

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Case No. CG/1067/2016

Before: M R Hemingway: Judge of the Upper Tribunal

Decision: The Secretary of State's appeal to the Upper Tribunal is allowed. The decision of the Maidenhead First-tier Tribunal dated 21 December 2015 involved an error on a point of law and is set aside.

I remake the decision in the Upper Tribunal. In so doing I decide that the respondent (claimant) is not entitled to a bereavement payment and is not entitled to a bereavement allowance.

This decision is given under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

REASONS FOR DECISION

Introduction

1. I shall refer to the appellant before the Upper Tribunal as "the Secretary of State". I shall refer to the respondent before the Upper Tribunal as "the claimant". The Secretary of State has appealed to the Upper Tribunal, with the permission of a district tribunal judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (hereinafter "the tribunal") made on 21 December 2015, to the effect that the claimant is entitled to a bereavement payment and a bereavement allowance.

2. The appeal, as will be seen from what follows below, raises certain issues regarding the operation of what is referred to as the "Tell Us Once" Scheme and which is a scheme provided by the Department for Work and Pensions with the entirely laudable aim of limiting, in certain circumstances, the number of departments and agencies which a person is required to contact when a close relative has passed away. Some of the workings of the scheme are explained on the Gov.UK website.

3. This case is an unfortunate one in many respects. It is very difficult to fault the claimant in any way but, nevertheless, I have had to conclude that the tribunal, in deciding she was entitled to the above benefits did err in law such that its decision has to be set aside. I have also decided, since on the facts there can be no other outcome, to remake the decision to the effect that she is not entitled to those benefits. It gives me no pleasure to have to do that.

The facts

4. The claimant was born on 3 December 1959. She resided with her husband. Very sadly he unexpectedly passed away on 22 November 2013 aged 57 years. The claimant promptly registered his passing by attending her local Register Office. She did so on 28 November 2013.

5. It is not disputed that at the time of registration she was handed two documents by a deputy Registrar. The first of those bears the heading “Registration or Notification of Death”. There is a copy of it at page 8 of the appeal bundle. It contains standard personal information concerning the deceased as well as some notes. Under a sub-heading “After reporting the death to DWP” there appears this wording:

“By phoning the DWP Bereavement Service, you can also complete a benefit check of what you may be eligible for and, if appropriate, they can take a claim for bereavement benefit or a Funeral Payment over the phone.”

6. However, the copy of the document appearing at page 8 has the word “ignore” written upon it in capital letters. It has not been disputed that that was written by the deputy Registrar who was responsible for registering the death. The second of the two documents is a letter which clearly contains standard wording though some personal details relating to the claimant and the deceased have been inserted. That letter commences with the obviously standard wording:

“Thank you for choosing to use the Death Notification Service that the Department for Work and Pensions is providing to report bereavements to Government organisations and local council services. ...”

7. Other standard wording goes on to state that the person reporting the death is giving permission for the information provided to be shared with a number of other organisations including the Department for Work and Pensions. The letter then, in closing, has this further passage of standard wording:

“Please be aware that the Department for Work and Pensions offer a further service which can help you understand whether or not you may be entitled to extra help as a result of the recent bereavement.”

and a phone number to use in order to contact the DWP’s Bereavement Service is provided.

8. The claimant says that when she reported her husband’s passing and when she was given those documents she was told by the deputy Registrar that under a new system (the “Tell Us Once” Scheme) there would be no need for her to contact the Department for Work and Pensions, notwithstanding the above wording, and that to underline that, the deputy Registrar had written the word “ignore” as noted above. The claimant says that she knew little or nothing regarding benefit entitlement at that time but that she had effectively been assured that any required “follow-up” from Departments such as the Department for Work and Pensions would be carried out automatically. She thought, perhaps unsurprisingly, that nothing further would be required of her regarding anything to do with benefits and that if she was entitled to anything she would be told so. What she did not do, at that stage, was make a written application on an approved form for either bereavement payment or bereavement allowance.

