



Neutral Citation Number: [2026] UKUT 291 (AAC)
Appeal No. UA-2025-000806-BB

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Secretary of State for Work and Pensions

Appellant

- v -

Phillip Buckley

Respondent

Before: Upper Tribunal Judge Citron

Hearing date: 18 June 2026

Mode of hearing: Cloud Video Platform

Representation:

Appellant: by Richard Howell of counsel, instructed by Government Legal Department

Respondent: by himself

On appeal from

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Judge: P Johnson

Tribunal Case No: SC944/23/00815

Tribunal Venue: St Helens

Decision Date: 7 November 2024

SUMMARY OF DECISION

3.1 Bereavement payments

The respondent in this appeal, Mr Buckley, suffered the bereavement of his partner in 2018; at the time, cohabiting partners could not claim bereavement support payment; but the law was changed, retrospectively, by a “remedial order” in 2023, and Mr Buckley claimed bereavement support payment then. He was, however, refused the higher rate of bereavement support payment, as he did not satisfy the condition of having become entitled to child benefit, after the bereavement, in respect of a child or qualifying young person who was living with the claimant or their deceased partner

immediately prior to the partner's death. This was because, despite otherwise meeting the conditions for entitlement to child benefit in respect of a child he had with his deceased partner and who lived with them prior to the partner's death, Mr Buckley had not actually *claimed* child benefit following the bereavement (and, by the time he claimed bereavement support payment in 2023, he was no longer eligible to claim child benefit).

The First-tier Tribunal allowed Mr Buckley's appeal against the Secretary of State's decision to deny him the higher rate of bereavement support payment. Although it was a condition of the higher rate of bereavement support payment that Mr Buckley had, after the bereavement, become entitled to child benefit under section 141 of the Social Security Contributions and Benefits Act 1992, and section 13 of the Social Security Administration Act 1992, with which the former Act was to be read, provided that entitlement to child benefit required the making of a valid claim, the First-tier Tribunal held that "entitlement" in section 141, in this particular context, meant entitlement "to be paid", and did not require the making of a claim.

The Secretary of State appealed to the Upper Tribunal, with the permission of First-tier Tribunal.

The Upper Tribunal holds that the First-tier Tribunal erred in law. The Social Security Contributions and Benefits Act 1992 is to be read with Social Security Administration Act 1992 (as set out in section 177 of the former Act), and so entitlement under section 141 of the former Act requires making of a valid claim for child benefit (as laid out in the latter Act). Mr Buckley had not made such a claim, and so was not eligible for the higher rate of bereavement support payment. The appeal is allowed and the First-tier Tribunal's decision is re-made, dismissing Mr Buckley's appeal against the original decision of the Secretary of State.

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 Secretary of State's appeal. The making of the decision of the First-tier Tribunal referred to above involved the making of an error on a point of law. The Upper Tribunal SETS ASIDE the First-tier Tribunal's decision and RE-MAKES it, as follows:

The Upper Tribunal DISMISSES Mr Buckley's appeal against the decision of the Secretary of State dated 13 February 2023, to the effect that Mr Buckley was not entitled to the higher rate of bereavement support payment.

REASONS FOR DECISION

1. This decision is about whether Mr Buckley was entitled to bereavement support payment at the higher rate, following the death of his partner in 2018.

Bereavement support payment at the higher rate

2. In the summary of the law which follows, I have highlighted certain words and phrases (by putting them in italics), as they will be central to in the analysis which follows.
3. Bereavement support payment is set out in Part 5 of the Pensions Act 2014 (the “**Pensions Act**”). Section 30(1) of the Pensions Act provides that a person is entitled to bereavement support payment in the circumstances set out there, one of which (s30(1)(aa)) is that “in the case of a person whose cohabiting partner dies, the person is pregnant *or entitled to child benefit* in circumstances specified under subsection (4) or, where no such circumstances are specified, in such circumstances as the Secretary of State may specify by regulations”.
4. Section 30(2)(a) states that the Secretary of State must by regulations specify the rate of bereavement support payment. Section 30(4)(a) provides that “in the case of a person who is pregnant *or entitled to child benefit* in specified circumstances, the regulations may specify a higher rate”.
5. In exercise of the powers conferred by (amongst others) section 30, the Secretary of State made the Bereavement Support Payment Regulations 2017 (the “**regulations**”). Regulation 3(1)-(3) specifies the higher rate of bereavement support payment. Regulation 4(1) provides that a person falling within regulations 4(2)-(4) is “entitled to the higher rate of bereavement support payment under regulation 3(1) to (3).” Regulation 4(4) applies to:

A person who, after their spouse, civil partner or cohabiting partner died, *becomes entitled to child benefit under section 141 of [the Social Security Contributions and Benefits Act 1992]* for a child or qualifying young person who was residing with the person or their deceased spouse, civil partner or cohabiting partner immediately before the spouse, civil partner or cohabiting partner died.

