



Neutral Citation Number: [2026] UKUT 55 (AAC)
Appeal No. UA-2024-001673-GA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

His Majesty's Revenue and Customs

Appellant

- v -

JA

Respondent

**Before: Upper Tribunal Judge K Markus KC (sitting in retirement)
Decided on consideration of the papers**

Representation:

Appellant: Ms Brandi Amiss-Trowler, Free Representation Unit
Respondent: Mr David Eland, HMRC

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)
Judge: Judge J.L. Compton
Digital Case No.: 1702547589429082
Tribunal Venue: Hatton Cross
Decision Date: 14th August 2024

SUMMARY OF DECISION

On appeal to the First-tier Tribunal against a decision that the claimant was not entitled to Guardian's Allowance because one of the conditions of entitlement in section 77 of the Social Security Contributions and Benefits 1992 was not satisfied, the tribunal decided that that condition was satisfied. However the tribunal erred in law in failing to consider whether another relevant condition of entitlement which had not been addressed in the original decision was satisfied.

Keywords:

34.10 – tribunal jurisdiction
2.4 – guardian's allowance

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 dated 14th August 2024 involved an error of law. Under section 12(2)(a) and section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remit it to the First-tier Tribunal for reconsideration by a fresh tribunal in accordance with the following directions.

DIRECTIONS

1. This case is remitted to the First-tier Tribunal for reconsideration.
2. The members of the First-tier Tribunal which reconsiders the case should not be the same as those who made the decision which has been set aside.
3. The parties should send to the relevant HMCTS office within one month of the issue of this decision, any further evidence upon which they wish to rely.
4. The tribunal hearing the remitted appeal is not bound in any way by the decision of the previous tribunal.
5. Copies of the parties' submissions to the Upper Tribunal and this decision should be added to the bundle to be placed before the tribunal hearing the remitted appeal.

These Directions may be supplemented by later directions by a tribunal judge, registrar or legal officer in the Social Entitlement Chamber of the First-tier Tribunal.

REASONS FOR DECISION

Introduction and background

1. HMRC appeals against a decision of the First-tier Tribunal (FtT) which decided that the respondent (JA) was entitled to Guardian's Allowance (GA) in respect of his four step-children following the death of their mother (his wife).
2. When JA applied for GA he stated that he knew the whereabouts of the children's father. On that basis HMRC refused the application. On his appeal to the FtT, JA said that he had misunderstood the meaning of "whereabouts", and that he only knew the general geographical area in which the father lived but not his address.

Legal framework

3. The only statutory provision in issue in this appeal is one of the conditions of entitlement to GA, set out in section 77(b) of the Social Security Contributions and Benefits Act 1992:

"that one of the parents of the child or qualifying young person is dead and the person claiming a guardian's allowance shows that he was at the date of the death unaware of, and has failed after all reasonable efforts to discover, the whereabouts of the other parent;"

The First-tier Tribunal's decision

4. The FtT set out a summary of evidence and then proceeded:

(i) Accordingly, the Tribunal was satisfied that [JA] was not aware of the whereabouts of [the father as at the date of death of [the mother] until the date of decision (and continuing). It accepted [JA's] evidence that he ticked the box 'yes' to knowing the whereabouts of [the father] so that he could provide all of the information he could, and that he was required to enter a post code as this was not an optional box, before he could move on to the rest of the form. The Tribunal noted that no warning was given to applicants to not tick 'yes' unless they had a definitive location and postcode of the absent parent, and that they should move to the next question if that was the case.

(j) The Respondent did not state in its original decision or in its mandatory reconsideration decision notice that it took issue with the reasonable efforts element of s.77(2) Social Security Contributions and Benefits Act 1992. Whilst the appeal submission sought to make submissions about whether [JA] had made reasonable efforts, this did not form part of its decision and this was not stated as the reason (in the alternative) as to why [JA] was not entitled to Guardian's allowance.

(k) The Tribunal did not therefore consider the 'alternative' case as it had not been put to [JA] in the decision letter. Whilst the Tribunal understands that both elements of s.77(2) must be satisfied, the Respondent did not in its decision notice, state that the second element was in dispute or formed part of the basis of the refusal of entitlement.”

5. The FtT therefore decided that JA was entitled to GA. It refused permission to HMRC to appeal, and permission was granted by the Upper Tribunal.

The grounds of appeal and the parties' submissions

6. The Upper Tribunal gave permission to HMRC to appeal on the ground that it was arguable that the FtT erred in law in failing to consider the second limb of section 77(2)(b).

