[2017] AACR 22

(FMcC v Department for Communities (SPC) [2016] NICom70)

Mr O Stockman **C2/15-16(PC)**
Commissioner
26 October 2016

Eligible housing costs – repairs and improvements not carried out within six months of date of receipt of a loan

The claimant took out a mortgage to purchase her home in 1988. Between 1997 and 2010 she took out four further mortgage loans secured on her home, redeeming the previous mortgage on each occasion. She generated capital by re-mortgaging and used this in part to carry out repairs and improvements to her home. She claimed state pension credit (PC) in 2010. The housing costs element was initially assessed incorrectly by the Department on the basis of incomplete information. A Departmental decision in 2012 superseded the previous award and reduced the claimant's entitlement to eligible housing costs. The claimant appealed. In the assessment of her eligible housing costs, the tribunal allowed the claimant the cost of purchasing her home in 1988. The tribunal further allowed the costs of those elements of the mortgage loans taken out by the claimant for carrying out repairs and improvements to the claimant's home. The tribunal applied paragraph 12(1) of Schedule 2 to the State Pension Credit Regulations (NI) 2003 (the SPC Regulations). This provided for three categories of qualifying loan, each with a specific purpose, and required that "the loan was used for that purpose, or is used for that purpose within 6 months of the date of receipt or such further period as may be reasonable in the particular circumstances of the case" (the time criteria). The tribunal, disallowing the appeal, found that the claimant was not entitled to the cost of any loan where repairs and improvements had not been carried out within the time criteria. The claimant applied to the Commissioner for leave to appeal.

Held, allowing the appeal, that:

1. paragraph 12(1) of Schedule 2 to the SPC Regulations had two limbs; the first permitted the costs of a loan to be met for a period when a loan had been used for one of the three qualifying purposes; the second permitted the costs of a loan to be met for a period when the loan was prospectively to be used for one of the three qualifying purposes (paragraphs 25 to 29);

2. the second, prospective, limb was subject to the requirement that the loan was used for a qualifying purpose within the time criteria (paragraph 30);

3. on a linguistic and purposive construction , there was no warrant for applying the time criteria to the first limb where the loan had already been used for a qualifying purpose (CIS/257/1994 distinguished) (paragraphs 34 to 37);

4. the claimant was entitled to the cost of loans where repairs and improvements had been carried out, regardless of the fact that they had not been carried out within six months of the date of receipt of the loan (paragraph 38).

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Background circumstances

1. In 1988 the appellant took out a mortgage in order to purchase her current home, with a loan of £32,000. She took out a second mortgage in 1997 with a loan of £40,000 and redeemed the previous mortgage. She took out a third mortgage in 2000 with a loan of £90,000 and redeemed the previous mortgage. She took out a fourth mortgage in 2003 with a loan of £93,295 and redeemed the previous mortgage. She took out a fifth mortgage in 2010 with a loan of £173,495, and again redeemed the previous mortgage.

2. In January 2010 the appellant claimed state pension credit (PC) from the Department for Social Development (the Department). The Department awarded PC, including an element of housing costs, from 25 January 2010, based on the mortgage loan figure of £93,295. However, following the receipt of further information, the Department decided that the appellant's housing costs element had been incorrectly assessed. Following reassessment, the Department restricted the appellant's housing costs to the amount of the first loan, taken out for the purchase of the appellant's house in 1988, plus increases for certain repairs and improvements. It rejected certain other claimed repairs and improvements on the specific basis that the appellant was not a "disabled person" at a material time.

3. The appellant appealed from this decision, but a tribunal disallowed her appeal. She appealed to the Social Security Commissioner. In an interim decision issued on 9 December 2015, I found that on a correct interpretation of the law the appellant fell within the definition of "disabled person" from 1 April 1996 to 7 April 2002, therefore potentially qualifying for the cost of certain repairs and improvements to be added to her housing costs. I allowed her appeal and set aside the decision of the appeal tribunal for the reasons given in my interim decision.

4. Having set aside the decision of the tribunal, rather than remit the appeal to a newly constituted tribunal, I directed further evidence with a view to making a decision on the appellant's entitlement to housing costs under article 15(8)(a)(ii) of the Social Security (NI) Order 1998. The appellant submitted evidence on 7 January 2016. I gave the Department an opportunity to comment on the evidence and Mr Crilly duly responded on 9 February 2016. The appellant made further submissions in response on 26 April 2016.

