



Neutral Citation Number: [2025] UKUT 186 (AAC)  
Appeal Nos. UA-2024-001041-BB & UA-2024-001043-BB

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**Secretary of State for Work and Pensions**

**Appellant**

**- v -**

**AE**

**Respondent**

**Before: Upper Tribunal Judge Wright**

**Hearing date: 6 March 2025**

**Representation:**

**Appellant:** Richard Howell of counsel

**Respondent:** The respondent did not appear and was not represented

*On appeal from:*

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case Nos: SC242/23/06181 and SC242/23/05618

Tribunal Venue: Fox Court, London

Decision Date: 12 April 2024

**SUMMARY OF DECISION**

*This is a decision about the legal effect of a decision by HMRC to terminate the claimant's award of child benefit and how that then affected the claimant's entitlement to widowed parent's allowance. It is a condition of entitlement to widowed parent's allowance that the claimant is entitled to child benefit. The Secretary of State for Work and Pensions is responsible for widowed parent's allowance. Her office in the DWP only found out two years later that the claimant's award of child benefit had been terminated in July 2019. The Secretary of State decided (i) that the claimant had been overpaid the widowed parent's allowance for over two years from July 2019 and (ii) that overpayment was recoverable from the claimant because he had failed to disclose that his award of child benefit had ended in July 2019. The FTT allowed the appeals on the basis that the claimant had remained entitled to child benefit from July 2019 and so no overpayment arose. The FTT did so because it considered that although the claimant was not in receipt*

*of child benefit from July 2019, he continued to meet all the conditions of entitlement to child benefit from that date.*

*The Upper Tribunal allows the Secretary of State's appeal, sets aside the FTT's decision, and restores the Secretary of State's decision about whether the claimant had been overpaid widowed parent's allowance. The effect of HMRC's termination decision was to supersede and bring to an end, with effect from July 2019, the decision that had awarded the claimant child benefit. As the decision which had found the claimant was entitled to child benefit, and so had awarded that benefit, had been superseded by HMRC's July 2019 termination decision, and the claimant had not appealed that supersession decision, the sole basis on which the claimant could regain his entitlement to child benefit from July 2019 was if he made a fresh claim for child benefit which covered the period from July 2019, a claim being one of the conditions of entitlement to child benefit. However, the claimant did not make a further claim for child benefit until 20 January 2022. That claim was successful but the award on that claim could only take effect from 25 October 2021. The claimant therefore had no entitlement to child benefit between 29 July 2019 and 24 October 2021, and the FTT had erred in law in concluding otherwise. Its distinction between 'receipt' and 'entitlement' was irrelevant and wrong on the facts of the case, and it had failed to understand both the legal effect of the decision terminating the award of child benefit and the consequence the lack of a claim for the relevant period had in respect of entitlement to child benefit for that period. Whether the overpayment was in law recoverable from the claimant for failure to disclose is remitted to a fresh FTT to decide.*

**KEYWORD NAMES (Keyword Numbers) bereavement and death benefits (3) bereaved parents allowance (3.2), and benefits for children (2); child benefit (2.1), and revisions, supersessions and reviews (30); supersession: general (30.9)**

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

## **DECISION**

**The decision of the Upper Tribunal is to allow the Secretary of State's appeal. The decisions of the First-tier Tribunal made on 12 April 2024 under case numbers SC242/23/06181 and SC242/23/05618 were both made in error of law. Under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007, both of those decisions are set aside.**

**Under section 12(b)(i) and (ii) of the Tribunals, Courts and Enforcement Act 2007 I remake the first of those decisions and remit the second decision to be redecided by a freshly constituted First-tier Tribunal, at an oral hearing.**

**The first decision concerns whether the claimant (who is now the respondent on this Upper Tribunal appeal) had been overpaid widowed parent's allowance between 29 July 2019 and 24 October 2021 in the sum of £13,546.54. I remake that decision and dismiss the appeal of the claimant**

against the Secretary of State decision of 12 January 2022 that he had been overpaid widowed parent's allowance between 29 July 2019 and 24 October 2021 in the sum of £13,546.54.

The second decision of the First-tier Tribunal concerns whether the above overpayment of widowed parent's allowance is in law recoverable from the claimant, under section 71 of the Social Security Administration Act 1992, for failing to disclose that he had ceased to be entitled to child benefit in July 2019. That decision is remitted to a freshly constituted First-tier Tribunal to be redecided at or after a hearing.

## REASONS FOR DECISION

### Introduction

1. This appeal concerns two decisions made by the Secretary of State on 12 January 2022 (as revised on 7 February 2022) about the claimant's entitlement to widowed parent's allowance ("WPA"). The claimant was the appellant before the FTT and is the respondent on this appeal by the Secretary of State to the Upper Tribunal. In short, it was decided by the Secretary of State that the claimant had been overpaid WPA, and that overpayment was recoverable from him because he had failed to disclose that his entitlement to child benefit had ceased. As will be seen, entitlement to child benefit is one of the conditions of entitlement to WPA.
2. The First-tier Tribunal on 12 April 2024 ("the FTT") allowed both appeals of the claimant on the basis that he had remained entitled to child benefit throughout the relevant period, and so had not been overpaid any WPA. As such, the question of whether the overpayment was in law recoverable from the claimant fell away as there was no overpayment.
3. The sole issue that arises on this appeal by the Secretary of State from the FTT's decisions is whether the claimant had remained entitled to child benefit in circumstances where the Commissioners for His Majesty's Revenue and Customs ("HMRC") had terminated the claimant's entitlement to child benefit for the relevant period and no claim for child benefit had subsequently been made which covered that period.
4. This decision is therefore only in substance about whether the claimant had been overpaid WPA and the lawfulness of the FTT's approach to that issue. It is not about whether the FTT correctly approached the issue of failure to disclose, which arose on the second decision under appeal to it, as its conclusion that the claimant had not been overpaid meant this second issue did not arise.
5. In essence, the FTT concluded that the claimant remained entitled to child benefit for the relevant period because, in the FTT's view, all that had occurred

was that HMRC had terminated the payment of the child benefit but entitlement to that benefit continued. The FTT considered that entitlement to child benefit had continued as the claimant continued to meet all the ‘underlying conditions’ of entitlement to that benefit for the relevant period, even though he had not made a further claim for child benefit which covered that period.

6. For the reasons I explain below, the FTT’s reasoning on this issue was unsound and was based on misunderstandings about the legal effect of HMRC’s termination decision and whether a claim for a benefit is a condition of entitlement to benefit. Since the decision of the House of Lords in *Insurance Officer v McCaffrey* [1984] 1 WLR 1353, a claim covering the relevant period is a core condition of entitlement to child benefit.
7. As such the FTT erred in law in its approach to whether the claimant had been overpaid WPA for the relevant period. I decide moreover that on the law and on the evidence that the claimant was overpaid WPA for the relevant period. This then leaves the question of whether the overpayment is recoverable from the claimant under section 71 of the Social Security Administration Act 1992. The appeal against that ‘failure to disclose’ decision will, in consequence, need to be remitted to a new FTT to be redecided.

