Neutral Citation Number: [2025] UKUT 166 (AAC)
IN THE UPPER TRIBUNAL Appeal No. UA-2023-001611-TC
(ADMINISTRATIVE APPEALS CHAMBER) UA-2023-001612-TC

On Appeal from the First-tier Tribunal (Social Entitlement Chamber) SC946/19/02420 – SC946/21/00244

BETWEEN

Appellant CMH

and

Respondent HIS MAJESTY'S REVENUE AND CUSTOMS

BEFORE UPPER TRIBUNAL JUDGE WEST

Decided after an oral hearing on 26 February 2025: 2 June 2025

Representation: Mr Hudi Ellinson, accountant, for the Appellant (Haffner Hoff Ltd)

Mr Simon Pritchard, counsel, for the Respondent (instructed by HMRC)

ON APPEAL FROM

Tribunal:	First-tier Tribunal (Social Entitlement Chamber)
Tribunal Venue:	Manchester
Tribunal Case No:	SC946/19/02420 – SC946/21/00244
Tribunal Hearing Date:	27/6/2023

Summary of Decision S.30 Childcare Payments Act 2014 – whether claimant made "declaration of eligibility" - if so, was it a valid declaration of eligibility? - if Upper Tribunal must consider eligibility for itself, was claimant in fact ineligible because in receipt of "other relevant childcare support" at relevant time? – whether s.30 ceased to have effect before claimant made declaration of eligibility – whether ***HMRC v RS (No.2) (TC)*** [2022] UKUT 246 correctly decided in its interpretation of Article 7(6) of the Welfare Reform Act 2012 (Commencement No.23 and Transitional and Transitory Provisions) Order 2015 and whether it should be followed

Keyword Name 33 Tax credits and family credit

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

DECISION

The decision of the First-tier Tribunal sitting at Manchester dated 27 June 2023 under file references SC946/19/02420 – SC946/21/00244 does not involve an error on a point of law. The appeal against that decision is dismissed.

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

REASONS

Introduction

1. This is an appeal, with the permission of District Tribunal Judge McDade, against the decision of the First-tier Tribunal sitting at Manchester on 27 June 2023.

2. I shall refer to the appellant hereafter as “the claimant”. The respondent is the His Majesty’s Revenue and Customs. I shall refer to it hereafter as “HMRC”. I shall refer to the tribunal which sat on 27 June 2023 as “the Tribunal”.

3. The issues with which these appeals are concerned include

(a) the declaration question: did the claimant make a “declaration of eligibility” for the purposes of s.30 of the Childcare Payments Act 2014?

(b) the validity question: if so, was it a “valid declaration of eligibility”? Was the “validity” requirement met in circumstances where HMRC was satisfied that the claimant was eligible because his application was successful and a childcare account was opened or, alternatively, must it determine the claimant’s eligibility for itself.

(c) the “other relevant childcare support” question: if it must consider eligibility for itself, was the claimant in fact ineligible because he was in receipt of “other relevant childcare support” at the relevant time?

(d) the ceasing to have effect argument: did s.30 cease to have effect before the claimant made a “declaration of eligibility”?

(e) was ***HMRC v RS (No.2) (TC)*** [2022] UKUT 246 correctly decided in its interpretation of Article 7(6) of the Welfare Reform Act 2012 (Commencement No.23 and Transitional and Transitory Provisions) Order 2015 and should it be followed?

The History of the Claim

4. The claimant appealed against two decisions of HMRC:

(1) SC946/21/00244 (on appeal **UA-2023-001612-TC**) dated 9 December 2020 that he had made a valid declaration of eligibility for tax-free childcare and so his entitlement to tax credits was correctly terminated. He therefore had no entitlement to tax credits from 19 March 2019

(2) SC946/19/02420 (on appeal **UA-2023-001611-TC**) dated 9 August 2019 that he was not able to make a new claim for tax credits for any period after 19 March 2019.

5. The matter came before the Tribunal on 27 June 2023 when the appellant appeared with his representative and gave oral evidence. A presenting officer was present.

6. The appeals were refused and the decisions of HMRC were upheld.

The Tribunal's Statement of Reasons

7. So far as material the Tribunal found that

> Appeal SC946/21/00244
> 1. The appellant appeals against a decision of the respondent dated 9 [December] 2020. This was a decision under s.18 of the Tax Credits Act 2002, that the appellant's entitlement to tax credits had ended on 19 March 2019 because the appellant had made a valid declaration of entitlement for Tax Free Childcare (TFC).
>
> 2. The appeal was heard on 27 June 2023 by way of a face to face hearing, with the presenting officer attending remotely. The appellant attended and gave some oral evidence. His representative Mr Ellinson also attended and made submissions, as did the presenting officer for the respondent, Mr Gander.
>
> Background
> 3. [The appellant] and his wife have three children. Their past income and the previous awards of tax credits, prior to the award in question, are not in dispute between the parties.
>
> 4. In March 2019, [the appellant] states that he went onto the online system (which is the same for both 30 hours free childcare ("30 hours") and TFC intending to claim 30 hours only. However, it was determined by HMRC that he had made a valid declaration of eligibility to TFC, which had the effect of terminating his entitlement to tax credits, pursuant to s.30 Childcare Payments Act 2014.

5. [The appellant] was notified of the termination of the entitlement to tax credits by letter on 25 March 2019. This was a s.16 Tax Credits Act 2002 decision and has previously been the subject of an appeal under reference SC946/19/03400. Ultimately, although that appeal was allowed by the F-tT, it was subsequently struck out by the Upper Tribunal, because on 9 December 2020, just before the F-TT's decision, the respondent issued the s.18 decision which had the effect of superseding the s.16 decision, thus lapsing the appeal.

6. This was therefore an appeal against the s.18 decision dated 9 December 2020.

Findings

7. The Tribunal made the following findings.

8. The appellant did not intend to apply for TFC; he intended to apply for 30 hours but in error applied for both on the online joint application form.

9. The appellant was successful in his application for TFC in that an account was opened, but not in respect of 30 hours as the appellant's daughter was too young to be eligible.

10. The appellant (and his wife) had not used the TFC account and on 18 June 2019 their entitlement stopped because they had not reconfirmed their details, as is required every 3 months.

11. The appellant was an eligible person because there was no other relevant childcare support payable in respect of any relevant period, by reason of the operation of s.30 of the Childcare Payments Act 2014

12. HMRC was satisfied that the appellant was an eligible person for the entitlement period. There is no evidence that there was any other person who holds an active childcare account for the child.

...

14. Was there a declaration of eligibility?

15. The appellant's case was that he had not intended to claim tax free childcare and had done so inadvertently while attempting to claim 30 hours. The respondent had not provided a copy of the appellant's completed online form and the presenting officer said that his was not

available to him. Nevertheless, the Tribunal considered that the appellant had made his declaration of eligibility when he completed the online claims process for TFC and 30 hours. Using its knowledge and expertise, the Tribunal considered that as part of this process he would have had to take positive action by completing the various fields and confirming, for example, that he and his wife were working and that they met the requirements for earnings. The Tribunal considered that this amounted to a declaration, which is defined by the legislation as a statement made by a person for an entitlement period which states that the person is an eligible person for the entitlement period.

16. The presenting officer for the respondent contended in his submissions that there would have been a warning on the website that applying for TFC would affect any award of tax credits. This appeared to have been accepted by the appellant's representative, but he also contended that this warning appears for both TFC and 30 hours claims.

17. The Tribunal was satisfied that a claim had been made as a tax-free childcare account was opened and evidence was before the Tribunal confirming that the eligibility period began on 20 March 2019.

18. The Tribunal had sympathy with the appellant's predicament. However, it did not consider that the legislation allowed it to find that there had not been a declaration of eligibility.

19. For these reasons the Tribunal considered that there had been a valid declaration of eligibility.

20. <u>Was the declaration of eligibility valid?</u>
21. The Tribunal noted that s.4(2) CPA 2014 provides that a declaration of eligibility made by a person is "valid" for the purposes of the act if HMRC are satisfied that the person is an eligible person for the entitlement period. It does not appear to have been in issue between the parties that there was no other person holding an active childcare account in respect of the relevant child(ren).

22. It appeared from the fact of the evidence that HMRC has been satisfied that the appellant was an eligible person, given the outcome of the application and the fact that the tax-free childcare account had been open[ed].

23. In this regard, the Tribunal considered that there were some parallels between this and the Upper Tribunal's decisions in relation to tax credits and claims for universal credit, in particular *HMRC v GS (TC)* [2023] UKUT 9 (AAC). In that appeal it was held that the relevant issue for the Tribunal was whether the Secretary of State was (as a matter of fact) satisfied that the basic conditions had been met, and not whether he was entitled to be satisfied that they were. The Tribunal considered that the same principle applied to this appeal, given the parallels between the language used in the legislation. In particular, it noted that s.4(2) states that declaration is valid if HMRC are (my emphasis) satisfied that a person was eligible, not properly satisfied or the declaration was properly made.

24. The Tribunal considered that from the evidence it would conclude that HMRC was satisfied that the appellant was an eligible person and so it would follow that the declaration of eligibility was valid pursuant to s.4(2).

25. Was the appellant an eligible person?
26. Nevertheless, given that the question had been raised, the Tribunal also went on to consider whether the appellant was an eligible person.

27. It had been raised by the appellant's representative that the appellant could not be an eligible person, because when he is said to have made the declaration, he was in receipt of payment for childcare through the tax credits regime, which could qualify as "other relevant childcare support" within the meaning of s.13 as outlined above.

28. The Tribunal considered this. However, the Tribunal decided that no tax credits were payable to the appellant in respect of the relevant period, which would be the three months beginning on 20 May 2019. This is because, by virtue of the operation of s.30, the appellant's tax credit award terminated on 19 May 2019. The Tribunal considered that the effect of s.30, in terminating the award, meant that it could not be said that tax credits were payable at the time of the declaration. For these reasons the Tribunal considered that the appellant was not in receipt of other relevant childcare support and would be an eligible person.

29. For these reasons the appeal against the decision dated 9 December 2020 was refused.

> Appeal 946/19/0240
> 30. In his submissions at the outset of the hearing, the appellant's representative accepted that the decision in *RS (No.2) (TC)* [2022] UKUT 246 (AAC) was on all fours with this decision in this appeal.
>
> 31. The Tribunal agreed with this and could not see anything on the facts which would distinguish this appeal from the appeal in *RS (No.2).*
>
> 32. In this appeal, the appellant was also seeking to rely on Article 7(6) of the Welfare Reform Act 2012 (Commencement No.[23] and [Transitional and Transitory] Provisions) Order 201[5].
>
> 33. Applying the analysis of Judge Wikeley in the decision in *RS (No.2)*, and given that the appellant was seeking to apply in August 2019 for an award of tax credits for the tax year 2019/20, the Tribunal considered that the appeal could not succeed.
>
> 34. For these reasons the appeal against the decision refusing the claim for tax credits was refused."

8. On 12 September 2023 the District Tribunal Judge acceded to the claimant's application and granted him permission to appeal.

9. I made directions for the future conduct of the appeal on 1 December 2023 and directed an oral hearing of the appeal in Manchester on 29 July 2024.

10. It was then necessary to compile a list of cases for hearing and it was not until the morning of 26 February 2025 that I heard the appeal in Manchester when the appellant was represented by Mr Hudi Ellinson of Haffner Hoff Ltd and HMRC by Mr Simon Pritchard of counsel. I reserved my decision.

The Statutory Framework

11. S.30 of the Childcare Payments Act 2014 ("the 2014 Act") provides that

“Termination of tax credit awards

(1) In this section “the relevant day”, in relation to a person who has made a declaration of eligibility for an entitlement period, means—

(a) the first day of the entitlement period, or

(b) if later, the day on which the declaration of eligibility for the entitlement period was made.

(2) This subsection applies where—

(a) a person (“P”) has made a valid declaration of eligibility for an entitlement period,

(b) an award of a tax credit is or has been made—

(i) to P or to a person who is P's partner on the relevant day (whether on a single claim or a joint claim), or

(ii) to both of them on a joint claim, and

(c) the award is for a period that includes the relevant day.