5. Arising from Mr Crilly's submissions, I appreciated that there remained a further issue of disputed law within the proceedings in addition to the factual questions. This concerned the application of paragraph 12(1) of Schedule 2 to the State Pension Credit Regulations (NI) 2003 ("the PC Regulations") to the appellant's circumstances. It had not seemed necessary to decide this issue in my interim decision, although it was a factor in the tribunal's decision. I now recognise that it would have been better to have resolved this issue in my interim decision, and I apologise to the appellant for the undue delay which this omission has contributed to the proceedings.

6. On 10 June 2016, I issued a direction to the Department to make written observations under regulation 20(4) of the Social Security Commissioners (Procedure) Regulations (NI) 1999. In the light of the submissions received on 19 July 2016, I held an oral hearing on 27 September 2016.

Relevant legislation

7. The issue in dispute concerns the interpretation of paragraph 12 of Schedule 2 to the PC Regulations. This provides that:

> "**12. –** (1) A loan qualifies under this paragraph where the loan was taken out, with or without security, for the purpose of –
>
> (a) carrying out repairs and improvements to the dwelling occupied as the home;
>
> (b) paying any service charge imposed to meet the cost of repairs and improvements to the dwelling occupied as the home;

(c) paying off another loan to the extent that the other loan would have qualified under head (a) or (b) had the loan not been paid off,

and the loan was used for that purpose, or is used for that purpose within 6 months of the date of receipt or such further period as may be reasonable in the particular circumstances of the case."

Hearing

8. I held an oral hearing on this further issue. The appellant, who stated that she was unwell, was not expected to attend and did not attend. Mr Crilly of Decision Making Services appeared for the Department.

9. I invited Mr Crilly to make submissions on the meaning of paragraph 12. He outlined that the Department's position was that the words above permit housing costs to be met where a loan was used for a prescribed purpose in sub-paragraphs (a)–(c) or is prospectively to be used for such a purpose at the date of a claim. However, it was the Department's interpretation that each of those limbs was subject to the time requirement that the loan was used for the purpose within six months of the date of receipt or such further period as may be reasonable in the particular circumstances of the case. Although the submissions and discussion which follow equally apply to each of the three limbs from (a) to (c), in the particular case I am concerned with sub-paragraph (a) which deals with repairs and improvements. As some of the work of repair and improvement had not been carried out by the appellant for a long time after the loans had been taken out, the Department's submission was that she could not satisfy the requirements of the paragraph.

10. While accepting that there was an element of ambiguity in the words in paragraph 12, Mr Crilly submitted that the use of the terms "was" and "is" indicated a distinction between the loan having been used or being prospectively used for the statutory purpose. Mr Crilly submitted that paragraph 12 of Schedule 2 to the PC Regulations is the equivalent of paragraph 16 of Schedule 3 to the Income Support (General) Regulations (Northern Ireland) 1987 ("the IS Regulations"). The current form of Schedule 3 to the IS Regulations came into force on 02 October 1995. Prior to this date, loans for repairs and improvements were provided for in paragraph 8 of the previous Schedule 3.

11. Paragraph 8(1) of the former Schedule 3 was drafted in the following terms:

"**8. –** (1) Subject to paragraph 7A, there shall be met under this paragraph interest payable on any loan which is taken out, with or without security, for the purpose of –

(a) repairs and improvements to which paragraph 1(b) refers; or

(b) paying off another loan but only to the extent that interest on that other loan would have been met under this paragraph had the loan not been paid off,

and which is used for that purpose or is to be so used within 6 months of the date of receipt or such further period as may be reasonable, and the amount to be met under this paragraph shall be calculated as if the loan were a loan to which paragraph 7 applied."

12. Mr Crilly submitted that the wording in the old paragraph 8(1) allowed for the carrying out of repairs and improvements to be anticipated. This is made clear by the use of the words "or is to be so used". Therefore, a loan could have qualified as an eligible housing cost under paragraph 8(1) before it was actually used for the purpose of carrying out repairs and improvements.