#### **The relevant factual and legal background in more detail.**

8. By a decision of the Secretary of State dated 4 November 2013, the claimant had been entitled to WPA from 6 November 2013, having sadly been widowed on 28 October 2012.
9. WPA is a benefit provided for under section 39A of the Social Security Contributions and Benefits Act 1992 (“the SSCBA”). The key relevant condition of entitlement to WPA for the purposes of this appeal is, per section 39A(2)(a) of the SSCBA and the part of the subsection which I have underlined for emphasis, that:

**“Widowed parent’s allowance.**

**39A....**

(2)The surviving spouse, civil partner or cohabiting partner shall be entitled to a widowed parent’s allowance at the rate determined in accordance with section 39C below if the deceased spouse, civil partner or cohabiting partner satisfied the contribution conditions for a widowed parent’s allowance specified in Schedule 3, Part I, paragraph 5 and—

(a) the surviving spouse, civil partner or cohabiting partner is entitled to child benefit in respect of a child or qualifying young person falling within subsection (3) below.”

10. Thus, to be entitled to WPA the claimant had also to be entitled to child benefit.
11. On 12 January 2022 the claimant contacted the Department for Work and Pensions (“the DWP”) to query why he was no longer receiving child benefit. Child benefit is, however, administered by HMRC. On being contacted by the

DWP following the claimant's query, HMRC told the DWP that the claimant's award of child benefit had ceased from 29 July 2019. This information led the DWP to issue two decisions dated 12 January 2022.

12. However, prior to these decisions being made, the claimant had reclaimed child benefit and he was (re)awarded child benefit on that claim, by HMRC, from 25 October 2021. The DWP accepted that the claimant had also reclaimed WPA, and on that claim it (re)awarded him WPA with effect from 25 October 2021 (i.e., from when his award of child benefit recommenced). This led the Secretary of State on 7 February 2022 to revise her decisions of 12 January 2022, but only to the extent of reducing the period of the WPA overpayment to a period from 29 July 2019 to a new end date of 24 October 2021. Those decisions were set out by the Secretary of State in her appeal response to the FTT as follows:

- (i) As a result of the decision dated 4 February 2022, an overpayment of Widowed Parent's Allowance has been made from 29 July 2019 to 24 October 2021 (both dates included) amounting to £13546.45. This is because on 29 July 2019, or as soon as practicable afterwards, [the claimant] failed to disclose the material fact that his entitlement to Child Benefit was reduced or stopped.
- (ii) As a consequence, Widowed Parent's Allowance amounting to £13546.45 for the period from 29 July 2019 to 24 October 2021 (both dates included) was paid which would not have been paid but for the failure to disclose. Accordingly, that amount is recoverable from [the claimant]."

13. It was these decision which were under appeal to the FTT. The claimant's grounds of appeal were as follows:

"I have been in receipt of Widowed Parents Allowance since 2012. I was unfairly asked to repay £13546.45 for the periods 29 July 2019 to 24 October 2021 because my Child Benefit was unfairly cut during those periods. My daughter was entitled to Child Benefit during those dates and I am still having an ongoing case with Child Benefit due to this. They have not even followed the correct process when dealing with me as confirmed by the Tribunal so my case with Child Benefit is ongoing. I asked that my account is frozen again with the Widowed Parents Allowance until I resolve my situation with the Child Benefit office but they have contacted my employer to recover sums. This is unacceptable as my daughter is entitled to Child Benefit and I am entitled to receive Widows Pension during those periods. I want to clearly explain the benefit itself. Widowed Parents Allowance is a benefit for people whose spouse or civil partner died before 2017. (My wife sadly passed away in October 2012 therefore I am eligible for this benefit). The eligibility criteria is as below: You can get Widowed Parent's allowance if: You are a widow, widower, or surviving Partner; and Your spouse or civil partner died before 6 April 2017; and Your late spouse or civil partner either:- Satisfied the national insurance(NI) contribution conditions; or-was an employed earner and died as a result of industrial injury or disease. You are under the pension age; and "You are entitled to child benefit for at least one-eligible child' An eligible child[.]

"A 'child' means both a 'child' and a 'qualifying young person'. A child counts as an eligible child 'if: S/he is your and your late-spouse's/civil partner's child; or, you were residing with your late spouse or civil partner immediately before she died and you were entitled to child benefit for the child at the time i.e., even if the child is not your late spouse's/civil partner's child, or Immediately before she/he-died, your late spouse-or-civil partner was entitled to child benefit for the child ie, even if the child is not your child. I fit the criteria above, as my wife passed away in 2012, she satisfied the NI contribution conditions, I was under the pension age, and I am entitled to child benefit as we are both her biological parents, we were both living together and before my wife died she was entitled to child benefit. So why is this amount being asked back from me? This has put me in great stress as a single father who needs this benefit to look after my youngest daughter as a widower. The DWP have waited 2 years to tell me I am not entitled (when in fact I am) to then claim that I owe them over £13,000 worth of money and try recover this from me. This is unacceptable and stressful for me as a father who is trying my best to look after my daughter after my wife passed away. I have continuously updated the DWP with the situation with child benefit and they should be more understanding of the stress I am under[.] If I was not entitled to child benefit they would have not re-opened my account. I was entitled to child benefit, but they are refusing to reinstate me back more than 3 months. They told me to appeal and I am still in the process of appealing with them. Regardless of my situation with child benefit, I am entitled to Widowed Parents Allowance as I fit the criteria explained above."

### The FTT's decision

14. The FTT heard the appeals on 12 April 2024. The claimant did not attend the hearings of his appeals. The FTT allowed both appeals and set aside the Secretary of State's decisions.

15. The FTT's decisions were:

"3. The DWP asserts that [the claimant] failed to disclose a material fact, namely that his entitlement to Child Benefit (CB) had ceased and this is why he did not meet the conditions of entitlement to Widowed Parents Allowance (WPA) from 29.7.19. I consider that the DWP is wrong and that [the claimant]'s entitlement to CB did not cease and therefore [he] had not failed to disclose a material fact.

4. Subject to any other conditions of entitlement being met, [the claimant] continued to be entitled to WPA when the DWP made its decision...

6. The decision made by the DWP on 12.1.22 (as revised on 7.2.22) that [the claimant] was overpaid WPA in the sum of £13,546.54 for the period 29.7.19 – 24.10.21 is set aside.

7. [The claimant] was not overpaid WPA."

16. The FTT gave its reasons for its decisions in (combined) Decision Notice of 12 April 2024. The essential reasons for the FTT's decisions were as follows:

"10. the DWP says that [the claimant] ceased to receive CB and therefore all the conditions of entitlement to WPA were not fulfilled. However, section 39A(2)(a) Social Security Contributions and Benefits Act 1992 ('the Act') refers to the person being "entitled to [CB]". It does not refer the person being 'in receipt of CB' which I consider to be a different concept....

