowances. At 12 or 14 the boys and girls had to go out to work. There were no Holidays with Pay. There were no holidays at all for most people. Only Sundays, Christmas Day and Good Friday and Bank Holidays. Every other day was a working day. There was no National Health Service. There were only the General Practitioners, and they had to be paid. So you did not call them in until you or the children were desperately ill. But sometimes the kind family doctor would come and charge only what you could afford. There were no State Hospitals. There were only the charitable hospitals and these depended on voluntary contributions. Hospital Sundays were well supported. There were no Universities or Colleges for Further Education or even Grammar Schools unless you could get a scholarship or your parents could pay the fees. It was a hard life for the likes of my father and mother and us children. But it was a character-builder.

Then there were piecemeal efforts made. A start was made with the Old Age Pensions Act 1908 and the National Insurance Act 1911, with extensions from time to time. The Workmen's Compensation Acts provided some compensation for accidents at work, but they were bedevilled when the lawyers got their teeth into them.

The great reform came with the Report by Sir William Beveridge. It was commissioned in June 1941 when the outcome of the War was in the balance. It looked as if we might be defeated. But, with supreme courage, the work of reconstruction was planned. In his report dated 20 November 1942 Sir William wrote: "A revolutionary moment in the world's history is a time for revolutions, not for patching". He laid down the guidelines for a comprehensive system of Social Security. He said: "Social insurance fully developed may provide income security: it is an attack upon Want. But Want is one only of the five giants on the road of reconstruction, and in some ways the easiest to attack. The others are Disease, Ignorance, Squalor and Idleness".

The post-war Parliament acted upon that Great Report. It passed the statutes which formed the solid foundation of the House of Social Security'. They were the National Insurance (Industrial Injuries) Act 1946, the National Insurance Act 1946 and the National Health Service Act 1946. These set out a whole range of benefits. Poor Law went out of the window. It was replaced by the Law of Social Security. It provided compensation for industrial accidents and diseases. It gave money payments by way of unemployment benefit, sickness benefit, maternity benefit, retirement pensions, widows' benefit, guardians' allowances and death grants. It established a comprehensive Health Service. The charitable hospitals were taken over by the State. The doctors were all paid by the State. The sick were treated free. The Welfare State had arrived.

The next thirty years show the development of Social Security as the primary objective of the modern State. Its cost runs into thousands of millions of pounds, far exceeding the sums spent on Defence and the Armed Services, the Police or Administration of Justice. The Law is now consolidated in the Social Security Act 1975 and the numerous Regulations made under it. It has its own judicial hierarchy. There are adjudications by Insurance Officers, Local Tribunals and Commissioners. The decisions of the Commissioners are by the Statute made 'Final'. Not only are they final, but most important of all—the Commissioners are themselves completely independent of the administration. They are subject to no interference by anyone save only by the Courts—and that only very rarely under their exceptional jurisdiction.

This brings me to the present book. The Statutes on Social Security are necessarily complex because they have to cover the whole range of human activities and human wants. The Regulations are necessarily detailed because they have to provide so many different benefits in so many different circumstances. When problems arise, the lawyers have to decide them. Whenever a Commissioner gives a decision, he has to give his reasons in writing. Each decision forms a precedent which others will follow. If the decision is of general application, it is printed out and made available to all the many persons concerned in this field. Not only to the insurance officers and local tribunals. But also to trade unions and employers' organisations. In this way there has grown up a vast body of case-law which bids fair to exceed in volume the case-law of other big legal subjects such as Family Law or Labour Law or Revenue Law. All those are now derived from Statutes. Each generating a mass of case-law in those subjects. It is possible for the practitioner to find his way through the maze: because there are textbooks and digests of cases available.

No satisfactory guide has hitherto been available to Social Security Law. There is no index to point the way. There is no digest of cases to help you forward. If you wish to find what decisions have been given on any particular point, it is like looking for a needle in a haystack: or to use Lord Justice Bowen's search for equity-it is like a blind man in a dark room looking for a black hat which isn't there.

