Neutral Citation Number: [2026] UKUT 283 (AAC)
Appeal Nos. UA-2025-000114-CSM,
UA-2025-000116-CSM

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between

ROE (anonymity order made)
Appellant

- v -

Secretary of State for Work and Pensions
First Respondent

IAL (anonymity order made)
Second Respondent

Before:	**Upper Tribunal Judge Church**
Hearing date(s):	11 June 2026
Mode of hearing:	In person
Hearing venue:	Field House, London

Representation:	
Appellant:	Unrepresented
First Respondent:	Ms Imogen Sadler of counsel, instructed by GLD
Second Respondent:	Unrepresented

On appeal from:

Tribunal:	First-tier Tribunal (Social Entitlement Chamber)
Tribunal Case Nos:	SC124/20/00688 and SC124/24/01291
Tribunal Venue:	Fox Court
Tribunal panel:	Tribunal Judge C Pithie and Financial Member Ms C Farquharson
Decision Date:	11 June 2024

SUMMARY OF DECISION

CHILD SUPPORT (5) variation: diversion of income (5.5)

This appeal is about regulation 71 of the Child Support Maintenance Calculation Regulations 2012. The First-tier Tribunal decided to make a variation under Regulation 71 to the amount the Father was liable to pay by way of child maintenance.

The Upper Tribunal allowed the appeals on the basis that, having made a finding that the Father was subject to a freezing order, it was incumbent on the First-tier Tribunal to explain how, given that freezing order, it was satisfied that the Father:

> (a) had the ability to control the amount of income he received or was taken into account as his gross weekly income; and
>
> (b) unreasonably reduced the amount of his income which would otherwise fall to be taken into account as gross weekly income or as unearned income under regulation 69 by diverting it to other persons or for purposes other than the provision of such income for himself

as required by Regulation 71. Its failure to do so rendered its reasons inadequate.

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 appeals. The decisions of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(i) and (3) of the Tribunals, Courts and Enforcement Act 2007, I set the decisions aside and remit the case to be reconsidered by a fresh tribunal in accordance with this decision.

REASONS FOR DECISION

Introduction

1. The Child Support Act 1991 (the **"1991 Act"**) and associated regulations create a statutory scheme for the making of payments by one parent where that parent provides 'day to day' care of the child to a lesser extent than the other parent. The payments are to help with the costs of raising the child. While the scheme is administered by the Child Maintenance Service (on behalf of the Secretary of State for Work and Pensions), the payments are made not by the Government but rather by the parent with the lesser share of care to the parent with a greater share of care.
2. This appeal concerns the liability of ROE (who is the "non-resident parent" for the purposes of the 1991 Act), to pay child maintenance to IAL (who is the "person with care" for the purposes of the 1991 Act) in respect of their child (who is a "qualifying child" for the purposes of the 1991 Act). Because those terms are a bit confusing, I will refer to them in more familiar terms as the Father, the Mother and the Child.

Anonymity

3. On 20 April 2026, because I was concerned that revealing the Child's identity would be harmful to them, and revealing the Father's and Mother's identities would allow identification of the Child, I made an anonymity order prohibiting any person from disclosing or publishing the name, or any part of the address, of the Father, the Mother or the Child, or to publish or reveal any other information that would be likely to lead to the identification of any of them and I ordered that the

Father should be known as ROE, the mother as IAL and the Child as ULY. These are ciphers designed to protect the identities of the Mother, Father and Child, and the letters are chosen at random. My order and the reasons for it are published on the judiciary website.

Legal framework

4. The Child Support Maintenance Calculation Regulations 2012 (the **"2012 Regulations"**) set out the way that liability to make payments by way of child maintenance is calculated. This is done mainly by reference to the paying parent's gross weekly income according to the most recent tax return they have submitted to HMRC.

5. The 2012 Regulations make provision for adjustments to be made to the calculation of a parent's liability to make child maintenance payments in certain circumstances where that parent has managed their affairs in a way that has had the effect of reducing the amount of their income or assets that would otherwise have been taken into account in calculating their liability to pay child maintenance.

6. Regulation 71 of the 2012 Regulations provides:

> **"Diversion of income**
>
> **71.**-(1) A case is a case for a variation for the purposes of paragraph 4(1) of Schedule 4B to the 1991 Act where-
>
> > (a) the non-resident parent ("P") has the ability to control, whether directly or indirectly, the amount of income that-
> >
> > > (i) P receives, or
> > >
> > > (ii) is taken into account as P's gross weekly income; and
> >
> > (b) the Secretary of State is satisfied that P has unreasonably reduced the amount of P's income which would otherwise fall to be taken into account as gross weekly income or as unearned income under regulation 69 by diverting it to other persons or for purposes other than the provision of such income for P."
>
> (2) Where a variation is agreed to under this regulation, the additional income to be taken into account is the whole of the amount by which the Secretary of State is satisfied that P has reduced the amount that would otherwise be taken into account as P's income."

The First-tier Tribunal's decisions under appeal

7. The decisions under appeal are the decisions made by the First-tier Tribunal on 11 June 2024 in relation to the Mother's appeals against the Child Maintenance Service's decisions made on 17 July 2020 about the Father's liability to make child maintenance payments to the Mother in relation to the Child with effective dates of 13 July 2019 and 1 April 2020. The First-tier Tribunal allowed the appeals and set both decisions aside (the **"First-tier Tribunal's Decisions"**).