11.....previously (in relation to a different welfare benefit) it had been held by a Commissioner that 'in receipt of' meant both entitlement to a benefit and actually being paid that benefit. Parliament then changed the legislative provisions to make expressly clear that 'in receipt of' meant being paid the benefit only. That must mean that a person can be entitled to a benefit even if the benefit is not being paid to the person. If that was not the case then Parliament would not needed to have changed the law to make it clear that that there was a distinction between these concepts (in relation to that other benefit), namely that being entitled to the benefit did not mean that the person was in receipt of it; being in receipt of it meant it actually being paid to the person. I consider that the distinction in these legal concepts has direct applicability to the present appeals before me.....

12. It is clear that [the claimant] was not being paid CB from 29.7.19. There is no dispute about that. Thus, it is clear that he] was not 'in receipt' of CB. However, was [he] 'entitled to' CB? I find that he was. Although the letter from HMRC to [the claimant], dated 24.3.20... refers to [the claimant] not being entitled to CB, I find on the balance of probabilities that this is the standard wording used by HMRC to also capture the situation where an award is terminated on account of a claimant not furnishing HMRC with information it has asked for.

13. I find that all the conditions for entitlement to CB continued to be met. [The claimant] says that nothing had changed about his or the subject child's circumstances during the period that CB was not in payment. The reason for the break in payment was because HMRC says that it asked [the claimant] for some information and [he] did not provide it. It is only for that reason that HMRC made a decision to terminate the award of CB. This itself is explained by the DWP where it says: "*[the claimant] for some information and [he] did not provide it. It is only reply from [the claimant] was received, [CB] was terminated, and a letter was issued to [AE] to advise him of this on 24 March 2020.*"

14. Later, when [the claimant] got in touch with HMRC, he made a new claim for CB and the award of CB was made. This can also be seen from the Directions Notice of DTJ W Rolt of 19.10.23 on the related but not linked CB appeal (SC242/22/01923). In that Notice, DTJ Rolt urges HMRC to use its discretion and pay the CB to [the claimant] for the period during which there was a break in payment. He so urges HMRC because [the claimant] and the subject child met the conditions of entitlement. I suspect that DTJ Rolt made this request because although the substance of the appeal appears clear (entitlement was met), the appeal itself is said to be made late and therefore

the first issue that has to be dealt with is the preliminary issue of whether that appeal is valid and can be admitted.

15. As a final note, the DWP is not able to point to anything about [the claimant]'s actual circumstances on the ground or that of the subject child to show that [the claimant] did not meet the conditions of entitlement to CB. The DWP could have carried out its own evaluative exercise to see if it considered that [the claimant] met the conditions of entitlement. It has not done so despite my suggestion that it may need to do this task.. Instead, it relied only on the letter from HMRC to [the claimant] stating that [he] was not entitled and yet (as referred to above), the DWP has pointed out that the termination of CB by HMRC was due [the claimant]'s failure to respond to the requests for information and not anything else.

16. In conclusion, I find that the conditions of entitlement to WPA continued to be met because [the claimant] continued to be entitled to CB although for a period, he was not being paid it. Thus, he was not in receipt of CB but he was entitled to it. The relevant legal provisions in the Act refer to the person being entitled to CB rather than being in receipt of it and [the claimant] remained entitled to CB. This means I must allow the....entitlement appeal which naturally means the overpayment appeal must also succeed."

17. The FTT gave the Secretary of State permission to appeal to the Upper Tribunal. It agreed that it would be appropriate for the Upper Tribunal to consider the matter.

### **The grounds of appeal**

18. The Secretary of State's grounds of appeal which were before the FTT for being given permission to appeal to the Upper Tribunal are the same grounds on which she now relies before the Upper Tribunal.
19. The material parts of those grounds are worth setting out in full as they explain clearly, in my judgement, why the FTT went wrong in its analysis and thereby materially erred in law.

### **"B. THE STATUTORY SCHEME IN OVERVIEW**

3. Child benefit is a separate benefit governed by Part IX of the [SSCBA] Benefits Act..... Entitlement depends on a person being responsible for one or more children or qualifying young persons: see s.141 of the [SSCBA]. However, s.141 of the [SSCBA] must be read together with the Social Security (Administration) Act 1992 [("the SSAA")]: see s.177(2) of the [SSCBA] and s.192(2) of the [SSAA]. Section 13(1) of the [SSAA] provides that: *"Subject to the provisions of this Act, no person shall be entitled to child benefit unless he claims it in the manner, and within the time, prescribed in relation to child benefit by regulations under section 5 above."*

4. The Child Benefit and Guardian's Allowance (Administration) Regulations 2003 SI 2003/492 ("the CB Administration Regulations") were made (inter alia) in the exercise of the powers conferred by s.5 of the [SSAA]. They



provide, subject to immaterial exceptions, that the time within which a claim for child benefit may be made “*is 3 months beginning with any day on which, apart from satisfying the conditions for making the claim, the person making the claim is entitled to [child] benefit*”: see reg.6(1). Regulation 15(1) of the CB Administration Regulations provides that an award of child benefit is generally made by HM Revenue and Customs (“HMRC”) for an indefinite period.

5. Regulation 23 of the CB Administration Regulations applies to any person entitled to child benefit: see reg.23(1). Regulation 23(2)(a) provides that such a person must furnish in such manner and at such times as HMRC may determine such information or evidence as the HMRC may require for determining whether a decision on an award should be revised or superseded pursuant to the powers conferred on HMRC [pursuant to sections 50 and 53 of the Tax Credits Act 2002] by ss.9-10 of the Social Security Act 1998 [(“the SSA”)]. Regulation 23(3) provides that a person to whom reg.23 applies must furnish to HMRC such information and evidence as HMRC may require in connection with the payment of child benefit.

6. Part 4 of the Child Benefit and Guardian’s Allowance (Decisions and Appeals) Regulations 2003 SI 2003/916 (“the CB (D&A) Regulations”) is headed: “*Suspension and Termination*”. Regulation 19 applies where HMRC require information or evidence for a determination of whether a decision awarding child benefit should be revised or superseded: see reg.19(1). Regulation 19(2) applies to a person who fails to comply with reg.23 of the CB Administration Regulations insofar as they relate to information, facts or evidence required by HMRC: reg.19(3)(c). A person to whom reg.19(2) applies must supply the information or evidence within a period of one month of being notified that he is required to do so: see reg.19(2)(a). Regulation 19(5) provides that HMRC may suspend the payment of child benefit to a person who fails to satisfy the requirements of reg.19(2).

7. Regulation 20 is headed “*Termination in cases of failure to furnish information or evidence*”. It applies where child benefit has been suspended under reg.19(5) “*and more than one month has elapsed since the first payment was so suspended*”: reg.20(1)(b). Regulation 20(2) provides that HMRC “*must decide that the person ceases to be entitled to the benefit or allowance from the date on which payment was suspended*”.

