

**Judgment 26/2005**

**Administrator of the Social Security Authority v.  
Beresford – Royal Court (Civil action file 741) –  
29 April, 2005**

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**Social Insurance (Guernsey) Law, 1978 – disqualification from receiving contribution credits – set aside by Social Insurance Tribunal – appeal by Administrator to Royal Court – Tribunal found to have erred in law.**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

The 29<sup>th</sup> day of April, 2005 before Geoffrey Robert Rowland Esquire, Deputy Bailiff; sitting alone

In the matter of:

THE ADMINISTRATOR  
TO THE SOCIAL SECURITY AUTHORITY

(Appellant)

and

DAVID EDWARD BERESFORD

(Respondent)

Whereas on 23<sup>rd</sup> March, 2005, the Deputy Bailiff considered an appeal on a point of law by the Administrator of the Social Security Authority against a decision of the Social Insurance Tribunal of the 14<sup>th</sup> February, 2003, and heard thereon Advocate P Nicol-Gent, Counsel for the Appellant, the Respondent being unrepresented and not present

The Deputy Bailiff this day gave judgment in the terms attached hereto and

1. Found that the Tribunal's reasoning for allowing the appeal was flawed and that the Tribunal had erred law;
2. Ordered that the parties shall bear their own costs in this appeal

S. M. D. ROSS  
Her Majesty's Deputy Greffier

**IN THE ROYAL COURT OF GUERNSEY**  
**ORDINARY DIVISION**

**Between**

**ADMINISTRATOR TO THE SOCIAL SECURITY  
AUTHORITY**

**Appellant**

**and**

**DAVID EDWARD BERESFORD**

**Respondent**

**Judgment of the Deputy Bailiff Geoffrey Robert Rowland**

**Advocate P Nicol-Gent for the Appellant**

**The Respondent was unrepresented and not present in person**

**Hearing date: 23rd March 2005**  
**Judgment handed down: 29<sup>th</sup> April 2005**

**Legislation referred to:**

The Social Insurance (Guernsey) Law, 1978

**Introduction**

1. This is an appeal on a point of law by the Administrator of the Social Security Authority (“the Authority”) against a decision of the Social Insurance Tribunal (“the Tribunal”) of 14<sup>th</sup> February 2003, the Tribunal having allowed the appeal of Mr David Beresford against the Authority’s decision of 26<sup>th</sup> September 2002 to disqualify him from receiving contribution credits following his refusal to take part in the Board of Industry Fieldwork Scheme.

2. It should be noted that Mr Beresford is now resident in France and has consented to matters proceeding in his absence (providing that all documents were placed before the Court) on the basis that the purpose of the appeal is to clarify the law for future cases and the Authority will not seek to reclaim any benefit received by him in the event of a successful appeal. I was informed that this is a position with which the department is content.

**The Facts**

3. The key facts were not in dispute.

4. Mr Beresford is a 59-year-old highly experienced Master Mariner and Royal Naval Reserve officer. He retired to the island some ten years ago. His initial attempts to find employment in Guernsey were unsuccessful, resulting in his making a claim for unemployment benefit in August 1994 and taking part in a Board of Industry Fieldwork Scheme in 1995. Thereafter he obtained employment of a kind which he considered relevant to his professional experience until 2001, when his employment as a yacht broker came to an end. He made a further claim for unemployment benefit. The present appeal arises out of this second claim.

5. On 1<sup>st</sup> October 2001 Mr Beresford registered his claim for unemployment benefit. He stated that he was looking for full-time managerial work. He gave his trade as Master Mariner with experience of fishing/boat work, IT/computers and office work. His application made no mention of any health restrictions on his ability to work. Mr Beresford's claim for benefit was briefly suspended in October 2001 and again in July 2002 when he was away from Guernsey on holiday. As it was renewed on its original terms on both occasions on his return this has no bearing on the case.

6. On 17<sup>th</sup> May 2002 Mr Beresford had received unemployment benefit for 180 days. In accordance with the terms of section 24 of the **Social Insurance (Guernsey) Law 1978** as amended ("the Law"), he was not entitled to further unemployment benefit. In the absence of unemployment benefit he would have to turn to the parochial authorities for such benefit as they might accord to him. However he remained entitled to contribution credits in respect of his social insurance record.

