



**SOCIAL FUND – SURE START MATERNITY GRANT –  
EFFECT OF UPPER TRIBUNAL DECISION *SK & LL V  
SSWP [2020] UKUT 145 (AAC)***

<b>Contents</b>	<b>Paragraphs</b>
Introduction	1 - 2
The UT Decision	3 - 4
Effect of the UT Decision	5 - 7
Annotations	
Contacts	

**INTRODUCTION**

1. The purpose of this memo is to inform DMs about a decision of the Upper Tribunal, “SK”<sup>1</sup>, which deals with the exclusion of claimants from a Sure Start Maternity Grant (SSMG) payment in the circumstance that there is an existing member of the family under the age of 16 (the “first-child only” rule).

*1 SK and LL v SSWP [2020] UKUT 145 (AAC);*

2. In accordance with regulation 5A of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005, a claimant cannot be awarded a SSMG where there is another existing member of the family under the age of 16 (aside from the child being claimed for), except where
  - The child who is the subject of the claim was one of a multiple birth,
  - The other child (or children) under the age of 16 is of a parent under the age of 20 who is a member of the claimant’s family,
  - The claimant’s other child (or children) under the age of 16 was not, at the time of the child’s birth, a child of the claimant, and at the time the claimant became responsible for the child, the child was over 12 months old.<sup>1</sup>



## THE UT DECISION

3. The SK appeal concerned a SSMG claimant who was refused the benefit as she already had a child under the age of 16 as an existing member of the family. The claimant came to the UK from Iraq with her other child in 2015 (the child being born before the mother fled Iraq), claimed asylum, and was granted refugee leave in 2017. It was after having been granted refugee status that she made her claim for SSMG.
4. The UT decided that the refusal to grant SSMG in these circumstances was unlawful. Where a refugee comes to the UK with a pre-flight child (or children), as they are “*likely to have left their homes with little in the way of belongings and without an opportunity to return safely and collect further belongings*”<sup>1</sup> the refusal of benefit discriminated against them contrary to Article 14 (read with Article 8 and A1P1) of the European Convention on Human Rights.

*1 SK, paragraph 94*

## EFFECT OF THE DECISION

5. Where a claimant (who satisfies all other qualifying criteria) has an existing member of the family under the age of 16 they will still be entitled to a SSMG in the circumstances where they have been granted
  - Refugee status, or
  - Humanitarian protection

as long as the other child (or children) under the age of 16 was their responsibility before their flight to the UK.

Note: An asylum seeker is awaiting a decision on whether they are to be granted refugee status or humanitarian protection, or whether they are to be refused leave to remain in the UK. If the claimant is an asylum seeker they are not entitled to SSMG as they have no recourse to public funds.

6. For information on the meaning of refugee status and humanitarian protection see paragraphs [073175](#), [070110](#), and [070697](#) of the DMG, or [C1376-C1377](#) and [C1384](#) of the ADM, and paragraphs 334 and 339C of the [Immigration Rules](#) part 11.



7. The relevant determination date of the UT decision was 16.03.20. These changes apply from that date onwards.

### **ANNOTATIONS**

This memo will be annotated at ADM paragraph L2019 et seq.

### **CONTACTS**

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 04/19](#) - Obtaining legal advice and guidance on the Law.

**DMA Leeds: December 2020**

**The content of the examples in this document (including use of imagery) is for illustrative purposes only**