9. The claimant was not contacted by the Department for Work and Pensions. She says that she had thought that was probably because she was not, in fact, entitled to any benefits consequent upon her husband’s passing. However, she says that she subsequently spoke to a friend who had been in similar circumstances to her and who, as I understand it, had been given different advice by a different Registrar and had received the relevant benefits. Having been duly prompted by this, the claimant completed a standard application form entitled “Electronic

Bereavement Benefit 1 Form” which was sent to the Department for Work and Pensions, as its title suggests it would have been, electronically. That clearly did constitute a claim for bereavement benefit (which is an umbrella term encompassing bereavement payment, bereavement allowance and one other benefit not relevant here). A copy of that form is contained within the appeal bundle and is dated 17 August 2015. That date must, I think, represent the date when the form had been submitted to the Department for Work and Pensions by electronic means. In explaining why she had not claimed earlier, given that there are statutory time limits for the claiming of these benefits (see below) the claimant had written:

“Unaware that benefit existed, not made aware by Registrar that she needed to claim. Registrar advised that every (sic) would be done automatically.”

10. On 19 August 2015 a decision maker acting on behalf of the Secretary of State decided that the claimant was not entitled to either a bereavement payment or a bereavement allowance. Essentially, that was because no claim had been made within the time limits prescribed by legislation. The decision maker said that the claim for bereavement payment was required to have been made within 12 months of the death and it had not been. The decision maker also said that whilst entitlement to bereavement allowance could be backdated for three months the claimant could not take advantage of that because it had been more than three months since the expiry of the 12 month period after the passing of the claimant’s late husband during which time there had been entitlement to bereavement payment.

11. The claimant, dissatisfied with that decision, applied for a mandatory reconsideration but that did not result in any alteration to the original decision.

Some relevant legal provisions

12. Insofar as it is relevant, section 1 of the Social Security Administration Act 1992 provides as follows:

“Entitlement to benefit dependent on claim

1. - (1) Except in such cases as may be prescribed, and subject to the following provisions of this section and to section 3 below, no person shall be entitled to any benefit unless, in addition to any other conditions relating to that benefit being satisfied –
 - (a) he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations under this Part of this Act; or
 - (b) he is treated by virtue of such regulations as making a claim for it ...
- (2) Where under subsection (1) above a person is required to make a claim or to be treated as making a claim for a benefit in order to be entitled to it –
 - (a) if the benefit is a bereavement payment, the person shall not be entitled to it in respect of a death

occurring more than 12 months before the date on which the claim is made or treated as made; and ...”

Pausing there, it may be seen that section 1(1) lays down a general rule that there cannot be entitlement to a benefit unless a claim for it is made. That rule is subject to special cases in respect of which special provision by regulations is made but there is no specific provision within regulations which has potential application here. Section 3 does contain some special provisions regarding bereavement benefit but that is (unlike the situation in this case) in circumstances where death is difficult to establish.

13. The relevant part of the Social Security Contributions and Benefits Act 1992 provides as follows:

- “ **20.** - (1) Contributory benefits under this Part of this Act are of the following descriptions, namely - ...
- (e)(a) bereavement benefits, comprising –
- (i) bereavement payment;
 - (ii) widowed parent’s allowance;
 - (iii) bereavement allowance; ...”

14. The next source of potentially relevant provisions is the Social Security (Claims and Payments) Regulation 1987. Those Regulations, insofar as they may be relevant, provide as follows:

“ **Making a claim for benefit**

- 4.** - (1) Subject to paragraphs 10-11B, every claim for benefit other than a claim for income support or jobseeker’s allowance shall be made in writing on a form approved by the Secretary of State for the purpose of the benefit for which the claim is made, or in such other manner, being in writing, as the Secretary of State or the Board may accept as sufficient in the circumstances of any particular case. ...
- ...
- (10) This regulation shall not apply to a claim for state pension credit, subject to regulation 6(1G), or unemployment and support allowance.
- (11) A claim for graduated retirement pension, or a shared additional pension, a retirement pension, a state pension under Part 1 of the Pensions Act 2014, a bereavement benefit, a social fund payment for funeral expenses or winter fuel payment may be made by telephone call to a telephone number specified by the Secretary of State for the purpose of the benefit for which the claim is made, unless the Secretary of State directs, in any particular case, that the claim must be made in writing. ...