7. The credits would reckon for the purpose of old age pension and other benefits to which he might be entitled.

8. On 17<sup>th</sup> July 2002 the Job Centre conducted a review of Mr Beresford's job-seeking efforts in line with their view that a period of more than nine months should have been sufficient time for him to obtain employment appropriate to his background. Further review meetings were held on 14<sup>th</sup> August, 21<sup>st</sup> August, 4<sup>th</sup> September, 11<sup>th</sup> September and 18<sup>th</sup> September 2002. The officer involved in those meetings made notes of what emerged and the advice given to Mr Beresford. Despite the efforts of Mr Beresford and the Job Centre no employment offers were forthcoming.

9. Section 93 of the Law states as follows:

*"The functions conferred on the Authority by or under this Law, other than any power to make regulations, may be exercised by the President or any other member of the Authority or by the Administrator, if authorised in that behalf by the Authority."*

10. On 18<sup>th</sup> September 2002 the Administrator empowered under Section 93 of the Law took a decision on behalf of the Authority that the Fieldwork Scheme was a suitable form of employment for Mr Beresford.

11. I was advised that the Administrator was so authorised.

12. The Authority wrote to Mr Beresford referring him to the Fieldwork Scheme. Unfortunately this letter appears to have gone astray. Nothing turns on this since it has never been disputed that Mr Beresford was properly notified of an employment opportunity within the meaning of the Law.

13. On 20<sup>th</sup> September 2002 Mr Beresford replied to the effect that he would not accept a place on this Scheme because -

- (i) he was not a manual worker and the Scheme involved manual work,
- (ii) it would inhibit his search for alternative employment,
- (iii) he would be degraded and insulted to work on the Scheme having recently applied for the post of Fieldwork Officer there,
- (iv) he was experiencing back pain and trouble with his hands.

14. Letter dated 26<sup>th</sup> September 2002 following receipt of Mr Beresford's letter of 20<sup>th</sup> September 2002 the Authority informed Mr Beresford that the Administrator to the Authority ("the Administrator") had disqualified him from receiving contribution credits. The

Authority contend that he was entitled to do so in accordance with section 26(1) of the Law. The material part of subsection (1) states that (emphasis supplied):-

*“(1) A person shall be disqualified from receiving unemployment benefit for such period not exceeding ten weeks as may be determined ...if–  
(a)....  
(b) after a situation in any suitable employment has been properly notified to him as vacant or about to become vacant, he has without good cause refused or failed to apply for that situation or refused to accept that situation when offered to him”.*

15. No copy of the actual letter sent to Mr Beresford is now available but a specimen letter of the type he was sent was produced for the Court. Again nothing turns on this. Mr Beresford would have received the letter soon thereafter in normal course of post.

16. Mr Beresford was entitled to appeal against the decision or to wait until the expiration of ten weeks and renew his application for contribution benefits on the same factual basis that the Authority had made its determination or he could submit any new facts which he considered to be relevant. States of Guernsey departments have traditionally been prepared to reconsider decisions in light of new relevant facts being submitted to them. Furthermore in recent years this Court has accepted that it has jurisdiction to review decisions in cases which in England would be dealt with by way of judicial review.

17. On 3<sup>rd</sup> October 2002 the Authority wrote to Mr Beresford in response to a further inquiry from him. The Authority explained the reasons for the decision and no doubt in light of Mr Beresford's claim that he was experiencing back pain and trouble with his hands sought clarification of his medical condition with a view if appropriate to reviewing the disqualification. Mr Beresford replied on 7<sup>th</sup> October 2002. He stated that he had recently been diagnosed with arthritis, gave permission for the Authority to contact his doctor and elaborated further on the non-medical grounds for refusing the Fieldwork Scheme place as set out above. He made an additional point in this letter that he considered that the Scheme was humiliating and inappropriate for someone of a professional background like himself.

18. On 15<sup>th</sup> October 2002 Mr Beresford served a Notice of Appeal appealing to the Tribunal (under Section 81 of the Law) against the disqualification decision of 26<sup>th</sup> September 2002. The grounds of appeal that he gave were essentially the matters set out in his letters of 20<sup>th</sup> September and 7<sup>th</sup> October 2002, which he included as appeal documents, together with criticisms of the Job Centre's efforts to help him find alternative employment and its failure to provide retraining.