(3) Where subsection (2) applies, the award of the tax credit terminates immediately before the relevant day, regardless of whether the decision on the claim was made before or after the relevant day.

This is subject to subsections (4) to (7).

(4) Where a person has made a valid declaration of eligibility for more than one entitlement period beginning during the determination period (see subsection (5)), the award of the tax credit is terminated immediately before the day which is the relevant day in relation to the first of those entitlement periods.

(5) In subsection (4) the “determination period”, in relation to an award of a tax credit, means the period—

(a) beginning with the day on which the claim for the tax credit was made, and

(b) ending with the day on which the decision on the claim was made.

(6) Where—

(a) a person has applied for a review under section 21A of the Tax Credits Act 2002 of a decision not to make an award of a tax credit or to terminate such an award, and

(b) the conclusion on the review is that the decision is varied or cancelled,

subsection (3) does not apply in respect of the award in relation to any entitlement period beginning before the day on which the person is notified of the conclusion on the review.

(7) Where—

(a) a person has brought an appeal under section 38 of the Tax Credits Act 2002 against a decision not to make an award of a tax credit or to terminate such an award, and

(b) the appeal is upheld,

subsection (3) does not apply in respect of the award in relation to any entitlement period beginning before the day on which the person is notified of the decision on the appeal.

(8) Where an award of a tax credit made to a person is terminated by virtue of this section—

(a) HMRC must notify the person of that fact,

(b) the tax credits legislation applies in relation to the person with such modifications as may be made in regulations, and

(c) the amount of any tax credit to which the person is entitled is to be calculated in accordance with the tax credits legislation, subject to any such modifications of that legislation.

(9) Regulations may make further provision for the purpose of securing that, where a person makes a valid declaration of eligibility, any entitlement of the person, or a person who is the person's partner, to payments under the tax credits legislation ceases immediately before the relevant day.

(10) Regulations under subsection (9) may, in particular—

(a) provide that the tax credits legislation applies in relation to the person whose entitlement to such payments has ceased with such modifications as may be specified in the regulations, and

(b) apply any provision of this section with such modifications as may be so specified.

(11) If—

(a) a person makes a declaration of eligibility for an entitlement period, and

(b) at any time after the relevant day HMRC determine that the declaration was not valid,

that does not affect anything done by virtue of this section as a result of the making of the declaration.

(12) In this section—

- "joint claim" and "single claim" have the same meaning as in the Tax Credits Act 2002;
- "the tax credits legislation" means the Tax Credits Act 2002 and any provision made under that Act.

(13) This section ceases to have effect when the repeal of Part 1 of the Tax Credits Act 2002 made by Schedule 14 to the Welfare Reform Act 2012 has fully come into force."

12. S.4 of the 2014 Act provides for declarations of eligibility in the following terms:

"Declarations of eligibility
(1) For the purposes of this Act a "declaration of eligibility" is a statement made by a person for an entitlement period which states that the person is an eligible person for the entitlement period.

(2) A declaration of eligibility made by a person for an entitlement period is "valid" for the purposes of this Act if—

(a) HMRC are satisfied that the person is an eligible person for the entitlement period,

(b) on the day on which the declaration is made, there is no other person who—

(i) holds an active childcare account in respect of the relevant child (see subsection (4)), or

(ii) is seeking to hold an active childcare account in respect of that child (see subsection (5)), and

(c) the declaration is made in accordance with regulations under this section.

(3) But subsection (2)(b) does not apply for the purpose of determining whether a declaration of eligibility made for the purposes of opening a childcare account is valid (see instead section 17(2)(c)).

(4) In subsection (2)(b) "the relevant child" means the child in respect of whom the person making the declaration holds a childcare account.

For what is meant by an "active" childcare account, see section 17(3).

(5) For the purposes of this section a person is "seeking to hold an active childcare account" if—

(a) the person has applied to open a childcare account and the application has not yet been determined,

(b) the person has made a valid declaration of eligibility for an entitlement period which has not yet begun, or

(c) the person has made a declaration of eligibility for an entitlement period which, if valid, would result in the person holding an active childcare account for that period.

(6) Regulations may make further provision about declarations of eligibility, including, in particular—

(a) provision specifying, or enabling HMRC to specify, information which a person making a declaration of eligibility is required to provide to HMRC;

(b) provision specifying, or enabling HMRC to specify, the form and manner in which declarations of eligibility may be made;

(c) provision specifying the times when declarations of eligibility may be made;

(d) provision about the consequences of making a declaration of eligibility—

(i) after the beginning of the entitlement period for which it is made, or

(ii) at such other time as may be specified;

(e) provision for any consequences specified by virtue of paragraph (d) not to apply in specified circumstances or if specified conditions are met;

(f) provision specifying circumstances in which a person, or a person of a specified description, may make a declaration of eligibility on another person's behalf, including provision enabling HMRC to appoint a person for that purpose;

(g) provision treating things done, or omitted to be done, by a person who makes a declaration of eligibility on another person's behalf as having been done, or omitted, by that other person.

(7) In subsection (6) "specified" means specified in the regulations."

13. S.13 of the 2014 Act provides that

"Neither the person nor his or her partner may be receiving other childcare support
(1) A person meets the condition of eligibility in this section if, at the date of the declaration—

(a) no other relevant childcare support is payable to the person in respect of any relevant period, and

(b) the person has not made, and does not intend to make, a claim that would result in any other relevant childcare support becoming payable to the person in respect of any relevant period.

(2) "Other relevant childcare support" means any payments towards the costs of childcare which are made out of funds provided by a national authority, other than—

(a) payments under this Act, or

(b) payments of a description specified in regulations.

(3) In subsection (2) "national authority" means any of the following—

(a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975);

(b) the Scottish Ministers;

(c) the Welsh Ministers;

(d) a Northern Ireland department.

(4) "Relevant period", in relation to a declaration of eligibility, means a period which—

(a) includes the date of the declaration,

(b) includes the whole or any part of the entitlement period for which the declaration is made, or

(c) falls within that entitlement period.

(5) In the case of a declaration of eligibility made for the purposes of opening a childcare account, any reference in subsection (4) to the entitlement period for which the declaration is made is to be read as a reference to the period of 3 months beginning with the date of the declaration."

14. At the relevant time (August 2019), Article 7(1) of the Welfare Reform Act 2012 (Commencement No.23 and Transitional and Transitory Provisions) Order 2015 ("the No.23 Order") provides that

"Transitional provision: claims for housing benefit, income support or a tax credit

7(1) Except as provided by paragraphs (2) to (6), a person may not make a claim for housing benefit, income support or a tax credit (in the latter case, whether or not as part of a Tax Credits Act couple) on any date where, if that person made a claim for universal credit on that date (in the capacity, whether as a single person or as part of a couple, in which he or she is permitted to claim universal credit under the Universal Credit Regulations 2013), the

> provisions of the Act listed in Schedule 2 to the No. 9 Order would come into force under article 3(1) and (2)(a) to (c) of this Order in relation to that claim for universal credit".

15. For the claimant's postcode, legacy benefit claims were stopped from 25 July 2018. It follows that, from 25 July 2018, he was prevented from claiming tax credits unless he came within one of the exceptions in Articles 7(2)-(6). Article 7(6) provides that

> "(6) Paragraph (1) does not apply to a claim for a tax credit where a person has or had, or persons have or had, an award of child tax credit or working tax credit in respect of a tax year and that person or those persons makes or make (or is or are treated as making) a claim for that tax credit for the next tax year".

The Claimant's Submissions

16. The two appeals both resulted from the termination of the claimant's tax credits award due to an alleged "valid declaration of eligibility" made by him for the purposes of Tax-free Childcare ("TFC"). The first day of the resulting "entitlement period" for TFC was 20 March 2019, leading to his tax credits award being terminated on 19 March 2019 under s.30 of the 2014 Act.

17. **UA-2023-001612-TC** concerns the decision to terminate the claimant's tax credits award for the 2018/2019 tax year. He submitted that the award should not have been terminated.

18. **UA-2023-001611-TC** concerns the refusal to accept a new claim which he made for tax credits on 9 August 2019. He submitted that he was able to make a new claim due to savings provisions in the legislation introducing Universal Credit, viz. Article 7(6) of the No.23 Order.

19. Although the two appeals do not depend on each other, if the claimant is successful in overturning the decision to terminate his tax credits award, then the other appeal will fall, as a new claim would not have been necessary.

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20. The sequence of events, as relevant to this appeal, was as follows:

(a) on 14 March 2019 the claimant allegedly made a "valid declaration of eligibility" for TFC

(b) on 20 March 2019, HMRC confirmed that he was an eligible person for the entitlement period and therefore terminated his tax credits award immediately prior to that date

(c) following that termination, HMRC issued various decision notices and other notices, which were subject to a previous appeal. The Upper Tribunal in **UA-2021-001947-TC** struck out that appeal because HMRC had subsequently made a final decision on the claimant's entitlement for the 2018/2019 tax year, which had the effect of lapsing the earlier decisions

(d) on 9 December 2020 HMRC made a final decision as to his entitlement for the 2018/2019 tax year. The decision notice was issued to the claimant on 11 December 2020.

Ground 1: No "declaration of eligibility" was made for TFC purposes

21. The main ground of appeal before the Tribunal was that the claimant never intended to claim TFC and was actually attempting to make a claim for 30-hour funding (which would not have terminated his tax credit award).

22. Although the Tribunal accepted in its findings that he did not intend to apply for TFC, it still decided that a "declaration of eligibility" had been made.

23. That was wrong as a matter of law. The dictionary definition of "declaration" is "an official announcement or statement" or a "firm, emphatic statement which shows that you have no doubts about what you are saying". The dictionary definition of "statement" is "a definite or clear expression of something in speech or writing".

24. Considering that definition, it was submitted that the requirements set by s.30 of the 2014 Act were not met and as such the claimant's tax credits award never terminated.

Ground 2: The alleged "declaration of eligibility" was not "valid"

Issues raised by the Tribunal

25. The Tribunal found that the declaration of eligibility was "valid" despite prior entitlement to childcare support through the tax credits system (see s.13 of the 2014 Act) because:

(a) it was sufficient that HMRC was "satisfied" that the claimant was an "eligible person" (s.4(2)(a) of the 2014 Act) and

(b) he was in fact an eligible person, because tax credits were not payable in respect of the relevant period.

26. Taking the second point first, in order to be an eligible person, s.13 of the 2014 Act requires that "at the date of the declaration no other relevant childcare support is payable to the person for any relevant period" and "relevant period" is defined as including the date of declaration. Here, the date of declaration was 14 March 2019 and tax credits continued until 19 March 2019.

27. Furthermore, even had the first entitlement period for TFC started on 14 March 2019 (meaning that the tax credits award would have terminated on 13 March 2019), at the point of the declaration tax credits were still, at that point, ongoing. It was only once the declaration was held to be a valid declaration that HMRC subsequently terminated the tax credits award retrospectively from a day prior.

28. On the first point made by the Tribunal, that it was sufficient that HMRC was "satisfied" that the claimant was an eligible person, it was submitted that HMRC was well aware of his tax credits award, as it also administers the tax

credits system. That can also be seen by the fact that it immediately terminated his tax credits award upon the TFC application being made.

29. HMRC could not therefore have been "satisfied" that the claimant was an eligible person.

30. S.30(11) of the 2014 Act provides, that if HMRC later determines that the declaration was not valid, that will not affect the tax credits termination. However, in the claimant's case, HMRC was never satisfied that there was a valid declaration.

31. What actually happened was that HMRC simply set up its computer system to terminate tax credit awards automatically despite not being satisfied that a valid declaration was made.

32. Although relating to a different issue, the House of Lords held in ***Hinchy v Secretary of State for Work and Pensions*** [2005] UKHL 16 that information provided to one branch of a government department does not allow one to assume that other branches are aware of that information. However, as mentioned above, the branch of HMRC dealing with the TFC claim clearly did know about the claimant's tax credits.

