



Neutral Citation Number: [2026] UKUT 30 (AAC)
**Appeal No. UA-2024-001536-CHB,
UA-2024-001698-CHB**

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

HM Revenue & Customs

First Appellant

and

MAC

Second Appellant

- v -

SC

Respondent

Before: Upper Tribunal Judge Citron

Hearing date: 20 January 2026

Mode of hearing: Cloud Video Platform

Representation:

1st Appellant: by Matthew Fraser of counsel, instructed by HMRC Legal Group

2nd Appellant: by himself

Respondent: by herself

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: SC323/23/01143

Tribunal Venue: video hearing

Decision Date: 21 May 2024

SUMMARY OF DECISION

2. BENEFITS FOR CHILDREN

2.1 Child benefit

This case concerned priority for child benefit where two persons (in this case, the separated parents of the child concerned) were potentially entitled to the benefit. The relevant provision was paragraph 5 of Schedule 10 to the Social Security Contributions and Benefits Act 1992, which provides that, in such circumstances, the two potentially entitled parties (the parents) may jointly elect for one of them to be entitled or, in default

of such election, HMRC had a discretion to decide. The First-tier Tribunal had decided that a valid joint election was in place (in favour of the Respondent, the mother) based on its finding that the parents had agreed this, and the agreement was reflected in a letter from the Second Appellant (the father)'s solicitors and in a consent order of the Family Court. The Upper Tribunal holds that the First-tier Tribunal erred in law: a joint election of this kind must be in writing (or by telephone) and must be notified to HMRC; "agreement" alone is insufficient, and in this case the documents in question, even if they had been given to HMRC, did not amount to a joint election for the mother to receive child benefit in respect of the child. The Upper Tribunal also follows a previous decision of the Upper Tribunal in holding that an exercise of discretion by HMRC under paragraph 5 of Schedule 10, to award child benefit to a different person, is itself a change of circumstances justifying supersession of a previous award of child benefit. The decision of the First-tier Tribunal was set aside and re-made in the form of an award of child benefit in respect of the child concerned to the person whom HMRC, on exercising their discretion under paragraph 5 in default of a joint election, had awarded it to (the father).

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

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal, referred to above, involved the making of an error on a point of law. Under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007, I set aside the First-tier Tribunal's decision and re-make it as follows: the Second Appellant was entitled to child benefit in respect of the child referred to in the 'Reasons' section below as "Child", from 23 January 2023.

REASONS FOR DECISION

1. References in what follows to
 - a. **sections** and to **Schedules** are to sections of, and schedules to, the Social Security Contributions and Benefits Act 1992;
 - b. **regulations** are to the Child Benefit (General) Regulations 2006;
 - c. numbers in square brackets are to the numbered paragraphs of the First-tier Tribunal (the "**FTT**")'s statement of reasons in this case;
 - d. "**Father**" are to the second appellant;
 - e. "**Mother**" are to the respondent;
 - f. "**HMRC**" are to the first appellant.

The decision of the FTT

2. The FTT allowed Mother's appeal against a decision of HMRC of 18 April 2023, awarding child benefit in respect of one of her (and Father's) two children, their daughter ("**Child**"), to Father from 23 January 2023 (prior to this, child benefit in respect of Child had been awarded to Mother). The FTT's decision was on the basis that both Mother and Father were entitled to child benefit in respect of Child, but Mother had priority under the provisions of Schedule 10 – in particular, under paragraph 5 of the schedule, since there was a joint election to that effect.
3. Father and Mother had been a couple but had separated some years earlier.
4. Father had claimed child benefit in respect of both his children with Mother, on 29 December 2022.
5. The FTT made two determinative findings in the 'Conclusions' section of its decision:
 - a. first, that it was not satisfied that HMRC had demonstrated that there had been a change of circumstances such as to provide grounds for supersession (of their earlier decision, that child benefit in respect of Child be awarded to Mother) ([38]); and
 - b. second, that Father and Mother had jointly elected for Mother to be entitled to child benefit in respect of Child. The findings in support of this in the FTT's analysis were:
 - i. that Mother and Father had come to an agreement that Mother would receive all the benefits to which she was entitled (and this, in the FTT's view, extended to child benefit); that agreement, the FTT found, was documented in a letter of 14 August 2019 from Father's solicitors to Mother and in a consent order made in the Family Court on 12 October 2020 ([39] and [40]);
 - ii. Mother's future entitlement to state benefits was an essential prerequisite to the financial arrangements made on divorce; any change to these would, unless agreed, require a further Family Court order to provide approval;
 - iii. Father had acted unilaterally, "possibly" in breach of the October 2020 Family Court order, in claiming child benefit; his actions undermined the terms of the financial settlement to which he had agreed ([41]);
 - iv. the agreement between Mother and Father, recorded in the October 2020 Family Court order, met the requirements of a joint election: [42];
 - v. the October 2020 Family Court order, along with the August 2019 letter from Father's solicitors to Mother, were "sufficient notification" to HMRC: [43];