Now at last we have the necessary guide, the indispensable *vade mecum*. Desmond Neligan was in my chambers years ago. He would have done well in any field of law. He chose Social Security Law. He was himself a Commissioner for National Insurance for many years. He is one of my many friends who have served as Commissioners and have built up a body of law of high quality and permanent value. Recently retired, he has made this Digest of Commissioners' Decisions covering the whole field of Social Security Law. He has summarised the facts of all the important decisions and given references to the full reports. The book will be invaluable to all those who work in this field and who practice in it. And whenever a case comes before our Court, we will see to it that, beside us on the desk, is Neligan's Social Security Case Law.

Ernest M.R.

Introduction

The present system of social security, as embodied in what are known as the Social Security Acts 1975 to 1978, has been built upon the foundation of two Acts of Parliament which came into force thirty years ago, in July 1948; namely, the National Insurance Act 1946 and the National Insurance (Industrial Injuries) Act 1946. Under those Acts a comprehensive system of national insurance came into existence embracing virtually every male in the country between the ages of 18 and 65 and, with certain exceptions, every female between the ages of 18 and 60 for all of whom payment of contributions became compulsory, and to whom, subject to the provisions of the Acts, a wide range of benefits became payable. It was recognised that questions as to entitlement to those benefits would inevitably arise but it was considered that the ordinary courts would not be an appropriate forum for deciding such questions and accordingly a system for the independent adjudication of them was provided by the creation of what came to be known as the 'statutory authorities' consisting of the insurance officer, the local tribunal and the National Insurance Commissioner. There has always been an absolute right of appeal from decisions given by insurance officers to a local tribunal, but for roughly the first ten years after the new legislation came into force there was no such unfettered right of appeal to the Commissioner from decisions of local tribunals. In 1959, however, a recommendation by the Committee on Administrative Tribunals and Inquiries [Cmnd. 2181 ('The Franks Committee')] was accepted and the necessity for obtaining leave to appeal in such cases was abrogated. Predictably there was then a marked increase in the number of appeals to the Commissioner.

In the original Acts of 1946 provision was made for the appointment by Her Majesty the Queen of a Commissioner and 'such number of Deputy Commissioners as Her Majesty may think fit' from 'among persons who are barristers or advocates of not less than ten years standing'; and, as in the case of judges, the appointment has always been by the Crown. In 1965, however, there was a slight change of title when by the National Insurance Act of that year, which was a consolidating Act, the Commissioner was designated the 'Chief Commissioner' and Deputies became known as simply 'Commissioners'. At the present time there are the Chief Commissioner and eight Commissioners based in London, two Commissioners in Edinburgh, and one in Cardiff. Notwithstanding the use in the present legislation of the comprehensive term 'social security' the title of the final appellate tribunal under the legislation continues to be designated the 'National Insurance Commissioner'.¹

The Commissioners are all of equal status (the Chief Commissioner being *primus inter pares*) and have equal jurisdiction in judging and deciding the many, varied, and often highly complex, matters of fact and questions of law which come before them. It has been said (somewhat pejoratively it may be thought) that proceedings before the Commissioners are of a 'quasi-judicial' nature but, although the nature of such proceedings is inquisitorial, as opposed to adversarial, National Insurance Commissioners are, in truth and in fact judges who exercise a purely judicial function in the specialised, and socially extremely important, branch of the law which is now dictated and governed by the Social Security Acts. Decisions of the Commissioners, all of which are given in writing, are of binding effect on local tribunals and insurance officers as was explained in paragraphs 17 to 21 of Decision R(I) 12/75, which will be found in Part 3 of chapter 17, post. (The reference is 17.3.12 iii for the explanation of which see page x, post). In cases in which difficult questions of fact and/or law arise the issues may, on the authority of the Chief Commissioner, be tried by a Tribunal of three Commissioners, which was described by the Court of Appeal as being a 'highly qualified and expert adjudicating body'. It will be seen that in the following chapters the letter 'T' appears in brackets under certain decision numbers indicating that it is a decision by a Tribunal of Commissioners. It has always been, and is, the practice for particular decisions to be selected (the final selection being made by the Chief Commissioner) for reporting, and a body of case law has thus been built up for the guidance of insurance officers, local tribunals and other interested parties. The way in

¹ But see Editor's note ¹ on page xi.

which decisions come to be reported, and the method of identification of both reported and unreported decisions, is explained in appendix 1, post.

