Neutral Citation Number: [2025] UKUT 108 (AAC)
Appeal No. UA-2023-000654-CSM

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

DL

Appellant

- v -

(1) Secretary of State for Work and Pensions
(2) WL

Respondents

Before: Upper Tribunal Judge Scolding KC
Hearing date: 26 February 2025.
Mode of hearing: Oral hearing, Appellant and First Respondent were present at Field House and the Second Respondent was present by telephone.

Representation:
Appellant: In person, accompanied by his partner (MM)
First Respondent: Mr. Mark Greaves, Counsel, representing the SSWP
Second Respondent: In Person.

On appeal from
Tribunal: Social Entitlement Chamber
Tribunal Case No: SC322/21/00572

Tribunal Venue: Watford Hearing Centre
Decision Date: 6 February 2022

SUMMARY OF DECISION

Child Support Act 1991: What has to be in place for the Court to recognise that a supersession decision has been made under s17 of the Child Support Act 1991 (in circumstances where the decision making is unclear and confused). What happens if this decision does not comply with Regulation 25 of the Child Support Maintenance

Regulations 2012 – does that mean the decision is totally invalid or can the Tribunal examine the manner and extent of the deficiencies and the prejudice to the parties when deciding if the notification was invalid.

KEYWORD NAME
CHILD SUPPORT: child support- jurisdiction: child support – other
In cases of confused or unclear decision making, what requirements are essential for something to amount to a supersession decision under s17 of the Child Support Act 1991. Whether the requirements of Regulation 25 of the Child Support Maintenance Regulation 2012 are such that failure to comply with the requirements automatically makes the decision totally invalid, or can the Tribunal examine the manner and extent of the deficiencies and the prejudice to the parties when deciding if the notification was invalid or simply deficient (and so can be relied upon as a decision which can be the subject of appeal).

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is that the First Tier Tribunal erred in law and that there was no decision against which either the Appellant or Second Respondent could appeal. It allows the appeal, The Tribunal exercises its jurisdiction under s12 (2) to set aside the decision and remakes it, by striking out the appeal.

What this case is about

1. This is an appeal by DL, the Appellant, the "non-resident parent" and father of twin boys, against the decision made on 6 February 2023 that he was liable to pay child maintenance to the Second Respondent, WL, the "parent with care" in respect of her son, whom I shall call C, from 22 February 2021. The appeal had been brought to the First Tier Tribunal ("FTT") by the Second Respondent against the refusal by the CMS to add her son C to the child maintenance assessment which already existed for her other son, who I shall call CN by decisions made on 5 February 2021 and 22 July 2021. I understand that since the date of the FTT decision, DL has been paying a sum of money for child maintenance for C.

2. This case has a woeful litany of failings by the Child Maintenance Service in the way that they have dealt with these claims. Counsel for the First Respondent, the Secretary of State for Work and Pensions apologised on behalf of the Child Maintenance Service for the manner in which this case had been decided at the hearing. Neither the Appellant or the Second Respondent were responsible for the confusion and catalogue of failings demonstrated by this case. They should be commended for their forbearance during this protracted process. The Second Respondent was distressed by the length of time that this case had taken and by dealing with what has turned out to be a case of some procedural complexity.

She told me that her mental health had been significantly affected by the continuation of this case. I hope that the CMS will seek to avoid the mistakes seen here recurring.

Factual background

3. I take much of this factual background from the decision of the FTT judge.

4. The Appellant and Second Respondent are the parents of twins, C and CN, and another child, CH. Until 1 September 2019, the twins lived with the Appellant, and the Second Respondent paid child maintenance for them. From that date, the award for child maintenance ended for the Appellant as neither of the twins were in full time education.

5. CN moved to live with his mother, the Second Respondent at this point and from 23 November 2019, the Second Respondent was awarded child maintenance for CN from the Appellant from 23 November 2019. C (the subject of the appeal to the FTT) joined the army. C left the Army and on 27 October 2020 he came to live with the Second Respondent.

6. In October 2020, the Second Respondent contacted the CMS to ask to add C to the claim for maintenance. This is important as the Second Respondent was therefore not asking for a maintenance calculation to be made (s11 of the Child Support Act 1991 (CSA)) but for it to be superseded under s17 of the CSA 1991). This is because there had been a change of circumstances to add another "qualifying child" from October 2020. CMS records show that she said she phoned in October 2020 when speaking with them on 18 January 2021. On 18 January 2021, CMS note that the Second Respondent telephoned and asked for C to be added to the child maintenance claim. She informed the CMS that he was in full time education. There is dispute between the Appellant and the Second Respondent as to exactly when C was in full time education but that is not an issue upon this appeal. She also said that she was waiting for a child benefit claim to be processed. Child Benefit was awarded to the Second Respondent from either 2 November 2020 or from 22 February 2021 (there are two dates on information obtained by CMS from HMRC who administered child benefit). A record from the CMS on 19 January 2021 recorded this report as a new qualifying child in a parent with care household.