### C. THE APPROACH OF THE TRIBUNAL

8. The issue in the Entitlement Appeal was whether the [claimant] was entitled to widowed parent’s allowance in the period from 29 July 2019 to 24 October 2021. That turned on whether the Appellant was entitled to child benefit in that period: see s.39A(2)(a) of the [SSCBA].

9. It is common ground that the [the claimant] it was not in receipt of child benefit on and after 29 July 2019. In particular, HMRC wrote to the Appellant on 19 July 2019, informing him that: “*We’ve stopped paying Child Benefit for your child*”, and asking him for further information to confirm his entitlement to child benefit. He was informed that, unless the information

requested was provided within one month of the date of HMRC's letter, "*you may lose some or all of your Child Benefit entitlement*". [This letter is at page 4 of Addition D to the FTT bundle].

10. The FTT held that HMRC had made a decision, communicated by letter dated 23 March 2020, that the [claimant's] "*award [was] terminated on account of [him] not furnishing HMRC with information it has asked for*", and that HMRC had "*made a decision to terminate the award of CB*". HMRC's letter of that date stated in terms: "*You are no longer entitled to Child Benefit... because you have not sent us the information we asked for on 18 July 2019*", and that payment had been stopped since 29 July 2019. [This letter is at page 5 of Addition F to the FTT bundle. The reference to '18 July 2019' appears to be a typographical slip and should have read '19 July 2019'.]

11. Following that decision, the [claimant] made a further claim to HMRC for child benefit on 20 January 2022, and child benefit was once again awarded by HMRC with effect from 25 October 2021.

12. The FTT held that the [claimant] met all of the conditions for entitlement to child benefit during the period of 29 July 2019 to 24 October 2021, even if he had not been in receipt of it.....

#### D. SUBMISSIONS

13. In deciding that the [claimant] was entitled to child benefit in the period of 29 July 2019 to 24 October 2021, the FTT erred in law by failing to apply and give effect to reg.20(2) of the CB (D&A) Regulations, s.17(1) of the [SSA], and s.13(1) of the [SSAA]. By virtue of that error of law, the FTT erred in law in holding that the [claimant] was entitled to widowed parent's allowance in the period of 29 July 2019 to 24 October 2021, and in allowing the Entitlement and Overpayments Appeals.

14. **First**, the FTT erred in law in holding that the effect of HMRC's decision communicated by letter dated 24 March 2020 was not to terminate the Appellant's entitlement to child benefit with effect from 29 July 2019. The FTT was right to direct itself that there is a distinction between a person being entitled to a benefit and that benefit being in payment. A person entitled to child benefit may not be paid it for a number of reasons. However, the unambiguous effect of reg.20(2) of the CB (D&A) Regulations was to require HMRC to decide that the [claimant] "*cease[d] to be entitled to [child] benefit ... from the date on which payment was suspended*", i.e. 29 July 2019. HMRC made a decision to that effect on 24 March 2020.

15. **Second**, HMRC's decision under reg.20(2) of the CB (D&A) Regulations was a supersession decision for the purposes of s.10 of the [SSA]: see, in relation to analogous statutory provisions, *R(H) 4/08* per Mr Commissioner Jacobs at §33; *CH/2995/2006* per Mr Commissioner Rowland at §22. Accordingly, [subject to mandatory reconsideration] a right of appeal against that decision lay to the FTT under s.12(1) of the [SSA]. However, subject only to the provisions of Chapter II of Part 1 of the [SSA], HMRC's termination decision was "*final*": see s.17(1) of the [SSA]. The Secretary of State and the FTT in this appeal were therefore bound to proceed on the

basis that HMRC's extant decision was binding and that the [claimant] was not entitled to child benefit on and after 29 July 2019.

16. **Third**, once the [claimant]'s entitlement to child benefit had ceased pursuant to HMRC's termination decision under reg.20(2) of the CB (D&A) Regulations, entitlement to child benefit could only then arise if a further claim for that benefit was made to HMRC. That is the clear and unambiguous effect of s.13(1) of the [SSAA], which makes entitlement to child benefit conditional on making a claim for it: see *Secretary of State for Work and Pensions v Nelligan* [2004] 1 WLR 894 per Scott Baker LJ at §§13-15, §17, §25 (in relation to the analogous provision in s.1 of the [SSAA]). In the absence of a claim, therefore, it was immaterial that the other conditions of entitlement to child benefit in Part IX of the [SSCBA] were met by the Appellant. The FTT erred in law to the extent it held otherwise...

17. **Fourth**, the [claimant] did make a further claim for child benefit in January 2022. However, the effect of s.13(1) of the [SSAA] and reg.6(1) of the CB Administration Regulations is that that claim could only be made for a past period of three months "*which, apart from satisfying the conditions for making the claim, the person making the claim is entitled to [child] benefit*". Accordingly, the further claim made on 20 January 2022 did not confer an entitlement to child benefit in the period before 25 October 2021, from which HMRC awarded child benefit, and to the extent the FTT held otherwise, it erred in law. Further or alternatively, the date of entitlement under that further award was a matter for HMRC to determine under s.8(1) of the [SSA], and the FTT and the Secretary of State in this case were bound by it pursuant to s.17(1) of the [SSA]."

20. It is perhaps worth setting out remarks the FTT judge who had decided the appeals made having had sight of these grounds of appeal, when he gave the Secretary of State permission to appeal to the Upper Tribunal:

"I do wish to make the following remarks: while I can see that the DWP argues that HMRC made a decision to terminate AE's claim for Child Benefit (CB) and stated that he was not entitled to it, I am not sure that this can be said to the final word on AE's entitlement. It could, I think, be argued that yes - HMRC took a view on entitlement, declared that AE was not entitled and therefore could not be paid CB but if one (any person) considers underlying entitlement to CB and whether AE met the conditions of entitlement, it can be seen that he did. Whether HMRC decided that AE was entitled and could be paid is, I think, a separate matter. There are many people who may be 'entitled' to a benefit because they meet the conditions of entitlement to that benefit but for whatever reason, chose not to claim the benefit. Can it be said that such a person is not entitled to X benefit? I think rather it can be said that the person cannot be paid the benefit because they have not satisfied the relevant first-tier agency (FTA) e.g. HMRC or DWP, that they are entitled to X benefit. That might be because, for example, they have not submitted a valid claim for X benefit. However, I think it can still be said that the person is entitled to X benefit because irrespective of the view of the FTA, the person meets the conditions of entitlement. The next step to the road to payment of X benefit is for the person to satisfy the FTA of their

entitlement which requires other things e.g. the submission of a valid claim for X benefit.”

