DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

The DECISION of the Upper Tribunal is to dismiss the appeals by the Appellant.

The decision of the Birmingham First-tier Tribunal dated 5 March 2014 under file references SC216/13/01336 and SC216/13/01337 do not involve any error of law. The decisions of the First-tier Tribunal stand.

This decision is given under section 11 of the Tribunals, Courts and Enforcement Act 2007.

REASONS FOR DECISION

The central issue posed by this appeal

1. The central issue raised by this appeal is whether the First-tier Tribunal found sufficient facts or provided adequate reasons for concluding that a signature on a cheque drawn on an account in the Appellant's sole name was indeed the Appellant's own signature.

The delay in resolving this appeal before the Upper Tribunal

2. The First-tier Tribunal ("the Tribunal") dismissed the Appellant's appeals following a hearing on 5 March 2014. Judge Lane struck out the claimant's application for permission to appeal on 6 August 2015, following the failure of the Appellant's representative to comply with directions to consolidate the grounds of appeal. Judge Lane later reinstated the application for permission to appeal, having accepted that the representative had not in fact received the relevant directions. She also gave permission to appeal. Now that both parties' representatives have made their submissions in writing, the files have been transferred to me for decision.

3. There is no request for an oral hearing of these appeals and I do not consider one is necessary for their fair and just disposal, the relevant arguments having been set out clearly and fully in writing by the parties' representatives. Nothing turns on the earlier strike out and subsequent reinstatement of the case.

The case before the First-tier Tribunal

4. The case before the Tribunal concerned the Appellant's appeals against an entitlement decision and an overpayment recoverability decision in relation to his income support claim. The Appellant had been in receipt of income support since 2003 as being unfit for work.

5. The Secretary of State's case was that following a fraud investigation, a DWP decision-maker had decided that the Appellant had undeclared capital between the lower and upper limits as from 2006, and that he had undeclared capital over the £16,000 higher threshold as from October 2009. The entitlement decision was accordingly to the effect that the Appellant's entitlement to income support was reduced from 2006 and removed completely from October 2009 through until March 2012. The overpayment decision was that, as a result of the failure to disclose the relevant capital, the Appellant was liable to repay a total of £9,822.04 in income support overpaid from 10 February 2006 to 9 March 2012.

6. The Appellant's case was simple: he argued that he did not possess capital over the relevant limits at the material times. He contended that the funds held in accounts

which were in his name were not actually his money; further, he argued that both his father and his brother had access to the accounts. He also produced a letter from his father stating that he (the Appellant's father) had kept funds intended for his funeral in his son's account so that it would be readily available when he died.

The First-tier Tribunal's decision

7. The Tribunal dismissed both the entitlement and the overpayment appeal. In the decision notice, issued on the day of the hearing, the Tribunal summarised its reasoning as follows:

> "3. The funds in both bank accounts are legally the appellant's. I do not accept that he had no knowledge of the accounts, or that they were opened without his knowledge. He was able to present his case today in an articulate and clear way. While it is possible that his brother and father may have used the account, they did not attend to give evidence in support. I do not accept that the transactions in both accounts were carried out by his father and brother.
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> 4. The signatures on the appeal, the HSBC cheque, one of the IB50s, and the statement given at the interview under caution are all similar. I do not accept that the appellant has been the victim of some kind of identity fraud."

8. The Tribunal subsequently produced a statement of reasons at the Appellant's request. It is fair to say it is not a lengthy document, running to just 2 pages of A4. Paragraphs 1 to 6 set out the background to and chronology of the appeal, and summarise the evidence and submissions at the hearing. The Tribunal's findings and reasons were then contained in paragraphs 7 and 8 respectively, which read as follows:

> "7. Having considered all the evidence before me, I made the following findings:
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> - The appellant is aged 39, and has been receiving IS on the grounds of incapacity since at least 2003. He suffers from depression, and has done for many years. The evidence does not suggest that he is unable to manage his own affairs or has significant memory problems.
> - The appellant is the legal and beneficial owner of the funds in the Nationwide and HSBC bank accounts. I do not accept that he was unaware of these accounts, or that they were entirely operated by others.
> - His capital at various points from 2006 to 2012 is that set out in the schedule in the bundle.
> - While the signatures at various points in the documents varied to some extent, enough were similar to conclude that these were his signatures on the documents concerned.
> - He received the periodic notifications from the DWP with instructions to disclose capital and he failed to do so.
> - The overpayment figure of £9,822.04 is correct.
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> 8. In short I found the appellant's account wholly unconvincing and implausible. He comes across as intelligent, articulate, and able to present a complex case clearly, by reference to a variety of documents. I reject the account that he had no idea of the existence of the accounts. I find that several of the signatures, including those on the appeal form, the IB50 and one of the large cheques to be similar, and likely to be by the same person. I find it implausible that someone has been forging his signature and others have been entirely operating two accounts in his name, with substantial funds in them. While it

> may be that his father and brother have put some funds into the accounts, I find their letters lacking in detail and unconvincing. I note that neither chose to attend to give evidence in support of their son/brother."

