DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

The DECISION of the Upper Tribunal is to dismiss the appeal by the Appellant. The decision of the Ipswich First-tier Tribunal dated 4 January 2016 under file reference SC919/15/00627 does not involve any material error on a point of law. The First-tier Tribunal's decision stands.

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

REASONS FOR DECISION

The subject matter of this appeal

1. This appeal concerns the complex rules about making a claim and qualifying for a Social Fund Sure Start Maternity Grant (or SSMG for short).

The complexity of social security legislation

2. Some 25 years ago Lord Donaldson MR complained in *R v Legal Aid Board ex parte Brice* [1992] 1 FLR 324 (at 324H) that:

> "The rules and regulations which govern entitlement to welfare benefits in a modern state are necessarily numerous, highly complex and subject to frequent variation and amendment to take account of changes in needs and policies. Yet those whom they are designed to benefit are often amongst the least able to unravel their mysteries."

3. There has been little if any improvement in the intervening 25 years (see Professor Neville Harris's book *Law in a Complex State: Complexity in the Law and Structure of Welfare* (2013)).

4. All this will be no consolation to the Appellant in the present case (Miss W), who finds herself very much at the sharp end of such complexity. She had a baby; she was (and may very well still be) on a very low income; she made repeated claims for a SSMG; she badgered both the DWP and HMRC for decisions on her various claims in the face of delays by officialdom (especially HMRC); and yet she has still not qualified for payment of a SSMG.

The Upper Tribunal's decision on this appeal in summary

5. The Appellant's appeal to the Upper Tribunal is dismissed. The Ipswich First-tier Tribunal's decision (dated January 4, 2016) that Miss W does not qualify for a SSMG contains no material legal error and so the First-tier Tribunal's decision stands.

The hearing of this Upper Tribunal appeal

6. I held an oral hearing of this appeal before the Upper Tribunal at Field House in London on March 22, 2017. Miss W attended, representing herself. As she was unable to make suitable alternative childcare arrangements, she brought along her daughter (then aged 21 months) to the hearing. I hope Miss W felt she was able to make all the points she wanted to, despite the inevitable distractions posed by an

understandably rather bored toddler. I would add that she has explained her case both very clearly and consistently in the letters she has written at various stages in these proceedings. In the course of making this decision, I have also sought to explore all the legal avenues which might possibly assist Miss W's case.

7. I made directions for further submissions on points raised by the appeal following the oral hearing, which have now been considered. Miss W also asked for another oral hearing. I have concluded that an additional hearing is not necessary, as all the relevant issues have been canvassed either in writing or at the hearing in March.

8. The Secretary of State was represented at the oral hearing and in the latter stages of these proceedings by Mr Stephen Cooper, Solicitor. I am grateful to him too for his oral and written submissions on the appeal and for his good humour in coping with the interventions by Miss W's daughter during the hearing.

The relevant law governing claims for Sure Start Maternity Grants

9. In this case entitlement to a SSMG turns on two separate requirements: the Appellant must have both (1) made a claim in time and (2) been eligible for the benefit in terms of receiving a qualifying benefit or tax credit. Crucially those requirements must be met at the same time and not at different times over the same period.

10. The time limits for claiming a SSMG are carefully defined. The claim must be made within the period from 11 weeks before the first day of the expected week of childbirth until three months after the actual date of birth (Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968; "the Claims and Payments Regulations"), regulation 19(1) and Schedule 4, paragraph 8(a)).

11. So on one level the 'window of opportunity' for claiming a SSMG is relatively generous – typically 24 weeks in all. However, once that window is shut, there is no prospect of re-opening it. A claimant may have very good reasons for not having made the claim within the relevant period set by legislation – but there is no discretion under the rules to extend the time limit (at either end). Thus the law is clear: the claim must be "made within the prescribed time for claiming a Sure Start Maternity Grant" (Social Fund Maternity and Funeral Expenses (General) Regulations 2005 (SI 2005/3061; "the SSMG Regulations"), regulation 5(5)).