33. Furthermore, there are persuasive arguments that ***Hinchy*** may not apply any more, see ***SK v Department for Communities (ESA)*** [2020] NI Com 73 at [48]:

> "48. There is a vast difference between the manual administrative systems that pertained in the days before computerisation and the technology available to the Department today. *Hinchy* addressed a disjointed Departmental administration in the period from 1993 to 1998 passing information about DLA awards around on pieces of card, where one branch did not know what the other was doing. The evidence in this case indicates that that system has been consigned to the past. Claimants are entitled to assume that when they receive their decision in relation to one benefit, the Department's

> modern computerised systems will not just have communicated the decision to them, but also to any other branches of the Departmental administration where that decision has an impact."

Issues raised by HMRC

34. HMRC makes a further argument that it does not fall within the definition of "Minister of the Crown" and therefore childcare support under tax credits is not "other relevant childcare support" for the purposes of s.13 of the 2014 Act.

35. The claimant accepted that HMRC does not fall within the definition of "Minister of the Crown", but he submitted that tax credits (including the childcare element) are still support "provided" by a Minister of the Crown, as the definition of that term includes the Treasury.

36. HMRC does of course administer the tax credits system; however the Treasury has ultimate responsibility for the design and policy decision-making of the system. That is exemplified by the fact that all substantive regulations for tax credits are made by the Treasury and not HMRC, see s.65(1) of the Tax Credits Act 2002 ("the TCA 2002").

37. HMRC have also argued that "other relevant childcare support" referred to in s.13 of the 2014 Act does not include the childcare element of tax credits.

38. They assume that those TFC claimants who are in receipt of an ongoing award of tax credits are likely to be in receipt of the childcare element and as such s.30 of the 2014 Act would never bite if "other relevant childcare support" includes the childcare element of tax credits.

39. The claimant disagreed with that assumption. In fact, in all situations where it is beneficial for a claim to be made for TFC despite an ongoing entitlement to tax credits, there will not be entitlement to the childcare element of tax credits.

40. That is because it is only worthwhile to claim TFC (thereby ending entitlement to tax credits) where the tax credits entitlement is very low – below

the potential support provided by TFC, which is a maximum of £2,000 per annum.

41. As per the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002 ("the TCR 2002"), the childcare element is tapered away before Child Tax Credit is reduced. The child element of Child Tax Credit is well in excess of £2,000.

42. This means that any TFC claimants with an overall tax credit entitlement of under £2,000 will not be receiving any childcare support through tax credits.

43. Even where a claim is made for TFC despite it not being worthwhile, there are still many situations where there is no entitlement to a childcare element. That could be because household income is high enough for the childcare element to be tapered to nil, or where a claimant does not currently make any use of childcare, but is claiming TFC for the coming term. (A TFC claim must be made prior to the start of the term.)

Ground 3: S.30 of the 2014 Act no longer applies

44. S.30(13) of the 2014 Act provides that s.30 ceases to have effect "when the repeal of Part 1 of the Tax Credits Act 2002 made by Schedule 14 to the Welfare Reform Act 2012 has fully come into force."

45. Article 2 of The Welfare Reform Act 2012 (Commencement No. 32 and Savings and Transitional Provisions) Order 2019 (S.I. 2019/167) ("the No.32 Commencement Order") brought that repeal fully into force on 1 February 2019, which was before the date of the alleged declaration of eligibility.

46. Although Article 3 of that Order provides for certain cases to be "treated" as though the repeal had not come into force, it could be argued that the legislation has fully come into force. That is because the savings in Article 3 are "deeming provisions" which are only to be taken so far as necessary to achieve their purpose.

47. In that context the claimant relied on ***Szoma v Secretary of State for Work and Pensions*** [2005] UKHL 64 (reported as ***R(IS) 2/06***) where Lord Brown made the following statement regarding deeming provisions:

> "[…] it would in my judgment be quite wrong to carry the fiction beyond its originally intended purpose so as to deem a person in fact lawfully here not to be here at all. "The intention of a deeming provision, in laying down a hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further" – the effect of the authorities as summarised by *Bennion, Statutory Interpretation*, 4th ed (2002), Section 304 at page 815."

48. The claimant submitted that the "originally intended" purpose of the deeming provision here is the only issue at stake in the No.32 Commencement Order, that is, to allow certain claimants to remain on tax credits. The matter contained in s.30 of the 2014 Act is unconnected and should not be taken into account when considering the extent to which the deeming provision should be taken.

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49. The claimant accepted that this case is similar to ***HMRC v RS (No. 2) (TC)*** [2022] UKUT 246 (AAC), but submitted that that case was wrongly decided.

50. In ***RS (No. 2)*** the Upper Tribunal held that the phrase "the next tax year" is a reference to the whole of the next tax year, whereas the claimant's claim was only for part of the tax year. It was accepted that that would equally apply in the present case.

51. However, the claimant submitted that claims for tax credits, whenever made, are not made for specific periods within a tax year. Rather, a claim is made generally for a particular tax year.

52. That is supported by s.5 of the TCA 2002 which provides for the date an award is to begin by reference to the date the claim was made, with no mention made of the specific period for which a claim is being made.

53. The TCR 2002 similarly only deal with the date of claim and not the period claimed for (save where a claim is made before the start of the relevant tax year, in which case the claim is still for the tax year as a whole). Backdating is provided for by treating the date of claim as being made earlier.

54. The tax credits claim form also supports the position that a claim is not made for particular periods, but is always made for a tax year as a whole.

55. As such, the claimant submitted that he did make a claim for the next tax year as a whole (despite the claim date being later than 6 April) and therefore was able to make a new claim when he did.

HMRC's Submissions

Introduction

56. By the decision of 29 June 2023, the Tribunal confirmed determinations made by HMRC, namely that:

(a) in relation to Appeal SC946/21/00244 ("Appeal 1"): on 14 March 2019, the Claimant made a valid declaration of eligibility for an entitlement period in respect of TFC for the purposes of s.30 of the 2014 Act. As a result, his entitlement to tax credits was deemed to have terminated with effect from 19 March 2019

(b) in relation to Appeal SC946/19/02420 ("Appeal 2"): he was not permitted to apply for tax credits in August 2019.

57. HMRC's position is that the decision was right, essentially for the reasons which the Tribunal gave, as supplemented by the additional reasoning below. (HMRC disagreed with the Tribunal's reasoning at paragraph 28 of its statement of reasons, where there appeared to be some confusion over relevant dates), but that reasoning did not impact on the correct outcome of the appeals).

58. Further, in relation to Appeal 2 there is an Upper Tribunal decision directly on point ***(RS (No.2) (TC))***. The Upper Tribunal is not bound by its previous decisions but, as a matter of judicial comity it should normally follow an earlier decision of co-ordinate jurisdiction, unless satisfied that the earlier decision was wrong (***DB v Secretary of State for Work and Pensions*** [2023] UKUT 144 (AAC) at [10]). Whilst HMRC's primary position is that ***RS (No.2)*** was decided correctly, it also says that the judgment should, in any event, be followed for reasons of comity (noting that there is no suggestion that the decision was per incuriam or otherwise tainted by misdirection, the claimant's disagreement effectively being a disagreement with the Upper Tribunal's ultimate conclusion as to the proper statutory construction of the relevant provision).

Factual Background

59. HMRC initially made tax credits decisions in respect of the claimant under the TCA 2002. The decision, for the period 6 April 2018 to 5 April 2019 and notified on 12 November 2018, detailed an award of £0 working tax credit ("WTC") and £16,949.01 child tax credit ("CTC"). That award of CTC included the childcare element of WTC amounting to £8,057.612.

60. On 14 March 2019, the claimant made an online application for TFC and 30 hours free childcare ("30 Hours"). The circumstances in which that application came to be made is an issue addressed below in relation to Appeal 1, but in short the Tribunal found that he "did not intend" to make an application for both TFC and 30 Hours, having applied "in error" for the former. On 19 June 2019, the claimant wrote to HMRC stating that he had "mistakenly applied". Mistake or not, HMRC contends that it is clear that the claimant in fact made an application.

61. The outcome of his application was: (i) the claim for 30 Hours was unsuccessful (because his child was too young to be eligible) and (ii) the application for TFC was successful and a childcare account was opened. (The child in question, R, was born 10 January 2017. That meant R was aged 2 years and approximately 10 weeks as at 14 March 2019. Regulation 3(1) of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement)

Regulations 2002 made provision, at the relevant time, for a qualifying child being one who has either attained the age of 3 years or will attain that age within 16 weeks beginning with the day on which the declaration was made in relation to that child. That was omitted on 1 December 2022 by virtue of The Childcare (Free of Charge for Working Parents) (England) Regulations 2022.)

62. HMRC wrote to the claimant on 25 March 2019. That letter (generated electronically) detailed an award of £0 WTC and £15,517.79 CTC, of which £7,040.51 was in relation to the childcare element of WTC. The period for which this award was made was 6 April 2018 to 19 March 2019.

63. On 11 December 2020 HMRC issued its decision made on 9 December 2020 under s.18 TCA 2002. The decision detailed an entitlement to £0 WTC and £10,936.78 CTC, of which £2,459.50 was in relation to the childcare element of WTC. The entitlement period was 6 April 2018 to 19 March 2019. That decision is the subject of Appeal 1.

64. On 8 and 9 August 2019 the claimant and his wife attempted to make a fresh claim for tax credits. These attempts were made via webchat and telephone. However, he was prevented from claiming tax credits because he lived in an area where Universal Credit had been rolled out. He said that HMRC was wrong to stop him making a claim. Although it appears to be common ground that he would ordinarily have been prevented from making a claim for tax credits, he argues that he could claim tax credits because his claim fell within a statutory exclusion to the general prohibition of new claims. That decision is the subject of Appeal 2.

The TFC Scheme

65. The TFC scheme was introduced by the 2014 Act and aimed to provide financial support to help working families with the cost of childcare. It also sought to assist those with responsibility for children to take up paid work or to increase their paid work when they may have been previously deterred from doing so owing to the cost of childcare.

66. Under the TFC scheme, the Government makes a top-up payment of £2 for every £8 paid towards childcare, up to a maximum of £2,000 per child, per year (£4,000 if the child is disabled). Those payments are made into a so-called "childcare account". A person is required to make a declaration of eligibility when first applying to open a childcare account. Further declarations must then be made thereafter (known as reconfirming declarations) to reconfirm entitlement to support, see s.17(1) and (2).

Appeal 1

67. The issues which arise for consideration as part of Appeal 1 are:

(a) the declaration question: did the claimant make a "declaration of eligibility" for the purposes of s.30 of the 2014 Act?

(b) the validity question: if so, was it a "valid declaration of eligibility"? In this regard, the Upper Tribunal would need to consider whether the "validity" requirement was necessarily met in circumstances where HMRC was evidently satisfied that the claimant was eligible because his application was successful and a childcare account was opened or, alternatively, whether it must determine the claimant's eligibility for itself.

(c) the "other relevant childcare support" question: if it must consider eligibility for itself, was the claimant in fact ineligible because he was in receipt of "other relevant childcare support" at the relevant time?

(d) the ceasing to have effect argument: did s.30 cease to have effect before the claimant made a "declaration of eligibility"?

The Legal Framework

68. In summary:

(a) by ss.30(2)-(3), where: (1) a person makes a "valid declaration of eligibility for an entitlement period"; (2) an award of tax credit has been made to that

person and (3) the award is for a period that includes the "relevant day", the award of tax credit terminates "immediately before the relevant day"

(b) the phrase "relevant day" is defined in s.30(1) as the first day of the "entitlement period" or, if later, the day on which the declaration of eligibility for the entitlement period was made

(c) by s.5(1) the length of the "entitlement period" is 3 months, subject to any regulations altering that length

(d) by s.5(3)(a) regulations may make provision for determining when "entitlement periods" are to begin or end. Regulation 4(1) of the Childcare Payments Regulations 2015 ("the 2015 Regulations") provides that a "person's first entitlement period begins on the day on which HMRC confirm that the person is an eligible person for the entitlement period"

(e) by s.30(11) if a person makes a declaration of eligibility for an entitlement period and "at any time after the relevant day HMRC determine that the declaration was not valid", that "does not affect anything done by virtue of this section as a result of the making of the declaration".