13. Mr Crilly further observed that the prospective element that had been apparent in the former paragraph 8(1) appears to have been removed when the current equivalent IS provision came into effect from 2 October 1995. This was because the two words "to be" have been omitted. However, Mr Crilly submitted that the second limb must contain a prospective element. Otherwise there would be no need for it as the condition in the first limb would always be satisfied once the loan has been used for the relevant purpose.

14. Taking this into account, he submitted that, whilst a literal interpretation of the second limb of paragraph 12(1) would preclude consideration of any element of anticipation that the loan is to be used for a relevant purpose, a purposive approach should be adopted to allow for such a consideration. This would involve reading "… or is *to be so* used for that purpose …" into the legislation, with the effect of preserving a construction with which to permit a prospective element that had clearly been present in its predecessor.

15. Turning to the question of the period within which the statutory purpose had to be achieved, Mr Crilly submitted that the former paragraph 8(1) meant that, in order to qualify as an eligible housing cost, a loan taken out for the purpose of repairs and improvements had to be so used within six months of the date of receipt or longer if reasonable. He submitted that the six month limit in the former paragraph 8(1) applied to all loans, including those taken out previously and already used for the stated purpose. He further submitted that this was confirmed by GB Commissioner's decision CIS/257/1994.

16. CIS/257/1994 was concerned with the application of paragraph 8(1) of the former Schedule 3 to the IS Regulations. In that case, the claimant had taken out a loan with the intention of carrying out repairs and improvements to her home. However, the loan was not used for that purpose. The money had been transferred in to a business account owned by the claimant's son and spent. GB Commissioner Mr Rowland held that the loan did not fall to be included as a housing cost for income support purposes. He gave his reasons for this conclusion in paragraph 7 of the decision:

> "I agree with the adjudication officer now concerned with the case that the dissenting member of the tribunal took the right approach and that the majority erred in their construction of paragraph 8(1). The opening words of paragraph 8(1) require that the loan have been taken out 'for the purpose of' carrying out repairs or improvements. That condition is satisfied in this case. However, the concluding words require that the loan be 'used for that purpose' within 6 months or an extended period. The words 'or is to be so used' are included only because the determination may be made before the end of the relevant period so that the adjudication officer or tribunal is obliged to anticipate what will happen. Where, as here, a tribunal is able to make use of hindsight, they should base their decision on what has actually happened. Therefore, if it was reasonable to extend the 6 months' period only to 12 months, the claimant was still not entitled to have interest on the loan met – even during those 12 months – because she had not used the loan for the relevant purpose within the 12 month period."

17. Mr Crilly submitted that the Commissioner in CIS/257/1994 held that the six month or relevant extended period rule applied to all instances; both to those circumstances where the purpose had already been met, as well as those where the purpose was still a prospective one.

18. He further submitted that this view was supported by the commentary accompanying paragraph 16(1) to Schedule 3 of the IS Regulations in page 679 of *Social Security Legislation 2014/15: Volume II – Income Support, Jobseeker's Allowance, State Pension Credit and the Social Fund* edited by Sweet & Maxwell. This states:

> "The loan has to be used for the repairs, etc. within six months or some further period. If the loan is not so used, the claimant is not entitled to interest on it even during the six months or any extended period (CIS 257/1994)".

19. Turning to the present form of the rule in paragraph 12 of the PC Regulations, Mr Crilly submitted that the six month rule equally applied to the past and the prospective limbs. In the present case, even if the appellant could show that she had used a relevant loan for repairs and improvements, it would not be enough to establish entitlement. She would have to show that she had used the loan for the purpose within six months of its receipt, or such longer period as might be reasonable in the circumstances.

Assessment

20. I accept the submission of Mr Crilly that paragraph 12 of Schedule 2 to the PC Regulations is a direct equivalent of paragraph 16 of Schedule 3 to the IS Regulations and is therefore linked in its origin to paragraph 8 of the former Schedule 3. However, it seems to me that the words of paragraph 12 are less clear than the provisions which preceded them.

21. The Department has not been able to point to any change in policy or rationale for changing the words from those appearing in the pre-2 October 1995 IS Regulations. The changes were put into effect by the Social Security (Income Support and Claims and Payments) Regulations (NI) 1995 (SR 1995/301). Those regulations principally introduced a distinction in treatment between entitlement to the housing costs element of IS incurred before and after 2 October 1995. Entitlement was restricted in certain respects after that date. However, it does not appear from the particulars of those changes, that this should necessarily alter the correct interpretation of the provisions which I have to consider.