The grounds of appeal

9. The Appellant's grounds of appeal are threefold. First, Mr H. Ullah, the Appellant's representative, argues that the Tribunal failed adequately to explain why it took the view of the evidence that it did, particularly with regard to the issue of the signature as it had appeared on various documents in the appeal bundle. Second, Mr Ullah contends that the Tribunal failed to act sufficiently inquisitorially, e.g. as regards to asking questions about other evidence in the case (including another cheque) which had not been reproduced by the DWP in the appeal bundle. Third, it is said the Tribunal failed to make adequate findings of fact on material matters. To the extent that this ground is really another way of putting the first two grounds of appeal, this does not merit separate treatment. However, it can also be seen as a challenge to the findings of the Tribunal on the issue of the recoverability of the alleged overpayment.

10. Mr W. Spencer, for the Secretary of State, resists the appeal; in short, he submits that the Tribunal's treatment of the issues in dispute was sufficient and sustainable on the evidence before it.

The Upper Tribunal's analysis

Ground 1 – the signature on the HSBC cheque

11. The DWP's case rested on the existence of, and the funds held in, two accounts, one held with the HSBC and one held at the Nationwide. Both accounts were in the Appellant's sole name. On the face of it, this meant the Appellant was accordingly both the legal and the beneficial owner of those funds. It was up to the Appellant to show, on the balance of probabilities, that he did not in fact have any or all of the beneficial interest in that capital (see *MB v Royal Borough of Kensington & Chelsea (HB)* [2011] UKUT 321 (AAC) at paragraphs 36-42).

12. On the evidence before the Tribunal, the funds in the HSBC account never exceeded the upper capital limit. However, those assets, when combined with the monies in the Nationwide account, took the Appellant above the upper capital limit (and so out of income support entitlement) in October 2009. The Appellant's case, at the interviews under caution, in correspondence with the Tribunal and at the hearing, was that the funds belonged to his father and brother, and that he had no knowledge of transactions carried out on either account. The Tribunal considered the evidence from both family members and found it wanting. It is axiomatic that the weight to be attached to evidence is a matter for the fact-finding Tribunal and there is certainly no error of law in its approach in that regard.

13. However, the crucial question at the heart of this appeal was the credibility of the Appellant himself. The Tribunal gave a number of reasons why it found the Appellant's version of events to be unsatisfactory. In particular, the credibility of the Appellant's explanation was tested by reference to a cheque for £13,100, drawn on the HSBC bank account, dated 8 October 2008, and made payable to the Appellant himself. The Appellant's case was that this was not his signature and that he was a victim of fraud. The Tribunal simply disbelieved this explanation. The Judge referred in particular (in the statement of reasons) to the signature on the appeal form (Upper Tribunal bundle in appeal CIS/109/2015 (all page references refer to this file), p.14), on one of the IB50s (presumably a reference to p.109) and the cheque itself (p.102). The Judge's assessment was that the signatures were "likely to be by the same person". As Mr Spencer notes, this is ultimately a matter of impression. Looking at

the signatures in question for myself, the Tribunal's assessment was plainly one that was open to it on the evidence. The Tribunal Judge does not need to be an accredited forensic graphologist to make such an assessment.

14. Mr Ullah argues that the Tribunal erred in law as it failed to explain what it made of various other signatures in the appeal bundle which are said to be different to those relied on by the Judge. These other signatures include an IS A1 claim form (p.25), a signed statement (p.110), a BF223 form (p.116), a Med 4 (p.118), another IB50 (p.122) and correspondence to the Tribunal office (pp.178. 181 and 183). In fact the signed statement (p.110) has a signature which is very similar to those relied upon by the Tribunal. However, the fundamental flaw in the Appellant's argument is that it assumes everyone has a uniform 'standard' signature, and that this Appellant has one 'correct' signature. Human experience tells us to the contrary. Many people have signatures which vary from the broadly legible to little more than a squiggle, depending on their age, their health and other circumstances, down to such details as the size of the available box for the signature.