69. Applying these provisions to the facts of this appeal, if a "valid declaration of eligibility" was made:

(a) the day on which the declaration was made was 14 March 2019. This was the claimant's first application.

(b) HMRC granted the application to open a childcare account and the entitlement period commenced on 20 March 2019. This was confirmed to the claimant via the online childcare services portal.

(c) the "relevant day" was 20 March 2019.

70. In terms of the application of s.30 to the facts of this case, it is common ground that: (1) an award of tax credits had been made to the claimant in respect of the 2018/2019 tax year (this was an award made under s.14 TCA 2002) and (2) the award included the "relevant day" (i.e. 20 March 2019). The sole question for the purposes of s.30 is therefore whether the claimant made a "valid declaration of eligibility for an entitlement period", which gives rise to two sub-issues: (1) did he make a "declaration of eligibility" and (2) if so, was it "valid"?

71. By s.4(1) of the 2014 Act, a "declaration of eligibility" is "a statement made by a person for an entitlement period which states that the person is an eligible person for the entitlement period".

72. A "declaration of eligibility" is "valid" (pursuant to s.4(2)) if: (1) "HMRC are satisfied that the person is an eligible person for the entitlement period", (2) no other person holds or is seeking to hold a childcare account in relation to a relevant child and (3) the declaration is made in accordance with the requirements of the relevant regulations. The 2015 Regulations contain requirements for making declarations. These include, at regulation 22, a requirement that declarations are (ordinarily) made using electronic communications.

73. In terms of s.4(2), it appears to be common ground that, if the claimant made a "declaration of eligibility", then no other person held a relevant childcare account and it was made in accordance with the relevant requirements. Accordingly, the only validity question is whether "HMRC [was] satisfied that the person is an eligible person for the entitlement period" (in accordance with s.4(2)(a)).

74. In relation to that question, by way of summary:

(a) by s.3(1), a person is an "eligible person for an entitlement period" if he meets the conditions of eligibility in ss.6 to 13

(b) the conditions include, at s.13(1)(a), that "no other relevant childcare support is payable to the person in respect of any relevant period". "Relevant period" is defined at s.13(4) as a period which (a) "includes the date of the declaration", (b) "includes the whole or any part of the entitlement period for which the declaration is made", or (c) "falls within that entitlement period". By s.13(5), in the case of a declaration of eligibility made for the purposes of opening a childcare account, the "entitlement period" for which the declaration is made is to be read as a reference to the period of 3 months beginning with the date of the declaration. (In the instant case, the claimant was making a declaration of eligibility for the purposes of opening a childcare account. In those circumstances, the date of the first entitlement period will not be known until the application is successful and therefore the Act deems a three month period, commencing from the date of the declaration.)

(c) the phrase "other relevant childcare support" is defined at s.13(2) as "any payments towards the costs of childcare which are made out of funds provided by a national authority…"

(d) the term "national authority" is defined at s.13(3) as: (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975 ("the MCA 1975")), (b) the Scottish Ministers (c) the Welsh Ministers (d) a Northern Ireland department.

The declaration question

75. First and foremost, HMRC says that the Tribunal's factual findings dispose of this part of the appeal.

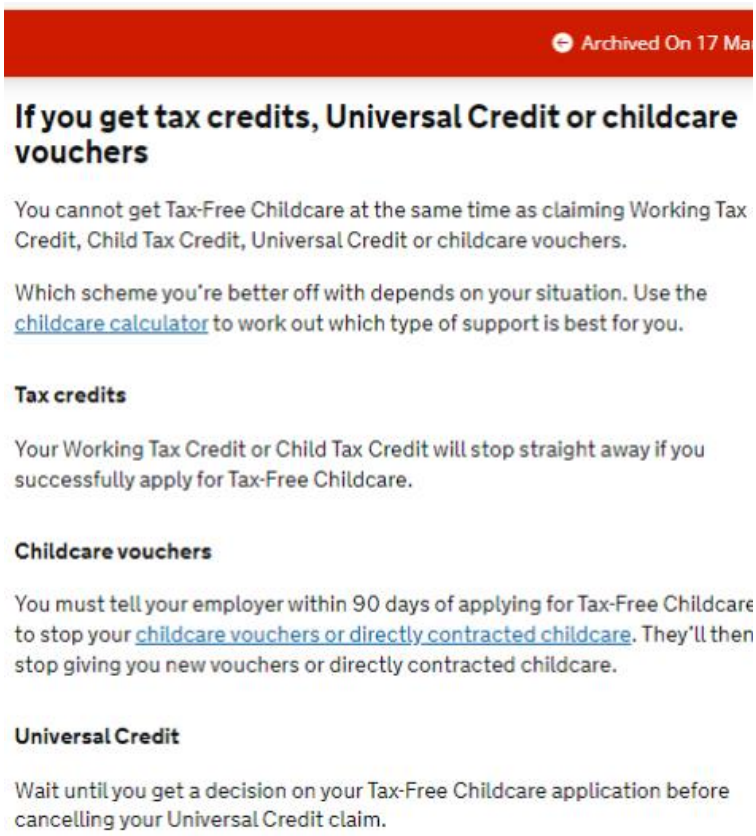
76. The Tribunal found that the claimant had made a valid declaration of eligibility for an entitlement period in respect of TFC. Indeed, that is apparent from the fact that HMRC was issued with an electronic notice sent for the purposes of informing it of such a declaration. The Tribunal stated that in making that application the claimant "…would have had to take positive action by completing the various fields and confirming, for example, that he and his wife were working and that they met the requirements for earnings". If he had

not made a declaration confirming his eligibility, HMRC would not have considered (and granted) his application to open a childcare account.

77. The Tribunal was right to make the findings of fact which it did regarding the application process and, unsurprisingly, the claimant does not challenge them (nor could he).

78. In any event, any doubt about the correctness of the Tribunal's findings can be settled by reference to the "gov.uk" archived website at https://webarchive.nationalarchives.gov.uk/ukgwa/20190317223446/https:/www.gov.uk/tax-free-childcare which contained the portal which the claimant would have used to make his application:

(a) the online portal for applying for TFC explained under the heading "Check if you're eligible for Tax-Free Childcare" (the boxes appear side by side in the original, but I have placed them one after the other for ease of reference):



Archived On 17 Ma

If you get tax credits, Universal Credit or childcare vouchers

You cannot get Tax-Free Childcare at the same time as claiming Working Tax Credit, Child Tax Credit, Universal Credit or childcare vouchers.

Which scheme you're better off with depends on your situation. Use the childcare calculator to work out which type of support is best for you.

Tax credits

Your Working Tax Credit or Child Tax Credit will stop straight away if you successfully apply for Tax-Free Childcare.

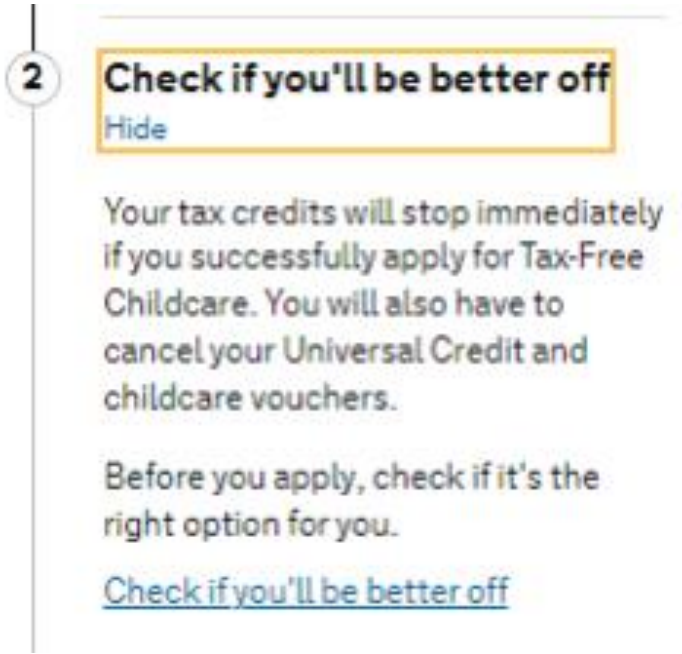
Childcare vouchers

You must tell your employer within 90 days of applying for Tax-Free Childcare to stop your childcare vouchers or directly contracted childcare. They'll then stop giving you new vouchers or directly contracted childcare.

Universal Credit

Wait until you get a decision on your Tax-Free Childcare application before cancelling your Universal Credit claim.

(b) the portal then had a section entitled "Check if you'll be better off" which warned that tax credits would stop immediately if a successful application for TFC was made:



2

Check if you'll be better off

Hide

Your tax credits will stop immediately if you successfully apply for Tax-Free Childcare. You will also have to cancel your Universal Credit and childcare vouchers.

Before you apply, check if it's the right option for you.

Check if you'll be better off

(c) there was then a link to a calculator to allow individuals to enter their circumstances, including whether they were in receipt of tax credits, their income, children and childcare costs.

(d) under the heading "Apply for Tax-free Childcare", the portal explained that there was "one application for [TFC] and [30 Hours]. As part of your application, you will find out if you can get both". You could apply for both TFC and 30 Hours or just 30 Hours. There was then a link to allow applications to be made via the "Government Gateway".

(e) the pages in relation to 30 Hours explained that it could be obtained "at the same time as claiming … tax credits … or [TFC]":

> You can get 30 hours free childcare at the same time as claiming Universal Credit, tax credits, childcare vouchers or Tax-Free Childcare.

(f) the 30 Hours pages also explained the relevant eligibility requirements regarding the age of the child:

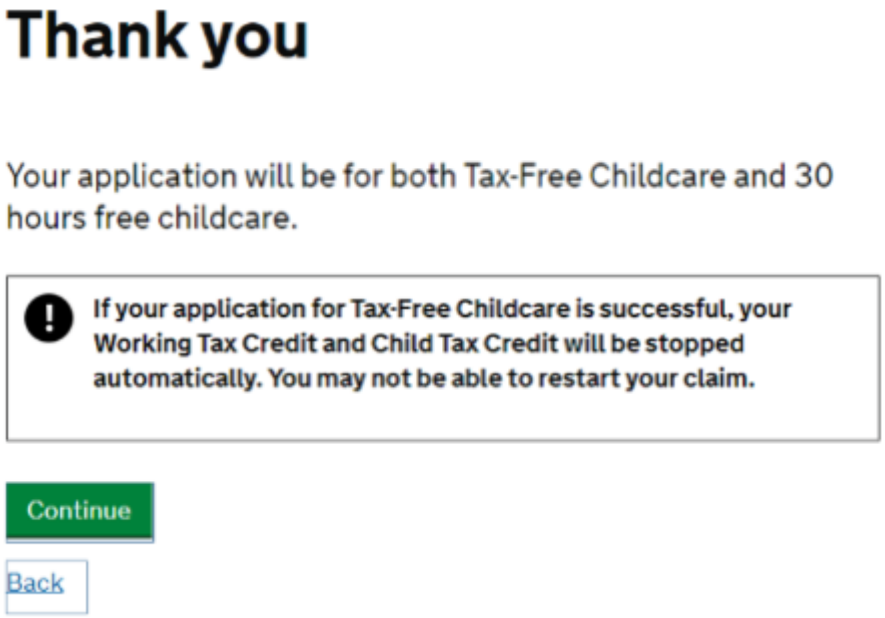
When to apply

You can apply from when your child is 2 years and 36 weeks old.

