Neutral Citation Number: [2011] EWHC 1542 (Admin)

Case No: CO/178/2011

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
ADMINISTRATIVE COURT

Birmingham Civil Justice Centre,
Bull Street, Birmingham

Date: 17/06/2011

Before :

MR JUSTICE HICKINBOTTOM

- -

Between :

COVENTRY CITY COUNCIL

Appellant

- and -

NEIL VASSELL

Respondent

- -
- -

Iqbal Mohammed (instructed by **Christine Forde, Council Solicitor**) for the Appellant
Benjamin Douglas-Jones (instructed by **G Lesin-Davis, EAD Solicitors**) for the Respondent

Hearing date: 18 May 2011

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Judgment

Mr Justice Hickinbottom:

Introduction

1. This matter raises important issues concerning the mental elements the prosecution have to prove to convict a housing benefit claimant for non-disclosure of a change in circumstances that affects his benefit entitlement.

2. It comes before this court as an appeal by way of case stated from a decision of the Coventry Magistrates' Court on 1 September 2010. The justices found the Respondent Neil Vassell not guilty of one offence that, between 29 October 2007 and 5 July 2009, he failed to give prompt notification of a change of circumstances that he knew would affect his entitlement to housing benefit and council tax benefit ("CTB"), namely that he had begun to receive student finance by way of a supplementary grant, student loan and bursary, contrary to section 112(1A) of the Social Security Administration Act 1992 as amended ("the 1992 Act"). The information in fact referred to "section 112(1)" of the 1992 Act, but it is clear that section 112(1A) was intended and no point turns upon that error.

The Statutory Scheme

3. Housing benefit is paid to people with a low income who pay rent. Similarly, CTB is paid to such people who pay council tax. Each benefit is the subject of a national scheme, but both are administered and paid by local authorities. The rules for the two benefits are similar, and they are subject to parallel regulations, namely the Housing Benefit Regulations 2006 (SI 2006 No 213, "the HB Regulations") and the Council Tax Benefit Regulations 2006 (SI 2006 No 215, "the CTB Regulations"). Those regulations have been the subject of frequent amendment. The regulations referred to and quoted in this judgment are those which applied in the relevant period.

4. Eligibility for a housing benefit or CTB depends upon individual circumstances, and is assessed mainly on the basis of information provided by an applicant. There are some circumstances (not relevant to this appeal) in which a claim can be made by telephone, but generally an application must be made in writing, on a form approved by the relevant local authority (regulation 83(1) of the HB Regulations, and regulation 69(1) of the CTB Regulations).

5. However, income-based job seekers allowance ("JSA") provides a gateway to both housing benefit and CTB, in the sense that those who are entitled to JSA are also entitled to those additional benefits – and regulation 83(4) of the HB Regulations and the parallel regulation 69(4) of the CTB Regulations provide that, where the applicant is also claiming JSA, a claim for housing benefit and CTB may be sent or delivered to the appropriate Department of Work & Pensions ("DWP") office. That DWP office is then required immediately to send the housing benefit and CTB forms on to the relevant local authority, which must notify the DWP of the address to which such forms are to be forwarded (regulation 83(3) and (4)(c) of the HB Regulations, and regulation 69(3) and 4(c) of the CTB Regulations). In practice, housing benefit and CTB claim forms are included in JSA claim packs, and, where JSA is claimed at a DWP contact centre (such as a Job Centre), the forms are all completed at the same time, left there and sent on.

6. If a benefit claimant's circumstances change, then of course his entitlement to benefit may change. Local authorities are largely reliant on such changes being notified by the benefit claimant himself, for obvious reasons. Regulation 88(1) of the HB Regulations imposes a general duty on benefit claimants to notify changes of circumstances, in these terms:

> "… if… during the award of housing benefit, there is a change of circumstances which the claimant… might reasonably be expected to know might affect the claimant's right to, the amount of or the receipt of housing benefit, that person shall be under a duty to notify that change of circumstances by giving notice…".

The notification generally has to be in writing, and has to be to "the designated office" (a phrase to which I shall return). Regulation 74(1) of the CTB Regulations is in similar terms.

7. That is a widely cast duty of notification; but there is no direct sanction if this particular duty is breached. Breach of regulation 88 of the HB Regulations or its CTB equivalent is not, for example, a criminal offence. Sanctions for non-disclosure (such as the recovery of overpayments, penalties and criminal prosecution) are dealt

with in other parts of the statutory scheme, and each is dependent upon different criteria.

