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## ESM7080 - Case Law: Edwards v Clinch

1981 case - 56TC367

### Point at issue

The question for determination was whether fees paid to Mr Clinch were chargeable to tax under Schedule E as emoluments of an "office" or chargeable under Schedule D.

### Facts

Mr Clinch was a chartered civil engineer. He was one of a panel of some 60 persons whom the Department of Environment invited from time to time to act as Inspectors to hold public local inquiries in respect of matters for which the Secretary of State for the Environment was responsible. A Department official would inform him of the location and date of an inquiry, and the daily fee payable, and would invite him to undertake it. Mr Clinch had complete discretion to accept or refuse the invitation.

On acceptance he would have the papers forwarded to him with an authority, signed on behalf of the Secretary of State, appointing him to hold the particular inquiry. The conduct and procedure was his sole responsibility, subject to the rules governing Tribunals and Inquiries. If he became ill, or had some other urgent business to attend to, he could ask to be released. If the Department consented, it would find some other Inspector to conclude the inquiry.

### Decision

The case reached the House of Lords where, by a 3 to 2 majority, it was held that Mr Clinch did not hold an office.

### Commentary

Until this case, the meaning of the word "office" was considered to be that given by Rowlatt J in the case of *Great Western Railway Co. v Bater* (8TC231) i.e.

"a subsisting, permanent, substantive position which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders."

In *Edwards v Clinch*, Lord Wilberforce considered whether the definition was still appropriate in 1981. He accepted that a rigid requirement of permanence was no longer appropriate and continuity need not be regarded as an absolute qualification. However, the word must involve a degree of continuance and of independent existence. It must connote

"a post to which a person can be appointed, which he can vacate and to which a successor can be appointed."

In Mr Clinch's case the majority view was that he was not appointed to a position which had an existence of its own or the continuance essential for an office. He was acting in a personal capacity to carry out a specific task.

Included in the various judgments are references to the many cases in which the subject of "office" was a factor. These include:

- *McMillan v Guest* (24TC190) – non-executive director
- *CIR v Brander & Cruickshank* (46TC574) – company registrars
- *Mitchell & Edon v Ross* (40TC11) – part-time hospital consultants
- *Dale v CIR* (34TC468) – trustee.