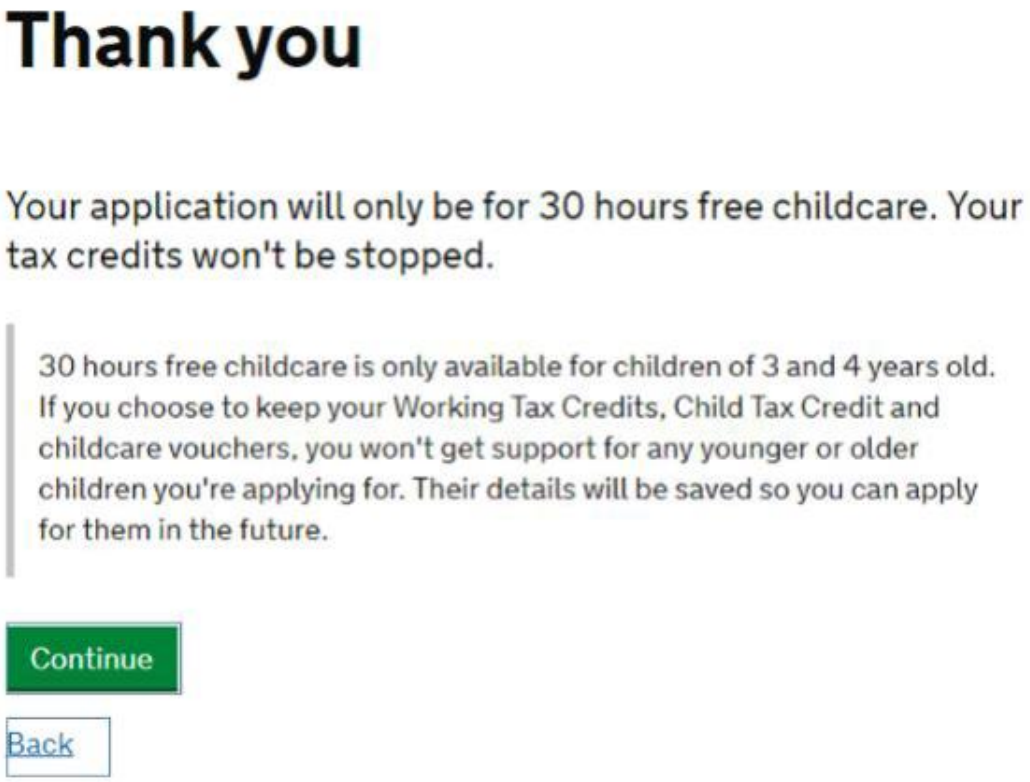
When your child turns 3	When they can get 30 hours from	Recommended time to apply
1 September to 31 December	1 January	15 October to 30 November
1 January to 31 March	1 April	15 January to 28 February
1 April to 31 August	1 September	15 June to 31 July

(https://webarchive.nationalarchives.gov.uk/ukgwa/20190321044737/https://www.gov.uk/apply-30-hours-free-childcare)

(g) during the application process itself, the claimant would have seen at least one warning explaining that any WTC or CTC would cease automatically following a successful application for TFC. During the application process, when made aware that he could not claim 30 Hours, he would have been asked if he wished to continue with his TFC application and he must have indicated yes. A screenshot from the electronic application in 2018 in respect of applications for 30 Hours and TFC shows one such warning:



(h) if the application was for 30 Hours only (for which he was ineligible), an applicant would be told that his tax credits would not be affected:



(i) having provided all the necessary information, the applicant would see a section headed "Declaration", containing the message: "By continuing you confirm that the details you have given are correct and complete". To proceed, the individual would need to press "Accept and send".

79. In terms of the application, the claimant pressed the "Accept and send" button on the declaration page and which caused HMRC to receive an electronic notification that he had made a declaration of eligibility to TFC. An electronic record of this electronic notification was set out in the submission, but I have not reproduced it here since it reveals the names of the claimant and his wife and their address.

80. The claimant argues that, notwithstanding the fact that he made an application for TFC, he did not make a "declaration of eligibility" because he did not "intend" to do so. This argument is without merit. Whether he intended (subjectively or with the benefit of hindsight) to apply for TFC and to make a declaration of eligibility, he did in fact make such a declaration when he clicked "Accept and send" under the heading "Declaration". He did this notwithstanding

the warning(s) he would have seen about the impact his actions would have on his tax credits. It cannot be right that someone who, in fact, makes a declaration must be treated, for the purposes of the 2014 Act, as not having made the declaration because they pressed a button by mistake. If HMRC was required to interrogate an individual's declaration and effectively ask them, after they have made a declaration, "are you really sure that you meant to apply?" then the legislative framework would become unworkable and impractical. This is particularly so where Parliament has decided that declarations should (in general) be made electronically.

The validity question

81. By s.4(2)(a), the validity question asks whether "HMRC [was] satisfied that the person is an eligible person for the entitlement period". The answer is clear: HMRC was satisfied because the claimant's application was granted. That was the Tribunal's finding of fact as to HMRC's position. If HMRC was not satisfied that he was eligible, then his application would not have been successful.

82. Whilst he advanced legal arguments regarding his eligibility, it is not necessary for the Upper Tribunal to opine on those arguments because:

(a) Parliament has decided that the focus should be on HMRC's views as to eligibility (rather than considering eligibility objectively).

(b) in this regard, the position is similar to that in ***HMRC v Secretary of State for Work and Pensions and GS*** [2023] UKUT 9 (AAC) where the Upper Tribunal considered a regulation containing a requirement that the Secretary of State "is satisfied that the claimant meets [the relevant conditions]" (see [17]). The Upper Tribunal explained that this meant consideration of whether, as a matter of fact, the Secretary of State was so satisfied was required. It was not necessary to consider whether the Secretary of State should properly have been satisfied [25]:

> "The language of [the relevant regulation], particularly the statutory focus of it applying where a claim 'is' made and

> where the Secretary of State 'is' satisfied, is the language of fact. The language used is not concerned with any wider issue of whether the claim was properly made or the Secretary of State was properly satisfied that the specified basic conditions were met. Had that been the intention then such language could have been used…"

That reasoning applies equally to s.4(2)(a) of the 2014 Act.

(c) if there was any room for doubt about this, HMRC's interpretation is consistent with s.30(11) of the 2014 Act which confirms that HMRC can, in due course, change its view about an individual's eligibility, but that any such change does not impact anything which occurred by reason of s.30 (in other words, a change in view as to eligibility does not impact a prior termination of tax credits).

83. It being clear that HMRC was satisfied that the claimant was an eligible person (and the Tribunal having made a finding of fact in this regard), the requirements of s.4(2) were met and the "eligibility declaration" was "valid". Even so, the Tribunal said it would "nevertheless" consider the question of eligibility "given that the question had been raised". HMRC therefore does the same in the skeleton argument even though, as matter of law, the issue does not arise.

The "other relevant childcare support" question

84. The claimant argues that he was not eligible because he was in receipt of "other relevant childcare support" during a "relevant period". In this regard, he relies upon his award of the childcare element of WTC.

85. His analysis is flawed because the childcare element of WTC is not "other relevant childcare support". First, this is because the childcare element of WTC, and indeed tax credits as a whole, are provided by HMRC and not a Minister. It therefore falls outside the scope of the definition of "other relevant childcare support":

(a) “other relevant childcare support” is defined as “any payments towards the costs of childcare which are made out of funds provided by a national authority…”

(b) HMRC is not a “national authority” as defined by s.13(3) of the 2014 Act. HMRC was established under the Commissioners for Revenue and Customs Act 2005 (“the 2005 Act”). By s.1 of that Act the Commissioners were appointed by Letters Patent. By s.2 they Commissioners may appoint staff, known as Officers. Such appointments may be made only with the approval of the Minister for the Civil Service as to terms and conditions of service (s.2(5)). A new section was inserted into the MCA 1975 Act at s.5A by s.8 of the 2005 Act. This section provided that the Commissioners and their Officers are to be treated as Ministers of Crown, but only for the purposes of s.1(1)(a) and (c) of the MCA 1975, namely the power of the Crown to make an Order in Council: (1) providing for the transfer to any Minister of the Crown of any functions previously exercisable by another Minister of the Crown and (2) directing that functions of any Minister of the Crown shall be exercisable concurrently with another Minister of the Crown, or shall cease to be so exercisable. In other words, s.5A of the MCA 1975 gives the Crown power to transfer certain functions to and from HMRC, but that power does not make HMRC a Minister of the Crown and it clearly cannot affect tax credits because s.5A(3) prohibits the transfer of certain of HMRC’s functions, including “the payment and management of tax credits for which the Commissioners of Inland Revenue were responsible before the commencement of this section”.

(c) HMRC’s non-ministerial position is also clear from the Explanatory Notes to the 2005 Act:

> *“Section 8: Power to transfer functions*
> 57. The Act establishes HMRC as a non-Ministerial department. It would therefore not ordinarily be covered by the provisions of the Ministers of the Crown Act 1975, which allows the transfer of functions between Ministerial departments by Order in Council, thereby removing the need for primary legislation to achieve this.

> 58. This section amends the Ministers of the Crown Act 1975 to allow HMRC to be treated as a Ministerial department solely for the purposes of transferring functions under that Act. Functions may therefore be transferred into or out of HMRC by Order in Council subject to negative resolution procedures …
>
> 61. Subsection (3) operates to prevent the transfer from HMRC of any of the functions specified in section 5(1) of the Act, including the collection and management of revenues (i.e. taxes, duties and contributions) and the payment and management of tax credits …"

(d) tax credits are "made out of funds provided by" HMRC. This is clear from s.2 of the TCA 2002:

> "The Commissioners for Her Majesty's Revenue and Customs shall be responsible for the payment and management of tax credits".

Also, by s.28(1) TCA 2002, tax credit overpayments are to be paid to HMRC and by s.29(3) proceedings for recovery are generally taken by HMRC. Furthermore, it falls to HMRC to operate the penalty regime on tax credits. HMRC's involvement therefore goes far beyond being a mere conduit for disbursing funds.

(e) consistent with the above, the Explanatory Notes accompanying s.13 of the 2014 Act give an example of "other relevant childcare support" which is support paid by central government and they refer to s.13 as affecting "Government childcare support":

> *Section 13: Neither the person nor his or her partner may be receiving other childcare support*
> 73. Section 13 sets out the eighth condition of eligibility. This is that the person must not be receiving certain other types of childcare support. This condition must also be met by any partner of that person. This stops a person or their partner receiving support under the scheme when they are already benefiting from other childcare support.
>
> 74. For example, a person will not meet this condition if they are receiving support under the Childcare Grant

> administered by the Student Loans Company, which provides up to 85% financial support towards students' childcare costs. However, a person will still meet this condition if they benefit from payments that are made directly to their childcare provider, such as free early years provision. Regulations may also be made to provide other exemptions from this condition.
>
> 75. Subsections (1) and (4) stipulate that, on the date that they make a declaration of eligibility, the person must not be entitled to receive other forms of Government childcare support, or have made a claim to such support, for a period which includes the date of declaration or coincides or overlaps with the entitlement period for which the declaration is made …".

By regulation 45(3) of the Education (Student Support) Regulations 2011, the childcare grant is not available if the person has elected to receive the childcare element of WTC. This reflects an overarching policy intent in ensuring parents only receive support from one scheme and allowing parents the ability to choose which scheme best meets their circumstances at any given time.

(f) also consistent (but perhaps of more limited assistance given that it HMRC's own guidance), HMRC's manual states that tax credit awards are not "other relevant childcare support":

> *"TFC12150 - Other customers who cannot make a TFC declaration: receiving other childcare support*
> *Childcare Payments Act 2014, section 13*
> On the date of their declaration to TFC, a person must not be receiving any other relevant childcare support at any point during the entitlement period (including the date of the declaration), and there must be no claim or intention to make a claim that would result in any other relevant childcare support becoming payable to the person in the entitlement period. This does not apply to tax credit awards (see TFC 40100 – Termination of a Tax Credit claim)".

86. The claimant argues that, notwithstanding the above, the Treasury "provides" child tax credits because the Treasury has "ultimate responsibility for the design and policy decision-making of the system". Even if that is right (notwithstanding s.2 of the TCA 2002 explaining that the Commissioners are

responsible for the management of tax credits), it would not be relevant because s.13(2) of the 2014 Act is not concerned with policy making, it is concerned with the entity who provides the funds out of which payments are made. That is HMRC.