8. For example, recovery of overpayments is dealt with in Part 13 of the HB Regulations. Regulation 99 defines "overpayment" in terms of any benefit payment made to which the claimant was not entitled; and regulation 100 empowers the relevant authority to recover any overpayment except when it results from "an official error", defined in Regulation 100(3) as an error for which the authority is solely responsible. There are parallel provisions in the CTB Regulations, in Part 11 and in particular regulations 82 and 83. If an authority continues to pay benefit after a claimant has given notification of a change in circumstances which extinguishes or reduces his entitlement to housing benefit or CTB, then the resulting overpayment would be by virtue of an official error and the authority would not be able to recover it. The definition of "official error" does not require the error to be made by a person in the authority's department dealing with housing benefit; and, therefore, a failure of an officer in another department (e.g. the social services department) to pass details of a change of circumstances on to the housing department may amount to an official error, and mean that any overpayment is consequently irrecoverable. Similarly, it has been held that, where the DWP office handling a claimant's JSA claim undertook to pass on a change of circumstances to the local authority housing department, but then did not do so, that too was capable of amounting to an official error to bar recovery of a resulting overpayment (Social Security Commissioners' Case CH/939/2004). R (Sier) v Cambridge City Council [2001] EWCA Civ 1523 suggests it would be otherwise if no such undertaking were given.

9. However, it is clear from the statutory provisions that, in the absence of an official error, a local authority may recover an overpayment of benefit even if that overpayment results from an entirely innocent failure by the benefit claimant to notify a change in circumstances.

10. Circumstances in which a criminal offence is committed for non-notification of a change of circumstances are dealt with in Part VI of the 1992 Act. Section 112(1A) (inserted by Section 16(3) of the Social Security Fraud Act 2001) provides as follows:

> "A person shall be guilty of an offence if –
>
> > (a) there has been a change of circumstances affecting any entitlement of his to any benefit or other payment or advantage under any provision of the relevant social security legislation;
> >
> > (b) the change is not a change that is excluded by regulations from the changes that are required to be notified;
> >
> > (c) he knows that the change affects an entitlement of his to such a benefit or other payment or advantage; and
> >
> > (d) he fails to give a prompt notification of that change in the prescribed manner to the prescribed person."

11. Two points are immediately apparent. First, a criminal offence is only committed in circumstances which are much narrower than those that might comprise a breach of the general duty to notify: where a benefit claimant "… knows that the change affects an entitlement… to… benefit" in the criminal provision can be compared with where he "might reasonably be expected to know might affect the claimant's right to… benefit" in the general duty. Second, as unsurprisingly confirmed by the Divisional Court (Auld LJ and Newman J) in King v Kerrier District Council [2006] EWHC 500 (Admin), for a conviction under section 112(1A), each of the ingredients of the offence as set out in paragraphs (a) to (d) of the section must be proved to the criminal standard.

12. At the time of the alleged offence in the appeal before me, how notification of a change had to be made in "the prescribed manner to the prescribed person" was prescribed in Regulation 4 of the Social Security (Notification of Change of Circumstances) Regulations 2001 (2001 SI No 3252). Those Regulations were made by the Secretary of State under the criminal provisions of the 1992 Act, including section 112(1A), the requirements in the Regulations for "a failure to give prompt notification in the prescribed manner to the prescribed person" being specifically prescribed only for the purposes of those criminal offences.

13. At the relevant time, Regulation 4(1) provided:

> "… [W]here the benefit affected by the change of circumstances is housing benefit or [CTB], notice must be given or sent in writing to the relevant authority at –
>
> (a) the designated office…".

Subparagraph (b) referred to other possible methods of notification, not relevant to this appeal. By Regulation 4(2), "relevant authority" and "designated office" had the same meaning as those phrases were given in the HB Regulations and the substantively identical CTB Regulations.

14. By Regulation 2 of the HB Regulations, "relevant authority" meant simply the local authority administering the benefit. That is the "prescribed person" to whom notification has to be given. It is uncontroversial that the appropriate authority for the Respondent was the Appellant Council ("the Council").

15. The same regulation defined "designated office" as:

> "… the office designated by the relevant authority for the receipt of claims to housing benefit [or CTB, as the case may be] –
>
> (a) by notice upon or with a form approved by it for the purpose of claiming housing benefit [or CTB]…."

Changes in circumstances therefore had to be given or sent to the office which the benefit claim form identified as the appropriate office for the receipt, not specifically of notification of later changes, but of the benefit claim itself.

16. The authorities such as they are suggest that, although where notification of a change of circumstances has to be given to a particular legal person, then notification to another legal person will not suffice (see, e.g., Social Security Commissioners' Case No CSS/33/1990: disclosure to the Post Office where benefit was collected found not to amount to disclosure to the departmental predecessor of the DWP).

17. In any event, where a benefit claimant claims housing benefit or CTB at a DWP office whilst claiming JSA (see paragraph 5 above), it is clear that that DWP office does not itself become "the designated office" for the receipt of housing benefit or CTB claims simply by virtue of the scheme which allows the relevant claim forms to be left there. "The designated office" is the office designated by the local authority as the office for receipt of benefit claims, only by notice on the housing benefit/CTB claim form. The DWP office would therefore only become "the designated office" if it were so designated on that form.