15. The Tribunal's finding was that (such squiggles aside) the Appellant's signature had an identifiable range of variants. Those signatures on the documents identified by the Judge fell within that range (as indeed did the signed statement he omitted to mention). In particular, the signature on the HSBC cheque also fell within that range. Those findings were consistent with the conclusion that it was the Appellant who had himself signed the cheque. As Mr Spencer submits, "What matters is whether it was the claimant who signed the cheque. His defence was that he had no involvement at all in the account. A finding that he signed a cheque drawn on the account would and did straightforwardly destroy that defence."

16. In that context I also note the Tribunal had recorded the Appellant's argument that amongst the signatures that were not his was the signature on his own appeal form (statement of reasons at paragraph 6). No possible explanation was offered for such a curious state of affairs – and the similarity between the signature on the appeal form and on the HSBC cheque is obvious to the untrained eye. As Mr Spencer puts it, the Appellant has completely failed to give "anything approaching a coherent account of how and when he has been a victim of fraud, given his claim that the accounts in question were operated by his brother and father … his *ad hoc* appeals to fraud serve only to encumber his account with an additional layer of implausibility".

Ground 2 – the Tribunal's inquisitorial duty and the missing second HSBC cheque

17. Mr Ullah argues that the Tribunal failed in its inquisitorial duty in that the Judge should have made proper enquiries about documents mentioned elsewhere in the papers but which do not themselves form part of the bundle of evidence. He gives two examples.

18. The first 'missing' document is a second HSBC cheque, dated 18 October 2011, made out for the sum of £2,505 and made payable to the Appellant. This cheque was shown to the Appellant at each of his two interviews under caution (IUC). At the first IUC, when he was unaccompanied, the Appellant said that the signature on the second HSBC cheque did not look like his. At the outset of the second IUC the Appellant's solicitor read a pre-prepared statement on her client's behalf, and the Appellant then answered every question in an interview lasting just over an hour with a "No comment" answer. For example, he was asked whether the writing on the second HSBC cheque was his writing ("No comment"). The second HSBC cheque was not included in the bundle of papers for either of the Appellant's appeals.

19. The Appellant's argument to the Tribunal was that this second cheque had been "conveniently omitted by the DWP for their benefit. Its existence would disprove that the signatures on the cheques were the same as on the benefit forms" (p.208). Mr Ullah argues that the Tribunal should have enquired as to the whereabouts of this other cheque, contending that if the signature on the second cheque had been different from the first cheque reproduced in the papers, then this would have supported the Appellant's case.

20. In response to directions from Judge Lane, Mr Spencer has made enquiries of the relevant DWP offices. They report that the case had been treated as closed and so all the papers had been destroyed after a period of time, in accordance with usual protocols. The Secretary of State is therefore now unable to produce a copy of the second HSBC cheque. In law, of course, there is no presumption that a missing document contains material which is favourable to the claimant (see Commissioner's decision R(IS) 11/92 and *The Ophelia* [1916] 2 AC 206).

21. In any event I agree with Mr Spencer that the absence of a copy of the second HSBC cheque in the evidence before the Tribunal is immaterial. As a matter of law, the presumption on the facts was that beneficial ownership followed legal ownership. It was therefore for the Appellant to displace that presumption. The Tribunal made a clear and sustainable finding as regards the writing and signature on the first HSBC cheque, which in and of itself fatally undermined the Appellant's story, irrespective of the second HSBC cheque. Put another way, there are realistically only two possible interpretations of the signature on the missing second cheque. One is that – as the fraud investigators plainly thought – the signature on the missing cheque is similar to that on the first cheque and on other documents signed by the Appellant, which would only go to reinforce the Secretary of State's case. The other possibility is that the signature on the second cheque is not akin to that on the first; perhaps it is in the realms of a 'squiggle'. Even if that were so, it does not detract from the Tribunal's finding on the first cheque. It would simply prove nothing either way. So the Tribunal's failure to pursue the mystery of the missing second cheque does not amount to an error of law,

22. The second 'missing' document is an IB50. At the second IUC, the fraud investigator referred to an IB50 dated 29 December 2009. It was put to the Appellant that he had filled in and signed that document ("No comment"). It was further put to the Appellant that the writing and signature on the IB50 were similar to the writing on the second HSBC cheque ("No comment"). The December 2009 IB50 does not seem to be in the appeal file. Given the broad terms of rule 24(4)(b) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2685), it certainly might have been better if it had been included. However, clearly the Secretary of State thought his case was strong enough without the production of such further evidence, and the Tribunal can hardly be fairly criticised for failing to explore the point. There is certainly not the hint of any unfairness towards the Appellant by the omission to produce the IB50 in question.