7. The Second Respondent told the CMS (as recorded in notes of 18 January 2021, 4 March 2021 and 2 August 2021) that he had begun a full-time course of education at a local FE college. The FTT bundle contains a letter form the relevant FE college saying that he had started a college taster course on 25 January 2021 and subsequently a further full-time course of education from

September 2022. I should note that the Appellant disputed these dates and whether C was at college during 2021.

8. In November 2020, the Appellant had contacted the CMS about C and his responsibility to pay child maintenance. This prompted a letter from the CMS dated 25 November 2020. This said:

"*Thank you for your enquiry to the Child Maintenance Service dated 29 October 2020.*
If C is added to the case and starts attending college then yes you will be liable to pay. If he goes into full time employment, then no you will not be liable to pay. You will be informed of any changes if they happen".

9. Following on from this letter, on 19 January 2021 , CMS wrote to the Appellant and asked him to confirm that he was the father of C (I agree with the FTT judge that this was an odd question when parentage was not disputed), but he accepted parentage and spoke to the CMS on the same day and said that there was no shared care.

10. On 2 March 2021, the CMS telephoned the Second Respondent to ask about full time education. This may have been in response to the Appellant's call to the CMS stating that C was not in full time education, but there was also a further call to the Second Respondent on 4 March 2021, where she confirmed and provided details of his college course.

11. On 8 March 2021, the CMS wrote to the Appellant as follows:

"Thank you for your enquiry to the CMS dated 2 March 2021.
You have raised the fact that C is not in full time education. We have investigated this and can confirm that Child Benefit has been in payment for C since the 22 February 2021.
C will still be added to the case at this stage.
Once you have received notification of this, you will have 30 days to dispute the decision."

12. Despite this letter, the CMS at the FTT told the Judge that on 5 March 2021, the "service request" was cancelled and no further action took place in respect of the Second Respondent's application to add C. There is no information to show why this action took place or of any further action following on from the letter to the Appellant of 8 March 2021 by the CMS.

13. On 22 July 2021, the CMS "cancelled" the child maintenance payments for CN, with effect from 6 July 2021. CN's child benefit had stopped on 6 July 2021. CN

had entered full time work at this stage and so would not qualify for continuing maintenance. There is no dispute about this between any parties. The CMS wrote to the Appellant on the same date telling him of this.

14. On 2 August 2021, the Second Respondent telephoned the CMS about C and why his maintenance was not continuing. She was advised that as the claim had been cancelled, that she would need to open a new case – i.e. start a claim again. That was incorrect information because her telephone call was within 30 days of the decision to cancel the claim, and so this telephone call should have been treated as a request for mandatory reconsideration (but was not). In September 2021, C started a full time course at the local college and he was still in receipt of child benefit (as confirmed in a letter from HMRC dated 7 September 2021).

15. At some point the CMS sent a letter to the Appellant on 27 September 2021 (potentially identifying that a mandatory reconsideration was to take place). The Appellant replied to this on this letter on 5 October 2021 , the Appellant says this about C's claim:
"If you have been asked to review the case because of C, I am aware he was added to the case at the start of January [and then goes on to make representations about why he should not have to pay maintenance for C at this time]."
C has reportedly started attending college full time from 6 September 2021….I would therefore accept a new case being opened from this date if it can be proved by the college that he is attending. ……
I would also state that if this case is opened, I would like you to full assess my income as I believe that I was overpaying child maintenance for CN …[and then gives reasons why] I would expect that this new case should start from 6 September 2021 or later……".

16. In the meantime, the CMS undertook a mandatory reconsideration, and found that this case was "out of formula" [sic] because
"You *have raise the [sic] Mandatory reconsideration to include C on to case, however this is outside of formula for Mandatory Reconsideration due to C was not included on to case from start of case 23 November 2019*".