7. The representatives of each party have provided written submissions.

8. HMRC's written submissions were submitted late. I have reviewed the Upper Tribunal file. On 22 September 2025 Mr Eland for HMRC had contacted the tribunal clerk because he had received a letter chasing him for his reply to JA's submissions but he had not received JA's submissions. It is not clear if a copy was then sent in October but a further copy of JA's submissions was sent on 4 January. At the time that I asked the clerk to chase Mr Eland, on 28 January, one month for replying had not yet elapsed. Mr Eland provided HMRC's submissions on 29 January. If 4th January was the first time that JA's submissions were sent to HMRC, there is no need for an extension of time. However, if they had been sent earlier (it is difficult to tell from the system, but Mr Eland said they had not been received) and so HMRC's response is late, I extend time for their

response. I take into account that any delay was relatively short, that JA had also been granted extensions of time to file late submissions, that there was some confusion as to what was sent by the tribunal administration and that, even if sent, it seems that JA's submissions had not been received by HMRC until 4th January. Moreover, there is no prejudice to JA in my admitting late submissions from HMRC – they do not add anything of substance to the original grounds of appeal to the Upper Tribunal.

9. As to the substantive matters, HMRC's representative submits that, once it was accepted that JA had not known the father's whereabouts, it should have considered whether JA had made reasonable efforts to discover his whereabouts. On behalf of JA, Ms Amiss-Trowler relies on section 12(3D) Social Security Act 1998 and submits that the FtT had no jurisdiction to consider the question of reasonable efforts because that was not an issue that arose in the original decision or on mandatory reconsideration. She submits that JA had no notice that reasonable efforts was in issue and had not had an opportunity to provide evidence on this point.

Decision without an oral hearing

10. HMRC has asked for the decision to be made without a hearing. JA's representative suggests that a hearing may be appropriate as it may raise an important point of law. The appeal does raise a point of law but it is narrow and straightforward. I have detailed written submissions from the parties and do not need to hear any oral evidence. I would not be assisted by having an oral hearing, which would simply generate additional delay and expense. Accordingly and in accordance with the overriding objective I have decided to determine this appeal without a hearing.

Analysis

11. Section 12(3D) Social Security Act 1998 provides:

“In the case of a decision relating to child benefit or guardian's allowance, the making of an appeal under this section against the decision as originally made must follow the Commissioners for Her Majesty's Revenue and Customs first deciding, on an application made for revision of that decision under section 9, not to revise that decision.”

12. JA's representative submits that this means that the FtT cannot consider issues in dispute that have not been decided by HMRC.
13. Appeal to the FtT lies against a decision of HMRC, whether as originally made or as revised – section 12(1) SSA. As the Tribunal of Commissioners held in *R(IB)2/04* at paragraphs 24 and 25, the appeal tribunal stands in the shoes of the decision-maker on the claim and can make any decision on the claim which the decision-maker could have made, including dealing with new questions so as to reach the right result. At paragraph 55(1) and (2), by reference to *CIB/2338/2000*, the Tribunal of Commissioners explained that an appeal to the appeal tribunal is against an “outcome decision”, that is “one that directly affects the money that the claimant receives or might receive...”. This is to be contrasted with “the

building blocks of outcome decisions”. These affect the money that a claimant receives “only when incorporated in an outcome decision. The claimant is able to appeal against the outcome decision and is able to challenge, as an issue arising on that appeal, the underlying determination.” The same applies to an appeal against a decision refusing to revise the original decision (paragraph 55(2)).

14. In the present case, the “outcome decision” was the decision that JA was not entitled to GA. Satisfaction of the various conditions of entitlement to GA, contained in section 77, were the “building blocks” to that one decision.
15. There had been a decision by HMRC not to revise that outcome decision. Therefore section 12(3D) was satisfied.
16. The role of the FtT in the present case, standing in the shoes of the HMRC decision-maker, was to decide whether or not JA was entitled to GA. Although the original decision-maker had not needed to consider all the conditions of entitlement because one necessary condition was not satisfied, the FtT decided that that condition was satisfied and so it was necessary for it to consider the remaining conditions of entitlement. Failure to do so risked the FtT making the wrong outcome decision, contrary to its duty to reach the “right result”.
17. Indeed HMRC had made it clear that the second limb of section 77(2)(b) would arise for decision if the FtT decided that JA had been unaware of the father’s whereabouts and HMRC made written submissions on the evidence as to the application of that provision. See their initial response to the appeal in the FtT and their further response received by the FtT on 10 April 2024 (Addition B to the FtT bundle). If, despite this, the FtT had considered that it would have been unfair to require JA to show that he had failed to discover the father’s whereabouts after making reasonable efforts, they had a discretion to adjourn the hearing. However, it was an error of law for the FtT to have made a decision on entitlement without addressing the relevant conditions of entitlement.

Conclusion

18. In the light of the FtT’s error of law, I set aside its decision. I remit the appeal to another tribunal to consider whether JA was entitled to GA pursuant to section 77 of the 1992 Act. I have given directions above.

Kate Markus KC
Judge of the Upper Tribunal
(Sitting in retirement)

Authorised by the Judge for issue on 4th February 2026