19. On 31<sup>st</sup> October 2002 Mr Beresford's doctor replied to an enquiry from the Authority stating that while Mr Beresford had consulted him on 23<sup>rd</sup> September 2002 complaining of pain in his hands, no abnormalities were found on clinical examination or in blood tests and that Mr Beresford had not consulted him since. Furthermore correspondence was subsequently received from his doctor referring to Mr Beresford's medical condition. However for the purposes of this appeal Mr Beresford's medical condition is not material although it might well have been had he renewed his application at a later date, certainly following his doctor's letter of 28<sup>th</sup> January 2003. That is not a matter I need to consider. Had he renewed his application the Authority might have sought further clarification and would have been at liberty to seek a second opinion.

20. On 20<sup>th</sup> November 2002 the Authority re-affirmed the decision taken under the delegated Section 93 authority on 26<sup>th</sup> September 2002 that the referral to the Fieldwork Scheme of 18<sup>th</sup> September 2002 constituted an offer of suitable employment to Mr Beresford in accordance with section 26 (4) of the Law. The material part of subsection (4) states that (emphasis supplied): –

“(4) For the purposes of this section –  
(a).....  
(b) *employment shall be deemed to be employment suitable in the case of any person if it is so determined by the Authority.*”

### **The Tribunal Hearing 14<sup>th</sup> February 2003**

#### *The Authority’s case;*

21. The Authority argued by reference to its written submission to the Tribunal hearing that all benefit claimants were expected, after a suitable time in which to find work, to widen the range of positions they were prepared to consider. The Authority had considered that after ten months Mr Beresford had had sufficient time to find employment in keeping with his skills and experience. Therefore it had an obligation to review his efforts. One reason why Mr Beresford had been unsuccessful despite assistance from the Job Centre was that he was unwilling to apply for employment of a lower standing than his previous employment. The need to consider a wider range of work was a factor in the decision to offer Mr Beresford a place on the Fieldwork Scheme, of which he had previous experience, although attempts would be made on the Scheme to match work to the need of the participants, who typically came from a wide range of backgrounds. It was not open to the Tribunal to review Mr Beresford’s referral to the Fieldwork Scheme because the offer of employment on the Fieldwork Scheme had been determined as suitable by the Authority in line with section 26(4) of the Law.

22. There was no issue on proper notification. Previous Tribunal decisions (to which I was referred) SI/TD 21/96, SI/TD 21/95 and SI/TD 31/94 confirmed that the relevant sections of the Law applied where a claim to unemployment benefit had been exhausted but contribution credits were still being made.

23. Accordingly the Authority submitted that Mr Beresford could remain entitled to those credits while refusing a place on the Fieldwork Scheme only if he could show good cause for that refusal under section 26 (1) (b).

24. The Authority’s case was that he had failed to show good cause for the following reasons:

- (i) Mr Beresford’s medical condition had been investigated and in the light of the letter of 31<sup>st</sup> October 2002 from his doctor there was no medical evidence to support the claim that he was unfit for fieldwork;
- (ii) his concern that it would be degrading for him to work on the Fieldwork Scheme because he had previously applied for the post of Fieldwork Officer was not justified because the Fieldwork Manager was discreet and none of his co-workers would be aware of that fact. Even if they were, this would not amount to good cause;
- (iii) his concern about applying for future jobs was not justified. Fieldwork Scheme participants were granted absence to attend job interviews;
- (iv) the Tribunal decisions referred to above were of a similar nature to that of Mr Beresford. The appellants in those cases were not found to have shown good cause.

#### *Mr Beresford’s case;*

25. I have relied upon the Authority’s Counsel in the peculiar circumstances of this case where Mr Beresford was not present in Court nor represented to ensure full and frank disclosure of what might have been contended by Mr Beresford. I have had the benefit of sight of a statement from Mr Beresford and of relevant correspondence emanating from him

to the Authority's Counsel and including also a letter addressed to the Bailiff dated 25<sup>th</sup> April 2003.