87. The claimant also refers to s.65(1) of the TCA 2002, but this does not assist him. By s.65(1) of the TCA 2002

> "Any power to make regulations under section 3, 7 to 13, 42 and 43, and any power to make regulations under this Act prescribing a rate of interest, is exercisable by the Treasury".

"[T]he determination of the maximum rate" of the childcare element of WTC is provided for at s.12 of the TCA 2002 and at regulation 13 of the Working Tax Credit (Entitlement and Maximum Rate Regulations) 2002. These provisions do not make Treasury responsible for the payment or management of tax credits – that responsibility falls to HMRC.

88. In terms of the statutory purpose of s.13, by ss.11-13 Parliament has enacted provisions which are intended to stop parents getting double government support for their childcare costs (s.11 excludes recipients of Universal Credit, s.12 excludes "relevant childcare schemes" and s.13 excludes recipients of "other relevant childcare support" (e.g. childcare vouchers)). Those provisions do not address tax credits because persons on tax credits are not (and are not supposed to be) ineligible. Instead, the mechanism for stopping double government support in relation to tax credits is the auto-stop of tax credits applicable when a valid declaration for TFC is made (i.e. s.30).

89. Second (and consistent with the first point), as a matter of construction, Parliament must have intended tax credits to fall outside the scope of "other relevant childcare support" because:

(a) s.30 expressly envisages that someone can make a "declaration of eligibility" at a time when an award of a tax credit has been made. If the claimant is right, a person with a childcare element of WTC can never apply for TFC and

there is therefore no need for a statutory mechanism to terminate the tax credit award

(b) if he is right, a recipient of the childcare element of WTC would necessarily be ineligible for TFC and he would be unable to make himself eligible because there is no mechanism voluntarily to terminate a tax credit claim mid-year

(c) prior to the introduction of Universal Credit, legislation envisaged that individuals might choose to switch between tax credits and TFC. Indeed, there were tax credit claimants in receipt of very low awards who were better off on TFC. Following a change in circumstances in which, for example, their income dropped considerably, the position would revert to tax credits being the most beneficial option.

90. At paragraph 28 of the statement of reasons, the Tribunal appears to have been confused regarding the date of the declaration (referring to May 2019, rather than March 2019). HMRC therefore does not rely upon that part of the Tribunal's reasoning (which is in any event obiter).

The ceasing to have effect argument

91. Finally, the claimant argues that even if he made a "declaration of eligibility", s.30 of the 2014 Act had ceased to have effect. This is not correct.

92. By s.30(13) the section "ceases to have effect when the repeal of Part 1 of the Tax Credits Act 2002 made by Schedule 14 to the Welfare Reform Act 2012 has fully come into force".

93. It cannot be said that the repeal of the TCA 2002 has "fully come into force" when applicants (including the claimant until 19 March 2019) continue to receive tax credits where such credits are governed by Part 1 of the TCA 2002.

94. Whilst Article 2 of the Commencement No.32 Order provides that the "day appointed for the coming into force of section 33(1)(f) of the Act (abolition of tax credits) and the repeal of Part 1 of the 2002 Act (but not Schedule 1 or 3), by

Part 1 of Schedule 14 to the Act, is 1st February 2019", that provision did not stop Part 1 of the TCA 2002 continuing to apply to the claimant (amongst many others) after 1 February 2019. That is because Article 3 of the Order contains savings which treat the provisions listed in Article 2 as not coming into force in certain cases including at (2), "the case of an award of a tax credit that has effect for a period that includes 31st January 2019." That was the position in the present case: the tax credit award which terminated by operation of s.30 had been in place since 6 April 2018 and did not terminate until 19 March 2019.

Appeal 2

95. The issues which arise for consideration under Appeal 2 are:

(a) comity: should the Upper Tribunal follow ***RS (No.2)*** in the interests of comity?

(b) the "for the next tax year" argument: in August 2019, when the claimant was no longer in receipt of tax credits (his 2018/2019 tax credit award having terminated on 19 March 2019, subject to Appeal 1), could he make a claim for "that tax credit for the next tax year"?

The Legal Framework

96. At the relevant time (August 2019), Article 7(1) of the No.23 Order stated that, except as provided by paragraphs (2)-(6), a person may not claim a tax credit on any date where, if that person claimed Universal Credit on that date, the provisions of the Welfare Reform Act 2012 listed in Schedule 2 to the No. 9 Order would come into force under Article 3(1) and (2)(a) to (c) of the No.23 Order in relation to that claim for Universal Credit.

97. For the claimant's postcode, legacy benefit claims were stopped from 25 July 2018. It follows that, from 25 July 2018, he was prevented from claiming tax credits unless he came within one of the exceptions at Article 7(2)-(6). Financial support was available to him in the form of Universal Credit, but he has not made a claim to Universal Credit.

98. By Article 7(6) of the No.23 Order, the general prohibition against claims for tax credits does not apply where "a person has or had, or persons have or had, an award of child tax credit or working tax credit in respect of a tax year and that person or those persons makes or make (or is or are treated as making) a claim for that tax credit for the next tax year".

RS (No.2)

99. In ***RS (No.2)*** the Upper Tribunal considered the application of Article 7(6) of the No.23 Order to an individual, RS, who had a tax credits award in 2018/2019 and was treated as having claimed, and an initial decision was made awarding, tax credits in respect of 2019/2020. RS then applied for TFC in June 2019, which brought the tax credits award to an end pursuant to s.30 of the 2014 Act. On 1 August 2019, RS attempted to claim tax credits. The Upper Tribunal held that RS could not do so because a claim made part way through a tax year could not be a claim "for the next tax year". This was because:

(a) a tax year runs from 6 April in one calendar year to 5 April in the following year (s.48 of the TCA 2002, which applies to relevant subordinate legislation by virtue of s.11 of the Interpretation Act 1978)

(b) Article 7(6) of the No.23 Order makes a distinction between the previous award (which must have been made "in respect of a tax year") and the new claim (which must have been "for the next tax year")

(c) the phrase "for the next tax year" involves a reference to the next tax year as a whole, from 6 April in one year to 5 April in the following year, and not to a part tax year. This is consistent with both the statutory wording and the underlying policy intent

(d) as to the wording, if the draftsman had wanted to include within the scope of Article 7(6) tax credits claims which were made in year, and for part of a current tax year, it would have been straightforward to do so (e.g. "a claim for that tax credit for the next tax year or part of that tax year", cf. ss. 3(1) and 17 of the TCA 2002)

(e) as for the policy intent, the purposes of the Welfare Reform Act 2012 include the replacement of tax credits (and other means-tested legacy benefits) by Universal Credit. Transitional protection typically has the effect that a claimant remains on an "old" benefit until that person ceases to satisfy the relevant entitlement conditions, at which point the individual must make a claim for the "new" benefit (or not at all). It is consistent with this approach that transitional protection ceased (and so the option of claiming the "old" benefit disappeared) once any entitlement to tax credits had terminated.

100. In ***RS (No.2)*** the Upper Tribunal did not need to decide whether Article 7(6) was limited to renewal claims (as had been argued by HMRC). HMRC remains of the view that Article 7(6) is limited to renewal claims, but that issue also does not need to be decided here.

Comity

101. The claimant accepted that, if ***RS (No.2)*** is followed, then Appeal 2 must fail. HMRC's position is that the decision must be followed not only because it is right, but also as a matter of comity.

102. As was explained in ***Dorset Healthcare NHS Trust v MH*** [2009] UKUT 4 at [37], as relied upon in the aforementioned ***DB***:

> "A single judge in the interests of comity and to avoid confusion on questions of legal principle normally follows the decisions of other single judges. It is recognised however that a slavish adherence to this could lead to the perpetuation of error and he is not bound to do so".

103. The Upper Tribunal in ***RS (No.2)*** considered the same arguments which are under consideration in Appeal 2 and therefore, in the interests of comity, it should follow that decision.

The "for the next tax year" argument

104. In any event, the Upper Tribunal was right in ***RS (No.2).*** To make a claim "for the next tax year" it is necessary to claim for the whole tax year. It is not enough to make a claim in respect of just part of a tax year (as the claimant did) and if that had been Parliament's intention it would have said so.

105. The claimant refers to s.5 of the TCA 2002, which concerns the period of awards, but that does not assist him (as was said in ***RS (No.2)*** at [55]). The provision provides for tax credit claims to be made in the middle of a tax year (s.5(2)), but that says nothing about the meaning of "for the next tax year" in Article 7(6) of the No.23 Order. In any event, contrary to the claimant's argument, it is clear from s.5 that claims are for a period (either the whole tax year or the period between the claim being made and the end of that tax year (i.e. the current tax year)).

106. He also refers to the TCR 2002, but those regulations do not assist his argument as it is a different statutory provision using different statutory language.

Conclusion

107. For these reasons, the appeals should be dismissed.

Discussion

Appeal 1

The declaration question

108. I can deal with this point in short order. The Tribunal found in paragraph 15 of its statement of reasons that

> " ... the appellant had made his declaration of eligibility when he completed the online claims process for TFC and 30 hours. Using its knowledge and expertise, the Tribunal considered that as part of this process he would have had to take positive action by completing the various fields and confirming, for example, that he and his wife were working and that they met the requirements for earnings. The Tribunal considered that this amounted to a declaration, which is defined by the legislation as a statement made by a person for an entitlement period

> which states that the person is an eligible person for the entitlement period."

109. There was no appeal against that finding of fact (nor could there be). That finding is determinative of the point.

110. In any event, were there any doubt about the correctness of the Tribunal's findings, the position is settled by reference to the "gov.uk" archived website which contained the portal which the claimant would have used to make his application and which sets out at some length the steps which would have to be taken to complete the online application, which I have set out at some length in paragraph 78 above.

111. At the culmination of the process, the claimant pressed the "Accept and send" button on the declaration page and that caused HMRC to receive an electronic notification that he had made a declaration of eligibility to TFC. He sought to argue that, although he made an application for TFC, he did not make a "declaration of eligibility" because he did not "intend" to do so. I do not accept that submission.

112. The reality is that he did in fact make such a declaration when he clicked "Accept and send" under the heading "Declaration". That was notwithstanding the warning(s) which he would have seen about the impact which his actions would have on his tax credits. I do not accept that the warnings in the process should not be taken into account in determining whether a valid declaration of eligibility was made. In short, whether or not the claimant intended (subjectively or with the benefit of hindsight) to apply for TFC and to make a declaration of eligibility, he did in fact make a declaration of eligibility. The claimant sought to rely on the dictionary definition of a "declaration", but that does not assist him. On the contrary, it undermines his case. The dictionary definition of "declaration" is "an official announcement or statement" or a "firm, emphatic statement which shows that you have no doubts about what you are saying". That is precisely what the claimant was doing when he pressed "accept and send".

113. It is not correct that a claimant who, as a matter of fact, does make a declaration can or should be treated, for the purposes of the 2014 Act, as *not* having made the declaration because he pressed a button by mistake. A mistaken declaration is nonetheless a declaration. HMRC is not required to interrogate an individual's declaration and effectively ask him, after he has made a declaration, "are you *really* sure that you meant to apply?". That inquiry would be required in every case. The legislative framework would on that hypothesis become unworkable and impractical, all the more so where Parliament has decided that declarations should (in general) be made electronically.

The validity question

114. Again I can take this point shortly.

115. By s.4(2)(a) of the 2014 Act

> "A declaration of eligibility made by a person for an entitlement period is "valid" for the purposes of this Act if—
>
> (a) HMRC [is] satisfied that the person is an eligible person for the entitlement period".

HMRC was clearly so satisfied because the claimant's application was granted. That was the Tribunal's finding of fact as to HMRC's position. If HMRC was not satisfied that he was eligible, his application would not have been successful.