17. On 7 October 2021 the CMS wrote to the Appellant saying that C had not been added back onto the case.

18. The Second Respondent appealed to the FTT. C's child benefit ended on 5 September 2022.

The First Tier Tribunal's decision

19. The Secretary of State for Work and Pensions argued at the FTT hearing (there were 2 hearings held in July and November 2022) that the CMS had not notified the Appellant about the application made by the Second Respondent to add a qualifying child and had not made a decision about it and so the FTT had no jurisdiction. They submitted that the Second Respondent could complain (presumably to the CMS and then the Parliamentary and Health Service Ombudsman) about maladministration.

20. The FTT disagreed. Its reasons are set out from paragraph 42 of its judgment. I summarise them here. C was a qualifying child because he was in education from 25 January 2021 (paragraphs 43 – 45 of the FTT decision) , there was documentary evidence to support this and HMRC had paid child benefit from 2 November 2020.

21. There was no dispute that the Second Respondent had applied for an application which should have been treated and an application for supersessions under Regulation 18 of the Child Support Maintenance Calculation Regulation 2012 (CSMC) , and the First Respondent should have made a decision (paragraph 46)

22. The part of the decision subject to appeal says this :
"*47. Thirdly, CMS had duly given notice of the application to [the Appellant], by letter of 19.1.2021. The application was confirmed by the CMS in their telephone call with him on 19 January 2021. That notice was compliant with the requirements of Regulation 11 of the CSMC Regulations 2012. This does not seem to be disputed by CMS. Although Regulation 12 refers to notification of the initial effective date being given in the notice under Regulation 11, the latter Regulation does not in terms make that a requirement for validity.*
48. Instead, the CMS submitted that the terms Regulation 12 was not met because Mr. DL has yet to be provided with notification of an effective date.
49. Fourthly, the Tribunal disagreed and was satisfied that the requirements of Regulation 12 of the CSMC Regulations 2012 were satisfied. This was the combined effect of these actions:
- The letter of 25.11.20, quote above, stating that the Appellant would be liable when C was added to the case and started attending college.
- Written notice to him of the application in the CMS letter of 19 January 2021
- The telephone call made by CMS to the Appellant on 19 January 2021 in which details of the application were confirmed.
- The CMS letter of 8 March 20201 in which CMS said that child benefit for C had been in payment since 22.2.2021 and C will still be added to the case at this stage.

50. Taken together, these communications provided the Appellant with notification that the initial effective date was 22 February 2021 even though those words themselves don't appear in the records. Regulation 12(2)(b) appears to contemplate notice being given by a combination of methods.
51. Finally, the decision on 5 March 2021 to cancel the Second Respondent's maintenance application for C could be treated as a refusal of her supersession application made in January."

The grounds of appeal and submissions of the parties

23. The Appellant appealed on the basis that the letters received by himself from the Respondent were not adequate to meet the requirements of valid notification of a decision about his liability to pay child maintenance in respect of his son, C. In particular, that there was a failure to identify the date of the maintenance calculation, the number of qualifying children, the number of relevant other children, the weekly rates and the amount calculated as required under Regulation 25 of the Child Maintenance and Support Regulations 2012 (CMS Regs 2012). He therefore argued that without valid notification, no step could be taken on any appeal and/or determination by the CMS so that the appeal by the Second Respondent did not have any decision upon which the FTT could grant jurisdiction.

24. Upper Tribunal Judge West granted permission to appeal, but identified that if the requirements of Regulation 25 are mandatory, is the notification effectives despite not containing all of the required information if the individual concerned is not significantly prejudice and then cited the decision of (*R(H) 1/02*).

25. The First Respondent supported the Appellant's appeal and submitted that the decision should be quashed because the FTT judge did not consider the issue of prejudice to the Appellant and/or failed to consider the issue of notification under Regulation 25 (set out below).

26. The Second Respondent (unsurprisingly) considered that notification had been given and that on the facts of the case she should have received CMS maintenance from 22 February 2021. She opposed the appeal.

Analysis: Notification and Relevant Regulation to be applied.

27. The FTT made the decision that notification had been given (as set out above) on the basis of examination of s11 of the CSA 1991 and Regulation 11 and 12 of the CSMC Regulations. Those were the regulations about notification cited within the CMS submissions to the First Tier Tribunal (although Regulation 18(5) of the CSMC Regulations is also mentioned about when a supersession decision takes effect).

28. Unfortunately, these are not the only relevant regulations about notification pertinent to this decision.

Act and Regulations

29. Section 11 of the Child Support Act 1991 (CSA) provides that the Secretary of State shall determine the application by making a decision under this section as to whether child support is payable and if so, by how much.