12. The substantive eligibility rules are also tightly drawn. In particular, the claimant (or, if they have one, their partner) must have been awarded a qualifying benefit "in respect of the date of the claim" for a SSMG – see regulation 5(2) of the SSMG Regulations. There is a list of qualifying benefits and tax credits in regulation 5(2)(a)-(g). That list includes means-tested benefits such as income support and child tax credit payable at a rate higher than the base family element. The list does not include statutory maternity pay or maternity allowance, presumably as those benefits are not means-tested.

The sequence of SSMG claims and decisions and Miss W's appeal

13. The relevant chronology in this appeal is as follows.

14. Miss W, who was born in 1977, is an EU national (a citizen of one of the 'A8' states) who has been living and working in the UK since 2008. She worked throughout the last decade up until her pregnancy. As Miss W was anxious to emphasise, and as I readily acknowledge, this is certainly not a case of so-called 'benefit tourism', whether or not any such phenomenon actually exists.

15. On March 6, 2015, when Miss W was within 11 weeks of the expected week of childbirth, she made a claim for SSMG (Claim 1). This claim was refused as at that date she had not been awarded a qualifying benefit. She did not appeal the decision on Claim 1.

16. On April 15, 2015, she made a further claim for SSMG (Claim 2). This was also refused as she had still not been awarded a qualifying benefit. Again, she did not appeal the decision on Claim 2.

17. On June 1, 2015, Miss W gave birth to a baby daughter.

18. On July 2, 2015, she again made a claim for SSMG (Claim 3). On July 6, 2015 this third claim was likewise refused, again because she had still not been awarded a qualifying benefit. The decision letter included a paragraph headed "If your circumstances change". This passage explained that if she had claimed one of the qualifying benefits (or tax credits) within 10 working days of the SSMG claim, which in turn resulted in an award of the qualifying benefit within three months of the baby's birth, "then you can make a new claim for a Sure Start Maternity Grant within three months of the decision being made about the qualifying benefit or tax credit". On July 15, 2015 Miss W wrote asking for that decision refusing a SSMG to be reconsidered.

19. On August 3, 2015, Miss W claimed income support. This claim was refused as her income (maternity allowance) exceeded her income support personal allowance.

20. On August 18, 2015 the Appellant applied to Her Majesty's Revenue & Customs (HMRC) for tax credits.

21. During the course of September and October 2015 the Appellant sent HMRC's Tax Credits Office a series of increasingly anxious letters asking about the progress of her tax credits claim (despite many efforts, and like many other claimants, she had been unable to get through to HMRC by telephone). She pointed out in this correspondence that she had no income other than maternity allowance and was struggling to pay her bills.

22. On October 20, 2015 the Appellant wrote to the DWP, pointing out she had had no reply to her letter of July 15, 2015 and asking for the decision on Claim 3 to be reconsidered.

23. On October 23, 2015, HMRC (finally) sent Miss W a tax credit decision letter, awarding her both working tax credit and child tax credit with effect from July 18, 2015 (i.e. from 31 days before the date of her tax credits claim: see regulation 7 of the Tax Credits (Claims and Notifications) Regulations 2002 (SI 2002/2014)).

24. On November 2, 2015, and in response to her letter of October 20, 2015, the DWP sent Miss W a mandatory reconsideration notice in relation to its decision of July 6, 2015 about Claim 3. The DWP confirmed that decision, namely that there was no entitlement to SSMG as the Appellant did not have an award of any qualifying benefit which covered the date of claim, i.e. July 2, 2015.

25. On November 27, 2015, the First-tier Tribunal received the Appellant's SSCS1 Form (notice of appeal) along with a copy of the mandatory reconsideration notice and copies of other correspondence. On the same date Miss W made a further claim to the DWP for SSMG (Claim 4).

26. According to the DWP's written response to the appeal, prepared for the First-tier Tribunal, Claim 4 was refused on December 1, 2015 because that claim had not been made within the prescribed time. However, the tribunal appeal file contained no copy of (i) the decision of December 1, 2015; (ii) any application for revision of, or appeal against, that decision; or (iii) any mandatory reconsideration notice in respect of that decision.