22. The main change in the relevant paragraph is that the tense of each limb is altered by the amendment so that the original pairing of "is used" with "is to be so used" is replaced by a pairing of "was used" and "is used". It may be that the change was considered necessary in the light of the more general changes to the provisions dealing with housing costs. Nevertheless, it seems to me that, whatever the purpose, the amended legislation was intended to preserve a distinction between entitlement in respect of periods where a loan has already been used for the purpose of repairs and improvements and entitlement in respect of periods where those repairs and improvements had not yet been carried out.

23. Mr Crilly submits that the words at the end of paragraph 12 require a purposive construction to achieve this effect, due to the omission of the words "to be" from the version of the legislation which is before me. Otherwise, if I understand his submission correctly, there is no effective difference between the terms "was used" and "is used". As I noted above, the original version of this legislation employed the term "is used" for expressing the past tense in

the sense of covering the situation where the repairs and improvements had already been carried out under the loan.

24. However, the key issue in the appeal is whether the Department is correct in its further submission that the relevant words have the effect that both of these limbs are subject to the condition that the loan was used for the statutory purpose within six months of the date of its receipt or such further period as may be reasonable in the particular circumstances. The Department submits that, as the appellant did not use her loan within six months of receipt, paragraph 12 prevents payment of housing costs for otherwise eligible repairs and improvements.

25. It does not appear to me, from a basic construction of the words in issue, that the Department's submission is correct. The previous version of the legislation read:

> "… and which is used for that purpose or is to be so used within 6 months of the date of receipt or such further period as may be reasonable".

26. The current version reads:

> "… and the loan was used for that purpose, or is used for that purpose within 6 months of the date of receipt or such further period as may be reasonable in the particular circumstances of the case".

27. It appears to me that, had the legislator intended to make both limbs subject to the time qualification, the insertion of commas after "purpose" and "used" would have clarified that intention in the old version of the legislation and the insertion of a single comma after the second "purpose" would have clarified that in the present version. Commas would have the effect of connecting both limbs to the time requirement. In their absence, there is an element of ambiguity.

28. As I understand the old version of the legislation, it provided for meeting the housing costs of a claimant who had taken out a loan and had used it to effect qualifying repairs and improvements. It also provided for meeting the housing costs of a claimant who had taken out a loan, but who had not yet used it to effect qualifying repairs and improvements, yet would prospectively use it to do so within six months or further reasonable period of receiving the loan. Significantly, it permitted entitlement to housing costs prior to completion of the repairs and improvements. Presumably there would have been cases where entitlement was accepted on a prospective basis, but the statutory purpose was later frustrated by non-completion of the work.

29. The current version of the legislation similarly provides for paying the housing costs of a claimant who has taken out a loan and has used it to effect qualifying repairs and improvements. However, a small difference appears evident to me. It appears that the new formulation does not permit payment pending the completion of prospective repairs and improvements. Instead, it seems to me, it permits payment retrospectively for a past period where such work was anticipated and has now been completed. The important qualification is that the repairs and improvements must have been completed within the relevant time requirement.

30. In the present case, the Department submits that the time requirement attaches to both the first and second limbs of the provision. However, it is not clear to me why the time requirement should extend to both limbs. If the time requirement was intended to apply to both limbs, only

one limb would have been necessary. I consider that, from a plain reading of the legislation, the time qualification only extends to the prospective limb. It appears to me that the first purpose of the legislation is to meet a claimant's housing costs in the situation where a loan has been taken out in order to carry out repairs and improvements regardless of when the repairs and improvements have been done. The second purpose is to meet the interest on a loan for a period where repairs and improvements have not yet been done, but where they are subsequently done within the relevant time period.