26. Mr Beresford argued by way of that prepared statement and reference to his letters that the Job Centre's efforts to help him find work were inadequate because the Job Centre was not properly equipped to deal with professional people. He had refused to attend the Fieldwork Scheme for the following reasons:

- (i) in the light of his considerable professional experience it was not appropriate for him to carry out unskilled work of the type available on the Fieldwork Scheme;
- (ii) having previously attended the Fieldwork Scheme in 1995 he was aware that it involved carrying out menial tasks alongside convicted criminals. He had to report to one of them. He considered this to be insulting;
- (iii) he had tried to widen the scope of the type of employment for which he was looking but still considered fieldwork unacceptable;
- (iv) his medical condition rendered him unfit for the type of work offered by the Fieldwork Scheme, as indicated by a further doctor's letter dated 28<sup>th</sup> January 2003 produced at the hearing.

27. Mr Beresford confirmed that his principal objection to working on the Fieldwork Scheme was that it was demeaning.

*The Tribunal's Findings;*

28. The Tribunal allowed the appeal on the grounds set out in the document SI/TD 10/02 to which I was referred. In its findings the Tribunal accepted that the question of the suitability of the work offered was not within its remit. It was a matter for the Authority pursuant to section 26(4) above. This acceptance was consistent with previous decisions made by the Authority.

29. The reason given by the Tribunal for allowing the appeal was that Mr Beresford had demonstrated good cause to refuse to take up the fieldwork placement in that:

- (i) he had previous experience of the Fieldwork Scheme and had found it distressing and demeaning to perform work of a menial nature alongside people whom he regarded as undesirable;
- (ii) the menial tasks he had previously carried out on the Fieldwork Scheme did not seem to be matched to his professional expectations, and the nature of the work now available on the Fieldwork Scheme did not appear to be different;
- (iii) the previous cases cited could be distinguished on the grounds that they did not concern someone with previous experience of work on the Fieldwork Scheme or of the low expectations it offered.

*The Authority's Appeal*

30. Aggrieved by the Tribunal's decision the Authority appealed to the Royal Court against it pursuant to section 82(3) of the Law.

**The Parties' Submission**

31. The Authority submitted a skeleton argument and this was further developed and amplified by Counsel during the course of oral submissions.

32. The Authority's case was that when dealing with the issue of good cause, the Tribunal erred in law by taking into account matters that properly go to the issue of suitable employment.

33. Further and or alternatively, it was submitted that the Tribunal applied the wrong test when considering whether good cause had been shown, and or based its decision on factors that could not properly amount to good cause as a matter of law and or policy.

*The meaning of “suitable employment” and “good cause”*

34. The Appellant’s submissions may be summarised as follows:

- (1) The Law does not define “suitable employment” or “good cause”. It is silent on the question of which factors should be considered when dealing with suitable employment, and which when dealing with good cause, within the meaning of section 26(1)(b).
- (2) That when determining if employment is suitable, the Authority must take into account the age and background of the claimant, together with the nature of the work to be done and the working environment.

Whether or not a claimant has good cause to refuse that employment depends on matters peculiar to the particular claimant (e.g. health problems, dependent relatives, difficult travel arrangements, religious objections), but not on matters common to anyone in the same general category (e.g. unskilled teenagers, middle aged professionals) as the claimant has contended.

This interpretation of the section it was submitted was supported by both the proper construction of the Law as a whole and the body of law referred to in the Authority’s Notice of Appeal and Case.

- (3) It might be argued that the term “suitable employment ” should be construed as a very general term, identifying employment of a type which unemployed people in general might be expected to do, but without a consideration of whether that employment is suitable for a particular person. On this construction, the issue of whether the specified employment is suitable for a particular individual could fall within the ambit of good cause.

However, the Authority’s Counsel submitted that the term “suitable employment” given its ordinary meaning suggests suitability for a particular claimant, and this interpretation is consistent with both section 26(4) and the approach taken in case law.

- (4) Section 26(4) states that (emphasis supplied):

*“employment shall be deemed to be suitable in the case of any person if it is so determined by the Authority”*

The Authority contended that on its true construction, this section must be intended to include a determination that the employment is suitable for the particular individual concerned.

To construe suitable employment in the general sense referred to in paragraph 3 above would be to render the underlined phrase unnecessary.

- (5) Plainly it would not be possible to determine whether particular employment were suitable for a particular person without taking into account general details about that person such as gender, age, and employment history i.e. the kind of details asked for when a claim for benefit is made. It might be argued that these factors can be considered under both “suitable employment” and “good cause”.