The First-tier Tribunal's decision and its reasons

27. The First-tier Tribunal ("the Tribunal") dismissed Miss W's appeal on the papers on January 4, 2016 and later issued a statement of reasons. This summarised the Appellant's various claims and outlined the entitlement rules for SSMG. The central passage in the Tribunal's reasoning read as follows:

> "11. From the facts of this appeal as set out in paragraphs 4-7 above it is clear that at the time the appellant made her first three claims for SSMG she was not in receipt of a qualifying benefit and therefore could not satisfy the criteria for entitlement.
>
> 12. It is also clear from the facts cited above that at the time of her final claim the appellant was considerably over the three-month time limit from the birth of her daughter to make that claim. The final claim had to be made at the latest three months from the date of the birth of the appellant's daughter; that is three months from 1 June 2015.
>
> 13. There is no provision for back dating of claims."

28. Miss W applied for permission to appeal, which was initially refused by a District Tribunal Judge. I subsequently gave Miss W permission to appeal.

The Upper Tribunal's preliminary analysis

A working assumption

29. In an attempt to avoid unnecessary complexity at this stage, I will assume for convenience that the decisions on all four SSMG claims are currently under appeal.

Claim 1

30. Claim 1 was made at a time (March 6, 2015) when Miss W was not in receipt of any qualifying benefit or tax credit. She does not suggest otherwise. That decision was plainly right on the facts as they were at the time.

Claim 2

31. The same applies to Claim 2 (April 15, 2015) – it was made in time but Miss W was not then in receipt of any qualifying benefit or tax credit.

Claim 3

32. The same also applies to Claim 3 (July 2, 2015). It was still made in time, just over a month after her daughter's birth, but Miss W was not yet in receipt of any qualifying benefit or tax credit. Her tax credit entitlement did not start until just over a fortnight later on July 18, 2015 – and, of course, that decision was not notified to her by HMRC until October 23, 2015.

Claim 4

33. Claim 4 (November 27, 2015) was made at a time when Miss W was undoubtedly in receipt of qualifying tax credits, but by now she was out of time. Her window of opportunity for claiming SSMG had closed on September 1, 2015 (i.e. three months after the actual date of birth).

Summary of preliminary analysis

34. This preliminary analysis agrees with the reasoning of the Tribunal (see paragraph 27 above). Miss W has repeatedly argued that the result of this analysis is unfair. I rather imagine that many people might agree with her. So is there any way round this conclusion?

The Upper Tribunal's further analysis

Introduction

35. When I gave Miss W permission to appeal, I referred to two possible ways of dealing with the problem which can arise where there is an award of a qualifying benefit in a case but where such an award is made after the refusal of a claim for SSMG.

36. These two potential solutions are discussed in the commentary to regulation 5(5) of the SSMG Regulations in *Social Security Legislation 2016/17 Volume II: Income Support, Jobseeker's Allowance, State Pension Credit and the Social Fund* (at p.1522). They can be described as the "further claim solution" and the "revision of the earlier decision solution".

The further claim solution

37. *Social Security Legislation 2016/17 Volume II* describes this potential solution in the following terms:

> "… if a claim for a maternity grant is refused because (at the date of that claim) a qualifying benefit not yet been awarded then, as long as the qualifying benefit is claimed within 10 working days of the original claim for the maternity grant, a further claim made within three months of a subsequent award of the qualifying benefit is treated as made on the date of the original claim, or the date the qualifying benefit was awarded, whichever is later" (p.1522).

38. This passage is a paraphrase of the effect of regulation 6(16)-(18) of the Claims and Payments Regulations. This is the statutory provision which the decision letter dated July 6, 2015 that had refused Claim 3 was also seeking to paraphrase (see paragraph 18 above). Regulation 6 itself deals with identifying the date of claim. The relevant parts of paragraphs (16) to (18) (as amended) provide as follows:

> "(16) Where a person has claimed a relevant benefit and that claim ("the original claim") has been refused in the circumstances specified in paragraph (17), and a further claim is made in the additional circumstances specified in paragraph (18), that further claim shall be treated as made—
>
> (a) on the date of the original claim; or
>
> (b) on the first date in respect of which the qualifying benefit was awarded,
>
> whichever is the later.
>
> (17) The circumstances referred to in paragraph (16) are that the ground for refusal was—
>
> (a) …;
>
> (b) …;
>
> (c) in any case, that the claimant, a member of his family or the disabled person had not been awarded a qualifying benefit.
>
> (18) The additional circumstances referred to in paragraph (16) are that—
>
> (a) a claim for the qualifying benefit was made not later than 10 working days after the date of the original claim and the claim for the qualifying benefit had not been decided;

> (b) after the original claim had been decided the claim for the qualifying benefit had been decided in favour of the claimant, a member of his family or the disabled person; and
> (c) the further claim was made within three months of the date on which the claim for the qualifying benefit was decided."

39. So these rules, in certain circumstances, allow a later claim for a SSMG to be treated as made on the date of "the original claim" or on the first date from which the qualifying benefit has been awarded (whichever is the later). Miss W, entirely understandably, relies on the reference in the Claim 3 decision letter to the effect that if she was subsequently awarded a qualifying benefit "then you can make a new claim for a Sure Start Maternity Grant within three months of the decision being made about the qualifying benefit or tax credit".

40. Claim 4 (November 27, 2015) was undoubtedly made within three months of the decision about the qualifying tax credit award (October 23, 2015). So Miss W certainly satisfied the conditions in both regulation 6(18)(b) and (c).

41. However, as Mr Cooper pointed out, she did not meet the terms of regulation 6(18)(a) – here Miss W's "original claim" (which in this context must mean the immediately preceding claim for a SSMG, not her very first SSMG claim) was made on July 2, 2015 and the tax credit claim was made on August 18, 2015, about 6 weeks later. There is no provision in the legislation to extend the (very tight) 10 day rule in regulation 6(18)(a). It is also clear from the drafting of both regulation 6(16) and (18) that the "additional circumstances" are cumulative, so each of the three conditions in regulation 6(18) must be met. It follows that as regulation 6(18)(a) – the 10 day rule – was not satisfied, then this special rule cannot assist Miss W. In an ideal world this possibility should have explored by the Tribunal. However, its failure to do so was not material to the outcome of the case.

The revision of the earlier decision solution

42. *Social Security Legislation 2016/17 Volume II* describes this alternative possible solution in the following terms:

> "Another way of dealing with the problem caused by a subsequent award of a qualifying benefit is by seeking a revision of the earlier decision to refuse the original claim. Under reg. 3(3) of the Decisions and Appeals Regulations (see Vol. III). the Secretary of State has power to revise that decision where the application for a revision is made within one month of the notification of the original refusal, or within the three months' time limit, whichever is later. So far those time limits are less generous to claimants than the rules in reg. 6(16)-(18) of the Claims and Payments Regulations. The potential advantage of this route is that the time limit may be extended under reg.4 of the Decisions and Appeals Regulations up to 13 months from the date of notification of the original decision. If the qualifying benefit was not awarded until after the expiry of the primary time limit, that might amount to "special circumstances . . . as a result of [which] it was not practicable for the application to be made within the time limit" — see reg. 4(4)(c) of those Regulations. Note, however, that there is no right of appeal against a refusal by the Secretary of State to extend time under reg. 4 (see *R(TC) 1/05*)" (p.1522).

43. In this case I am entirely satisfied that Miss W wrote to the DWP on July 15, 2015 asking for the decision letter dated July 6, 2015 (which refused her Claim 3 for SSMG) to be reconsidered. I say that despite the fact that no copy of that letter of July 15, 2015 has been produced by the DWP and Mr Cooper says no such letter has been traced. The reason I am confident Miss W sent that letter is three-fold. First, throughout this matter Miss W has been persistent (but courteous) in chasing

both the DWP and HMRC for a response. Second, Miss W specifically refers to her letter of July 15, 2015 in her subsequent letter of October 20, 2015, pressing the DWP for a response. Third, although the Secretary of State should have produced that letter of October 20, 2015 to the First-tier Tribunal, it only emerged through Mr Cooper's efforts after the Upper Tribunal oral hearing. That in itself suggests there may be other relevant correspondence received by the DWP but not held on file. I only need be satisfied on the balance of probabilities that Miss W sent the letter of July 15, 2015; in fact I am sure beyond any reasonable doubt she did so.