8. The First-tier Tribunal found that the Father had unreasonably diverted very substantial amounts of income from companies that he owned, and it was just and equitable to allow variations for those diversions of income. It decided that the amount of income that should be taken into account for the purposes of

calculating the Father's liability to pay child maintenance effective from 13 July 2019 was £134,319.75, and with effect from 1 April 2020 was £81,567.75.

The permission stage

9. The Father was unhappy with this outcome and sought permission to appeal to the Upper Tribunal. He submitted wide ranging and lengthy grounds of appeal, most of which amounted to a spirited disagreement with the First-tier Tribunal's assessment of the evidence and the findings it made based on that evidence, which I explained to him was insufficient to establish an error of law on the part of the First-tier Tribunal.

10. However, I decided that it was realistically arguable that the First-tier Tribunal had erred in law because it made a finding that the Mother had obtained a freezing order that placed significant restrictions on how much money the Father could "take out of" one of his companies but did not explain how it reached its finding that the Father had "the ability to control, whether directly or indirectly, the amount of income" that he receives or is taken into account as gross weekly income or as unearned income (as required by Regulation 71(1)(a) of the 2012 Regulations) or indeed whether he "unreasonably reduced" the amount of his income which would otherwise fall to be taken into account as gross weekly income or as unearned income under Regulation 69 of the 2012 Regulations by diverting it to other persons or for purposes other than the provision of such income for" himself.

11. I decided that this warranted a grant of permission and I made directions for the Secretary of State to make written submissions and for an oral hearing.

The positions of the parties

12. The Father invited me to allow the appeal, to set aside the First-tier Tribunal's Decisions, and to re-make those decisions on the basis that there had been no diversion of income.

13. The Secretary of State supported the appeals on the ground that the First-tier Tribunal had failed to explain how it was satisfied that the Father was drawing substantial sums from his business accounts and had the ability to control the amount of income he received and what should be taken into account as weekly income when he was significantly restricted in his ability to do so by the freezing order. The Secretary of State invited me to allow the appeal and remit the case to be reheard by the First-tier Tribunal.

14. The Mother opposed the appeals and invited me to confirm the First-tier Tribunal's Decisions.

The hearing

15. At the oral hearing of the appeal the Father and Mother represented themselves. The Mother was provided with special measures in the form of screens and arrangements to prevent the parties from encountering each other outside the hearing room. The Father and the Mother conducted themselves in an appropriate and calm manner, despite the high emotions involved.

16. Ms Sadler, for the Secretary of State, explained that her attendance was intended to assist the tribunal and ensure the good administration of the child support scheme, rather than to lend support to either parent.

17. I explained at the beginning of the hearing that an appeal to the Upper Tribunal was not a full-rehearing of the proceedings before the First-tier Tribunal, but rather a much more focused exercise in identifying whether the First-tier Tribunal erred in law. I encouraged the parties to stay focused on the task of identifying whether the First-tier Tribunal's Decisions involved any errors of law that might have made a difference to the outcome of the appeals.

18. Despite this, the Father made lengthy submissions setting out numerous grounds of appeal that largely repeated the grounds he had put forward at the permission stage and which I had found unpersuasive. There is no need for me to rehearse them here because they amounted to disagreements with the First-tier Tribunal's assessment of the evidence, the findings it made based on the evidence as it assessed it, and the conclusions it drew from those findings. As I explained, such disagreements do not, by themselves, establish any errors of law.

19. In her submissions the Mother said that while she was not happy with the First-tier Tribunal's Decisions herself, I should dismiss the appeals and confirm the First-tier Tribunal's Decisions. She said the Father had engaged in widespread wrongdoing and should not be permitted to exploit the "loophole" of the missing explanation about the freezing order to avoid his responsibilities.

Analysis

20. At the permission stage to grant permission to appeal I had to be persuaded only that it was realistically arguable that the First-tier Tribunal's Decisions involved a material error of law. At this stage I must be satisfied that the First-tier Tribunal Decisions did involve a material error of law.

21. I am satisfied that it was incumbent on the First-tier Tribunal to explain how, given the freezing order to which the Father was subject, it was satisfied that he:

    a. had the ability to control, whether directly or indirectly, the amount of income that he received or was taken into account as his gross weekly income; and

    b. unreasonably reduced the amount of his income which would otherwise fall to be taken into account as gross weekly income or as unearned income under regulation 69 by diverting it to other persons or for purposes other than the provision of such income for himself.

22. Without an explanation of that element of its decision making, it is impossible to know whether it was entitled to make a variation.

23. While the First-tier Tribunal gave clear and detailed reasons for many aspects of its decision making, its failure to explain these crucial matters renders its reasons inadequate and in error of law.

Conclusion

24. For these reasons I allow the appeals and set aside the First-tier Tribunal Decisions.

25. Because further factual matters require to be determined, and the First-tier Tribunal with its access to expert financial members is better placed to carry out the fact finding required, I remit the appeals to be redetermined by the First-tier Tribunal.

26. Sympathetic to the frustration that this decision is likely to cause both the Mother and Father given the long life that this case has had already, I do so with considerable reluctance.

27. To the extent that the First-tier Tribunal may have erred in any of the other ways argued by the Father, any such errors will be subsumed into the rehearing of the appeals.

Thomas Church
Judge of the Upper Tribunal

Authorised by the Judge for issue on 26 July 2026