Time for claiming benefit

- “ 19. - (1) Subject to the following provisions of this regulation, the prescribed time for claiming any benefit specified in column (1) of Schedule 4 is the appropriate time specified opposite that benefit and column (2) of that schedule.
- (2) The prescribed time for claiming the benefit specified in paragraph (3) is three months beginning with any date on which, apart from satisfying the condition of making a claim, the claimant is entitled to the benefit concerned.
- (3) The benefit to which paragraph (2) applies are –
- (a) child benefit;
 - (b) guardians allowance;
 - (c) ...
 - (d) invalid care allowance or carers allowance;
 - (e) maternity allowance;
 - (f) ...
 - (ff) ...
 - (g) widow’s benefit;
 - (ga) subject to paragraphs (3A) and (3B), bereavement benefit; ...
- (3A) The prescribed time for claiming a bereavement benefit within the meaning of section 36 of the Contributions and Benefits Act is 12 months beginning with the day on which, apart from satisfying the condition of making a claim, the claimant is entitled to such a payment ...”

15. I shall make reference to certain of the above provisions below.

The appeal to the First-tier Tribunal

16. As noted, the claimant was unsuccessful in her application for a mandatory reconsideration. Accordingly, she appealed to the tribunal. Her position, as summarised above, was set out in documentation before the tribunal including her letter of 23 August 2015 in which she had requested a mandatory consideration, her grounds of appeal and a written submission she had prepared for the tribunal and which is dated 20 November 2015. The tribunal held an oral hearing which she attended accompanied by her brother. There was no attendance on behalf of the Secretary of State. The appellants gave evidence as noted in the

tribunal's record of proceedings and which appears to have been in line with what had previously been stated by her in written form.

17. The claimant's appeal was allowed.

18. The tribunal was subsequently asked to provide its statement of reasons for decision ("statement of reasons"). It did so. In that document it explained that it had found the claimant to be a credible witness (indeed her credibility has never been challenged) and then went on to explain its reasoning as to why it was allowing the appeal. It said this:

" 8. Having heard evidence from the Appellant, I found her account had been consistent from first making her application through to the appeal hearing. Her evidence was given without prevarication and, even without corroboration, I would have accepted it as compelling; there is however documentary evidence in the appeal bundle which supports her account. After receiving the Respondent's decision on her paper application and the later reconsideration, the Appellant discussed the matter further with the local registrar to whom she had notified her husband's death. That registrar confirmed that the Appellant's understanding, that she had been told she needed to do no more in furtherance of her own entitlement, was indeed what had been intended. Whilst it may not have been the Respondent's intention that the registrar should tell the Appellant that, I find that is what the Respondent had in fact, probably inadvertently arranged for the Registrar to do. I say so for the following reasons. Those reading this statement should have regard to the document at Appendix B (page 45 of the appeal bundle), it is a bulletin issued by the Respondent to local registrars but, importantly, after the Appellant notified her husband's death to the registrar. It relates to the 'Tell Us Once' (TUO) scheme where notification of death to a registrar was also taken as notification to all parts of the DWP. The bulletin deals with changes to a customer notification letter of the type handed to the Appellant. Annexed to the bulletin was a revised draft of the letter from the DWP to be printed by registrars and handed to relatives. The date of the bulletin is significant – 09/12/13 i.e. almost 2 weeks after the Appellant registered her husband's death. That bulletin said that the DWP had been in discussion with "*our Delivery Partners*" and had made changes to the customer notification letter. Those changes were highlighted as '*Have made the statement explaining that TUO is not a claim to benefits service;...*'

9. The need for the Respondent to issue that bulletin and the revised draft letter at that time (i.e. before the DWP had accepted a claim from the Appellant) satisfies me that other bereaved relatives must also have been misled into believing that the Tell Us Once (TUO) scheme applied to their benefit entitlement. The new draft letter also makes it clearer that the 'Tell Us Once' service '*does not form any part of a claim to benefits*'. I find the Respondent's need to issue that bulletin, taken with the form of the replacement letter, admits of the strong possibility that registrars had previously understood the working of the system to be different to that intended by the DWP and had, wrongly in the Respondent's eyes, been advising bereaved relatives that the TUO scheme was sufficient to trigger their own entitlement to bereavement benefits.

10. For all those reasons, I was satisfied that the Appellant had been advised by the registrar, on the instructions of the Respondent, that her notification of her husband's death under the TUO scheme was sufficient to trigger a claim to any benefits she might be entitled in her own right.

