

Living together appeals revisited

Desmond Rutledge examines the Benefits Agency approach to 'living together' appeals and the importance of the general relationship

The cohabitation rule has been part of social security legislation since 1948. In 1977 the term 'cohabitation' was replaced by the phrase 'living together as husband and wife' ('LTAHAW') for means-tested benefits.¹ The significance of such a rule is that benefits may be removed or reduced where a man and woman are living in the same property.

The personal allowance for a couple is less than the personal allowance for a single man and a single woman added together. It was considered unfair to married couples if a man and woman could make separate claims when they were in fact cohabiting. Under the LTAHAW rule their income is aggregated. If one of the parties works full time, entitlement to Income Support or Jobseeker's Allowance will cease, and earnings are taken into account for the assessment of Housing Benefit and Council Tax Benefit.²

This article examines the decision-making process for determining LTAHAW appeals in means-tested benefits. It will be argued

that the list of factors reproduced in R(SB)17/81 (see Box 1) was intended as a useful starting point, but, over time, the list came to dominate the whole of the decision-making process. Adjudication is then reduced to listing activities shared by the claimant and her/his alleged partner. On this basis, claimants could find themselves treated as LTAHAW if the living arrangements are mutually convenient and there is evidence that the parties share household bills or spend some of their leisure time together. Recent case law has highlighted the importance of the general relationship and the need to view the evidence in its proper context. The information in this article applies to England, Wales and Scotland.

Legal status of the 'criteria'

In decisions on cohabitation for Widows Benefit, the Commissioners developed an approach based on three main factors:

- the parties' sexual relationship
- their financial relationship and
- their general relationship.³

When the High Court

came to consider LTAHAW appeals from Supplementary Benefit Appeal Tribunals, the court was not referred to previous Commissioners' decisions. The court was referred to a set of 'criteria' suggested in guidance to decision-makers. In this guidance, it was emphasised that there was no legislative definition of 'living together as husband and wife' and that the phrase must be regarded in the ordinary sense of the term. Box 1 gives their suggested approach and the criteria they supported.

R(SB)17/81 held that the approach of the Commissioners to cohabitation in Widows Benefit cases was essentially the same as that taken by the High Court in relation to LTAHAW. To treat the 'criteria' as the sole test for deciding LTAHAW, however, would be an oversimplification. Judicial approval for the list of factors was a qualified one. When considering the nature of the test and the criteria, Woolf J (as he then was) stated: '*What they are, in fact, are admirable signposts to help a tribunal, or indeed the commission, to come to a decision whether in fact*

the parties should be regarded as being within the words 'living together as husband and wife'".⁴

In another case, Woolf J comments: '*...his submission on behalf of the appellant was to take me through the published criteria for deciding matters of this sort which the commission lay down for the guidance of those responsible for operating these appeals. They are not matters of law but merely guidance of an administrative nature...*'⁵

The list is a useful tool for investigating the basic facts, but the decision-maker still has to interpret those facts and decide the ultimate issue: the nature of the general relationship between the parties. In

Box 1

'There is no single way by which the issue can be decided in every case. The main criteria that are taken into account are as follows:

- membership of the same household
- stability
- financial support
- sexual relationship
- children
- public acknowledgement'

Benefits

practice, the complex evaluation envisioned by Woolf J was reduced to a bureaucratic checklist. If the parties' replies indicated that they shared most of the domestic arrangements, then the decision-maker felt s/he was obliged to treat the claimant as LTAHAW. The flaw in this approach is that evidence the parties share key domestic activities falls short of proof of cohabitation, as the same evidence could equally describe a relationship between a brother and sister or between members of the opposite sex based on friendship and mutual convenience.

The proper context

In addition to investigating the parties' domestic circumstances, the decision-maker is required to place these findings in their proper context before drawing any inference regarding the general relationship between the parties.

If a tribunal only has regard to the published 'criteria', it will have failed to apply the correct legal test. This point is illustrated by *Robson v Secretary of State for Social Services*⁶ in which the tribunal decided the claimant was LTAHAW because the claimant and the alleged partner were living in the same flat as one unit. The court disagreed: *'It will be apparent, if that was the reason, that it constituted a misdirection and an error of law, because as has already been pointed out by Woolf J in Crake and Supplementary*

Box 2: Carer/patient relationship

In **CIS/1401/1997**, the claimant argued that his relationship with Miss K was that of a carer/patient and not akin to that of husband and wife. The parties shared accommodation and some of the household bills. The furniture belonged to the claimant; he undertook the household chores and they spent some leisure time together. The Adjudication Officer decided that they were LTAHAW because 'the claimant does everything for Miss K and he is committed to her and looks after her'. The tribunal confirmed the decision, stating 'the fact that the basis of the relationship is caring does not in the view of the tribunal preclude them from being a couple'.

The Commissioner accepted that living together cases involved the tribunal making a value judgement, but this only highlighted the importance of making adequate findings of fact. The decision failed to explain why the claimant's evidence had been rejected and this could not be explained away by the findings, since some of these were clearly supportive of the claimant's 'carer' argument.

Checklist for 'living together' appeals

The question to be determined: whether the relationship between the man and the woman is such that they must be regarded as living together as husband and wife ('LTAHAW') in the ordinary sense of the term?

The set of 'criteria' reproduced in **R(SB)17/81** are for guidance only and must be read in conjunction with Woolf J's decision in *Crake* and the principles in **CIS/087/93**.

The fact that a man and a woman share the same household does not prove that they are LTAHAW as this could equally apply to students sharing a flat or a brother and sister living together.