## **Arguments on the appeal to the Upper Tribunal**

### *The claimant's arguments*

21. At an earlier stage in the Upper Tribunal appeal proceedings the claimant was represented by solicitors. The submissions the solicitors made on behalf of the claimant opposing the Secretary of State's appeal argued, in essence and insofar as relevant, as follows:

- (i) the entitlement criteria for child benefit had never ceased to exist, but HMRC had erroneously superseded the claimant's entitlement to child benefit in 2019. Notwithstanding this decision, the claimant's position is that “entitlement towards child benefit have remained continuous given that his youngest daughter still remains eligible”;
- (ii) the claimant was seeking leave to appeal in respect of the decision by HMRC to terminate his child benefit;
- (iii) the child benefit had stopped in 2019. The claimant was misadvised to make a fresh claim for child benefit and not lodge an appeal outside the absolute 13 month time limit, which is permissible, against the 2019 decision to terminate his child benefit. He had reapplied and was rewarded child benefit. He had applied for mandatory reconsideration to restore entitlement to child benefit for the missing period [between 29 July 2019 and 24 October 2021]. The claimant had attended three separate FTT hearings about child benefit, the most recent of which had been on 6 June 2024 and had been unfavourable. He had therefore lodged an application for permission to appeal to the Upper Tribunal;
- (iv) section 39A(2)(a) of the SSCBA merely requires a claimant to be “entitled to child benefit” and it is not obligatory that a claimant claims child benefit. The claimant never ceased to be entitled to child benefit and the question of whether or not he claimed that benefit was purely academic;
- (v) the claimant's entitlement to child benefit remained continuous throughout in the light of the age of his youngest daughter; and
- (vi) HMRC had not issued any correspondence to warrant termination of child benefit

### *The Secretary of State's arguments in reply*

22. In her observations in reply to these submissions, the Secretary of State argued, first, that the claimant's argument that it was not obligatory that he had in fact claimed child benefit was contrary to the express provision found in section 13(1) of the SSAA.

23. The Secretary of State's second argument concerned the claimant's argument that he was entitled to child benefit for the missing period of 29 July 2019 to 24 October 2021, even if he was required to make a claim for that benefit. The Secretary of State understood this to be an argument that HMRC had erred in deciding on 23 March 2020 that the claimant was no longer entitled to child benefit on and from 29 July 2019. As to this argument, if it was the claimant's argument, HMRC's termination decision of 23 March 2020 was final, per section 17(1) of the SSA, subject to any appeal against that decision under section 12 of the SSA. If such an appeal had been brought and had been disallowed by the FTT on 6 April 2024, that decision was binding on the parties to that appeal (the claimant and HMRC) and the Secretary of State and the Upper Tribunal on whether the claimant was entitled to child benefit between 29 July 2019 to 24 October 2021. Furthermore, it was unclear whether the claimant had sought and been given permission to appeal by the Upper Tribunal against the FTT's decision of 6 April 2024. If the FTT's child benefit decision was under appeal to the Upper Tribunal, that might affect the final disposal of this appeal.
24. Both parties sought an oral hearing of the appeal, which I directed on 10 December 2024. In those directions I made the following observations:

"1. Both parties have referred in their respective submissions to [the claimant] having made a (late) appeal against HMRC's decision ending his entitlement to child benefit.

2. If that is the case, it would seem that those proceedings are only at the First-tier Tribunal stage. I say this, firstly, because the UA-2024-001041 Upper Tribunal reference is for the first of these bereavement benefit appeals....and does not relate to any subsequent appeal or application for permission to appeal brought by [the claimant] against a First-tier Tribunal decision concerning a (late) appeal about the ending of his entitlement to child benefit. Secondly, UTAAC has no record at present of any appeal or application for permission brought by [the claimant] against [such] a First-tier Tribunal decision. The only cases of which UTAAC has a record in which [the claimant] is [a] party, at least at present, are these two appeals.

3. Given its potential relevance to these two appeals about entitlement to widowed parent's allowance, it is incumbent on [the claimant], through his solicitors, to provide accurate and up-to-date information about the (late) appeal it is said [the claimant] has made to the First-tier Tribunal against HMRC's decision ending his entitlement to child benefit. That information should include the First-tier Tribunal's registration number for that late appeal and the most up to date information about where those (late) appeal proceedings have reached in the First-tier Tribunal. For example, has the First-tier Tribunal made a decision to admit, or not to admit, the late appeal? If so, when was that decision made and what was that decision? If the decision was a negative decision as far as [the claimant] is concerned (e.g., the First-tier Tribunal refused to admit the late appeal), what steps (if any) has [the claimant] taken to challenge that decision? The Secretary of State is not a party to those late appeal proceedings – HMRC will be respondent

in those proceedings – and so will not, and cannot be expected to, know this information herself.”

25. By an email of 19 February 2025 to the Administrative Appeals Chamber’s office in London, the claimant advised that he would not be attending the oral hearing of the Secretary of State’s appeal to the Upper Tribunal on 6 March 2025 and would not be represented at that hearing either. He asked for the appeal to be decided in his absence.
26. In the letter and chronology the claimant attached to the email he made or repeated the following points of relevance:
  - (i) the Upper Tribunal should uphold the FTT’s decisions;
  - (ii) his daughter was entitled to child benefit at the time, as she was only 13 years old, was in full-time education and was a British Citizen;
  - (iii) his entitlement to WPA had been unfairly stopped in 2019;
  - (iv) he had submitted an application for permission to appeal to the Upper Tribunal on 25 August 2024 against the FTT’s unfavourable decision of 6 June 2024 about child benefit, and that application was still pending;
  - (v) the FTT’s unfavourable decision on child benefit was one which struck out the child benefit appeal.
27. As to point (iv) made by the claimant, the evidence he provided with his chronology on 19 February 2025 was in fact an email to the FTT, dated 25 August 2024, in which he seemingly sought to reargue issues around the striking out of his child benefit appeal, including whether he had applied for mandatory reconsideration within time, and he asked the FTT to “let me know the next steps are to apply to the upper Tribunal”. That evidence does not show that the claimant had made an application to the Upper Tribunal on 25 August 2024. At the time of writing this decision the position remains that the only cases before the Administrative Appeals Chamber of the Upper Tribunal involving the claimant are these two appeals concerning WPA.

## Discussion and Conclusion

### *Discussion*

28. I agree with the Secretary of State’s arguments and will explain why I do so shortly. In essence, the FTT’s two critical errors were (i) its failure to work through the legal effect of HMRC’s decision to terminate the claimant’s award of child benefit, and (ii) its failure to recognise or accept that to be entitled to child benefit for the missing period of 29 July 2019 to 24 October 2021 the claimant had to have made a claim for child benefit which covered that period. As a matter of law, a claim for child benefit is as foundational to entitlement to that benefit as, per section 141 of the SSCBA, the claimant having a child or young person for whom he was responsible for each of the weeks during that missing period.