In the early years following the coming into force of the 1946 legislation many more decisions were reported than in later years, the reason being, of course, the desirability, indeed the necessity, for the establishment of some uniform practice in the application of what was, in effect, an entirely new code of law. (In fact, of the grand total of 2,488 decisions which were reported between 1948 and the end of 1977 over half were reported during the first ten years.) But the fact that in recent years not so many decisions have been reported is not because the problems that have arisen, and which continue to arise, under modern legislation are less numerous or less difficult. On the contrary, during the past fifteen to twenty years many Acts of Parliament relating to national insurance and industrial injuries, and kindred matters, have been passed, and in addition a plethora of regulations has been made under them, with the result that more complex problems have arisen, and continue to arise, in the administration of justice in the field of Social Security Law. There has, moreover, since 1948 been a not inconsiderable increase in the number and type of benefits on a claimant's entitlement to which the Commissioners are called upon to adjudicate. Thus, in 1960, questions of entitlement to family allowances under the Family Allowances Acts (now replaced by the Child Benefit Act 1975) were transferred from the family allowances referees to the statutory authorities; and at about the same time provision was made for an appeal on a point of law to be brought to the Commissioners from a decision of a medical appeal tribunal, leave having been obtained from the tribunal or from the Commissioner. In 1973, a similar provision came into force with respect to determinations on review made by the Attendance Allowance Board, or by its delegates. At the present time there are, under the Social Security Act 1975, eight what are called 'contributory benefits', six 'non-contributory benefits' and the various benefits payable in respect of industrial accidents and prescribed diseases. In addition a mobility allowance may be payable under the Social Security (Miscellaneous Provisions) Act 1977 to persons eligible for invalid carriages. Furthermore, it may be that in the not too distant future the Commissioners will be called upon to hear and determine appeals from supplementary benefit appeal tribunals.

The National Insurance (Industrial Injuries) Act 1946 replaced the Workmen's Compensation Acts, which were repealed, but the time-honoured definition of an industrial accident as being an 'accident arising out of and in the course of employment' was, and always has been, retained. (See now section 50(1) of the Act of 1975.) The question whether an accident was an industrial accident as so defined was the subject of numerous decisions of the Court of Appeal, and of opinions in the House of Lords. Although the Commissioners are not strictly bound to follow those decisions, or to have regard to those opinions, they have in practice always done so and in appendix 2 will be found a list of decisions of the Courts and the House of Lords to which reference has been made, and/or which have been followed, in decisions of the Commissioners on a variety of matters, including industrial accidents. Prescribed diseases may also give rise to difficult problems which it is the function of the Commissioners to solve; as, for example, whether a coal miner would have died when he did if he had not been suffering from pneumoconiosis; whether a man suffering from deafness has been employed for the requisite statutory period in 'the vicinity' of a particular plant or machine; and so on. The same, of course, applies to many of the other benefits which come within the purview of the Commissioners; such as, for example, what may be the effect on a person's entitlement to unemployment benefit of a payment in lieu of proper notice of dismissal from his employment, or of a 'golden handshake'. What constitutes 'performing normal household duties to any substantial extent' for entitlement to non-contributory invalidity pension? Was a person's absence from Great Britain 'for the specific purpose of being treated' for some illness or complaint? Furthermore, in many cases the effect of European law has now to be considered and possibly applied, with the result that in considering, for example, the application and relevance of some of the decisions referred to and summarised in part 2 of chapter 2, and in chapter 16,

regard should also perhaps be had to the cases reported in the Common Market Law Reports to which reference is made in chapter 19.