However, the Authority submitted that because section 26(1)(b) of the Law refers to “*suitable employment*” and “*good cause*” separately, the intention of the Law must be that they are distinct issues which involve the consideration of different matters.

- (6) Furthermore, section 26(4) sets out a provision for dealing with the question of whether employment is suitable, with no reference to the issue of good cause. This supports the view that the intention of the Law is that the two issues should involve separate considerations.
- (7) The purpose and effect of section 26(4) is to confer on the Authority alone the power to determine whether employment is suitable. That purpose would be frustrated if matters which necessarily go to the issue of suitable employment could be relied upon to support an argument of good cause.
- (8) The authorities relied on by the Authority illustrated the general principles applied in the UK when considering good cause. It was submitted that they supported the Authority’s interpretation of good cause as set out at paragraph 2 above. The Court’s attention was drawn in particular to the following cases;
  - Decision no. R (U) 41/52 – a refusal to accept employment in a distant town because of the need to care for a dependent relative was held to establish good cause;
  - Decision no. R (U) 34/56 – an upholster who regularly worked for one particular employer on short term contracts over a long period refused to accept temporary full time work with a rival business. This was because he had had to sign an agreement with his regular employer agreeing not to work for a rival and if he were in breach of this agreement, his regular employer would not offer him full time work again. This was held to be good cause;
  - Decision no. R (U) 20/60 – a woman’s refusal to accept work which required attendance from 7.15 am on the grounds that she could not arrange care for her baby outside the hours of 9.00am to 5pm was held to establish good cause;

35. *The Test for Establishing “Good Cause”*

- (1) The Authority contended that the test to be applied to the issue of good cause is an objective one based on the circumstances of a claimant, rather than a subjective one based on his personal feelings about the employment offered. The objective test has been applied in previous cases. It is the appropriate test as a matter of law and/or policy.
- (2) Whilst it might be argued that good cause within the meaning of section 26(1)(b) should be construed so as to mean a good cause, in the sense of a reliable basis, for a claimant’s subjective feelings the Authority submitted that such an argument would be wrong. The Authority contended that such a construction would frustrate the purpose of the Law, and furthermore would be incompatible with case law.
- (3) The overall purpose of section 26(1)(b) is to require people to accept suitable employment if available. This purpose would be frustrated if the subjective preferences of a claimant were sufficient reason to refuse suitable employment. Such an outcome cannot have been the intention behind the inclusion of the good cause provision, which, it was submitted, was intended solely to prevent

hardship, detriment to health or other unreasonable consequences of taking a particular job.

36. The attention of the Court was drawn to the following English cases:

- Decision No. R (U) 18/51 – a claimant’s reluctance to do seasonal work held not to establish good cause;
- Decision No. R (U) 35/52 – a stonemason’s reluctance to do work he considered inappropriate for him held not to establish good cause;
- Decision No. R (U) 32/56 – a claimant’s reluctance to do dangerous factory work held not to establish good cause, despite reliable basis for her fears in that the work was acknowledged to be dangerous;
- Decision No. R (U) 29/53 – a plumber’s unwillingness to consider work found by the employment exchange rather than by his own efforts held not to establish good cause. Observations were made with regard to the inability of authorities to fulfil their duties if a claimant’s preferences were to be heeded.

### **The Tribunal’s Findings**

37. The Authority contrasted its submissions with the Tribunal’s findings.

- (1) At paragraph 33 of its findings the Tribunal found that Mr Beresford regarded working on the Fieldwork Scheme as distressing and demeaning. If and insofar as this fact was relied upon by the Tribunal in its finding of good cause, the Authority contended that it was based upon the wrong test, namely a subjective one as to Mr Beresford’s feelings. The Tribunal also appeared to base its decision on its finding that these feelings had a reliable basis, namely Mr Beresford’s previous experience. This did not amount to good cause within the meaning of section 26(1)(b).
- (2) At paragraph 34 of its findings the Tribunal appeared to find that Mr Beresford had shown good cause because the work offered to him was of a menial nature inappropriate to his professional background, and it offered low expectations. It was submitted that this finding, although purporting to deal with the issue of good cause, in fact clearly went to the issue of whether the employment offered was suitable for Mr Beresford, in that it was based upon the nature of the work itself, rather than on a matter peculiar to Mr Beresford. The fact that the work was of a menial nature which offered low expectation, and was therefore not of a type to which Mr Beresford was accustomed, is a fact that would apply to all members of his general class namely retired/middle aged professionals. Consequently it could not support a finding of good cause.
- (3) At paragraph 35 of its findings the Tribunal appeared to find the fact that Mr Beresford had previous experience of the Fieldwork Scheme as significant in itself. It was submitted that if and insofar as this formed the basis of the Tribunal’s decision it was wrong in law. The significance of Mr Beresford’s previous experience on the Fieldwork Scheme was evidential only. It could be relied upon when making a finding of fact as to the nature of the Fieldwork Scheme work, should that be relevant to the decision, but could not amount to good cause in itself. Otherwise this would mean that if a claimant were offered on one occasion suitable work without good cause to refuse it, he could show good cause to refuse to do the same work at a later date purely by virtue of having done