31. Mr Crilly argued for a purposive construction, and submitted that the current version of the legislation required the notional insertion of the words "to be" after "is", in order to achieve a prospective effect. However, it appears to me that the change in tense in both limbs and the omission of the words "to be" is not accidental. Rather it is a subtle amendment. I consider that the two limbs each have a separate purpose. Rather than reading in the words "to be" when they are not there, as suggested by Mr Crilly, I consider that it is the very reference to the relevant time period which achieves the prospective effect intended by the legislature. The loan qualifies if it "is used for that purpose within 6 months of the date of receipt or such further period as may be reasonable in the particular circumstances of the case".

32. Mr Crilly submits that the time period qualification would extend to both limbs of the provision. By this interpretation, if repairs and improvements were delayed beyond six months or further reasonable period, they could never qualify as housing costs even when belatedly completed. However, it is difficult to see why this should be the case on policy terms. There is no undue advantage to such a claimant. Even without such a time restriction, the claimant who unreasonably delayed repairs and improvements would not qualify for increased housing costs until the work was done. Yet the obvious aim of the legislation is to meet such housing costs when repairs and improvements are done. A rationale for penalising delay by an absolute disentitlement from housing costs is not obvious.

33. Yet, where a loan is obtained, but then not used for relevant housing costs, it is easier to see why public policy would prevent payment pending completion of such work, or restrict it to a retrospective payment where the work was done within a particular timeframe. Such a measure would prevent a claimant who intended using a loan for a different purpose to those prescribed in the legislation from receiving interest on the loan by way of PC.

34. Mr Crilly relied on CIS/257/1994 and the authors of *Social Security Legislation 2014/15: Volume II – Income Support, Jobseeker's Allowance, State Pension Credit and the Social Fund*. However, it seems to me that CIS/257/1994 must be distinguished from the present case. It concerned a claimant who took out a loan for repairs and improvements. However, the money was channelled into her son's business and lost. The Commissioner was considering whether it could still be said that the money was to be used to the statutory purpose with, if not six months, at least a further reasonable period. The claimant had no realistic expectation that the money would ever be repaid. The question before the Commissioner was whether, in a case where the purpose of the loan was not achieved, the claimant was entitled to housing costs on the premise that it was nevertheless her intention to have the repairs done.

35. In an era before article 13(8)(b) of the Social Security (NI) Order 1998, which precludes this approach, he considered that the tribunal was entitled to use hindsight and to consider post-decision events. The Commissioner held that, even if it was reasonable to extend the statutory period to 12 months, the claimant was still not entitled to have interest on the loan met – even during those 12 months – because she had not used the loan for the relevant purpose within the

12 month period. In the contemporary adjudication system, a tribunal is not entitled to have regard to circumstances which were not obtaining at the date the decision under appeal was made. However, the change in the legislative provisions which I referred to above makes it unnecessary for me to explore the implications of that further.

36. More generally, it appears to me that there is not authority for the proposition submitted by Mr Crilly, relying on CIS/257/1994 and *Social Security Legislation 2014/15: Volume II*, that the loan has to be used for the repairs and improvements within six months or such further reasonable period.

37. CIS/257/1994 was concerned with the pre-2 October 1995 version of the equivalent IS legislation and with a factual situation where the repairs and improvements were not done. I do not understand it as extending to a principle that, where repairs and improvements are effected beyond the statutory time period extending to prospective loans, the interest on the relevant loan can never be met. If my understanding is wrong, I consider any proposition to that effect in CIS/257/1994 to be *obiter*. In any event, I consider that I should distinguish it from the present case on both fact and law, as it dealt with an earlier version of the law.

38. I conclude that the words qualifying entitlement in terms of the time in which the loan must be used for the statutory purpose apply to periods when the work of repairs and improvement has remained in prospect, but not to the period when the work of repairs and improvement has been done. Accordingly, there should be no restriction on entitlement to the appellant in the present case during any period when she had completed work of repairs and improvements, solely on the basis that she did not complete such work within six months of receiving a loan or such further period as might be reasonable in the circumstances.

39. The Department and the tribunal each interpreted the time qualification as precluding an award of an element of housing costs where repairs and improvements were carried out beyond a period of six months or further reasonable period from the receipt of the loan. I am satisfied that this interpretation involved the making of an error of law.

40. I allow the appeal. I make the findings of fact which appear in the Appendix to this decision and I direct accordingly.

APPENDIX

My findings and decision on entitlement

Loan 1: I find that the appellant borrowed £32,300 from Cheltenham & Gloucester Building Society in 1988 to purchase her present home.