18. Neither does a DWP office have any general obligation to pass on to the local authority any information it receives that may be relevant to entitlement to housing benefit or CTB – although, of course, it has the power to do so. There is no general obligation on an authority administering one benefit to pass on to another authority administering a different benefit information that may be relevant to entitlement to that other benefit. (Indeed, generally, a claimant cannot make assumptions about the *internal* administrative arrangements of a public body that might or might not include arrangements for data transfer between offices in the same body: Hinchy v Secretary of State for Work and Pensions [2005] UKHL 16.) Leaving aside and open the question of the effect of an unequivocal undertaking from a DWP office to a benefit claimant that it will pass on information to the relevant local authority (considered in paragraph 8 above, in the different context of recovery of overpayments), there is only an obligation to transfer information to another public body administering another benefit where the statutory scheme expressly imposes it. I have already referred to the provisions that require a DWP office to forward a housing benefit/CTB claim form to the local authority when it is completed at a DWP office at the same time as a JSA claim form (see paragraph 5 above). Another example is found in regulation 4B(2)(b) of the Social Security (Claims and Payments) Regulations 1987 (SI 1987 No 1968), which requires a local authority office bearing the "ONE" logo to forward to the DWP information relating to any other benefit, except only where it relates to housing benefit or CTB: where no such logo is shown, there is no such obligation (Social Security Commissioners' Case No CIS/4848/2002).

19. Therefore, summarising those provisions as they are relevant to this appeal, a housing benefit or CTB claimant will only be guilty of an offence under section 112(1A) if the prosecution prove to the criminal standard that he failed to give prompt notification of a change in his circumstances that he knew affected his entitlement to such benefit, to the relevant local authority at the office notified to him on the benefit claim form as the office designated for the receipt of such benefit claims.

Facts

20. The relevant facts, primarily taken from the case stated itself, are as follows. At the outset I should say that the justices found Mr Vassell to be a credible witness (see Case Stated, Paragraph 6), and they do not appear to have made any findings contrary

to the statement he made and upon which relied. They clearly accepted all of the substance of that statement.

21. In January 2005, Mr Vassell successfully claimed JSA, housing benefit and CTB, each of which he received from that month. He made his claim for all three benefits at the Cofa Court Job Centre in Coventry. Cofa Court was a DWP office, but one which accepted claims for housing benefit and CTB under the provisions to which I have already referred (see paragraph 5 above). There was one form for both housing benefit and CTB, which did not expressly say to where the completed form should be sent, although it did have the following address at its head: "Benefits Service, Spire House, New Union Street, Coventry CV1 2PW". The form had the following declaration, which Mr Vassell signed: "I know I must let the council know about any changes in my circumstances which might affect my claim". That clearly reflects the general duty to notify any change of circumstances that *might* affect benefit entitlement, in regulation 88 of the HB Regulations and its CTB counterpart. There were, however, no further details of how or where a change of circumstances had to be notified.

22. In July 2007, Mr Vassell attended Cofa Court to notify a change in his circumstances which he thought might affect his right to benefits, namely he had taken up part-time employment with Coventry City Council. He submitted a written and signed declaration with regard to that change, and was directed by staff to the Council's Housing Department, which was apparently in a different building, to notify them too of the change, which he did. There he completed a "Change of Circumstances Form", which (i) referred to "my claim for housing benefit and [CTB]; (ii) on its face appeared to be a Council document (for example, it has a reference to a "Coventry City Council Stamp"); and (iii) referred to a reception desk at Spire House but which, at its foot, said: "Please post your benefit application form to: Coventry City Council Benefits Service, PO Box 3899, Coventry CV1 5WW". The form had a number of declarations, including:

> "I know I must let you know in writing about any changes in my circumstances which might affect my claim so that my benefit can be worked out again. I understand that it is an offence under the Social Security Fraud Act 2001 not to tell you about changes in circumstances straight away."

Mr Vassell signed that form. It is uncontroversial that the July 2007 change in his circumstances was adequately notified to the Council.

23. From October 2007, Mr Vassell became a full-time student at Coventry University. He attended Cofa Court again that month, and notified them of this change in circumstance. Mr Vassell gave evidence that he signed his JSA signing-on book and, although the justices made no finding in respect of that, the manner in which he gave that notice is not vital to this appeal. His claim for JSA was certainly duly terminated. He was not told by the Cofa Court staff that he needed separately to inform the Council's Housing Department of the change, in respect of his housing benefit or CTB claims; and he did not go to that department to do so.

24. Mr Vassell in his interview said that he thought that, by notifying Cofa Court as he did, that was sufficient notification in respect of all three benefits. He seemed initially

to have expected that all three benefits (JSA, housing benefit and CTB) would be cancelled; but he knew that he continued to receive housing benefit and CTB from the Council. Having given (as he thought) notice to the Council of the change through Cofa Court, when payment of the local authority benefits continued, he thought that he must be entitled to them because they were still being paid.

