



## APPEAL TRIBUNAL

Held at Fox Court, London on 9 August 2013

Before Mr M.A. Stephens

<b>Appellant:</b> Mr M. Neary	<b>Tribunal Ref.</b> SC133/13/0002
	<b>Benefit Claim No.</b> 142364
<b>Respondent:</b> London Borough of Hillingdon	

### STATEMENT OF REASONS FOR DECISION

This statement is to be read together with the decision notice issued by the tribunal

1. I indicated at the end of this appeal hearing that I would defer making a decision on the day. I have taken some time to consider the matter and for the reasons that I now give I have come to the conclusion that the appeal must fail. In short, I find that the Appellant, Mr Mark Neary, is estranged from his wife, Mrs Julie Neary with the consequence that he, as joint owner of the residential property at ("the property"), is in possession of capital in excess of the statutory limit of £16000.00. He is therefore not eligible for an award of housing benefit.
2. I make my decision having heard evidence from Mr Neary and also from Mr Cullimore on behalf of the Respondent. I was greatly assisted by counsel for the Respondent who not only brought out further relevant evidence from Mr Neary but who was also able to guide the Tribunal and the Appellant through the relevant legislation.
3. I was also helped in the approach to the appeal by the detailed submission made to the Tribunal by the Respondent. This set out details of the facts of the case together with supporting documents and the legal framework surrounding the issues in the appeal. I do not intend to repeat the sections of statutes or regulations to which reference was made except to the extent of identifying below those points which I have used in making my decision.

4. The basic facts of the matter, as I find them to be, are that Mr Neary, together with his son, had moved out of the family home at because of the paranoid schizophrenic illness suffered by Mrs Neary. This separation occurred in the summer of 2009. When Mr Neary applied later in the year for Housing Benefit and Council Tax Benefit, he stated to the Council that the situation was "not to be treated as a normal separation". The inference drawn by the decision maker at the time was that the Nearys were not estranged and so an award of the benefit was made.
5. The entitlement to benefits remained in place for about two years before Mr Cullimore, on behalf of the Respondent, had dealings with Mr Neary. As the result of discussion between the two, an award of discretionary housing benefit was made at this time. Mr Cullimore took the view at this date that the Nearys were not estranged but that they did not live together because of the problem caused by doing so. The decision to award Housing Benefit and Council Tax Benefit has now been superseded by the Respondent on the basis of consideration of the information that it had from Mr Neary about his marital state. The consequence of the supersession was that it was decided that Mr Neary was no longer entitled to either benefit on the basis that he had capital in excess of prescribed limits and there was no exception that allowed it to be discounted from consideration.
6. It is a fact of the matter that, although they live apart, Mr and Mrs Neary are not divorced. Mr Neary has stated unequivocally that he could not afford to enter into divorce proceedings but, at the same time, he does not see himself and Mrs Neary getting back together as a couple. The relationship, such as I find it to be, is one that is centred on a mutual interest in their son, Stephen. There is no physical relationship between husband and wife, no sharing of resources or liabilities, no division of responsibilities, no significant communication and no affection generated between them.
7. I have had regard in reaching these conclusions to the material contained in the papers before me as well as the evidence that I heard at the appeal. I note the email exchanges between the parties in early September 2012 and the notes completed by Mr Cullimore at his meeting with Mr Neary on 12 September. Whilst the points written down are not an entire verbatim record, I am satisfied, having seen and heard both Mr Neary and Mr Cullimore, that the notes are a fair and accurate reflection of the conversation. That being so, I feel able to rely upon the same. I was able to go through the notes with Mr Neary and I did not understand him to take any or any substantial issue with what had been

recorded. I am satisfied that it is fair for me to use these notes in formulating my conclusions as to the state of the Nearys' marriage.

8. I have also taken into account the way in which Mr Neary described the state of his marriage in a document compiled by him prior to a formal valuation of the property being obtained by the District Valuer Service. He describes (on more than one occasion) his wife as "estranged" from him and, sad to record, advises that "because of her illness, she doesn't believe my identity and refuses to disclose any information to me". Although at the hearing Mr Neary was unwilling to accept that he was estranged from his wife, he acknowledged that he was, at best, in an unconventional marital relationship. He asserted that he did not regard his marriage as "over" and that he still cared deeply for his wife. I can accept without any difficulty that he may still have concern for the well-being of Mrs Neary – her illness must be something of a strain for him and it is not as if it was something of her own making. However, I cannot accept that this is still a living marriage. It exists merely as a legal shell; it is devoid of the usual characteristics of the loving relationship and notions of partnership and family unit that strike me as being the bedrock of a marriage. Whilst Mr Neary may seek to say that his marriage is not over, it is in my view in all but name for the purpose for which I have to consider it. I am sorry that I have to reach such a conclusion. Mr Neary speaks of a sense of shame about the situation. If that is the way in which he feels, it further strikes me as being entirely consistent with an emotion that one might have at the end of a relationship. He has no reason to feel ashamed otherwise as it is not a matter within his control that his wife suffers debilitating mental illness.

9. In my judgment, the legal framework, when traced through the various routes, comes to this: the dwelling house property at \_\_\_\_\_ is owned by Mr and Mrs Neary as joint tenants. It has no or no substantial mortgage secured on it. The gross value of the property is estimated by Mr Neary at £200000.00. The District Valuer assessed Mr Neary's half share at £109000.00 (before selling costs), giving a slightly higher gross value. The significance of the value of Mr Neary's share is that it has a value greater than the statutory maximum that one can hold by way of capital under section 134 of the Social Security Contributions and Benefits Act 1992 and still be eligible for Housing Benefit and/or Council Tax Benefit. I have seen the figures totaling £101996.94 used by the Respondent to calculate the capital sum. I accept these figures as correct but even if the bank balances are wrong it is clear

that there is sufficient value in the Tanglewood Close property for Mr Neary to hold capital in excess of the prescribed amount.