- vi. that joint election remained in place: [44].
6. The FTT made findings about the August 2019 letter from Father's solicitors to Mother at [7]: the following were shown in bold in the FTT's decision, to show their importance to its analysis:
- a. Mother's income would "incorporate" benefits;
 - b. Mother was to apply for all benefits to which she was entitled;
 - c. Mother was to notify Father's solicitors as soon as she was in receipt of her benefits.
7. The FTT made findings about the 2020 Family Court order at [9-13]; the following were shown in bold in the FTT's decision, to show their importance to its analysis:
- a. there was an undertaking by Mother to apply for whichever benefits she was entitled to;
 - b. other undertakings by Mother were expressed to start from Mother's receiving her benefits.
8. The FTT decision found at [15] that, according to both parents' submissions to HMRC, from 5 March 2021 holiday-time was split equally but during term-time and half-term, the children would stay with Father 6 days per fortnight, and the other 8 days with Mother (and these arrangements were unchanged: see [19]).

The grant of permission to appeal

9. The FTT gave permission to appeal against its decision. Both HMRC and Father had applied for such permission.
10. The Upper Tribunal received notices of appeal from both HMRC and Father. The Upper Tribunal directed that the appeals of HMRC and Father be treated as a single consolidated set of proceedings, with two appellants.
11. When granting permission to appeal, the FTT said it was granting permission "so that the Upper Tribunal can consider" three items (labelled "a", "b" and "c"). I observed in case management directions, and reiterate here, that this seems a less-than-ideal way of expressing a decision giving permission to appeal: what such a decision should identify is arguable errors of law in the FTT's decision (as opposed to matters for the Upper Tribunal to "consider").
12. Item "a" for "consideration", per the grant of permission to appeal by the FTT, was "whether an agreement made by the parties, such as in this case in Family Court proceedings, can constitute an agreement for the purposes of the rules in Schedule 10 ... about competing claims, or whether, as in this case, one party can, despite such agreement, seek to re-open matters by making a fresh application to HMRC to be granted child benefit".

13. It seems to me the arguable legal error identified here, expressed in precise terms, is that of treating the *agreement*, which the FTT found to have been reached between Father and Mother (and evidenced in the October 2020 Family Court order), to the effect that Mother should receive child benefit in respect of both children, as a valid *joint election* for the purposes of paragraph 5 of Schedule 10.
14. Items “b” and “c” for “consideration”, per the grant of permission to appeal by the FTT, were whether it was relevant that Mother claimed (a) to be significantly worse off than Father; (b) that Father had acted out of pure spite in claiming child benefit, and was pursuing the claim as a form of “financial abuse”; and (c) that the award of child benefit in respect of Child to Father had resulted in the ending of child maintenance for Child.
15. I observe here that the FTT did not itself make factual findings in respect of the claims of Mother referred to, and (consistent with this) did not rely on these claims in reaching its conclusions. I can only think, therefore, that the arguable legal error here is that the FTT erred by so doing (such that these are, in reality, grounds of appeal in Mother’s favour, albeit that she is the respondent in these proceedings).

The Upper Tribunal proceedings

16. I am grateful to all three parties for attending the hearing and setting out their cases clearly and concisely, including in skeleton arguments prior to the hearing.
17. Father and Mother were both unrepresented (legally) in these proceedings (as indeed they were before the FTT) – in light of this, I thought it fair and just to set out my initial thinking, in some detail, in case management directions issued on 30 August 2025, so as to enable the parties to address their arguments to those areas where they disagreed with my initial thinking. Partly as a result of that, the explanation of my decision, which follows, does not expressly set out the arguments of each of the parties, and give my response to each; but it should be adequately clear from what follows, as to which arguments (which might have changed the outcome of my decision) I have not accepted, and why.

Why I have decided that the FTT erred in law on the matter of a joint election under paragraph 5 of Schedule 10

18. It was common ground that, as at the time when HMRC made their decision (April 2023), both Father and Mother were (apart from s144(3)) entitled to child benefit in respect of Child; that, per s144(3), only one of them was to be entitled to such child benefit, and that was to be determined in accordance with Schedule 10; and that the relevant paragraph of Schedule 10 was paragraph 5, which provided that “such one of them shall be entitled as they may jointly elect or, in default of election, as the Secretary of State may in his discretion determine”. Furthermore, paragraph 6(1) of Schedule 10 provides that elections under the schedule must be made “in the prescribed manner”; and this is in turn set out in regulation 14(1) as

... by giving notice in writing to [HMRC] at an appropriate office on a form approved by [HMRC] or by telephone to an officer of [HMRC] at an appropriate office or in such other manner being in writing as [HMRC] may accept as sufficient in the circumstances of any particular case or class of cases.