30. Section 17 of the Child Support Act 1991 provides the basis upon which a supersession decision can be made – which is either an application "made for the purpose" or on the initiative of the Secretary of State. The application made by the Second Respondent was not an application for maintenance, which was already in payment at the dates when the Second Respondent telephoned to say that C had come to live at home and go into full time education. It was not in payment in respect of C, but that does not matter. The Appellant was already paying a sum for CN. The Second Respondent's application was to add a qualifying child (in the words of the legislation) to the claim, which is a decision to supersede the s11 decision made in respect of CN from 23 11 2019. That was a decision made under s17 of the Child Support Act 1991. The Secretary of State has power to make regulations under s17(2) ,(3) and (5) of the Act about the exercise of the supersession power and when it is exercisable.

31. These are the CSMC Regulations 2012. Regulation 18 of the CSMC Regulations provides that:

"*18(1) This regulation sets out cases and circumstances in which a supersession decision takes effect on a date other than the date mentioned in section 17(4) of the 1991 Act [which is the case here as that only applies to decisions which should be revised and not superseded] .*
…..
18 (5) Where the ground for the supersession decision is that there is a new qualifying child in relation to the non-resident parent, the decision takes effect from the date which would be the initial effective date in relation to an application under s4 or 7 of the 1991 Act in relation to that child if there were no maintenance calculation already in force."

32. On the facts of this case, C (as he was over 16 when the application was made) is only a "qualifying child" if he is aged 16-19 (inclusive) and (amongst others) is in full time non advanced education. This means any qualification up to an A level or equivalent. An individual must attend a recognised educational establishment and attend the course for more than 12 hours of weekly contact time. If someone leaves school or college, the young person is still counted as being in full time education until child benefit stops being paid – which in this case

was on 5 September 1992. The relevant date for C would therefore be (if he so qualifies) the date when he began full time education.

Notification of supersession decisions

33. Decisions made in respect of supersession must be notified in accordance with Part 3 of the CSMC Regs 2012 and must include information as to the provisions in respect of revision, supersession and appeals from decisions made under the1991 Act under Regulation 24 (1) and 2 of the CMSC Regs 2012.

34. Regulation 26(1)of the CMSC Regulations provides that a "notification" of a decision made following the revision or supersession of the decision made under s17, whether as originally made or revised must (subject to qualifications which are irrelevant in this case) , **must** (*my emphasis*) set out the information mentioned in regulation 25(1) and (2) in relation to the decision in question. The requirement does not apply where the Secretary of State has decided not to supersede a decision and in that case the Secretary of State must, where appropriate and as far as reasonably practicable, notify the parties of that decision (Regulation 25(2).

35. Regulation 25 sets out the relevant requirements necessary for notification. The judge was not alerted to this regulation by the CMS in the submissions they made to him (or it is not mentioned in the written submissions I have seen, and no reference is made to it in the Judge's notice of the decision and statement of reasons). There is therefore no discussion of this in his decision.

36. Regulation 25 says:

"*25 – (1) Notification of a decision made under s11 or 12(2) of the 1991 Act must set out –*
The effective date of the maintenance calculation:
Where relevant, the non-resident parent's gross weekly income, including –
Whether that is based on historic income or current income and
If based on current income, whether that income has been estimated…….
(c) the number of qualifying children
(d) The number of relevant other children
(e) The weekly rate
(f) The amounts calculated in accordance with Part 1 of schedule 1….or a variation…..
(g) where the weekly rate is adjusted by apportionment to take account of share care
Where the amount of child support maintenance is decreased.
(2) A notification of a maintenance calculation made under s12(1) of the 1991 Act (default maintenance decision) must set out –

(a) The effective date of the maintenance calculation:
(b) the default rate
(c)The number of qualifying children on which the rate is based
Where the apportionment has been applied…..
And must state the nature of the information required to enable a calculation decision to be made. "

Given the statutory scheme , is there any jurisdiction for any appeal concerning C's child maintenance?

37. The First Respondent argued in the FTT (although not before me) that in fact no decision had been made as to C's maintenance and therefore when the maintenance of CN was cancelled the case was at an end. The reason that a decision was not made appears to be administrative failings of the CMS, not the failures of either the Appellant or the Second Respondent.

38. I consider on the facts set out above that the letters sent to the Appellant in March 2021 cannot be seen as a "decision" that C should pay a sum of money by way of child maintenance. At best, it is a decision that C is a qualifying child in education. That is one ingredient of a requirement to receive child maintenance but is not sufficient to meet the requirements of the legislation. The letter of 8 March 2021, which the FTT judge purported to find was in effect notification of liability to pay child maintenance cannot be seen as such when examining the statutory scheme.