It has already been pointed out that decisions of the Commissioners must, as a general rule, be followed and applied by local tribunals and insurance officers, but that is not the only effect they have for, subject to section 117 of the Social Security Act 1975 and to two further considerations to which reference will be made later, Commissioners' decisions are in all respects final and conclusive of the facts and law to which they relate. There can be no appeal, as such, from a decision of a Commissioner. Indeed, the finality of such a decision was underlined and emphasised in 1963 when an unsuccessful application was made to the High Court for a Declaration that certain men were entitled to unemployment benefit during a trade dispute notwithstanding they had been held by the Commissioner to be disqualified for the receipt of benefit under the relevant provisions of the National Insurance Act 1946. The matter went from the High Court to the Court of Appeal, when the decision of the Court below was upheld, and it was said *per curiam* that a claim for benefit under the Act could only be enforced by using the machinery provided by the Act under which it was a condition precedent to payment that there was an award by the Commissioner; and that the Court had no power to quash the Commissioner's award or to substitute another award for it. See Punton's case, reference 18.3.1 i.

Although no appeal lies from a decision of a Commissioner' provision has always been made (see now section 104 of the Social Security Act 1975) for a decision to be reviewed and revised in the event of it being shown by fresh evidence that it was given in ignorance of, or was based on a mistake as to, a material fact; or there was a material change of circumstances since the decision was given. See also section 110 as to the power to review medical decisions in cases of industrial accidents. Reported decisions relating to questions connected with review are referred to and summarised in part 6 of chapter 17, post.

The second of the two considerations referred to above is the Prerogative Writ of Certiorari, the cases relating to which are summarised in chapter 18, post. Up to the end of 1978, leave to apply for an order of certiorari to bring up and quash a decision of a Commissioner was given in 39 cases, in the majority of which the application for the order was unsuccessful, the Court (i.e. the Divisional Court or the Court of Appeal) holding that there was no error of law in the decision sought to be overruled. In two instances applications for an order of certiorari to quash decisions of the medical appeal tribunal reached the House of Lords where both were successful. See *Minister of Social Security v. Amalgamated Engineering Union, Ex parte Dowling* (18.2.2 ii); and *Jones and Hudson v. Secretary of State for Social Services* (18.2.2 iii). It has recently been accepted that in Scottish cases an appeal lies from a decision of a Commissioner to the Court of Session. See *Watt v. The Lord Advocate* (18.5.1 i).

It remains to say something about the general lay-out and plan of this Digest of Commissioners' Decisions. The majority, though not all, of the decisions which have been reported are summarised in chapters 1 to 17, post, each of which, as will be seen, relates to a particular benefit or to a particular topic such as adjudication, appeals from medical appeal tribunals etc. The sequence of the 'benefit chapters' follows, more or less, the order in which the relevant sections appear in the 1975 Act; i.e. unemployment benefit, sickness benefit, maternity benefit etc. In certain cases, however, decisions relating to claims for a particular benefit do not appear in the chapter concerned with that benefit but will be found in another chapter; for example, decisions relating to, for instance, late claims for sickness benefit will be found in chapter 13 dealing with that topic instead of in the sickness benefit chapter (i.e. chapter 2). An appreciable number of reported decisions have been omitted, particularly some of the earlier decisions which dealt with facts that are now wholly unrealistic; e.g. the amount of a person's earnings. Similarly, decisions which have been overruled by later decisions given by a Tribunal of Commissioners or rendered nugatory by subsequent legislation have not been included. (See, for example, the substitution, where repayment may be required, of the test of 'due care and diligence' for that of 'good faith' as a result of section 9 of the Family Allowances and National Insurance Act 1961; and the repeal