25. The justices made a number of important findings in relation to the events surrounding Mr Vassell giving the notice to Cofa Court that he did give in October 2007, as follows:

    (i) They found that Mr Vassell did not in fact notify the Council of his move to full-time education, as a change in circumstance (Paragraph 2(d) of the Case Stated).

    (ii) However, Mr Vassell believed that he had informed the relevant authorities in respect of housing benefit and CTB, by giving the notice to Cofa Court that he did give (Paragraphs 2(f) and 7).

    (iii) The failure of the Cofa Court staff on this occasion to advise Mr Vassell of the need to inform the Council's Housing Department of the change led him to believe he had discharged his responsibilities to notify the change correctly (Paragraphs 2(f) and 7).

    (iv) The benefit claim forms were not sufficiently clear as to how the duty to notify a change of circumstance must be discharged (Paragraph 8).

26. In relation to the reference to more than one benefit claim form in (iv), on 3 August 2009, in circumstances which are not entirely clear, Mr Vassell completed a second benefit claim form for housing benefit and CTB. However, that was *after* the period covered by the charge (which ended on 5 July 2009), and does not appear to have any direct relevance to this appeal. That form, however, is in similar style to the Change of Circumstances Form that Mr Vassell completed in 2007: it has the Spire House reception address, and the front page is endorsed with the same rubric about the PO Box to which benefit claims should be sent. The form also apparently had a Notification of a Change of Circumstances Form attached to it, for the applicant to tear out and keep. That was headed with the same PO Box number.

27. In the event, it is now common ground that, when Mr Vassell became a full time student, his entitlement to housing benefit and CTB was brought to an end: but he continued to receive them and, as a result, he was overpaid £6,215.95 in housing benefit. The information before the magistrates also referred to CTB. However, although during the relevant period when he was a student £1,425 was paid to him in CTB, the Council now concede that this did not in fact amount to an overpayment, because it was paid back to them as council tax in circumstances in which Mr Vassell, as a full time student, was not liable to pay council tax.

28. On the basis of their findings of fact, the justices found that the case against Mr Vassell had not been proved beyond reasonable doubt.

The Case Stated

29. The Council, being unhappy with the justices' interpretation of the notification requirements for section 112(1A), sought to appeal. The case stated by the magistrates poses four questions for this court, namely:

> "(a) What does "prompt notice" mean in the context of Section 112(1A)(d)? On the basis of the evidence before the Justices, had [Mr Vassell] given "prompt notice" of the relevant change in circumstances?
>
> (b) To what organisation or organisations does "prescribed person" refer in Section 112(1A)(d), i.e. does "prescribed person" include a Job Centre Plus, the Department for Work and Pensions and/or a City Council? Had [Mr Vassell] notified the "prescribed person"?
>
> (c) What does "prescribed manner" mean in the context of Section 112(1A)(d) and had the relevant changes been notified in such a manner by [Mr Vassell]?
>
> (d) Where a recipient of CTB or housing benefit notifies a Job Centre Plus of a relevant change in circumstances:
>
> > (i) is the Job Centre Plus obliged to share the said notification with a City Council, and
> >
> > (ii) would such a failure on the part of the Job Centre Plus absolve the Respondent of his duty to give prompt notification in the prescribed manner to the prescribed person? "

30. All of those questions go to the person to whom and the manner in which (in other words, *how*) notification is to be given under the requirements of section 112(1A)(d).

Section 112(1A)(c)

31. There is, however, a logically prior and discrete question, namely *what* has to be notified. That is dealt with in section 112(1A)(c).

32. I have already referred to King v Kerrier District Council, in which the requirements of section 112(1A) were considered (paragraph 9 above). It was held by the Divisional Court that each of the ingredients of the offence set out in subsection (a) to (d) of the section had to be proved to the criminal standard, including subsection (c): "… he [i.e. defendant] *knows* that the change affects an entitlement of to such benefit…" (emphasis added). It was accordingly held that, for a successful prosecution, it must be proved that the defendant knew that the change *would* – as opposed to *could* – affect his entitlement to the relevant benefit. That confirms one mental element in the offence, and an element of some significance, namely a high degree of knowledge the prosecution have to prove with regard to the effect on entitlement to benefit by the change of circumstances. As I have already described, that is not a requirement for recovery of an overpayment as a result of non-notification (see paragraphs 8-9 above): but, in terms of the criteria for a criminal

prosecution, subsection (c) sets a substantial hurdle for the prosecution to overcome. As this is a criminal provision, that is hardly surprising.

33. Mr Vassell was aware that, when he became a full-time student, that was a change of circumstance that *might* affect his entitlement to housing benefit and council benefit. Under Regulation 88 of the Housing Benefit Regulations (and CTB Regulations equivalent), he therefore had a duty to notify that change of circumstances. That he thought it could have that effect was enough to trigger that obligation.