Child benefit

6. Provision for child benefit is contained in Part IX (sections 141-147) of the Social Security Contributions and Benefits Act 1992 (the “**Benefits Act**”). Section 141 provides that:

A person who is responsible for one or more children or qualifying young persons in any week *shall be entitled*, subject to the provisions of this Part of this Act, to a benefit (to be known as ‘child benefit’) for that week in respect of the child or qualifying young person, or each of the children or qualifying young persons, for whom he is responsible.

7. Section 177(2) of the Benefits Act provides that: “This Act is to be read, where appropriate, with the Administration Act...”, that is (see s174) the Social Security Administration Act 1992 (the “**Administration Act**”). In parallel fashion, s192(2) of the Administration Act provides that it is to be read, where appropriate, with the Benefits Act.
8. Section 1(1) of the Administration Act provides that, save in such cases as may be prescribed and subject to certain exceptions, “no person shall be entitled to any benefit unless, in addition to any other conditions relating to that benefit being satisfied...
 - a. he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations under this Part of this Act; or
 - b. he is treated by virtue of such regulations as making a claim for it.”

For this purpose, a “benefit” includes bereavement support payment, but *not child benefit*.

9. Section 13(1) of the Administration Act 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.*”

The remedial order

10. The Bereavement Benefits (Remedial) Order 2023 (SI 2023/134) came into force on 9 February 2023. The remedial order was made to remedy the incompatibility with the Human Rights Act 1998 identified by the High Court (Holman J) in *R (Jackson) v SSWP* [2020] EWHC 183 (Admin), [2020] 1 WLR 1441 and to enable claims for bereavement support payment by persons with dependent children who were cohabiting partners (not married or in a civil partnership) at the time of the death. The remedial order among other things amended retrospectively s30 of the Pensions Act in order to entitle cohabiting partners with dependent children to bereavement support payment from 30 August 2018. (I gratefully adopt this short summary from Upper Tribunal Judge Stout’s decision in *AET v SSWP* [2025] UKUT 016 (AAC)).

The basic facts in this case

11. Prior to his partner’s death in November 2018, Mr Buckley lived with his partner and their children. His partner had been in receipt of child benefit. Following his partner’s death, Mr Buckley was solely responsible for the care of their youngest child, who was still in education and a qualifying young person, for the purposes of child benefit.
12. On 10 February 2023, Mr Buckley claimed bereavement support payment.
13. Mr Buckley never claimed child benefit.

The First-tier Tribunal's analysis

14. The First-tier Tribunal acknowledged that

- a. to be entitled to the higher rate of bereavement support, Mr Buckley had to have become *entitled to child benefit under s141 of the Benefits Act*; and
- b. under s13 of the Administration Act (with which the Benefits Act had to be read), no person shall be *entitled* to child benefit unless he claims it;

however, the First-tier Tribunal posited at paragraph [15] of its decision that, in s13 of the Administration Act, *entitled to* had a meaning, in that context, of *entitled to be paid*, which the First-tier Tribunal contrasted with “*entitlement in the in s141 sense*”. The First-tier Tribunal’s analysis was based on its giving *entitlement*, as used in s141 of the Benefits Act, its ordinary meaning, in context.

15. The First-tier Tribunal gave the Secretary of State permission to appeal.

The Secretary of State's case

16. The Secretary of State’s case included the following:

- a. a person is not entitled to child benefit absent a claim for it, even if the terms of s141 of the Benefits Act, read in isolation, are satisfied; this is due to s13(1) of the Administration Act.
- b. the Benefits Act must “be read, where appropriate” with the Administration Act. This means s13 of the Administration Act is to be read as forming part of the Benefits Act: see *Phillips v Parnaby* [1934] 2 KB 299 per Lord Hewart CJ at pp.302-303; the case quotes from Lord Selborne LC in *Canada Southern Ry Co v International Bridge Co* (1883) 8 App Cas 723,727, referring to two statutes which were there in question:

"It is to be observed that those two Acts are to be read together by the express provision of the seventh and concluding section of the amending Act; and therefore we must construe every part of each of them as if it had been contained in one Act, unless there is some manifest discrepancy, making it necessary to hold that the later Act has to some extent modified something found in the earlier Act."

- c. In reaching the view that s13 of the Administration Act was concerned with whether child benefit should be *paid* as opposed to governing *entitlement* to the benefit, the First-tier Tribunal failed to recognise that Parliament has consistently drawn a deliberate distinction between provisions affecting entitlement and those affecting whether a benefit is payable.