44. I am also satisfied – given the import of the later letter of October 20, 2015 – that Miss W's letter of July 15, 2015 was an application to revise the refusal decision of July 6, 2015 and was made within the required one month period (see regulation 3(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999/991)). It should have been enough to trigger the mandatory reconsideration process; in fact this did not take place until Miss W sent her follow-up letter of October 20, 2015. An application for a revision under regulation 3(3) can be on any ground. However, if the application is successful, its effect is to replace the original decision (in this case, the decision of July 2, 2015) from the date of that decision (see section 9(3) of the Social Security Act 1998). As Mr Cooper argued in his final written submission, "it would not be possible to revise the refusal of SSMG on 6/7/15 with effect from that date on the ground that the claimant became entitled to a qualifying benefit on a later date". It follows that Miss W can gain no assistance from this possible route.

45. So while there may be cases where a revision of the earlier refusal decision is a solution to the problem that arises where a qualifying benefit or tax credit is awarded after a refusal of a SSMG claim, this is not such a case. For example, a claimant who is awaiting the outcome of a tax credits claim might make an in-time SSMG claim on July 2, which is refused on July 6 because she is not in receipt of a qualifying benefit or tax credit at that date. She might then get an HMRC decision notice three weeks later, awarding tax credits from say June 1. She could then apply for a revision of the SSMG decision on August 1. In such circumstances the DWP could revise the decision of July 6 refusing a SSMG and make an award. This would be because (i) she had made a revision application within a month; (ii) there is no dispute the July 2 claim was in time; (iii) it is now clear that she had been awarded a qualifying benefit or tax credit "in respect of the date of the claim" for a SSMG (within the meaning of regulation 5(2) of the SSMG Regulations). However, I repeat that is not this case.

Conclusion

46. It therefore follows that neither the further claim solution nor the revision of the earlier decision solution provides any assistance for Miss W. The preliminary analysis therefore holds good; the first three claims were correctly refused as she was not in receipt of a qualifying benefit or tax credit, and the fourth and final claim properly rejected as it was out of time.

47. There are, however, a number of further matters to mention.

The telephone calls to the DWP's Wembley SSMG office

48. There was one area of unresolved fact, which related to Miss W's account of her telephone calls to the DWP's Wembley office which deals with SSMG claims. Miss W referred in her correspondence to these calls and the advice she was given. The First-tier Tribunal made no findings of fact about these calls (or about any such advice), and indeed did not even mention them. At the Upper Tribunal hearing Miss W told me that she had phoned the Wembley office on at least two occasions.

49. The first time was after Claim 3 had been refused in July 2015. She had called the Wembley office either in late July or in August. The Appellant explained that she was advised that she needed to wait until she had a decision on a qualifying benefit or tax credits claim ("The lady on the phone said that I could only apply if I'm receiving benefits"), but that she would not need to make a fresh SSMG claim as she had made Claim 3 within three months of her daughter's birth, and the July application would remain valid. The second occasion was after she received the tax credits award letter in late October 2015. This time she was advised by the Wembley office to send in a further SSMG application form (which accounts for Claim 4).

50. Miss W asked that the DWP's recordings of her call to the Wembley office in the summer of 2015 be retrieved to confirm her account. As I considered it may be important, before the Upper Tribunal hearing I directed the Secretary of State to try and produce the recording in question. The Secretary of State's representative reported that the DWP's "notepad" facility had no record of any such call. The DWP's call recording service had also been unable to trace a call, but explained that the lack of precise identifying data (e.g. date and time of call, identity of call handler, etc) meant that they could not assist.

51. I accept the Appellant's account of her telephone calls, and especially the call to the Wembley office in the summer of 2015. Her account of that conversation has been consistent throughout. She is a credible and indeed convincing witness as to the facts. The fact the DWP was unable to trace a recording of the telephone call, given the lack of specific identifying data provided, and notwithstanding there was no record on the "notepad", does not mean that no such call was made. I find it more probable than not that the call was made and that the Appellant was given the advice she has referred to.