Ground 3 – the overpayment recoverability fact-finding and reasoning

23. The remaining and third ground of appeal concerns the Tribunal's reasons for finding that the overpayments of income support were recoverable. Mr Ullah argues that the Tribunal failed to find sufficient facts and/or give adequate reasons e.g. on the issue of recoverability. Mr Spencer contends that the Tribunal did enough in this regard and, even if it did not, any deficiency was not material to the outcome of the appeals.

24. As to recoverability, the Tribunal noted that the DWP decision-maker's decisions had been based on a failure to disclose capital assets. The Judge found that the Appellant, who had been receiving income support on grounds of incapacity for work since 2003, was able to manage his affairs. He found that the Appellant's capital was above the relevant limits at the dates in question. He specifically found that the Appellant had "received the periodic notifications from the DWP with instruction to disclose capital, and he failed to do so" (see paragraph 8 above). Having rejected the Appellant's case on the issues of the signatures and the ownership of the capital funds, the Tribunal concluded that the overpayment of £9,822.04 – the arithmetic for which was not in dispute – was recoverable from the Appellant.

25. It is undoubtedly the case that the Tribunal's fact-finding and reasoning on the issue of recoverability was brisk and at time brusque. The Judge does not, for example, make express reference to regulation 32(1A) of the Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968). However, as Mr Spencer argues, the Tribunal's findings were sufficient to lead to the irresistible inference that the Appellant was under a legal duty by virtue of regulation 32(1A) to disclose the capital which the Tribunal had found he both possessed and knew about. The Tribunal was not required to provide a treatise on the application of the law relating to the recoverability of overpaid social security benefits. Rather, the adequacy of a Tribunal's reasons in any given case is very much context-specific. Given the Tribunal's findings on the principal matters in dispute, the Tribunal was entitled in this case to deal with the recoverability aspect of the appeal in summary terms.

26. An analogy may usefully be drawn with *MR v Secretary of State for Work and Pensions (IS)* [2011] UKUT 200 (AAC). In that case the Tribunal had confirmed the DWP decision-maker's finding that the claimant was not entitled to Income Support as a lone parent. This was because she and her husband were found to be members of the same household at all material times. It followed that she was liable for the resulting overpayment of benefit. The crucial issue of fact to be determined at first instance on that appeal was whether or not the couple were indeed living in the same household. As Judge Lane explained, dismissing the claimant's further appeal:

> "24. … The appellant's case was that she and her husband did not have any relationship and did not even live in the same house. He was no more than a visitor. Her husband's evidence about his living arrangements during the interview under caution was so far fetched that it did nothing to bolster her explanation. No tribunal could have accepted their accounts.
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> 25. Once the foundation of the appellant's case was rejected, the conclusion that the appellant and her husband were members of the same household was inescapable. All that was left was a married couple who were living together as married couples do, in a domestic establishment tied by the bonds of marriage and family. The only distinction was that they were not telling the truth about doing so."

27. On that basis Judge Lane concluded that the First-tier Tribunal in that case had not been required "to embark upon an elaborate fact finding exercise" as to the factors to be considered in assessing whether a shared household existed. Instead, "the conclusion that they did live in the same household derived from the rejection of their claim to be living apart" (at paragraph 26). In a similar way in the present case, once the Appellant's principal line of argument had been rejected, any defence to the recoverability of the resulting overpayment necessarily fell away.

28. Even if I am wrong about this, and the Tribunal should have expanded on its fact-finding and reasoning on the consequential issue of recoverability, the fact remains that any such deficiency was not material to the outcome of the appeals (see *R (Iran) v Secretary of State for Home Department* [2007] EWCA Civ 13 at paragraph 10). As Mr Spencer sums up the matter in his response to the appeal, the Tribunal "could have said more; but if it had, it would still have reached the same conclusion".

29. It follows that the Tribunal's decision was sustainable on the evidence before it and the findings of fact that it made. My conclusion, therefore, is that the Tribunal's decision does not involve any material error of law. I accordingly dismiss both of the Appellant's appeals.

Conclusion

30. For all these reasons, the decision of the First-tier Tribunal does not involve any material error of law. I must therefore dismiss the appeals (Tribunals, Courts and Enforcement Act 2007, section 11).

Signed on the original
on 04 May 2016

Nicholas Wikeley
Judge of the Upper Tribunal