11. So much then raises the question: was the Respondent responsible for that advice/information given to the Appellant. I find it was. There was clearly an agreement between the DWP and the Windsor and Maidenhead Registrar that the latter would act for the

Respondent in the TUO scheme. The front of registration certificate was ambiguous in that it did not say that the Appellant was obliged to claim her own benefits in another way, it said that she could ‘also’ complete a benefits check in her own right. The wording of that paragraph can be read as indicating that there was an optional supplementary procedure for applying for those benefits. The registrar’s endorsement of the word ‘IGNORE’ on that notice led the Appellant to do exactly that: assume that she need do no more. That the registrar gave that advice while acting as agent/partner for the DWP is evidenced by the text in the message section of the bulletin (appendix B page 45) where the Respondent identifies registrars as ‘*Delivery Partners*’. I am satisfied that the registrar was acting as more than a mere volunteer provider of information, s/he was acting as a ‘partner’ in the delivery of bereavement services on behalf of the DWP and on their instructions.

12. For the above reasons, I concluded that the Appellant notified her husband’s death to the Windsor and Maidenhead registrar on 28/11/2013 i.e. 6 days after the date of death. The registrar acting as a partner of the Respondent accepted that registration as an application by the Appellant for any and all benefits to which she might be entitled as a result of her husband’s death. The Appellant was advised on behalf of the Respondent that she need do no more to claim those benefits at that time. In the circumstances the Appellant was entitled to assume that, having heard no more from the DWP she was not entitled to any benefits. I found her subsequent application, lodged on 17/08/2015, was a restatement of her application made via the registrar on 28/11/2013. I concluded that a valid application had been made in time on 28/11/2013. I set aside the Respondent’s decision and remitted the application to the Respondent for further consideration of entitlement and a calculation of payments due.

13. I would comment that my decision would not have been the same had the Appellant’s conversation with the Registrar occurred on or after 13/12/2013 i.e. the date given by the Respondent in its bulletin (page 45) bringing changes to the TUO service making it then clear that it was not a ‘claim to benefits service’.”

19. As to the bulletin and the revised draft letter, it is right to say that the content of those documents as contained in the appeal bundle is as described in the statement of reasons.

The proceedings before the Upper Tribunal

20. The Secretary of State obtained permission to appeal to the Upper Tribunal. The grounds asserted that the tribunal had erred in concluding that there could be entitlement absent a claim. The author of the grounds, perhaps rather pithily though essentially accurately given my conclusion on the appeal, asserted “the absence of a claim cannot be taken to be a claim”. Having been granted permission to appeal, the Secretary of State’s representative provided a notice of appeal in which, essentially, the same point was made. It was said that however the Registrar might have construed his standing, what had occurred did not amount to the making of a claim for disablement benefit. No doubt, although he did not expressly say so, the author of the grounds had in mind the rules for claiming as set out in the above legislation.

21. The claimant, in accordance with directions I had issued, provided a written response. She pointed out that the tribunal’s decision had been comprehensive. She asserted that the Registrar had, in the circumstances, been acting as the agent for several Government bodies including the Department for Work and Pensions. As such, “a paper application was not necessarily required”. The Department for Work and Pensions, in issuing new instructions (the

bulletin), had recognised it had been at fault. No point of law had ever been raised by the Secretary of State.

22. Neither the Secretary of State nor the claimant asked for a hearing of the appeal before the Upper Tribunal.

My reasoning

23. I have decided not to hold an oral hearing of this appeal. As indicated, neither party has sought one. Both parties have stated their respective positions, quite clearly, in writing. Having reminded myself of the content of rules 2 and 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I have decided this appeal on the basis of the documentation before me.

24. It does not appear to have been disputed, at any stage, that the claimant meets the various conditions of entitlement to bereavement payment and bereavement allowance save for any requirements concerning the making and timing of a claim.

25. It is clear, though, from section 1(1) of the Social Security Administration Act 1992, that in order to establish entitlement to any benefit a claim for it must be made in the manner and within the time prescribed by regulations unless the person can be treated by virtue of such regulations as having made a claim. I can find nothing in the Social Security (Claims and Payments) Regulations 2007 or elsewhere to suggest that the claimant could be treated, by virtue of such regulations as having made a claim. So, in order to establish entitlement, she had to show that she satisfied the requirements within section 1(1)(a) of the Social Security Administration Act 1992.

26. Looking at the “manner” of the making of the claim, regulation 4(1) of the Social Security (Claims and Payments) Regulations 2007 lays down a general rule that a claim must be made in writing. In looking at the precise wording of regulation 4(1) that is so, as a general rule, even in circumstances where the Secretary of State may accept a claim made other than on a form approved by him. I have said that this is a general rule because there is a degree of variation and, specifically in relation to bereavement benefit (which encompasses both bereavement payment and bereavement allowance as has already been pointed out) regulation 4(11) permits telephone claims if made to a telephone number specified by the Secretary of State for the purpose of the claiming of that benefit. So, for the moment, leaving aside matters relevant to time limits and limitations upon backdating, those were the requirements the claimant had to fulfil in order to make her claim.