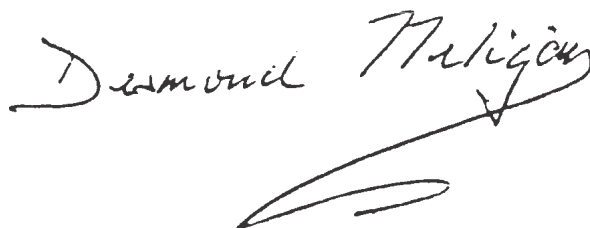
¹ See Editor's note ² on page xi

by the Protection of Employment Act 1975 of what may be described as 'the grade or class disqualification' in trade dispute cases.) In some other cases it has not always been easy to decide whether or not to omit a decision but in general the benefit of any doubt there may have been was given in favour of inclusion rather than exclusion; in any event it will be seen that at the end of each chapter there is a list of the decisions which have been omitted and the reason for such omission. There is also a list at the beginning of each chapter showing the headings of the parts and sections into which the chapter is divided. It is obvious that a digest of decisions such as this will, from time to time, have to be brought up-to-date by the deletion of decisions which, for one reason or another, have ceased to be of authority, and by the addition of new decisions. Accordingly a numbering system has been adopted which enables such changes to be made at any time, without renumbering problems, by the issue of new or replacement pages. Thus, within each chapter each part is numbered 1, 2, 3 etc. and within each part each section is similarly numbered; and the result, consisting of three sets of arabic numerals separated by dots, appears at the top of each page. The decisions themselves are identified by being numbered, within each section, using roman numerals. Thus, for example, the complete reference '10.3.2 ii' directs the reader to chapter 10, part 3 section 2 decision number 2. Amendments will be published periodically, probably at six monthly intervals, and a special sheet for recording the receipt of amendments will be found at the end of the Digest. Holders of public sale copies of the Digest will be supplied with the periodical amendments by Her Majesty's Stationery Office on payment of an annual subscription.

At the end of the Digest, after the appendices (to which reference has already been made) there will be found a comprehensive index which has been most expertly compiled by Mr D Pilkington ISO who was at one time an Assistant Secretary in the Department of Health and Social Security. With the aid of this alphabetical index, in conjunction with the numbering system explained above, reference to particular benefits, or topics, and the identification of particular decisions, should not present any difficulties.

In conclusion, I wish to record my thanks for the assistance I have been given at all times by those concerned with the compilation of this Digest of Commissioners' Decisions. The chapters have been circulated to various persons who have considered them and made comments, some of which have been helpful. In particular, I acknowledge with gratitude the help and support given to me at all times by Mr R Dronfield, the Chief Insurance Officer, and by members of his staff; especially by Mr D J McGroarty whose ever-ready help and organising ability have been invaluable, and who has been, in every respect, the perfect liaison officer. I am also indebted to Mr J G Monroe, one of the National Insurance Commissioners, for some helpful suggestions for additions to chapter 18, and for his assistance in the preparation of chapter 19. And finally, last but by no means least, my gratitude and sincere thanks to Miss Doris Gregory for her meticulous checking of every draft and for her willing help and never-failing co-operation at all times. She has indeed been invaluable.

Demond Maligou



Editorial Notes

Changes in titles of Commissioners etc.

1 The title “National Insurance Commissioner” referred to in the Introduction was changed to “Social Security Commissioner” with effect from 23 May 1980 by S 12 of the Social Security Act 1980. With effect from 23 April 1984, by virtue of the HASSASSA Act 1983, s. 25 and Sch. 8, the functions of the insurance officer, the benefit officer and the supplement officer were transferred to an “adjudication officer”, those of the local tribunal and the appeal tribunal were transferred to a “social security appeal tribunal” and those of the medical board were transferred to an “adjudicating medical practitioner”.

Right of appeal

2 Since 1980 it has been possible to appeal a decision of a Commissioner, with leave of the Commissioner, on a question of law to the Court of Appeal in England and Wales, the Court of Session in Scotland or the Court of Appeal in Northern Ireland (s. 14 of the Social Security Act, 1980). The right of appeal does not extend to a Commissioner's refusal of leave to appeal to him.

Use of appendices and general index

3 Reference is made in the Introduction to the construction of the Digest and its numbering system. The following notes may be helpful when searching for the synopsis of a particular decision.

- (1) If the decision is in the digest and its number is known, appendix 3 will show where it is to be found.
- (2) If the decision number is not known, search should be made in the contents tables and/or the general index under the heading or headings appropriate to the subject matter.
- (3) Appendix 2 contains lists of cases heard in the High Court etc. and the European Court on appeal or judicial review from Commissioner's decisions, as well as High Court etc. and EEC cases cited in Commissioner's decisions.

General

4 In addition to the hard copy version, this Digest is also available on the Internet at the DWP website address: www.dwp.gov.uk

5 Whilst every effort is made to ensure the accuracy of this work, the ACI Publications team would be happy to hear from anyone who spots errors. Please contact:

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