52. However, while the Wembley office may not have given Miss W the best advice, I agree with Mr Cooper that this issue has no actual legal bearing on the First-tier Tribunal's reasoning and decision.

Some problems with the First-tier Tribunal's decision

53. The Tribunal's central reasoning (see paragraph 27 above) was correct. It is essentially for that reason I dismiss this appeal. However, there were some problems with the Tribunal's decision beyond its failure to consider whether the further claim solution might have assisted Miss W. In my view these problems can be traced back to the DWP's written response on the appeal.

54. The DWP's written response was both confused and confusing. In the summary details of the case, in Section 1 of the response, the date of the outcome decision (in other words, the decision under appeal) was stated as being November 1, 2015 and the date of the mandatory reconsideration notice given as being November 2, 2015. The date of Miss W's appeal was given as November 27, 2015. The decision under appeal was said (in Section 3 of the response) to be the decision that Miss W was not entitled to a SSMG "because the claim was not made within the prescribed time". Section 4 of the DWP's response was even more confused. This stated that the Appellant had claimed SSMG on November 27, 2015, a claim which had been refused on December 1, 2015, and then, rather perplexingly, "reconsidered on 2.11.15 but not revised". Section 5 of the response explained that the claim was more than three months from the date of confinement "and there is no provision in the regulations to extend the time limit for claiming the Sure Start Maternity Grant".

55. In short, the DWP response had rolled up Miss W's various claims and in particular confused Claims 3 and 4. In effect the response treated her appeal as an

appeal against the decision on Claim 4 (claim rejected as out of time), when the mandatory reconsideration notice that she had supplied referred only to Claim 3 (claim rejected as not in receipt of a qualifying benefit).

56. The Tribunal's decision notice and statement of reasons purported to confirm the decision of November 1, 2015, doubtless as that was the supposed outcome decision cited on the front of the DWP's response. There was no decision of November 1, 2015. In reality the Tribunal was confirming the mandatory reconsideration decision of November 2, 2015, which had in turn confirmed the refusal of Claim 3 on July 6, 2015.

57. While this was an error of law by the Tribunal, it was not a material error of law in that it did not have any effect on the outcome. The Tribunal had correctly identified that the appeal relating to Claim 3 (the only appeal which was before it, as a matter of both fact and law) could not succeed as Miss W did not have an award of a qualifying benefit or tax credit at the relevant time. The Tribunal had also correctly noted that Claim 4 (which was not before it in any guise) could not succeed as it was out of time.

What could Miss W have done differently?

58. In her final written submission, Miss W very reasonably asks what she should have done differently in order to ensure that her SSMG application would have been accepted. She asserts that she was "certainly entitled to SSMG because I have applied within three months period after the child's birth and within these 3 months also the Tax Credit has been awarded".

59. However, as I have tried to explain above, it is not enough that the SSMG claim and the tax credit award both occurred in the three-month period after the child's birth. True, the SSMG claim must be made within the period starting 11 weeks before the birth and finishing three months afterwards. But the award of tax credits (or other qualifying benefit) must be in respect of the actual date of claim, not some later date in the same period.

60. It is possible to avoid the rigours of this strict rule, but as noted above only if the equally strict conditions in regulation 6(16)-(18) of the Claims and Payments Regulations are satisfied. These require that (a) the claim for the qualifying benefit or tax credit is made within 10 working days of the unsuccessful SSMG claim; and (b) the claim for the qualifying benefit or tax credit was successful; and (c) a further SSMG claim was made within three months of the award of that benefit or tax credit. Miss W met conditions (b) and (c) but not condition (a) and so could not take advantage of that rule.