39. Section 4 of the Child Support Act 1991 provides that a parent (whether person with care or non-resident parent) may apply to the Secretary of State for a "maintenance calculation" to be made under the Act, and where such "calculation" has been made, the Secretary of State may then make arrangements for the collection of the sums payable in accordance with the calculation.

40. Section 11 of the Child Support Act 1991 provides that where an application is made to the Secretary of State "shall be dealt with" by the Secretary of State in accordance with the provision made by or under this Act. Section 11 (2) says:

"The Secretary of State shall, unless the Secretary of state decides not to make a maintenance calculation in response to the application or makes a decision under s12) determine the application by making a decision under this section about whether any child support maintenance is payable, and if so, how much".

41. The essence of any decision by the Secretary of State in child support is therefore not just whether your child qualifies, but also how much money one has to pay, from when and how this sum has been calculated. Section 12 provides circumstances where the Secretary of State is required to make a maintenance

calculation or is making a supersession decision, and there is not sufficient information to enable a decision to be made, then a default maintenance decision shall be made. Again, whilst this enables the Secretary of State to supersede or revise decisions on a provisional basis, that does involve calculating how much is owed and from when.

42. The relevant Regulations – Regulation 3 of the CSMC 2012 identify that a "calculation decision" means a decision of the Secretary of state either under s11 (maintenance calculation), section 16(revision) or section 17 (supersession).

43. Section 20 provides that a person has a right of appeal to the First Tier Tribunal either against a decision, or a decision not to make a calculation or not to supersede a decision under s17 (s20(2)).

44. I do not therefore consider that there have been steps taken by the Secretary of State which could amount to a decision given the purpose of the statute. It only says that a child may qualify: not the relevant information about what money has to be paid, from when and how that sum has been calculated. I do not consider that one piece of the decision can amount to the entire decision given the statutory scheme.

45. I therefore agree (reluctantly) with the position put forward by the Respondent before the First Tier Tribunal and disagree with the position put forward by the Respondent in the Upper Tribunal. I consider that the First Tier Tribunal fell into error in trying to construct a decision from various pieces of correspondence, none of which could meet the terms of the Regulations.

46. Given this, I agree that there is no jurisdiction upon which any appeal could be brought by the Second Respondent, as there was nothing to appeal against.

Could it be an appeal against the refusal of the supersession application?

47. The FTT Judge considered at paragraph 51 of his decision that the decision of 5 March 2021 was to "cancel" the maintenance of the Second Respondent in respect of C and could be treated as a refusal of the supersession application made. I do not consider that it can be so treated. There has not been an explanation of what the "cancellation of a service request" is or was, and the information given by the CMS is that this was an internal note on the system. I do not consider that such an internal note, not sent to either party could be considered to be a decision.

What if I am wrong and a decision was then made?

48. If I am wrong about whether a decision has been made and the correspondence with the Appellant can amount to a "maintenance calculation" or "decision" made in March 2021, I consider that this is a case where there has not been substantive compliance on the facts, whether one characterises it as a notice which is "completely invalid" or has failed to substantively comply with the statutory requirements such that it would not be just to consider this to be a notice.

49. Bennion on Statutory Interpretation (19th Edn) at paragraph 9.5 identifies that where an Act imposes a procedural or other requirement in connection with the doing of anything under the Act but does not spell out the consequences of breach, the question arises where the failure to comply invalids the things done. The second principle says:
"In ascertaining the effect of a failure to comply, it is necessary to determine whether the legislature can fairly be taken to have intended non-compliance to result in total invalidity"

50. In *R (McGrath) v Camden LBC* [2020] EHWC 369 (at 52), Mr. Justice Holgate (as he then was) had to examine whether notices sent to demand business rates levies by a local authority, which failed to supply certain information relating to the levy were invalid and so the monies could not be claimed. At paragraph 52 – 53 (after having looked at the approach set out in Bennion (above)) said:

"…whether any other step or document must be treated as invalid or non-compliant with the legislation. In such circumstances the court must firstly construe the instrument in order to determine whether the legislature intended total invalidity to follow (R v Soneji [2006] 1 AC 340, paragraphs 15, 23 and 7: Bennion on Statutory Interpretation 7th Edn (2017), section 7.3). If the answer to the question is "yes" then no further issue arises. But if the answer is no, then the second question is whether the circumstances of the instant case indicate that invalidity should be the consequence. The answer to that question may be affected by whether there has been substantial compliance with the requirement, or whether any non-compliance has caused significant prejudice relevant to the purposes of the legislation (see eg SM (Rwanda) v Secretary of State for the Home Department [2019] Imm AR 714).