29. Before providing that explanation, however, I should address the possible need to stay these appeal proceedings because the claimant may have an appeal against HMRC's decision of 23 March 2020 to terminate his entitlement to child benefit from and including 29 July 2019. The Secretary of State at and before the hearing before me fairly recognised that if there was such an appeal, and with it the possible consequence that the termination decision would be overturned and entitlement to child benefit restored from 29 July 2019, that would bear on the proper disposal of this appeal.
30. However, as I have set out above, the last adjudication on this child benefit issue, on the claimant's own case, is the FTT's decision of 6 June last year, and that decision brought that appeal to an end. The effect of that FTT's decision is that HMRC's termination decision remains in place as a final decision on that issue, as there has been no substantive adjudication by the FTT on that issue.
31. Nor is there anything to indicate that there is any active challenge to FTT's decision of 6 June 2024. Having made further enquiries of the FTT's records since the oral hearing, I have identified that the 6 June 2024 decision (under FTT reference SC242/22/01923) struck out the claimant's late appeal against HMRC's termination decision of 24 March 2020. That strike out decision was made under rule 8(2) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 ("the FTT Rules") and was because the appeal was not made in time and there were no exceptional circumstances that justified extending time beyond the fixed maximum time limit of 13 months. The FTT gave short form reasons for its decision on 6 June 2024. The FTT then, pursuant to rule 38(7)(a) and (b) of the FTT Rules, treated the claimant's email of 25 August 2024, or a letter he wrote two days after this email, as a request for a statement of the reasons for its decision of 6 June 2024, instead of being an application for permission to appeal against the 6 June decision. Those full reasons were made by the FTT on 17 September 2024 and issued to the parties the next day. The next step, if he wished to do so, would then have been for the claimant to have applied to the FTT for permission to appeal against the 6 June 2024 decision. There is no evidence before me showing he has done so since 17 September 2024.
32. I record in any event the views of the Secretary of State on whether the claimant would be able to take any steps to have his WPA restored for the period 29 July 2019 to 24 October 2021 *if* he is able to have his entitlement to child benefit restored for this period. I need do no more than set out the text of the letter the Secretary of State's lawyers sent to the Administrative Appeals Chamber the day after the hearing of the appeal on 6 March 2025.

"I refer to the hearing of the above appeals on 6 March 2025 before Upper Tribunal Judge Wright, following which the Tribunal reserved judgment. I would be grateful if this letter could be placed before the Judge for his consideration.

During the course of the hearing, the Judge asked the Secretary of State to confirm, following the hearing, whether, (i) if the Tribunal allowed the Secretary of State's appeals and decided that the [claimant] was not entitled to widowed parent's allowance in the period from 29 July 2019 to 24 October 2021; and (ii) the [claimant] later succeeded, in proceedings between him and the Commissioners for His Majesty's Revenue and Customs ("HMRC"), in establishing that HMRC's decision of 24 March 2020 should not have been made, the Secretary of State would be able to supersede the Upper Tribunal's decision, with the effect that the [claimant] would be treated as entitled to widowed parent's allowance in the period between 29 July 2019 to 24 October 2021. The Secretary of State has considered the Tribunal's question. She does not consider that there is any clear means, under the relevant statutory provisions, by which she could make a supersession decision which had that effect.

The Secretary of State has reflected further. She considers that, if the [claimant] were successful in his proceedings against HMRC, he would be able to make a new claim to widowed parent's allowance, which would be treated as made on 25 October 2021. That is the effect of reg.6(19), read with reg.6(20)(a) of the Social Security (Claims and Payments) Regulations 1987, because widowed parent's allowance is a relevant benefit (see reg.6(22)), and for this purpose, child benefit would be a qualifying benefit (reg.6(22)). Accordingly, the Secretary of State submits that the Tribunal could allow her appeal, without causing any injustice to the [claimant] if he later succeeded in proceedings against HMRC."

33. In these circumstances, the lack of any appeal against the FTT's decision of 6 June 2024 and the ability of the Secretary of State to make an award of WPA for the period 29 July 2019 to 24 October 2021 if the claimant were to be able to restore his entitlement to child benefit from and including 29 July 2019, I do not consider there is any need for me to stay deciding this appeal
34. I turn therefore to explain why I consider the Secretary of State is right in her arguments and the FTT was wrong in its view that the claimant continued to satisfy section 39A(2)(a) of the SSCBA (being "entitled to child benefit") from 29 July 2019.
35. I start with why the claimant's child benefit award was terminated from 29 July 2019 and the legal basis and effect of HMRC's decision of 24 March 2020 to terminate that award. The FTT had evidence before it, at page 5 of Addition F, in the form of HMRC's letter of 24 March 2020, which told the claimant he was no longer entitled to child benefit, his payments of child benefit would stop from 29 July 2019 and that this decision had been made because the claimant had not supplied HMRC with information it had requested from him earlier. That letter went on to describe what the claimant should do if he thought the decision as wrong.
36. The FTT was aware of this decision of HMRC but considered that although it referred to the claimant not being entitled to child benefit, this was standard wording used by HMRC "*to also capture the situation where an award is*



*terminated on account of a claimant not furnishing HMRC with information it asked for".* It is plain from the earlier reasoning of the FTT that by "award is terminated" the FTT meant only that payment of the award was stopped. The FTT gave no further reasons for why it considered HMRC was lawfully able to terminate the payment of child benefit in such circumstances. For the reasons given by the Secretary of State, in my judgement there was no lawful basis for HMRC to stop the payment of child benefit, but continue the entitlement to that benefit, in the circumstances before the FTT. The FTT was wrong to conclude otherwise.

37. HMRC had previously decided that the claimant was entitled to child benefit and made an award of child benefit to him. That was a final decision by HMRC under section 17(1) of the SSA as by sections 50 and 53 of the Tax Credits Act 2002 the function of the Secretary of State for Work and Pensions in Chapter 2 Part I to the SAA (which includes sections 8-23 of the SSA) were transferred to HMRC in respect of its administration and decision-making in respect of child benefit. Accordingly, HMRC could only change the earlier decision which had awarded the claimant child benefit either by revising or superseding the decision under sections 9 or 10 of the SAA.
38. Sections 21-23 of the SSA makes provision for suspension of payment of benefit and the termination of entitlement to benefit. They provide, insofar as is relevant and with my underlining added for emphasis, that:

**"Suspension in prescribed circumstances**

**21:-**(1) Regulations may provide for—

(a) suspending payments of a relevant benefit, in whole or in part, in prescribed circumstances;

(b) the subsequent making in prescribed circumstances of any or all of the payments so suspended.

(2) Regulations made under subsection (1) above may, in particular, make provision for any case where—

(a) it appears to the Secretary of State that an issue arises whether the conditions for entitlement to a relevant benefit are or were fulfilled;

(b) it appears to the Secretary of State that an issue arises whether a decision as to an award of a relevant benefit should be revised (under section 9 above) or superseded (under section 10 above)....