116. In this respect, the position is very similar to that in ***HMRC v Secretary of State for Work and Pensions and GS*** in which I considered a regulation which also contained a requirement that the Secretary of State "is satisfied that the claimant meets [the relevant conditions]" (see [17]). I explained that that meant considering whether, as a matter of fact, the Secretary of State *was* so satisfied. It was not necessary to consider whether the Secretary of State should *properly* have been satisfied:

> "25. The language of [the relevant regulation], particularly the statutory focus of it applying where a claim 'is' made and where the Secretary of State 'is' satisfied, is the language of fact. The language used is not concerned with any wider issue of whether the claim was properly made or the Secretary of State was properly satisfied that the specified basic conditions were met. Had that been the intention then such language could have been used…
>
> 26. Put shortly, the relevant issue for the Tribunal was limited to whether the Secretary of State was (i.e. in fact) satisfied, and not whether he was entitled to be satisfied, that the [relevant] conditions ... were met."

117. In the course of my decision I also referred to the decision of the three-judge panel (of whom I was one) in the case ***of HMRC v (1) Secretary of State for Work and Pensions (2) SA (TC)*** [2022] UKUT 350 (AAC) ("***SA***") in which we said

> "31. Regulation 8(2) of the UC TP Regs provides that where regulation 8 applies, a tax credit award is "to terminate by virtue of this regulation." In other words, the tax credit award is to cease by operation of law if regulation 8 applies. Whether regulation 8 applied at the material time in our judgment involved no more than two questions of fact, which had to be determined on relevant evidence. First, whether a claim for universal credit had been made. A claim for universal credit plainly had been made in this case and the same was and is not disputed. Second, whether the Secretary of State was in fact satisfied that the claimant met the basic conditions specified in s.4(1)(a) to (d) of the 2012 Act. That factual question in our judgment was answered affirmatively by the stop notice which was received by HMRC from the Secretary of State on HMRC on 25 June
> 2018. Again, even though the stop notice was not before the FtT or us (though we set out below the information provided to us concerning how these stop notices were generated), the claimant does not dispute that the stop notice in fact concerned him and stated that the Secretary of State was satisfied that he met the basic conditions specified in s. 4(1)(a) to (d) of the 2012 Act. Once these two questions of fact had been determined, the only remaining question for the FtT arising under regulations 8 and 12A of the UC TP Regs was the correct date of termination of the tax credits award under regulation 8(2) of the UC TP Regs.

> 32. The language of regulation 8(1) of the UC TP Regs, particularly the statutory focus of it applying where a claim 'is' made and where the Secretary of State 'is' satisfied, is the language of fact. The language used is not concerned with any wider issue of whether the claim was properly made or the Secretary of State was properly satisfied that the specified basic conditions were met. Had that been the intention then such language could have been used. Perhaps more importantly, however, there is no sound basis for reading in language such as "properly satisfied" by necessary implication when to do so would involve HMRC trespassing on the decision making functions for universal credit for which it has no statutory authority otherwise conferred on it."

118. I am satisfied that that reasoning applies equally to s.4(2)(a) of the 2014 Act.

119. Moreover, HMRC's position is consistent with s.30(11) of the 2014 Act which confirms that HMRC can, in due course, change its view about an individual's eligibility, but that any such change does not impact anything which occurred by reason of s.30 (in other words, a change in its view as to eligibility does *not* impact a prior termination of tax credits).

120. HMRC was therefore satisfied as a matter of fact that the claimant was an eligible person; thus the requirements of s.4(2)(a) were met and the declaration of eligibility was valid. The correctness of the decision in ***Hinchy*** (as to which see my comments in ***MW v Secretary of State for Work and Pensions (ESA)*** [2023] UKUT (AAC) 50 at [25]-[38]) does not therefore arise for determination.

The "other relevant childcare support" argument

121. The claimant sought to argue that he was not eligible because he was in receipt of "other relevant childcare support" during a "relevant period". In that regard he relied upon his award of the childcare element of WTC. Although the point does not in fact arise for decision in the light of what I have said above, like the Tribunal I will consider it for the sake of completeness.

122. In that respect I accept the submission of Mr Pritchard for HMRC that that analysis is flawed because the childcare element of WTC is not "other relevant childcare support". "Other relevant childcare support" is defined as "any payments towards the costs of childcare which are made out of funds provided by a national authority…".

123. In the first place, the childcare element of WTC, and indeed tax credits as a whole, are provided by HMRC and not a Minister. It therefore falls outside the scope of the definition of "other relevant childcare support". In my judgment, HMRC is not a "national authority" as defined by s.13(3) of the 2014 Act for the reasons set out by Mr Pritchard, which I have set out in paragraph 85(b) and (c) above, which I do not need to repeat here. In summary, whilst S.5A of the MCA 1975 gives the Crown power to transfer certain functions to and from HMRC, that power does not make HMRC a Minister of the Crown and it clearly cannot affect tax credits because s.5A(3) specifically prohibits the transfer of certain of HMRC's functions, including "the payment and management of tax credits for which the Commissioners of Inland Revenue were responsible before the commencement of this section".

124. Mr Ellinson accepted that HMRC does not fall within the definition of a "Minister of the Crown", but argued that tax credits (including the childcare element) are still support "provided" by a Minister of the Crown, as the definition included the Treasury. He accepted that HMRC administers the tax credits system, but that the Treasury still had ultimate responsibility for the design and policy decision-making of the system. That was exemplified by the fact that all substantive regulations for tax credits were made by the Treasury and not HMRC under s.65(1) of the TCA 2002. I do not accept that argument.

125. What is clear from s.2 of the TCA 2002 is that it is HMRC which is responsible for the payment and management of tax credits. S.28 goes on to provide that

> **"Overpayments**
> (1) Where the amount of a tax credit paid for a tax year to a person or persons exceeds the amount of the tax credit to which he is entitled, or they are jointly entitled, for the tax year (as determined in accordance with the provision made by and by virtue of sections 18 to 21C), the Commissioners may decide that the excess, or any part of it, is to be —
>
> (a) repaid to the Commissioners; or
>
> (b) treated as if it were an amount recoverable by the Secretary of State under section 71ZB of the Administration Act ..."

and by s.29

> **"Recovery of overpayments**
> (1)Where an amount is liable to be repaid or paid by a person or persons under section 28, the Board must give him, or each of them, a notice specifying the amount".

and it is HMRC which operates the penalty regime for tax credits. HMRC's involvement therefore goes far beyond being a mere conduit for disbursing funds. In short, tax credits are "made out of funds provided by" HMRC, not by the Treasury.

126. I also accept Mr Pritchard's submission which I have set out in paragraph 85(e) above that the Explanatory Notes accompanying s.13 of the 2014 Act accurately set out the position in giving an example of "other relevant childcare support" which is support paid by central government and which refer to s.13 as affecting "Government childcare support":

127. Mr Ellinson submitted that it is nevertheless the Treasury which "provides" child tax credits because it is the Treasury which has "ultimate responsibility for the design and policy decision-making of the system". That submission must fail in the light of s.2 of the TCA 2002, which makes it clear that it is HMRC which is responsible for the management of tax credits. In any event, the argument also fails because s.13(2) of the 2014 Act is not concerned with policy

making, but rather with the entity which provides the funds out of which payments are made, which is HMRC.

128. Lastly, Mr Ellinson sought to rely on the rule-making power conferred by s.65(1) of the TCA 2002, but that power is narrowly circumscribed and does not assist him. It is not accurate to say that "all substantive regulations for tax credits are made by the Treasury, and not HMRC". What s.65(1) of the TCA 2002 in fact provides is that

> "Any power to make regulations under section 3, 7 to 13, 42 and 43, and any power to make regulations under this Act prescribing a rate of interest, is exercisable by the Treasury".

Subsection (2) then provides that

> "Any other power to make regulations under this Act is exercisable by the Board".

129. Moreover, the determination of the maximum rate of the childcare element of WTC is provided for in s.12 of the TCA 2002 and in regulation 13 of the Working Tax Credit (Entitlement and Maximum Rate Regulations) 2002. Those provisions do not make Treasury responsible for the payment or management of tax credits; on the contrary, that is the responsibility of HMRC.

130. I also accept the submission made by Mr Pritchard as set out in paragraph 88 above, namely that, in terms of the statutory purpose of s.13, by ss.11-13 Parliament has enacted provisions which are intended to stop parents getting double government support for their childcare costs (s.11 excludes recipients of Universal Credit, s.12 excludes "relevant childcare schemes" and s.13 excludes recipients of "other relevant childcare support" (e.g. childcare vouchers)). The reason why those provisions do not address tax credits is because claimants on tax credits are not (and are not supposed to be) ineligible. Instead, the mechanism for stopping double government support in relation to tax credits is the automatic stop of tax credits applicable when a valid declaration for TFC is made (i.e. s.30).

131. I also accept that, consistently with the previous point, and as a matter of statutory construction, Parliament must have intended tax credits to fall outside the scope of “other relevant childcare support”.

132. That is because, as Mr Pritchard submitted, s.30 in its terms expressly envisages that a claimant can make a “declaration of eligibility” at a time when an award of a tax credit has been made. If the claimant is right, a person with a childcare element of WTC could never apply for TFC and there would therefore be no need for a statutory mechanism to terminate the tax credit award.

133. Moreover, if he is right, a recipient of the childcare element of WTC would necessarily be ineligible for TFC and would be unable to make himself eligible because there is no mechanism voluntarily to terminate a tax credit claim mid-year.

134. Finally, I am satisfied that Mr Pritchard is also correct to say that, prior to the introduction of Universal Credit, legislation envisaged that individuals might choose to switch between tax credits and TFC and that there were tax credit claimants in receipt of very low awards who were better off on TFC. Following a change in circumstances in which, for example, their income dropped considerably, the position would revert to tax credits being the most beneficial option.

The ceasing to have effect argument

135. Finally, the claimant sought to argue that, even if he made a “declaration of eligibility”, s.30 of the 2014 Act had ceased to have effect. I do not accept that argument, which involves a misinterpretation of the relevant statutory provision. What s.30(13) of the 2014 Act provides is that

> “This section ceases to have effect when the repeal of Part 1 of the Tax Credits Act 2002 made by Schedule 14 to the Welfare Reform Act 2012 has fully come into force”.

136. It cannot properly be said that the repeal of the TCA 2002 has "fully come into force" when applicants (including the claimant until 19 March 2019) *continue to receive* tax credits where such credits are governed by Part 1 of the TCA 2002.

137. Article 2 of the Commencement No.32 Order provides that

> "The day appointed for the coming into force of section 33(1)(f) of the Act (abolition of tax credits) and the repeal of Part 1 of the 2002 Act (but not Schedule 1 or 3), by Part 1 of Schedule 14 to the Act, is 1st February 2019"

138. That provision does not, however, prevent Part 1 of the TCA 2002 continuing to apply to the claimant (amongst many others) after 1 February 2019.

139. The reason for that is that Article 3(1) of the Order contains savings which treat the provisions listed in Article 2 as not coming into force in certain cases:

> "Section 33(1)(f) of the Act, and the repeal of Part 1 of the 2002 Act (but not Schedule 1 or 3) by Part 1 of Schedule 14 to the Act, shall be treated as though they had not come into force, in relation to a case as referred to in paragraph (2), (3), (4), (5) or (9).

140. Article 3(2) provides that

> "(2) The case referred to is the case of an award of a tax credit that has effect for a period that includes 31st January 2019".

141. That was precisely the position in the present case: the tax credit award which terminated by operation of s.30 of the 2014 Act had been in place since 6 April 2018 and did not terminate until 19 March 2019.

142. For the sake of completeness, I should add that I agree that the Tribunal made a slip in paragraph 29 of its statement of reasons when it said that no tax credits were payable to the claimant in respect of the relevant period, which

would be the three months beginning on 20 May 2019. The relevant period is defined in s.13(4)-(5) and in this case would include the date of declaration on 14 March 2019 and not the three months beginning on 20 May 2019. Nevertheless, that slip could not affect the outcome of the appeal and should be regarded as immaterial.