I find that £32,300 of that sum is an allowable housing cost under paragraph 11(1)(a) of Schedule 2 to the PC Regulations from 1988.

Loan 2: I find that the appellant borrowed £40,000 from the Mortgage Trust in 1997 to redeem her original mortgage to the extent of £32,300.

The appellant submits that the balance of the loan was employed to repair the roof of her house at a cost of £1,000, and to replace windows at a cost of £5,000.

The appellant submits that the roof repairs were necessary due to storm damage and that there were two sets of roof repairs in 1997 and then in 1998/99. The appellant states that the window repairs were necessary due to the age of the house.

The appellant has provided evidence in the form of a letter from Belfast City Council dated January 2016 which establishes that environmental health abatement notices were issued by the council in 1997 in respect of a defective bay window and in April 1999 in respect of a defective rear entrance door and kitchen window, with work completed on each in October 1997 and July 1999 respectively.

The appellant has further produced copy invoices for £350, dated 1 December 1999, and £650, dated 30 November 2000 for flashing and slates replacement. These do not appear to me to be original documents. Nevertheless, I am satisfied that the work was done as claimed.

The period in issue is now some considerable time in the past. However, the onus must be on the appellant to make out the case that she spent the further loan as claimed. Judge Lane in the Upper Tribunal in *KWA v Secretary of State for Work and Pensions* [2011] UKUT 10 (AAC) has referred to the difficulty in assessing figures in cases where documentary proofs are not available. She has commented that tribunals cannot pluck figures out of the air, but are entitled to use experience and judgement in order to obtain them.

The Department has previously disallowed the sums claimed in the period of Loan 2 due to the fact that the claimed work was not done within six months or a reasonable period after obtaining the loan. Contrary to the Department's approach and for the reasons given above, I consider that this is not a lawful basis for refusing this element of the relevant loan.

I find that £32,300 of the sum of £40,000 is an allowable housing cost under paragraph 11(b) of Schedule 2 to the PC Regulations from 1997.

I find that the appellant is entitled to be assessed on the basis that interest on a further £350 for roof repairs should be allowable under paragraph 12(1)(a) and 12(2)(j) from 1 December 1999.

I find that the reasonable costs of replacement of a bay window must be permitted from 17 October 1997 and the reasonable cost of a rear entrance door and kitchen window should be permitted from 8 July 1999, again under 12(2)(j).

I do not have the expertise to make an assessment of the cost of these items myself. I direct the Department to make a reasonable assessment of the cost of the required work for bay window replacement and rear entrance door and kitchen window replacement and to allow these further sums to be added to the eligible housing costs from the respective dates. I grant the appellant liberty to apply to me for assessment, in the event that she disputes the amount permitted by the Department. Any such application must be made by the appellant within three weeks of the Department notifying her of its assessment.

Loan 3: I find that the appellant borrowed £90,000 from the Woolwich Building Society on 4 October 2000 to redeem her mortgage. She claims that she paid off the previous mortgage of £40,000 and used the balance to extend her property by reason of her disability needs.

The appellant is entitled to a housing costs element of £32,300 under paragraph 11(1)(b) plus a sum for the repairs and improvements element of Loan 2 above under paragraph 12(1)(c) from 4 October 2000.

The appellant is entitled to be assessed on the basis that interest on a further £650 for roof repairs should be allowable under paragraph 12(1)(a) and 12(2)(j) from 30 November 2000.

The Department previously disallowed the sums claimed under Loan 3 on the basis that the appellant did not fall within the definition of "disabled person" at the material time. I have found in my interim decision that the appellant was in receipt of invalidity benefit from 1 April 1996 to 7 April 2002 and therefore was a "disabled person" on 4 October 2000.

The appellant provides evidence in the form of a letter from an occupational therapist prepared in support of a disability living allowance claim and dated 12 September 2001. This refers to an earlier occupational therapy assessment which recommended a ground floor toilet and shower facility and referred to the appellant sleeping downstairs.

It appears that the appellant applied for a renovation grant and a disabled facilities grant from the NI Housing Executive around July 2000. On 29 March 2003 a senior grants officer in the NI Housing Executive certified that costs amounting to £13,502.14 associated with a renovation grant application were reasonable and should be given technical approval as the reasonable eligible cost of proposed work.