34. However, although he knew it *could* affect that entitlement (and he expected to have his housing benefit and CTB stopped), he clearly did not know that it *would*. As he continued to receive the benefits, despite having (as he thought) given notice to the Council of his change of circumstance, he thought that, contrary to his expectation, that change of circumstance did not affect his entitlement to housing benefit and CTB. Having given notice to Cofa Court, he believed that he was continuing to receive housing benefit and CTB because he was entitled to them (see paragraph 24 above). He made that clear in his interview, the substance of which the justices accepted.

35. Consequently, in my view, the prosecution were unable to prove the element of the offence set out in subsection (c) of section 112(1A), namely that, at relevant time, Mr Vassell knew that his move into full-time education would (rather than could) affect his entitlement to housing benefit or CTB. For that reason alone, I consider this appeal should be dismissed.

36. However, although I shall return to the issues raised by section 112(1A)(c) (see paragraph 68 below), that does not address the questions posed in the case stated, to which I now turn.

The Case Stated

Question (a)

37. Question (a) is as follows:

> What does "prompt notice" mean in the context of Section 112(1A)(d)? On the basis of the evidence before the Justices, had [Mr Vassell] given "prompt notice" of the relevant change in circumstances?

38. I can deal with this question shortly. By virtue of section 112(1A)(d), the offence involves the failure to give "prompt notification" of the change in circumstances. "Prompt" is an ordinary word, and the section does not use it in any extraordinary or technical sense. In R (Sedgefield Borough Council) v Dickinson [2009] EWHC 2758 (Admin), Davis J appears to have accepted that the words in section 112(1A) ought to be given their natural and ordinary meaning. I agree.

39. In his skeleton argument, Mr Mohammed for the Council submitted that as a matter of law, notification of a change of circumstance could not be "prompt" if it were not given before the change took effect, if such early notification were possible. At the hearing before me, in my view properly, he did not pursue that argument. There is no

such legal constraint. Whether notification is prompt is a matter of fact, for the magistrates to determine on the basis of the other facts as they find them.

40. In this case, the justices clearly considered that notice of move to full-time education, had it been given on 27 October 2007, would have been prompt. On the evidence, they were entitled to make that finding.

Questions (b) and (d)

41. Question (b) concerns to whom notification must be made. It reads as follows:

> To what organisation or organisations does "prescribed person" refer in Section 112(1A)(d), i.e. does "prescribed person" include a Job Centre Plus, the Department for Work and Pensions and/or a City Council? Had [Mr Vassell] notified the "prescribed person?

That question can be dealt with together with Question (d), which also concerns to whom notification might effectively be made:

> Where a recipient of CTB or housing benefit notifies a Job Centre Plus of a relevant change in circumstances:
>
> (i) is the Job Centre Plus obliged to share the said notification with a City Council, and
>
> (ii) would such a failure on the part of the Job Centre Plus absolve the Respondent of his duty to give prompt notification in the prescribed manner to the prescribed person?

42. For the reasons I have given (paragraphs 12 and following above), "the prescribed person" is the authority administering housing benefit and CTB. In Mr Vassell's case, that was the Council. The justices found that Mr Vassell did not notify his receipt of student benefits to the Council: he notified the DWP through its Cofa Court Job Centre. The Job Centre was not obliged to share the information provided to it with the Council. There was no such statutory obligation, nor has it been suggested that the DWP office undertook to Mr Vassell that they would do so.

43. In relation to Mr Vassell's "failure" to make notification to the prescribed person, I deal with that issue below in the context of Question (c).

Question (c)

Introduction

44. The focus of this appeal, and the debate before me, was on Question (c):

> What does "prescribed manner" mean in the context of Section 112(1A)(d) and had the relevant changes been notified in such a manner by [Mr Vassell]?

45. As indicated above, the statutory provisions (and particularly regulation 4 of the Social Security (Notification of Change of Circumstances) Regulations 2001) require the notification of a change of circumstances to be made in writing to the office notified to the claimant on the benefit claim form as the office designated for the receipt of such benefit claims. That is "the prescribed manner" for the purposes of section 112(1A)(d).

46. However, that is not an end to the question, because it does not address the issue of the required mental element, if any. As I have described, section 112(1A)(c) imports one mental element into the offence, namely knowledge of the defendant that the change of circumstances affects his benefit entitlement (see paragraph 32 above). But, by section 112(1A)(d), an offence is only committed where the defendant "fails to give a prompt notification of that change in the prescribed manner to the prescribed person". Do the prosecution have to prove any *mens rea* with regard to that failure and, if so, what mental element do they have to prove?

The Parties' Submissions

47. Mr Douglas-Jones, Counsel for Mr Vassell, submitted that this subsection was, at best, ambiguous as to whether the legislature intended to impose strict liability. There is a presumption that Parliament does not intend liability for statutory offences to be strict, i.e. does not intend to criminalise acts and omissions which are innocent in the sense that the defendant is blameless. There is nothing, either in the wording or context of the subsection or elsewhere, that serves to rebut that presumption. The ambiguity should therefore be resolved in favour of defendant benefit claimants such as Mr Vassell.