the work before. It was submitted that this could not possibly be an outcome intended by the legislation.

### **The Authority's Response to Mr Beresford's Case**

38. Mr Beresford had responded to the Appeal by way of a statement dated 9<sup>th</sup> August 2004. Enclosed with it was a statement read out at the Tribunal hearing and a letter to the Bailiff dated 25<sup>th</sup> April 2003.

39. As Mr Beresford is now living in France and did not wish to be present at the hearing I did not have the opportunity to seek amplification of his case, particularly in light of the submissions of Counsel for the Authority. Nevertheless I was satisfied that he had made known the thrust of his case. Subject to that qualification I consider that Mr Beresford's arguments set out in the comprehensive documents placed before me may be summarised as follows:

- (i) the Tribunal based its decision on the fact that the work was unsuitable for Mr Beresford due to his professional experience and previous experience of the Fieldwork Scheme, not on his personal likes and dislikes;
- (ii) a person with a professional background should not be referred to the Fieldwork Scheme unless its content changes so as to provide work of a sort compatible with the skills of a professional person;
- (iii) the medical evidence established that he was unfit to attend the Scheme;
- (iv) the cases relied on by the Authority should be distinguished on the basis that they involve manual labour and relate to English law. They do not concern a work scheme and were decided over 40 years ago;
- (v) the appeal should not have been brought because it was inappropriate to involve a court of law in what should be lay proceedings, and the Administrator should not expose the States of Guernsey to the costs of an appeal.

40. The Authority was satisfied that this was a fair summary of Mr Beresford's case.

41. The Authority responded to these points as follows;

- (i) whether the decision was based on the unsuitability of the work or Mr Beresford's personal likes and dislikes, it was wrong in law;
- (ii) the issue of whether to refer claimants with professional backgrounds to the Fieldwork Scheme is a matter for the Authority, not the Tribunal, to decide;
- (iii) the medical evidence is now irrelevant as the Tribunal did not base its decision on it;
- (iv) the cases relied on, while not binding, are highly persuasive. They arise under comparable English legislation and they deal with precisely the issue in the present case, namely a disqualification from benefit entitlement because of a refusal to accept suitable employment;
- (v) appeals on a point of law in these circumstances are permitted by virtue of section 82(3) of the Law.

## **Conclusions**

42. I have concluded that the appeal must succeed. My reasons may be summarised as follows:

### **Suitable employment**

43. Section 26 (4) provides that employment shall be deemed suitable in the case of any person if so determined by the Authority.

44. The Authority must take all relevant facts into consideration and must act in a reasonable manner when exercising its discretion. When exercising its discretion it must take into account matters which are relevant and appropriate in a Guernsey context. What might be a reasonable consideration in another jurisdiction may not be so in Guernsey. In a small island such as Guernsey individuals are expected to retain a substantial degree of responsibility for their own welfare and not to seek to cast the burden on the State. Great care should be taken when making comparisons with other jurisdictions. Account should be taken of the low level of unemployment, the level of Social Insurance contributions and the general level of taxation in Guernsey.

45. The Board of Industry's Fieldwork Scheme has operated for many years. It has developed and changed over the years in light of community needs and unemployment levels. In 2002 the persons who accepted employment on the Scheme would have had varying social and career backgrounds. Persons awaiting trial or serving terms of imprisonment were not employed on the Scheme.