Appeal 2

143. In ***RS (No.2)*** Upper Tribunal Judge Wikeley held that

> "31. The effect of Article 7(1) is that the default position is that a person who lives in an area in which universal credit has been brought into force cannot claim tax credits (or indeed housing benefit or income support). However, this is "except as provided by paragraphs (2) to (6)." So persons who can bring themselves within one of those exceptions may still claim tax credits (or one of the other legacy benefits mentioned) ...
>
> ...
>
> 36. Paragraph (6) is the sole remaining exception. Accordingly, the claimant has to show that he falls within the terms of this exception to be eligible to maintain a claim for tax credits. Failing that, he is subject to the default rule in Article 7(1), namely that he could not claim tax credits, instead having to claim universal credit. Paragraph (6) provides thus:
>
> > (6) Paragraph (1) does not apply to a claim for a tax credit where a person has or had, or persons have or had, an award of child tax credit or working tax credit in respect of a tax year and that person or those persons makes or make (or is or are treated as making) a claim for that tax credit for the next tax year.
>
> 37. So, this exception applies if a person has, or has had, a tax credit award "in respect of a tax year" and makes a claim (or is treated as making one) for the same tax credit "for the next tax year".
>
> 38. The claimant had undoubtedly had a tax credit award for 2018/19, and so an award "in respect of a tax year", meaning that 2019/20 was necessarily "the next tax year". The question, however, was whether the claim made part

way through that year (on 1 August 2019) was one made "for the next tax year", namely 2019/20.

39. The gist of the FTT's reasoning – that the claim was indeed made for the next tax year – was contained in paragraph 13 of its statement of reasons:

> When he telephoned on 01.08.2019 the Appellant was hoping to make a claim for a tax credit for the tax year 2019/20 having had an award for the preceding tax year 2018/19. 2019/20 was the next tax year after 2018/19 in which he had an award. The Tribunal considered that the exception in Article 7(6) therefore applied.

The parties' submissions

40. In its notice of appeal to the Upper Tribunal, HMRC submitted that the benefit of Article 7(6) of the Commencement No.23 Order was confined to those cases where there was what was commonly referred to as a 'renewal claim' for tax credits. On this analysis, the claimant had gained the benefit of Article 7(6) when the final decision on his 2018/19 claim had led to him being treated as having made a further such renewal claim as from 6 April 2019 and in respect of the 2019/20 tax year (under the procedure mandated by section 17 of the Tax Credits Act 2002 and regulation 11(2) and (3) of the 2002 Regulations). However, that award for 2019/20 was later terminated and consequently the subsequent claim made on 1 August 2019 (assuming it was a valid claim) was not a renewal claim. As such, it did not fall within the scope of Article 7(6) and so the claimant was subject to the default rule in Article 7(1), meaning that he was now barred from claiming tax credits. This approach, HMRC argued, was consistent with the underlying policy intention governing renewal claims.

41. In response, the claimant's representative submitted that there was no warrant for reading Article 7(6) as being confined to renewal claims, there being no such limitation in the wording of the provision. The representative further argued that there was no reason why the policy intention could not have been to allow anyone entitled to tax credits in a previous year to continue on tax credits even when it was not strictly a renewal claim. It was further noted that Upper Tribunal Judge Mitchell's decision in *W v HMRC* [2020] UKUT 239 (AAC) did not suggest that Article 7(6) was confined to renewal claims.

42. In reply, HMRC reiterated its contention that Article 7(6) is limited to renewal claims. On that basis, it was not intended to permit a fresh claim for tax credits in circumstances where a prior award of tax credits has terminated owing to an event that required such termination (as on the facts here). HMRC submitted that to hold otherwise would be inconsistent with the policy objective that, going forward, means-tested state support for people of working age should be delivered via universal credit rather than via tax credits.

43. The parties' arguments were further developed in several later written submissions, culminating in Judge Poynter's set aside ruling.

Discussion and analysis

44. There is no dispute that the claimant had a tax credits award "in respect of a year" for 2018/19. There is also no argument that in principle in such a case "the next tax year" was necessarily 2019/20. However, I conclude that the claim made on 1 August 2019 and so in 2019/20 was not made "for the next tax year".

45. In essence, my reasoning is largely in accord with the reasoning of Judge Poynter in the decision that he has set aside. In summary, it runs as follows.

46. A tax year runs from 6 April in one calendar year to 5 April in the following year (see Tax Credits Act 2002, section 48, which applies to relevant subordinate legislation by virtue of section 11 of the Interpretation Act 1978). Article 7(6) of the Commencement No.23 Order makes a distinction between the previous award (which must have been made "in respect of a tax year") and the new claim (which must have been "for the next tax year"). The phrase "for the next tax year" involves a reference to the next tax year as a whole, from 6 April in one year to 5 April in the following year, and not to a part tax year. This interpretation is consistent with both the statutory wording and the underlying policy intent.

47. As to the wording, if the draftsman had wanted to include within the scope of Article 7(6) tax credits claims which were made in year, and for part of a current tax year, it would have been a straightforward matter to do so. If that had indeed been the policy intention, the Order could have made provision for those persons who make "a claim for that tax credit for the next tax year or part of that tax year". Thus, for example, section 3(1) of the Tax

Credits Act 2002 concerns "entitlement to a tax credit for the whole or part of a tax year" (see also section 17(1)).

48. As to the policy intent, the purposes of the Welfare Reform Act 2012 include the replacement of tax credits (and other means-tested legacy benefits) by universal credit. Transitional protection typically has the effect that a claimant remains on an 'old' benefit until that person ceases to satisfy the relevant entitlement conditions, at which point the individual must make a claim for the 'new' benefit (or not at all). It is entirely consistent with this approach that transitional protection ceased (and so the option of claiming the 'old' benefit disappeared) once any entitlement to tax credits had terminated.

49. This analysis can then be applied to each of the claimant's two tax credit claims.

50. The first was the renewal claim he was treated as having made by virtue of having an award "in respect of" 2018/19. This claim was for "the next tax year", being the whole of 2019/20, and so satisfied the terms of Article 7(6). The fact that the claim led to a nil award and subsequent events led to the award's early termination after three months or so makes no difference in this respect.

51. The second was the brand new claim he made at a date when he had no extant award (on 1 August 2019). He may still be a person who "had" (rather than "has") an award of tax credits "in respect of a tax year" within the first part of Article 7(6). However, his claim was not "for the next tax year" (being the period from 6 April 2019 to 5 April 2020) within the latter part of Article 7(6). Rather, it was only for the part tax year from 1 August 2019 (or any such earlier date within the preceding 31 days fixed by reference to regulation 7 of the 2002 Regulations) to 5 April 2020.

52. As a result, the claimant did not fall within the exception in Article 7(6) of the Commencement No.23 Order but rather was barred from claiming tax credits by virtue of Article 7(1) of that same Order.

53. I should make it clear I am not expressly deciding that the protection afforded by Article 7(6) only applies in the context of renewal claims. It may well be that a claimant with a renewal award under section 17 of the Tax Credits Act 2002 and regulation 11 of the 2002 Regulations is the paradigm case under Article 7(6). However, and in the

absence of full argument on the point, I do not exclude the possibility that there may be other types of case which fall within the remit of Article 7(6).

54. In reaching my conclusions I have not overlooked the further arguments advanced by the claimant's representative on the proper construction of the Commencement No.23 Order. These relate to both the period that tax credit claims are made for and also the meaning of "for the next tax year".

55. As to the former, the representative's submission is that a claim for a tax credit is always made simply for a particular tax year and not for particular periods within any tax year. In addition, section 5 of the 2002 Act provides for the determination of the period of any tax credits award simply by reference to the date on which the claim is made. Whilst that may be an accurate portrayal of the general tax credits decision-making machinery, the issue here is the proper interpretation of the wording of the specific transitional provision in Article 7(6).

56. As to the latter, the representative's submission is that the phrase "for the next tax year" does not necessarily mean for the whole of the next tax year. While acknowledging that sections 3 and 17 of the Tax Credits Act 2002 specify "the whole or part of a tax year", reference is made to sections 18-20 where several mentions of a "tax year" must from their context include part tax years. The difficulty with this argument is that it fails to give sufficient weight to the fact that the legislative phrase now under scrutiny is not simply "the tax year" but rather "the next tax year".

57. It is further argued that there should be no difference in terms of the provision for savings made by the Commencement No.32 Order and the Commencement No.23 Order. However, this submission overlooks the fact that the two Orders serve very different purposes. The Commencement No.32 Order deals with those categories of case who are protected from the (immediate) effect of the abolition of tax credits. The Commencement No.23 Order deals with the conceptually separate issue as to whether certain categories of claimants for whom tax credits have not been abolished can still actually make a fresh claim for such tax credits.

58. I have also considered Judge Mitchell's decision in *W v HMRC* [2020] UKUT 239 (AAC). That case concerned a different issue arising under Article 7(6) (whether a

> widower could claim the benefit of the provision when the previous year's claim had been a joint claim with his now late wife). It does not in any way address whether "for the next tax year" means the whole tax year or includes a part tax year.
>
> 59. Finally, reference is made to observations in Judge Poynter's now set aside decision to the possibility that "in respect of a tax year" could include part of a tax year. It is suggested that this could mean that a fresh tax credits claim could be made in April 2020 for the whole of the 2020/21 tax year. It is further argued that it would be wholly illogical to allow a new claim in April 2020 but not in August 2019. I express no view on the scope of the phrase "in respect of a tax year", and so the apparent illogicality simply does not arise."

144. I am satisfied that Judge Wikeley was correct to have decided ***RS (No.2)*** for the reasons which he gave and that a claim made on 9 August 2019 and so in the 2019/20 tax year was not made "for the next tax year".

145. As Judge Wikeley held, rightly in my judgment, a tax year runs from 6 April in one calendar year to 5 April in the following year. Article 7(6) of the Commencement No.23 Order draws a distinction between the *previous* award, which must have been made "in respect of a tax year", and the *new* claim, which must have been "for *the next* tax year"). Like Judge Wikeley, I consider that the phrase "for the next tax year" involves a reference to the next tax year *as a whole*, from 6 April in one year to 5 April in the following year and not to a part tax year.

146. That interpretation is consistent with both the statutory wording and the underlying policy intent. If the draftsman had wanted to include within the scope of Article 7(6) tax credits claims which were made in year, and for part of a current tax year, it would have been easy to do so by making provision for those persons who make "a claim for that tax credit for the next tax year or part of that tax year", as was done, for example, in s.3(1) of the TCA 2002 with its reference to "entitlement to a tax credit for the whole or part of a tax year" (see also s.17(1) thereof). As to the policy intent, the purposes of the Welfare Reform Act 2012 include the replacement of tax credits (and other means-tested legacy benefits)

by universal credit. Transitional protection typically has the effect that a claimant remains on an "old" benefit until he ceases to satisfy the relevant entitlement conditions, at which point he must make a claim for the "new" benefit (or not at all). It is entirely consistent with that approach that transitional protection ceased (and so the option of claiming the "old" benefit disappeared) once any entitlement to tax credits had terminated.

147. I would have followed the decision in ***RS (No.2)*** unless I had been convinced that it was wrongly decided. I am not so convinced and would have followed it as a matter of comity in any event. The argument that "for the next tax year" involves part of a tax year was rejected by Judge Wikeley and I reject it for the same reasons.

148. As Upper Tribunal Judge Church said in ***DB***:

> "10. While FE is not binding on me, in the interests of comity and to avoid confusion on questions of legal principle, a single judge of the Upper Tribunal will normally follow the decisions of other single judges of the Upper Tribunal (see *Dorset Healthcare NHS Foundation Trust v MH* [2009] UKUT 4 (AAC) at [37]).
>
> 11. In any event I agree wholeheartedly with Judge Wikeley's analysis and nothing that the Appellant has said in his submissions persuades me that there is any good reason to depart from it. I adopt Judge Wikeley's reasons as my own. For these reasons the Appellant's arguments on interpretation fail."

149. If it had been sought to challenge the correctness of Judge Wikeley's decision, the correct course would have been to seek permission to appeal to the Court of Appeal in that case, not to revisit the argument in another case before the Upper Tribunal.

Conclusion

150. I am therefore satisfied that the decision of the Tribunal contains no error of law. For the above reasons the appeals are dismissed.

Mark West
Judge of the Upper Tribunal

Authorised for issue on 2 June 2025