48. He submitted, therefore, that section 112(1A)(d) should be construed to include a requirement for *mens rea*, i.e. an offence is only committed if the defendant benefit claimant dishonestly, or at least knowingly, fails to notify a change of circumstance which he knows affects his benefit entitlement. For the purposes of the offence, an entirely innocent failure is insufficient. On the justices' findings, Mr Vassell's failure was neither dishonest nor knowing, and therefore he was rightly acquitted.

49. Mr Mohammed for the Council submitted that the wording of section 112(1A)(d) is unambiguous: "fails" simply means "does not", and the subsection is satisfied if the prosecution prove that prompt notification of the change in the prescribed manner to the prescribed person has not in fact been given. The cause of the failure is irrelevant: it does not matter whether, in failing to give the notification required, the person is or is not in any way blameworthy. Unlike other sections of these criminal provisions (which refer to, and require proof of, a specific mental element – usually in the form of dishonesty), no mental element is prescribed in or required by section 112(1A)(d).

Discussion

50. The legal maxim *actus non facit reum nisi mens sit rea* (the act committed does not establish guilt unless the mind of the actor is guilty) has evolved into a presumption that Parliament intends statutory offences to require *mens rea*, and so, where the statutory provisions are silent as to mental element, appropriate words must be read in to require *mens rea* (see, e.g., the classic statement of Lord Reid to that effect in Sweet v Parsley [1970] AC 132 at page 148). The presumption generally requires the

defendant to have "a knowledge of the wrongfulness of the act" (Sherras v De Rutzen [1895] 1 QB 918 at page 921 per Wright J).

51. Parliament being sovereign, that presumption is, of course, rebuttable; but where, as in this case, the offence is truly criminal (as opposed to merely regulatory in nature), the presumption is strong and "can only be displaced if this is clearly or by necessary implication the effect of the statute" (Gammon (Hong Kong) Ltd v Attorney General of Hong Kong [1985] AC 1 at page 14 per Lord Scarman). In other words, the presumption is rebutted only if one is driven to the conclusion that Parliament must have intended there to be criminal liability absent any blameworthiness on the part of the defendant.

52. For the following reasons, I do not consider that the presumption is rebutted by either the wording or context of section 112(1A)(d).

53. The subsection concerns a failure to give notification "in the prescribed manner to the prescribed person", i.e. to the person and in the manner prescribed by the Secretary of State in regulations. The manner in fact prescribed is merely in writing to the office notified to the claimant on the benefit claim form as the office designated for the receipt of such benefit claims (see paragraphs 15-16 and 19 above). Although the designated office has to be notified to a benefit claimant (see paragraph 15 above), the "prescribed manner" does not itself otherwise require the benefit claimant to be given any notification of how a notification of a change of circumstance should be made. If Mr Mohammed's submission were correct – that section 112(1A)(d) merely required the prosecution to prove that the defendant had not notified a change of circumstance "in the prescribed manner to the prescribed person" – a benefit claimant could commit the offence of non-notification of a change of circumstance even if he had not been told how he should notify a change. It seems inherently unlikely (indeed, in my view, inconceivable) that that was Parliament's intention. This is not a situation in which an act has been prohibited in circumstances in which, because of potential danger to public health, safety or morals, the public interest is in favour of ensuring that those who participate in an activity take all steps to prevent the prohibited act. In those circumstances, there may be a purpose in imposing absolute liability; but Mr Mohammed did not suggest any reason or purpose for imposing such absolute liability here.

54. Furthermore, section 112(1A)(d) uses the phrase "*fails* to give a prompt notification", not "*does not* give a prompt notification". A failure to notify is not necessarily the same thing as mere non-notification. "Fails" is an ambiguous word that may or may not import the notion of fault (see Ingram v Ingram (1938) 38 SR (NSW) 407 at page 410 per Jordan CJ). In some areas of the law, "failure" is construed as involving a high degree of culpability (e.g. the failure to discharge the obligation of parenthood: see M v Wigan Metropolitan Borough Council [1978] 3 WLR 713, and O'Dare v South Glamorgan County Council (1980) 10 Fam Law 215). In other contexts, no fault is implied by the word.

55. If Parliament had intended criminal liability in relation to this failure to have been strict, it could have used words to have made that clear, such as "knowingly or otherwise". Recovery of overpayments of some benefits is dealt with in section 71 of the 1992 Act. Recovery can be made where there has been a failure to disclose "whether fraudulently or otherwise". In B v Secretary of State for Work and Pensions

[2005] EWCA Civ 929 it was held that that means recovery can be made even where the failure to disclose was innocent, because (in that case) the benefit claimant was unable to appreciate the materiality of the change of circumstances because she suffered from a learning disability. No such wording is used in section 112(1A). That is a strong indicator that it was not the intention of the words to impose criminal liability for an innocent failure to notify.