46. The range of work for those not in a supervisory or managerial position was of a manual nature. Work was lightly supervised. Persons employed in the Scheme would work in small groups generally of up to 4 persons and sometimes alone. Employees would be dressed in clothing as they deemed appropriate to the task and once a task had been allocated they would be scarcely supervised. The range of available work fell broadly within the compass of task that any householder might undertake from time to time and certainly encompassed a range of work which charitable minded persons who were interested in improving the community might undertake. Comparisons with work camps or some sort of forced labour would not only be wide of the mark but wholly wrong. Given the number of activities organised by charitable and parochial authorities designed to ensure that Guernsey can be seen to be a society which takes pride in its appearance a suggestion that the work might be viewed as demeaning is not a view which right thinking persons in the community would adopt.

47. The Authority had over the years consistently referred to the Fieldwork Scheme persons who had been unemployed over an extended period. Apparently this was the first and only appeal in which the suitability of the Scheme had been challenged.

48. I have concluded that it was perfectly reasonable for the Authority in the exercise of its discretion to determine that Mr Beresford should be referred to the Scheme. He had been claiming benefit for 10 months and the Authority had considered that it was due time for him to broaden the range of work which he might undertake. He would have received remuneration and that remuneration would have been greater than the benefit he had been receiving. He was fully entitled to decline to take up that employment but as a consequence would not have received contribution benefits. As it was in the joint interest of the Authority and Mr Beresford that he should find employment other than on the Fieldwork Scheme, he would have been entitled to attend job interviews whilst on the Scheme. Attendance at job interviews was not only permitted but actively encouraged.

49. Mr Beresford was not committed to employment on the Scheme for life. Indeed the Authority's decision was operative for only 10 weeks, although of course it was potentially renewable. Mr Beresford might have found alternative employment within that time.

### ***Proper Notification***

50. There was no issue taken by Mr Beresford on the procedural steps taken by the Authority. Mr Beresford had received due and proper notice of the Authority's decision to refer him to the Fieldwork Scheme.

### ***Period of Referral***

51. Mr Beresford did not contend that the period of referral should be a shorter period than 10 weeks. That would have been inconsistent with his contention that he should not have been referred to the Scheme.

### ***Good Cause***

52. Section 26 (1) (b) of the Law provides that it is open to a person properly notified that the Fieldwork Scheme constituted suitable employment and had been referred to the Scheme to show good cause why he should not take up that employment. Refusal or failure to comply in the absence of good cause would result in disqualification from payment of benefit contributions by the Authority.

53. The issue for the Tribunal was whether the facts on which Mr Beresford based his decision not to accept employment on the Scheme could constitute a good cause so as to avail himself of the Section 26 (1) (b) qualification.

54. I am satisfied that in light of the letter from Mr Beresford's doctor dated 31<sup>st</sup> October 2002 on which the Authority relied the Tribunal could not rely upon a medical condition argument advanced by Mr Beresford. He might have been able to rely upon a medical condition argument at a later date but in the event Mr Beresford did not pursue a further application.

55. Mr Beresford's subjective opinion that employment on the Scheme would be demeaning was not a factor which the Tribunal could take into account.

56. Mr Beresford's concern that he would not be able to attend job interviews was based on a misunderstanding on his part.

57. It follows that the Tribunal's reasoning for allowing the appeal was flawed. The Tribunal erred in law.

### **The Future – Appeals to the Tribunal**

58. It may be that the Authority in future cases will submit a more comprehensive argument to the Tribunal in support of its case. It would be appropriate to remind the Tribunal of the limited grounds on which it may take its decision.

59. In this case the Authority could have differentiated more clearly between the circumstances which it had been obliged to take into consideration in the exercise of its statutory duty to determine suitability of employment.

60. The Authority should also remind the Tribunal that it was the duty of the Authority pursuant to the provisions of Section 26 (i) (b) to determine whether employment shall be deemed to be employment suitable in the case of an appellant.

61. I have some sympathy for the Tribunal which may have confused matters which it should take into account when considering whether the Authority had exercised its discretion reasonably on the matter of suitable employment and whether Mr Beresford had good cause not to accept work on the Fieldwork Scheme.

62. This was not a case in which I considered it necessary to pronounce upon the circumstances in which a decision made by the Authority might be open to review notwithstanding its reliance upon Section 26 (i) (b).

### **Costs**

63. The Authority made no application for costs. The parties shall bear their own costs in this appeal.