**Suspension for failure to furnish information etc**

**22:-**(1) The powers conferred by this section are exercisable in relation to persons who fail to comply with information requirements.

(2) Regulations may provide for—

(a) suspending payments of a relevant benefit, in whole or in part;

(b) the subsequent making in prescribed circumstances of any or all of the payments so suspended.

(3) In this section and section 23 below "information requirement" means a requirement, made in pursuance of regulations under section 5(1A) of the [Social Security Administration Act 1992], to furnish information or evidence needed for a determination whether a decision on an award of benefit to

which that section applies should be revised under section 9 or superseded under section 10 above.

**Termination in cases of failure to furnish information**

**23:-** Regulations may provide that, except in prescribed cases or circumstances, a person—

(a) whose benefit has been suspended in accordance with regulations under section 21 above and who subsequently fails to comply with an information requirement; or

(b) whose benefit has been suspended in accordance with regulations under section 22 above for failing to comply with such a requirement, shall cease to be entitled to the benefit from a date not earlier than the date on which payments were suspended.”

39. Regulations 18 and 19 of the Child Benefit and Guardian’s Allowance (Decisions and Appeals) Regulations 2003 (“the CB (D&A) Regs) are made under sections 21-23 of the SSA. Regulations 18 and 19 (and regulation 20) fall within Part 4 of those regulations. Part 4 is titled “Suspension and Termination”.
40. Regulations 18 and 19 provide materially (again with my emphasis added by underlying) as follows:

**“Suspension in prescribed cases**

**18.—**(1) The Board may suspend payment of child benefit or guardian’s allowance, in whole or in part, in the circumstances prescribed by paragraph (2) or (3).

(2) The circumstances prescribed by this paragraph are circumstances where it appears to the Board that—

(a) an issue arises as to whether the conditions for entitlement to the benefit or allowance are or were fulfilled;

(b) an issue arises as to whether a decision relating to an award of the benefit or allowance should be—

(i) revised under section 9 or Article 10; or

(ii) superseded under section 10 or Article 11....

**Provision of information or evidence**

**19.—**(1) This regulation applies where the Board require information or evidence for a determination whether a decision awarding child benefit or guardian’s allowance should be—

(a) revised under section 9 or Article 10; or

(b) superseded under section 10 or Article 11.

(2) A person to whom this paragraph applies must—

(a) supply the information or evidence within—

(i) the period of one month beginning with the date on which the notification under paragraph (4) was sent to him; or

(ii) such longer period as he satisfies the Board is necessary in order to enable him to comply with the requirement; or

(b) satisfy the Board within the period of time specified in sub-paragraph (a)(i) that—

(i) the information or evidence required of him does not exist; or

(ii) it is not possible for him to obtain it.

- (3) A person to whom paragraph (2) applies is any of the following—
  - (a) a person in respect of whom payment of the benefit or allowance has been suspended in the circumstances prescribed by regulation 18(2);
  - (b) a person who has made an application for the decision to be revised or superseded;
  - (c) a person who fails to comply with the provisions of regulation 23 of the Administration Regulations in so far as they relate to information, facts or evidence required by the Board.
- (4) The Board must notify a person to whom paragraph (2) applies of the requirements of that paragraph.
- (5) The Board may suspend the payment of benefit or allowance, in whole or in part, to a person falling within paragraph (3)(b) or (c) who fails to satisfy the requirements of paragraph (2)."

41. A request was made by HMRC of the claimant for information under regulation 19 of the CB (D&A) Regs by its letter to him of 19 July 2019. That letter reads, so far as is material, as follows (again the underlining is mine and has been added for emphasis):

**"About your Child Benefit Award – reply needed**

We're writing to you to make sure the information held on our records is correct and to check your entitlement to Child Benefit.  
If you don't provide the information we've requested within one month from the date of this letter you may lose some or all of your Child Benefit entitlement. We will act on the information we hold to update your award, and you may be asked to repay money that we decide you should not have been paid.

We've stopped paying Child Benefit for your child. This is because we can't confirm that you're entitled to Child Benefit for them."

42. It is only by either regulation 18(1) or regulation 19(5) that HMRC was empowered, under section 21-22 of the SSA, to suspend the payments of the claimant's child benefit.
43. Regulation 20 of the CB (D&A) Regs then deals with termination. Section 23 of the SSA and regulation 20 are the only material provisions which are about termination. Regulation 20 provides as follows (again with my underlining added for emphasis) :

**"Termination in cases of failure to furnish information or evidence**

**20.—**(1) Subject to paragraph (3), this regulation applies where—  
 (a) a person whose benefit or allowance has been suspended under regulation 18 subsequently fails to comply with a requirement for information or evidence under regulation 19 and more than one month has elapsed since the requirement was made; or  
 (b) a person's benefit or allowance has been suspended under regulation 19(5) and more than one month has elapsed since the first payment was so suspended.

(2) The Board must decide that the person ceases to be entitled to the benefit or allowance from the date on which payment was suspended except where entitlement to the benefit or allowance ceases on an earlier date.

(3) This regulation does not apply where benefit or allowance has been suspended in part under regulation 18 or 19.”

44. Regulation 20 mirrors section 23 of the SSA. Neither that section nor regulation 20 is about stopping the payment of child benefit. The terms of regulation 20 are clear. What ‘termination’ means, consonant with section 23 of the SSA, is that the person has ceased to be entitled to the benefit.

45. The HMRC letter of 24 March 2020 to the claimant reads materially as follows:

**“About your benefit payments**

You are no longer entitled to Child Benefit for [your daughter].

We will stop your Child Benefit payments for [your daughter] from 29 July 2019.

This is because you have not sent us the information we asked for on 18 July 2019.”

46. Read with the relevant statutory provisions, the decision of HMRC communicated in its letter of 24 March 2020 was plainly, and could only have been, a termination decision under section 23 of the SSA and regulation 20 of the CB (D&A) Regs<sup>1</sup>. More importantly, however, there is nothing in the relevant legislative architecture which supports the FTT’s view that all HMRC had done, because of the claimant’s failure to provide it with the information it had asked of him on 18 July 2019, was to suspend the payment of his entitlement to child benefit from 29 July 2019 to October 2021. A distinction can sometimes usefully be drawn between receipt of a benefit to which a person is entitled and entitlement to that benefit. But that distinction is usually crafted in the governing statutory language. For example, in relation to child benefit, section 13A of the SSA provides that, in certain circumstances, a person who is entitled to child benefit may elect for all payments of the child benefit to which they are entitled not to be made to them. Likewise, as set out above, sections 21-23 of the SSA, and the relevant regulations made under them, distinguish between payment (or the suspension thereof) of the entitlement to a benefit and the termination of that entitlement. The FTT’s thesis failed to explore and thus appreciate this distinction. And the 24 March 2020 letter’s language of stopping the payments of child benefit was plainly, when read in context, about the end date of entitlement to child benefit.