27. I can see nothing in what the claimant has indicated, either in her oral evidence to the tribunal or in the clear and extensive written documentation she has supplied to it, which points to her having made a written claim for bereavement benefit within the requisite time limits. The tribunal found, in effect, that she had made her claim as a result of her interaction with the deputy Registrar. However, there is no finding to the effect that anything which might properly be interpreted as a claim for bereavement benefit was given to the Registrar in writing. The claimant does not assert that any written claim for bereavement benefit was made in writing and, indeed, it is very difficult to see how it could have been given the claimant’s own evidence that she was not aware of her benefit position at all and did not know about the two relevant benefits. There was no evidence of the existence of any document which might be

construed as a written claim and which was given to the Registrar. There was no completed prescribed form.

28. So, then, it is necessary to look at whether the requirement that a claim be a written one did not apply. I do, here, have regard to regulation 4(11) of the Social Security (Claims and Payments) Regulations 1987 which does, subject to conditions, permit a telephone claim for a bereavement benefit. However, there is nothing to suggest that a telephone claim for such a benefit was ever made to the Registrar, still less, on a telephone number specified by the Secretary of State for the purpose of a claim for bereavement benefit.

29. In light of the above, therefore, in my judgment, even accepting everything the claimant has to say, and even accepting for the moment that the Registrar was or may have been acting as an agent for the Department for Work and Pensions (something which I doubt very much), the legislative provisions which had to be met in order for a claim to be made, had not been met.

30. In my judgment, therefore, the tribunal did err in law because it did not have proper regard to the legislative requirements for the making of a claim before deciding that one had effectively been made through the interaction the claimant had had with the deputy Registrar. Indeed, on the evidence, there was no basis for the tribunal to find that those requirements had been complied with.

31. It is not disputed that the claimant did make a written claim for disablement benefit on 15 August 2015 when she completed and submitted the requisite form by electronic means. She does not, though, dispute the fact that that claim was made outwith (indeed significantly outwith) the applicable 12 month period during which, according to regulation 19(3A) of the Social Security (Claims and Payments) Regulations 1987, a claim for a bereavement payment must be made. The claim in writing on the prescribed form which was made was, in fact, out of time by something in the order of nine months. As to bereavement allowance, following the wording of regulation 19(3), that may be claimed within three months of the last day that there would (excluding the condition of making a claim) be entitlement. Entitlement lasts for a maximum of 52 weeks from the date of the relevant death. Accordingly, on the facts of this case, there was more than three months between the last date of possible entitlement and the date of the actual written claim. Consequently the claim for bereavement allowance was also late. Indeed, it has never been contended by the claimant that any entitlement was triggered by the submission of the electronic form.

32. In my judgment, all of the above not only demonstrates that the tribunal made a material error of law but also demonstrates that, on the undisputed facts, the claimant's appeal, when properly analysed, was bound to fail. That is why I have set aside the tribunal's decision and have gone on to remake the decision myself. I cannot see that if I were to remit any tribunal dealing with the appeal on a proper footing could reach a different decision to that which I have reached. Remittal would, therefore, be an empty exercise.

33. I would like to say a little more. First of all, my decision should not be taken as amounting to any criticism of the decision of the tribunal. It has, I have decided, erred in law but its consideration of the facts of the case and the documentation before it was meticulous. Further, it reached an outcome which I appreciate some readers of this decision may consider to be fair. However, its decision was unlawful for the reasons explained. Secondly, it does

seem apparent that the arrangements between the Department for Work and Pensions and Registrars, as they stood at the date the significant events in the context of this appeal occurred, had the potential to lead to misunderstandings. Indeed, there were actual misunderstandings here. The claimant has been unfortunate and I have to say I sympathise. I appreciate, however, that that will probably be no comfort to her. Nevertheless, I am tasked with applying the law and that is what I have done.

34. In view of the above the Secretary of State's appeal to the Upper Tribunal succeeds.

(Signed on the original)

M R Hemingway
Judge of the Upper Tribunal

Dated:

12 January 2017