61. So what should or could she have done differently? In retrospect one thing she might have done differently was to have made a claim for tax credits as soon as she had received the letter dated July 6, 2015. In order to take advantage of the further claim rule, she would have had to make that claim within 10 working days of July 2, 2015. Realistically that gave her about a week from receipt of the letter in which to make such a claim. As a single parent with a very young baby, she probably had other priorities on her mind. The letter of July 6, 2015 did not highlight the 10-day rule and certainly did not explain that it was an absolute and non-extendable time limit. It is possible, of course, that she made unsuccessful attempts to get through by telephone to the tax credits office during this time.

62. Is there anything else Miss W could have done differently? In her final written submission, she asks as follows:

> "I could have had keep sending another forms in July, August, September and October until the confirmation letter about the Tax Credit? Is that what I should have to do please? Keep sending the form and keep getting the same answer?"

The sensible thing to do in such circumstances was to seek advice. I am satisfied Miss W did that by telephoning the Wembley SSMG office in July or August 2015. For the reasons explained above, I am satisfied that the clear advice she was given was that she (1) had to wait till she was getting a qualifying benefit but (2) did not need to send in another form as the original form had been sent in within three months of the child's birth.

63. The advice as to (1), namely that Miss W needed to show entitlement to a qualifying benefit or tax credit was plainly correct – although it is unclear whether the full position was explained, namely that she had to have an award of a qualifying benefit (etc.) that referred to and covered the precise date of claim, and not simply an award the start date for which fell at some point in the three months since the child's birth.

64. The advice as to (2), namely that she would not have to send in a further claim form if she had already made one in that period of three months is more problematic. Such advice would not seem to square with section 8(2) of the Social Security Act 1998, the effect of which was that once Claim 3 had been decided on July 6, 2015 it ceased to exist (section 8(2)(a)), subject to any subsequent revision, and the claimant could not be entitled to benefit on the basis of circumstances not obtaining at that date in the absence of a fresh claim (section 8(2)(b)).

65. The best advice for Miss W to have been given would perhaps have been that (i) to be awarded SSMG she had to make a successful claim on or before September 1, 2015, as that date was an absolute deadline, and (ii) well before then, if she had not already done so, she should immediately make a claim for e.g. tax credits and follow it up with a fresh SSMG claim.

66. Mr Cooper has inevitably reminded me that the Upper Tribunal's jurisdiction is limited to deciding matters such as entitlement on claims for social security benefits. It does not extend to making findings as to the quality or accuracy of advice given by DWP staff. I am also conscious that while I am satisfied as to the advice Miss W was given, I cannot be sure of the full context in which that advice was given. I accordingly say no more, other than that Miss W may wish to approach an organisation such as Citizens Advice to see if there is any other means of securing a degree of redress.

67. HMRC was undoubtedly slow in dealing with Miss W's tax credits claim. However, HMRC's delays were not the immediate cause of Miss W missing entitlement to SSMG. I say that as Miss W's tax credits claim was made on August 18, 2015, and her 'window' for making a valid claim to SSMG in any event closed less than a fortnight later on September 1, 2015. The position might be different if Miss W had unsuccessfully tried to contact HMRC to make a tax credit claim on or before August 2, 2015 (in which case her tax credits award would have been backdated to no later than July 2, 2015, the date of her SSMG Claim 3.

Postscript

68. As noted, Miss W's tax credits claim was made on August 18, 2015 and backdated by the standard 31 days to July 18, 2015 (see paragraph 23 above), which was about a fortnight after the date of her SSMG Claim 3. However, up until

April 2012, new claims for tax credits were automatically backdated by 3 months, not 31 days. It will be no consolation to her, but if that provision had still been in force, Miss W's Claim 3 would have succeeded, as her tax credits claim would have been backdated (subject to the income rules) to May 18, 2015, and so she would have had an entitlement to tax credits as at the date of claim. So on the facts of her case Miss W would have succeeded on Claim 3 if it had been made four years earlier. Unfortunately, the change in the tax credits automatic backdating rules in 2011 meant that her claim could not succeed in 2015.

Conclusion

69. It follows my conclusion is that the decision of the First-tier Tribunal involved no material error of law. So I have no choice but to dismiss the appeal (Tribunals, Courts and Enforcement Act 2007, section 11).

Signed on the original
on 13 July 2017

Nicholas Wikeley
Judge of the Upper Tribunal