51. In *Natt v Osman* [2014] EWCA Civ 1520 at [28] the court identified 2 broad categories of cases where there are defective notices service – one set where the decision of a public body is challenge, often involving administrative law, or which concern procedural requirements for challenging a decision whether by litigation or some other process, and secondly those cases where the statute confers a property or similar right on a private person and the issue if whether non- compliance with the statutory requirement precludes the person from

acquiring the right in question. In this first category, the courts have asked whether the statutory requirement can be fulfilled by substantial compliance and if so, whether on the facts there has been substantial compliance even if not strict compliance. The second category (described by the Court of Appeal in *Natt* at paragraphs 29 – 32 of the judgment) are cases concerning property rights, and in particular rights to extend and acquire leases, or to acquire freeholds or the right to manage/be enfranchised in various ways under various statutes. In those cases, as the Court says at paragraph 31 of *Natt* (above) that the approach of substantial compliance has not been adopted in those cases – the notice has been interpreted to see if the requirements of the statute are met. If they are not met, then the notice is not valid.

52. The first question that therefore needs to be answered if whether this is case where the legislation intends there to be "total invalidity" if the notice is not served in accordance with Regulation 25. The First Respondent pointed to *R v IAT ex part Jeyeanthan* [1999] 3 All ER 231 at 235. in cases concerning procedural irregularity in applications for permission to appeal to the IAT, Lord Woolf identified:

"*Because of what can be the very undesirable consequences of a procedural requirement which is made so fundamental that any departure from the requirements makes everything that happens thereafter irreversibly a nullity it is to be hoped that provisions intended to have this effect will be few and far between. In the majority of cases……the tribunal before whom the defect is properly raised has the task of determining what are to be the consequences of failing to comply with the requirement in the context of all the facts and circumstances of the case in which the issues arises……"*

53. I do not consider that the statute in and of itself is one which requires absolute compliance with all aspects of Regulation 25 before it can be held to be lawful. I consider that the purpose of statute and its categorisation is one which falls into the first category of cases as described in *Nett v Gowan* , i.e. that it is an administrative decision (albeit in the context of decision making which impacts parents of children and their relationship with each other in effect imposing a statutory payment system upon them) and therefore that the court should examine all the facts and circumstances and do what they think is just.

54. I do not consider, however, that a failure to say (a) how much needs to be paid (b) the basis upon which the assessment is made cannot be considered to have substantially complied with the Regulations. I can see that there could be some cases where the background circumstances and facts could show that all the relevant information had been supplied to the parents but just in different formats at different times, and that if for example the number of qualifying children and

relevant other children is a matter of common knowledge, that would not be fatal to a defective notification. It is, as ever, a difference between substance and form – and in this case the substance was not there.

What should therefore happen?

55. Under s12 of the Tribunal Courts and Enforcement Act 2007, the Upper Tribunal has the power to set aside the decision of the First Tier Tribunal, and either refer the matter back to the First Tier Tribunal or to remake the decision.

56. As I have set out above, I consider that there was no decision against which the Second Respondent could appeal, and that the First Tier Tribunal did not have jurisdiction to reach the decision that it did. In these circumstances, my view is that the appropriate course of action is to strike out the appeal, as this saves time, money and expenditure in circumstances where there is only one answer.

57. As I have identified, even if I am wrong about this, my view is that the nature and extent of the deficiencies displayed by the decision were so fundamental that there was no adequate notification. I consider, given the length of time that this litigation has been ongoing, the vulnerability of the Second Respondent and the need for finality in litigation that sending this case back to the First Tier Tribunal would not be fair or consistent with the overriding objective. I do not agree with the First Respondent's submission that the matter should be remitted to consider the issue of prejudice and what the consequences of non-compliance should be in all the circumstances. I consider that it is inevitable that any First Tier Tribunal would find that the nature of the non-compliance was so significant that it was, in fact invalid rather than simply defective. I would therefore, if I did consider that there was jurisdiction to hear this appeal, have determined that I should allow the appeal and remake the decision.

58. This of course, leaves both the Appellant and Second Respondent in a difficult position. I consider that, as the fault lies with the First Respondent, that they may wish to consider how they can make a lawful supersession decision so that any dispute can be resolved.

Fiona Scolding KC, Judge of the Upper Tribunal

Authorised by the Judge for issue on 25 March 2025