56. I was informed by Counsel that their assiduous researches had failed to find any authorities directly on this issue, either in relation to section 112(1A) or any other parallel provisions of the statutory scheme, such as those relating to overpayments or penalties. However, there are some authorities which, in my view, to some extent support a construction of section 112(1A) that imports *mens rea*.

57. B (referred to in paragraph 55 above), concerned the ability of the DWP to recover overpayments under section 71 of the 1992 Act, where an income support claimant had failed to notify a change in circumstance. Her obligation to notify sprung from regulation 32 of the Social Security (Claims and Payments) Regulations 1987, under which a claimant is required to:

> "… furnish in such manner and at such times as the Secretary of State may determine such information or facts affecting the right to benefit or its receipt as the Secretary of State may require."

How disclosure had to be made, and where, was made abundantly clear to the particular benefit claimant, including an instruction in her order book under the heading in bold, "How to tell us about changes", saying, "You must get in touch with the social security office named at the front of this book as soon as you can". The fact that the disclosure requirement had been communicated to the benefit claimant in clear terms appears to have been important in the eyes of the Court of Appeal (see [7]-[8]). That the duty in B was to "disclose" information affecting the right to benefit (rather than, as here, to "notify" a change of circumstance) does not appear to me to be a material difference for these purposes.

58. In Social Security Commissioners' Case No CDLA/1823/2004, Mr Commissioner Rowland also considered this issue. He determined that case after the Tribunal of Commissioners' decision that was upheld in B (Social Security Commissioners' Case No CIS/4348/2003, reported as R(IS) 9/06), but before the Court of Appeal decision in that case. The facts of the case are not important for the purposes of this appeal, but it concerned both a failure to disclose for the purposes of section 71(1) of the 1992 Act, and a failure to notify a change of circumstances for the purposes of supersession (which, in effect, affected the ability to backdate benefit entitlement). The Commissioner noted the lack of *mens rea* in respect of the materiality of the change of circumstance as found by the Tribunal of Commissioners and eventually upheld by the Court of Appeal in B.

59. However, he went on to consider the mental element in the failure to notify. Generally, he said, as in B, how to disclose information or give a change of circumstance would be notified to the benefit claimant in clear and unambiguous terms. He continued (at paragraphs 8 and 9):

> "The more difficult cases, which the Tribunal of Commissioners did not have to consider, are those where instructions to report facts are ambiguous or expressed in such general terms as to require some interpretation by a claimant or where written instructions have been qualified by an officer acting on behalf of the Secretary of State or, indeed where there have been no relevant instructions at all but the claimant might have had reason to suspect that he was not entitled to all the benefit he was receiving.
>
> In any of those circumstances, it seems to me that the question whether there has been a 'failure' by the claimant to 'disclose'(for the purposes of section 71(1) of the 1992 Act) or to 'notify' (for the purposes of regulation 7(2)(c)(ii) of the 1999 Regulations) a fact to the Secretary of State must inevitably be determined by considering whether the Secretary of State could reasonably have expected the claimant to disclose or notify that fact…. It may be necessary to decide how a reasonable claimant could have construed the instruction…".

60. I appreciate that those comments were made in relation to different provisions, but they concerned a failure to notify a change of circumstances in a benefits context, the focus of this appeal. In the absence of anything suggesting the contrary, the requirements should be construed in a similar way. Whilst the Commissioner's comments were *obiter*, it comes as some comfort that the tribunal's jurisprudence appears consistent with the construction I favour.

61. Therefore, on principle supported by authority such as it is, I am persuaded that section 112(1A)(d) was not intended as a strict requirement, devoid of *mens rea*. Parliament intended that a requirement for a mental element should be read in.

62. With regard to the nature of that mental element, I am not persuaded by Mr Douglas-Jones' submission (not in truth forcefully pressed), that the context requires the prosecution to go so far as to prove that the failure to notify was dishonest. The offence created by Section 112(1A) is just one of several to be found in Part VI of the 1992 Act, a part entitled "Enforcement". Most relate to the information upon which benefit entitlement or continued entitlement is assessed, and many relate to failures to do something: for example, a failure to provide information on a claim, or a failure to notify changes in the information upon which a claim has previously been assessed. In these criminal enforcement provisions, where the prosecution is required to prove that a failure was dishonest, that is expressly made clear. For example, section 111A concerns different circumstances in which representations for obtaining benefit may be made. In that section there is repeated express reference to "dishonestly" failing to do things (see paragraph (d) of subsections (1A), (1B), (1D) and (1E) of section 111A). In the circumstances, the absence of any reference to "dishonesty", in my judgment, negates that as a specific requirement in section 112(1A)(d).

63. However, that was not Mr Douglas-Jones' primary submission, which was that, in section 112(1A)(d), "he fails to give a prompt notification" of a relevant change of circumstance means "he *knowingly* fails to give a prompt notification". I agree.