The applicant further provided evidence to me in the form of a Housing Executive grant costing summary in the sum of £20,316.55. This appears to consist of an element of £8,065.30 for disabled facilities and £10,068.41 for renovation, totalling £20,316.55 with the addition of VAT. The appellant has stated that the grant was never awarded. I do not know whether that is an accurate statement or not, but in any event it does not matter to the issue which I have to decide, namely whether the loan was taken out for the purpose of carrying out repairs and improvements to the dwelling occupied as the home. In the light of the evidence concerning the appellant's health at the material time, I accept that it was.

In a document dated 9 November 2009, the appellant has claimed that she used £26,000 of the £50,000 to adapt the house for her needs as a disabled person in 2005/06 by installing a downstairs bedroom and bathroom extension. She states that she installed new windows in 2003 at an approximate cost of £5,000. She states that she refurbished the kitchen in 2004 at an approximate cost of £3,000. She states that she installed a patio and ramps at a cost of £3,500. She has also stated that she advanced £17,000 to her son in 2000.

I do not fully accept the accuracy of the applicant's statements in the absence of relevant proofs. Nevertheless, there was evidence that work of extension to the appellant's house to accommodate a bedroom and bathroom would have cost around £20,316.55.

The appellant submits an undated builder's letter, which could be an estimate or an invoice, in the sum of £23,605, of which some £7,000 appears itemised, with £15,720 labelled non-specifically as "original costs". The appellant has endorsed a VAT figure to this by hand, but the document does not appear to be a VAT invoice, lacking as it does any VAT registration number. Its relationship to the work which is the subject of the NI Housing Executive grant application is also unclear.

I find that the appellant is entitled to the further sum of £20,316.55 to be assessed as a qualifying loan for repairs and improvements under the heading of adapting the dwelling for the special needs of a disabled person (paragraph 12(1)(a) and 12(2)(k)) from an approximate completion date of 2005.

The appellant does not provide evidence which would tend to establish that the remaining balance of the £50,000 further loan was used for the particular purposes claimed. She stated herself that £17,000 was advanced to her son, which is clearly not an allowable element. Moreover, I do not accept that the costs outlined for window repairs, kitchen renovation and the installation of ramps and a patio can be separated from the general work referred to in the NIHE application or builder's estimate.

At this point in time, long after the claimed work, I appreciate that the appellant has a very great difficulty in proving what was done and at what cost. However, as stated by Judge Lane in *KWA v Secretary of State for Work and Pensions*, where an issue cannot be resolved due to lack of evidence, it must be decided against the party who had the burden of proving it. In this case, that party is the appellant.

I find that there appears to be a certain amount of duplication in the work claimed by the appellant, so that work to a kitchen is claimed in both 2004 and 2010. I do not consider that it is likely that the applicant's kitchen would have required replacement in terms of maintaining its fitness for human habitation in such a short space of time as six years. It appears to me that there was work claimed for wheelchair access ramps in the period from 2000 to 2005 but also in 2010. It also appears to me that the appellant had claimed for replacement windows in 1999 and 2003. I do not accept that the appellant proves when this work was done and at what cost to the standard necessary for me to allow it.

Loan 4: I find that the appellant borrowed £93,295 from UCB Home Loans on 8 October 2003 in order to redeem her existing mortgage and used to it to repay the existing loan.

I find that there was no additional relevant loan at this time.

Loan 5: I find that the appellant borrowed £173,795 from Santander Bank on 25 March 2010.

I accept and adopt the findings of the Department in relation to the further work of repairs and improvement done at this time.

Conclusion

In summary, I find that the appellant is entitled to certain further elements of housing costs to be awarded to her in respect of loans for repairs and improvements to the dwelling home within the terms of paragraph 12(2). To the extent that they have not been previously allowed by the Department, these are:

(i) the sum of £350 for roof repairs as part of loan 2;

(ii) the reasonable cost of replacement of a bay window and the reasonable cost of a rear entrance door and kitchen window as part of loan 2:

(iii) the sum of £650 for roof repairs as part of loan 3;

(iv) the sum of £20,316.55 for adapting the dwelling for the special needs of a disabled person as part of loan 3.