19. In this case, the FTT made factual findings that Mother and Father had reached agreement that Mother should receive child benefit in respect of both their children, and that this agreement was reflected in the October 2020 Family Court order and the August 2019 letter from Father's solicitors to Mother; in my view, however, these facts fall short of showing that there was a joint election by Mother and Father in the required form. That is because:
- a. the joint election, on the terms of regulation 14(1) as applied to the facts of this case, had to be in writing (there is no question of a notification by telephone on the facts of this case) – hence, the fact (as found by the FTT) that Mother and Father had reached *agreement*, is itself insufficient to comprise a valid joint election under paragraph 5 of Schedule 10; what matters is what, in writing, was notified to HMRC; and
 - b. it does not seem that either the October 2020 Family Court order, or the August 2019 letter from Father's solicitors to Mother, had been sent to HMRC by the time of their decision (April 2023); but, even if they had, they do not, separately or together, comprise a joint election that Mother was to receive child benefit in respect of Child, for a number of reasons:
 - i. the letter from Father's solicitors is clearly not "joint" – it comes from representatives of one party only;
 - ii. the October 2020 Family Court order contains no clear statement that both parents had agreed to Mother's entitlement to the child benefit in question: the undertaking by Mother to apply for whichever benefits she was entitled to (the provision highlighted by the FTT in its reasoning) falls short of this.
20. I conclude that the FTT erred in law in concluding that a joint election under paragraph 5 of Schedule 10, by Father and Mother, had been made as at the time of HMRC's decision in April 2023.

Why I have decided that the FTT erred in law on the matter of there being grounds for supersession of the previous award of child benefit (in respect of Child) to Mother

21. I was referred to Upper Tribunal Judge Hemingway's decision in CF/2853/2017 (which does not appear to have been put before the FTT), a case which, like this one, concerned priority between persons entitled to child benefit under Schedule 10. In that case, Judge Hemingway decided that a decision by HMRC had two components: one was to exercise HMRC's discretion, in default of a joint election, under paragraph 5 of Schedule 10; the other was a decision, in consequence of that exercise of discretion, that there were grounds for superseding the previous

awarding decision. There was no right of appeal to the FTT against the first component (HMRC's exercise of discretion under paragraph 5 of Schedule 10); but that exercise of discretion was, itself, "a change of circumstances sufficient to underpin the other component of the decision which was to the effect that there were grounds to supersede the previous awarding decision and to end [the previous award holder]'s entitlement ... it follows from the exercise of discretion that there has been a change of circumstances and that the decision concerning [the previous award holder's] entitlement has to be superseded" (paragraph 28).

22. I am persuaded by Judge Hemingway's reasoning; it follows that the FTT in this case erred in law in finding that there were no grounds to supersede the previous award of child benefit in respect of Child, to Mother: HMRC's exercise of their discretion, in default of a joint election, in favour of Father, was itself a change in circumstances justifying supersession of the prior award.

Why I do not think the FTT decision erred in not making findings (or basing its decision) on other aspects of Mother's case

23. As the FTT's permission decision indicated in items "b" and "c" of its matters for "consideration", Mother's case ranged to matters such as Father's motivation in claiming child benefit, and the fairness of HMRC's exercise of their discretion under paragraph 5 of Schedule 10 so as to award child benefit in respect of Child to Father. I do not consider that the FTT erred in law in not basing its decision on these matters: the question of whether there was a valid joint election in place, depended on the considerations I have set out above; in the absence of such an election, HMRC had discretion to decide who was entitled to child benefit in respect of Child – and there is no right of appeal to the FTT against the outcome of that exercise of discretion (see paragraph 4 of Schedule 2 to the Social Security Act 1998).

Why I have decided to set aside the FTT's decision and remake it

24. The errors of law in the FTT's decision explained above are material and so require that the decision be set aside under s12(2)(a) Tribunals, Courts and Enforcement Act 2007. It seems to me fair and just in the circumstances that I re-make the decision, rather than remit the case, under s12(2)(b): there was no joint election, per paragraph 5 of Schedule 10, between Father and Mother in place as at the time of HMRC's decision in April 2023, which means that HMRC were entitled to exercise the discretion in that paragraph to award child benefit in respect of Child to Father. There is no right of appeal against that decision. I therefore re-make the FTT's decision in the terms of HMRC's original decision: that Father was entitled to child benefit in respect of Child from 23 January 2023.

Zachary Citron
Judge of the Upper Tribunal

Authorised by the Judge for issue on 21 January 2026