64. It is true that, in other provisions within the criminal part of the 1992 Act, the requirement for something to be done "knowingly" is express. Section 112(1)(b) creates an offence where a benefit claimant, for the purposes of obtaining a benefit, "produces or furnishes or *knowingly* causes or *knowingly* allows to be produced or furnished" a false document (emphasis added). However, the adverb there governs verbs other than "fails". There does not appear to be any reference to "knowingly fails" in the statutory scheme, or at least in this part of it. I do not consider that the references to "knowingly" elsewhere drives me to conclude that section 112(1A)(d) is absolute in the sense that a failure to notify that is not "knowingly" done was intended by Parliament to be a criminal offence.

65. The failure to notify a change of circumstances in section 112(1A)(d) must, in my judgment, be knowing in the sense that the benefit claimant must be aware of the person to whom and the manner in which the notification of the change of circumstances must be made; and must, in that knowledge, not give the notification, promptly, when there has been a change of circumstances requiring to be notified. It will usually be obvious that the notification must be made to the relevant local authority: but, in relation to the *manner* of notification, the authority is required to provide the benefit claimant with the relevant information of how to notify a change, in clear terms. That is anything but an onerous requirement for the authority. Particularly given the statutory provisions including the requirement to notify the designated office thus (see paragraph 15 above), it will no doubt usually make the manner of notifying changes clear on, or with, the benefit claim form (as the August 2009 form completed by Mr Vassell seeks to do). On any prosecution, whether the notification requirements have been expressed clearly enough will be a matter of fact for the justices to consider and decide. Where they are insufficiently clear, the justices will usually be able to make a ready finding that the defendant was unaware of the requirements, and therefore did not knowingly fail to notify the change. As suggested by B (see discussion above, especially at paragraph 57), in most cases the clarity of the information provided to the claimant is likely to be important if not crucial.

66. However, cases may arise where, despite a clear indication to the benefit claimant of how to notify a change of circumstances, he may contend that he did not in fact have the requisite knowledge, for example because he did not read the literature given to him and possibly signed by him. That does not of course arise on this appeal, because the justices found that the literature was not sufficiently clear (see paragraph 25(iv) above). When the issue does arise, whether the defendant had the requisite knowledge will be always an issue for the tribunal of fact (usually, the justices) to decide.

67. In approaching that issue, there should be borne in mind the words of Lord Bridge in Westminster City Council v Croyalgrange Ltd [1986] 1 WLR 674 at page 684E:

> "… that it is always open to the tribunal of fact, when knowledge on the part of a defendant is required to be proved, to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not want to have his suspicion confirmed."

That comment is particularly pointed in the context of section 112(1A) because, as I have explained (paragraph 32 above), a criminal offence under that provision is only committed where the benefit claimant *knows* that a change has affected his entitlement to benefit. In those circumstances, if he is unaware of how to notify that change and chooses not to make enquiries as to how to do so whilst continuing to receive the benefit, it will be open to the justices to make a finding of knowledge.

68. Similarly, if a benefit claimant, knowing of such a change, reasonably notifies the wrong person or in the wrong manner but then continues to be paid the benefit in that knowledge without making further enquiry, it will be open to the justices to make a similar finding. Once he realises that his report has not been effective and he is continuing to receive benefit to which he is not entitled, the continuing duty to make prompt disclosure will again bite (see Social Security Commissioners' Case Reports R(SB) 54/83 at paragraph 18, and R(SB) 15/87 at paragraph 28). In this appeal, Mr Vassell was under no such obligation, because he did not know that the change of circumstances affected his entitlement (see paragraphs 31-36 above).

69. Mr Mohammed sought to persuade me that, in this case, from the original benefit claim form and the July 2007 notification of his employment as a change of circumstance, Mr Vassell ought reasonably to have appreciated that he was required to give the Council specific notice of a change of circumstances that affected his entitlement to housing benefit and/or CTB. However, on the evidence, the justices found that the forms were not reasonably clear (paragraph 8 of the Case Stated: see paragraph 25(iv) above). On the evidence, they were entitled to make that finding; and, although entirely a matter for them, having seen the benefit claim form and the July 2007 Change of Circumstances Form, I quite understand why they made the finding that they did.

70. In the circumstances, the justices were correct to consider that the requirements of section 112(1A)(d) were not met, and were right on that basis to acquit Mr Vassell.

Conclusion

71. On the basis of the construction of section 112(1A) above, the hurdles that the prosecution have to surmount to convict a benefit claimant under that section may appear to be considerable. If a claimant fails to notify a change of circumstances, there are other substantial sanctions that might be imposed upon him, with less formidable criteria: for example, recovery of overpayments, or administrative penalties. However, section 112(1A) is a *criminal* provision and, in those circumstances, it should not be surprising that Parliament intended the matters which have to be proved to be strict.

72. In any event, for all the reasons I have given, this appeal is dismissed.