If the parties share the same household the decision-maker must go on to ask why they are living together and ascertain whether there is some explanation which indicates that the parties are not LTAHAW (*Crake v SBC*)

A relationship which contains elements of care and companionship and mutual convenience could constitute an explanation that showed the parties were living in the same household for some reason other than they are LTAHAW (**R(SB)35/85**)

A finding that aspects of the domestic activities are shared by the parties does not in itself prove that they must be regarded as LTAHAW (**CJSA/3027/1999**)

The domestic facts are only relevant for the light they show on the general relationship (**CIS/087/93**)

It is not enough to show that the parties are living in a somewhat similar manner to some married couples (**CSSB/145/83**)

The general relationship must be viewed in its specific factual context before any inference is drawn regarding the nature of the general relationship between the parties

Benefits Commission, it is not sufficient, in order to establish that a man and woman are living together as husband and wife, simply to show that they are living in the same or as part of the same household unit.⁷

Viewing the general relationship in context

The set of 'criteria' from the benefit guidance was not meant to displace the statutory test and must be applied alongside examination of the general relationship. This was the basis of the decision in **R(SB)35/85**, when the tribunal failed to realise that the elements of care and companionship and mutual convenience revealed by the facts could amount to an explanation indicating the parties were not sharing the same household because they were LTAHAW. **CSB/150/88** also highlighted the danger of using the list of factors without having regard to the general relationship. A man and woman were engaged to be married, but refrained from sex because of their strong religious convictions. They were pooling resources and living together in every respect except sleeping together. The tribunal went through the list and accepted that no sexual relationship existed, but nevertheless concluded they were living together as an unmarried couple. The Commissioner found that: *'...it was not appropriate to consider the criteria as a kind of score card from which the answer to the*

problem before them could be read straight off.'

Therefore, simply compiling a list of domestic activities shared by the parties will not be enough to determine the outcome of a living together case. Decision-makers must have regard to the overriding importance of the general relationship when they investigate and then interpret the domestic arrangements. CIS/087/1993 held that the list of factors placed: *'...a wholly inadequate emphasis on the significance of the parties' 'general relationship' that is of paramount importance and ... their sexual relationship and their financial relationship are only relevant for the light they throw upon the general relationship'*.

The case studies in Boxes 2 - 4 illustrate how the failure to view the general relationship in context results in decisions being set aside on appeal to the Commissioners.

Conclusion

In order to address the statutory test, it is necessary for tribunals to apply Woolf J's reasoning in *Crake* and the principles in CIS/087/1993. This means looking at the whole picture,⁸ which could include asking questions about the circumstances in which the relationship arose to see what light this may throw on the nature of the general relationship.⁹ The practical arrangements people have may resemble that of a married couple, if considered without knowing the reasons behind

Box 3: Mortgage payments did not convert a lodger into a partner

In CIS/708/94, Mr T had lived in the household as a lodger for some 20 years. The claimant's husband worked abroad and for periods Mr T lived in the house alone. After many years of marriage, the claimant and her husband divorced and the claimant remained in the matrimonial home subject to paying her husband a lump sum. The claimant was unable to obtain a mortgage because of her age. Mr T agreed to stand guarantor and a mortgage was obtained to discharge her liability to her husband, and to repair and refurbish the house. It was agreed that Mr T would be responsible for all mortgage repayments, and that, if he wished to leave at any time, the claimant would sell the house and reimburse him all the mortgage out-goings. The claimant made a will leaving the house to her daughter, subject to Mr T being reimbursed for all mortgage repayments made by him on the house. Mr T made a contribution to household bills; the parties sometimes shopped together and spent some leisure time together. The tribunal decided by a majority that the parties were LTAHAW. The Commissioner held that the facts amounted to an explanation, which showed the parties were not LTAHAW.

Box 4: Analogous to students sharing accommodation

In CJSA/3027/1999, the claimant and the alleged partner shared two-bedroom accommodation in a flat with mutual acquaintances. He could not afford a one bedroom flat, the housework was shared, but they each did their own laundry and shopping. The bills were paid in equal shares, apart from the phone bill. The tribunal confirmed the decision that they were LTAHAW.

The Commissioner accepted that the tribunal had failed to consider the evidence for the light it threw on the general relationship and did not consider the explanation given for living in the same household. The Commissioner gave his own decision that the claimant and the other party were not LTAHAW.

a decision to live together. However, this is not the same as proving they must be regarded as living together as husband and wife.¹⁰ Until the general relationship is viewed in its factual context, the tribunal will not be in a position to draw a proper distinction between a relationship based on mutual convenience and friendship, and one based on a particularly strong personal relationship.

5. *Campbell v Secretary of State for Social Services* [1983] 4 FLR 138, 142 E-F
6. [1982] 3 FLR 232
7. Whether the claimant is maintaining a separate household is the sole factor where the claimant and the alleged partner are married but claim they are separated: R(SB) 4/83. LTAHAW cases are not relevant to married couples appeals: CIS/2900/98 (**Adviser** 79)
8. R(G) 2/72
9. R(G) 3/71 para 3
10. See CSSB/145/83 para 7. The fact that the claimant is living in a somewhat similar manner to some married couples in which the husband had suffered a serious disability did not justify the tribunal's conclusion that the claimant was LTAHAW.

Footnotes

1. ss.135, 136 137(1) SSCBA 92, s.35(1) JSA 95
2. Reg 2(1) HB Regs 1987; Reg 2(1) CTB Regs 1992. See chapter on 'Claiming for others' in the CPAG Benefit Handbook for details
3. R(G) 3/71
4. *Crake v Supplementary Benefits Commission*, Butterworth v Supplementary Benefits Commission [1982] 1 All ER 498, 505 F-H

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