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<sup>1</sup> Quite why it gave an end date of entitlement of 29 July 2019 when, per regulation 20(2), the child benefit had seemingly been suspended on 18 July 2019 may be unclear. However, the lawfulness of HMRC’s decision is not before me and was not before the FTT either, and for the reasons given above the attempt to make a late appeal against that 24 March 2020 decision has been struck out by the FTT.

47. The termination decision of 24 March 2020 under section 23 of the SSA and regulation 20 of the CB (D&A) Regs was a supersession decision under section 10 of the SSA (see *R(H) 4/08*), those supersession powers under section 10 of the SSA also having been transferred to HMRC in respect of child benefit. Under section 17(1) of the SSA, that termination decision was a final decision about the claimant's entitlement to child benefit from 29 July 2019 to 24 October 2021, unless the 24 March 2020 decision was successfully appealed or it was subsequently revised or superseded. None of these exceptions to the finality of the termination decision apply. That final decision of HMRC about the claimant's entitlement to child benefit between 19 July 2019 and 24 October 2021 was binding on the FTT. It was therefore not open to the FTT or the Secretary of State, as suggested by the FTT at paragraph 15 of its decision, for the Secretary of State to have carried out her own evaluative exercise to see if she considered the claimant was entitled to child benefit. The function of deciding entitlement to child benefit rested with HMRC, not the Secretary of State
48. The only other way in which the appellant could have been entitled to child benefit for the period covering 29 July 2019 to 24 October 2021 is if he had made a claim for child benefit which covered that period. Contrary to the observations of the FTT when giving permission to appeal, and the arguments made on behalf of the claimant, making a claim for child benefit is a condition of entitlement to that benefit. That is the clear effect of section 13(1) of the SSAA, which provides insofar as is relevant as follows:

**"Necessity of application for child benefit**

13:-(1)....no person shall be entitled to child benefit unless he claims it in the manner, and within the time, prescribed in relation to child benefit by regulations under section 5 above."

49. Moreover, the effect of section 8(2) of the SSA was that the claim for child benefit that the claimant had made previously, and which had led to the decision that awarded him child benefit before July 2019, ceased to exist as a claim once that claim had been decided. Section 8(1) and (2) of the SSA, as applicable to HMRC, provides:

**"Decisions by [HMRC]**

8:-(1)Subject to the provisions of this Chapter, it shall be for [HMRC]—

(a)to decide any claim for a relevant benefit;

(2)Where at any time a claim for a relevant benefit is decided by [HMRC]—

(a) the claim shall not be regarded as subsisting after that time; and

(b) accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time."

That earlier claim for child benefit could not therefore meet the requirements of section 13(1) of the SSA for the period from 29 July 2019 to 24 October 2021 because as a matter of law it no longer existed.

50. Nor could the claim for child benefit which the claimant subsequently made on 20 January assist to cover this period either. That claim met section 13(1) of the SSSA but, under regulation 6(1) of the Child Benefit and Guardian's Allowance (Administration) Regulations 2003, that claim only could take effect from three months before it was made.
51. However, does the claimant's lack of entitlement to child benefit for the material period from 29 July 2019 under the provisions of one Act of Parliament, the SSAA, mean that he was not entitled to child benefit for the purposes of another Act of Parliament, under section 39A(2)(a) of the SSCBA? This was a point raised in oral argument by Mr Howell as a possible argument that might be available to the claimant. It has not been tested in argument and previous decisions have not identified this as a difficulty: see, for example, *SSWP v GH (BB)* [2015] UKUT 591 (AAC). The argument would seem to be that although the claimant was not entitled to child benefit for the relevant period under the SSAA, this did not answer whether he was "entitled to child benefit in respect of a child" for the purposes of the WPA under section 39A(2)(a) SSCBA. Quite what "entitled" would otherwise mean or be based on under the SSCBA is not clear.
52. It seems obvious to me, however, that such an argument cannot work. The two relevant Acts of Parliament, the Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act 1992 are plainly intended to be read together, as would have been the case under the Child Benefit Act 1975 (under section 6 of which entitlement to child benefit was dependent on a claim being made for that benefit). This is shown by section 177(2) of the SSCBA which provides that "[t]his Act is to be read, where appropriate, with the [Social Security] Administration Act [1992]". The twin of this in the Social Security Administration Act 1992 is section 192(2) which states that "[t]his Act is to be read, where appropriate, with the [Social Security] Contributions and Benefits Act [1992]". Both of these statutory provisions give effect to that which was held in *Philips v Parnaby* [1934] 2 KB 299 at 142-143, relying on *Canada Southern Railway Company v International Bridge Company* (1883) 8 App. Cas. 723, that two related statutes should be read as if a single Act unless to do so would give rise to manifest discrepancy.
53. In my judgement, it is plainly appropriate and would give rise to no manifest discrepancy to read "entitled to child benefit" in section 39A(2)(a) of the SSCBA as meaning the same as the exact same phrase found in section 13(1) of the SSAA. Other pointers to it being intended that "entitled to child benefit" should mean the same across both statutes can be found in sections 122(4) and (5), 141 and 146(2) of the SSCBA. Were it otherwise, entitlement to child benefit could arise under Part IX of the SSCBA without a claim being made for that benefit, and the provision in section 13(1) of the SSAA requiring a claim to be made to be entitled to child benefit would lead nowhere and be otiose.

54. I therefore agree with the Secretary of State that insofar as the FTT in its decision proceeded on the basis either that a claim was not a condition of entitlement to child benefit or that such a claim was in place between 29 July 2019 and 24 October 2012, it erred in law in so concluding.

### *Conclusion*

55. The effect of the above analysis is twofold. First, the FTT materially erred in law in deciding that the claimant remained entitled to WPA between 29 July 2019 and 24 October 2012. Second, it further erred in law in failing to arrive at the only conclusion which was open to it on the law and the evidence. That conclusion was that the claimant was not entitled to, and so had been overpaid, WPA between 29 July 2019 to 24 October 2012, because he was not entitled to child benefit between those dates. I therefore set aside the FTT's first decision, about whether the claimant had been overpaid WPA between 29 July 2019 and 2021, and remake that decision by dismissing the claimant's appeal against the Secretary of State's decision of 12 January 2022 that he had been overpaid WPA of £13,546.54 for the period 29 July 2019 to 24 October 2021.
56. The sole basis for the FTT deciding there was no recoverable overpayment under section 71 of the SSAA was because of its first decision that there had been no overpayment of WPA. It therefore did not need to address its mind to whether, if there was an overpayment, it was recoverable from the claimant under section 71. Given my decision that the claimant **was** overpaid WPA between 29 July 2019 and 24 October 2021, the issue of whether that overpayment is recoverable from the claimant will need to be remitted to a new FTT to be redetermined.
57. I therefore allow the Secretary of State's appeal in the terms set out above.

**Stewart Wright**  
**Judge of the Upper Tribunal**

Authorised for issue on 5<sup>th</sup> of June 2025