10. The debate at the heart of the appeal is whether Mr Neary is estranged from Mrs Neary. If he is not then, by paragraph 4(b) of Schedule 6 of the Housing Benefit Regulations 2006 (and for the purpose of what follows I treat the Council Tax legislation as being no different save where stated), any premises occupied in whole or in part by the former partner of the claimant is to be disregarded in the calculation of available capital. However, if the former partner is one whom he is estranged, the disregard is not effective and so the capital is deemed to be available.

11. "Estranged" is not defined within the regulation and it must be a question of fact in each case. I have been supplied with helpful legal materials by the Respondent, including the opinions of practitioners as to whether or not there was estrangement in this case. The conclusion I reach is wholly my own rather than being influenced by any other source. I have considered the definition of estrangement in the Council Tax Regulations 2006 and I find that in the circumstances as I have determined them to be, the parties are estranged, because there has been a breakdown in the relationship between them. I have further considered the legal precedents cited to me. I have reviewed the decisions in **R(IS)5/05, CPC/0683/2007** and **CH3777/07**.

12. I also bear in mind and find compelling the facts that Mr Neary completed an application for discretionary housing benefit on 24 March 2012 in which he clearly states that his marriage has ended and he refers to Mrs Neary as his "ex-wife". He signed a declaration of truth in support of that statement. I consider that significant and important. I am unable to accept his explanation that he wrote in the terms that he did because he thought he would be expected to explain why he and his wife were not living together and that it did not effectively mean what it said. In a further document declared to be true in September 2012 Mr Neary twice refers to his wife as "estranged". I set considerable store by his expressions as I take that to be a thoughtful categorization of his perception of the state of his marriage. It was unnecessary to deem Mrs Neary so unless that was really what he thought her to be. I do not regard the simple fact of living apart as estrangement. There has to be more to it in the sense of there being even less of a relationship than just geographical separation. In this case I am in no doubt that not only were husband and wife living apart physically but that there was also no common interest in the

continuing partnership of husband and wife. A mutual interest in the welfare of the child of the family may give rise to common ground but it does not prevent or cure or deny estrangement.

13. I found the commentary to paragraph 4(b) set out on page 591 of the CPAG publication CPAG's Housing Benefit and Council Tax Benefit Legislation 2012/13 to be a helpful synopsis of the authorities that bear on this point and I have accepted that as an accurate summation of the principles.

14. I add that I have also considered paragraph 4(a) of Schedule 6 and traced thought elsewhere in the legislation the definitions of "partner", "couple" and "relative" as well as "family". Mr Flanagan, for the Respondent, submitted that paragraph 4(a) could not be met because in respect of the consideration of the relevant premises (the property) Mrs Neary was not a partner within the definition given in regulation 2 of the Housing Benefit Regulations nor a member of a couple as defined nor, as a matter of fact, a member of the same household as Mr Neary. In this regard he relied upon the notes of interview compiled by Mr Cullimore to show that there was in fact more than one household. I accept his submissions. I further find that Mrs Neary does not come within the definition of relative so as to come under paragraph 4(a). The definition of "family", says Mr Flanagan, does not assist Mr Neary either when one considers section 137(1) of the 1992 Act. I agree. The Neary's son, Stephen, is now aged 22 and could not be classified as a child of the family for the purposes of the legislation in any event. The arcane twists and turns of the legislation have the effect, it seems to me, that Mrs Neary could be a relative of Mr Neary if she was part of a couple (but, as I find, she is not) but that Stephen is not a member of the family because he does not occupy the property as his home.

15. The consequence is that neither limb of paragraph 4 is met by Mr Neary and so the capital value that he has in the property cannot be disregarded. He holds capital in excess of the prescribed limit, thus affecting his entitlement to these benefits.

16. I am therefore satisfied that the Respondent was entitled in law to supersede its previous decision to award housing benefit and council tax benefit to Mr Neary. The Respondent, though the interview process, the information declared by Mr Neary and the evidence of the District Valuer had material upon which it could make an informed decision about Mr Neary's eligibility for benefit. I consider that the decision to supersede was justified and not perverse. The Respondent has

**Appellant:**

**Tribunal Ref:**

**Date of Hearing:**

discharged any burden it carried to show why the previous decision to award should be superseded. I am further satisfied that the decision to supersede could have been made at the time it was and possibly even at an earlier stage. However, there is no criticism of the Respondent, which I think has taken a wholly pragmatic view of the situation where it could.

17. I regret that I have to conclude that the appeal must be dismissed. Mr Neary is not entitled to housing benefit and/or council tax benefit from 10 September 2012 because he held capital at that time of an amount in excess of the prescribed limit. I appreciate and applaud the fact that Mr Neary has sought at all times only to act in the best interests of his son. It is a shame that a lack of entitlement to these benefits is the consequence.

The above is a statement of reasons for the Tribunal's decision under Regulation 53(4) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999.

Signed Chairman: M.A. Stephens

Date: 19 August 2013

*Statement issued to*

*Appellant on:*

*Respondent on:*

*Second Respondent on:*

} 3.9.13