- d. Two Upper Tribunal cases have examined similar statutory language in relation to widowed parent's allowance: section 39A(2)(a) of the Benefits Act makes it a condition of entitlement to widowed parent's allowance that the surviving spouse is "entitled to child benefit":
 - i. In *SSWP v GH* [2015] UKUT 591 (AAC) (at paragraphs [4] and [23]), the Upper Tribunal (Judge Sutherland Williams) held that "entitlement to child benefit is determined in part by section 13" of the Administration Act ([23]), and that "[t]here can be no entitlement to child benefit without a claim" ([4]).
 - ii. In *AE v SSWP* [2025] UKUT 186 (AAC) the Upper Tribunal (Judge Wright) held that (i) "making a claim for child benefit is a condition of entitlement to that benefit" by virtue of s13(1) of the Administration Act ([48]); and (ii) the words "entitled to child benefit" in the condition of entitlement to widowed parent's allowance in s39A(2)(a) of the Benefits Act require the condition of entitlement in s13(1) of the Administration Act to be satisfied (paragraphs [51-53]):

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 [Benefits Act] as meaning the same as the exact same phrase found in section 13(1) of the [Administration Act]. 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 [Benefits Act]. Were it otherwise, entitlement to child benefit could arise under Part IX of the [Benefits Act] without a claim being made for that benefit, and the provision in section 13(1) of the [Administration Act] requiring a claim to be made to be entitled to child benefit would lead nowhere and be otiose.

17. The Secretary of State's submissions referred to regrettable error in relation to what was on Department for Work and Pensions' website at relevant times as regards the issue in this case; they also accepted that Mr Buckley acted in good faith at all times.

Mr Buckley's response to the Secretary of State's appeal

18. Mr Buckley sought to defend the First-tier Tribunal's legal analysis; he also referred to what was said on the Department for Work and Pensions' website at relevant times; he said that, at the time (of the bereavement), he had been told by the child benefit office that he was entitled to child benefit, but, due to stress and grief at the time, he did not claim it (it was about £20 per week); it appears that his youngest child would have continued to be a qualifying young person for child benefit purposes, until around September 2019.
19. At the hearing, Mr Buckley put some emphasis on the point that, whilst the remedial order extended the time in which he (as a cohabiting partner, rather than

a spouse or civil partner, of the deceased) could claim bereavement support payment, and so, in effect, retrospectively opened up the possibility of his receiving that benefit in respect of a bereavement in 2018, by the time the remedial order was made, he was no longer able to make a successful claim for child benefit – he was, in effect, “out of time” for such a claim – and so he was not able to receive the higher rate of bereavement support payment. He implied that the remedial order should have amended the law to make it possible for someone in his circumstances to receive higher rate bereavement support payment.

My analysis

20. This case is about whether Mr Buckley was entitled to the higher rate of bereavement support payment; and the relevant legal requirement, set out in regulation 4(4), was that Mr Buckley had, after the bereavement in November 2018, become *entitled to child benefit under s141 of the Benefits Act* in respect of a child or qualifying young person who was residing with him, or his deceased partner, immediately before the bereavement. The words I have italicised are the focus of this decision (as it was not in dispute that the youngest child of Mr Buckley and his deceased partner was a qualifying young person living with them immediately before the bereavement).
21. Section 141 of the Benefits Act, on its face, sets out certain conditions for entitlement for child benefit – it is, once again, not in dispute that these were satisfied during some period of time after the bereavement. But what is, in my view, determinative of this case, is that s177(2) of the Benefits Act provides that *the Benefits Act is to be read, where appropriate, with the Administration Act*; and s13 of the Administration Act provides 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. In my view, this means that entitlement to child benefit under s141 of the Benefits Act includes the condition of entitlement set out in s13 of the Administration Act (i.e. the making of a valid claim). It seems to me “appropriate” to read the Benefits Act together with the Administration Act in this manner, as they are addressing the same subject - entitlement to child benefit.
22. In my view, therefore, the First-tier Tribunal erred in not interpreting s141 of the Benefits Act, as referred to in regulation 4(2), together with s13 of the Administration Act. The error was material, in that it led the First-tier Tribunal to conclude that Mr Buckley became entitled to child benefit under s141 after the bereavement, whereas, on a correct analysis of the (undisputed) facts, he did not; and this led the First-tier Tribunal to conclude that Mr Buckley was entitled to the higher rate of bereavement support payment under regulation 4(4) whereas, on a correct analysis, he was not.
23. Mr Buckley’s dissatisfaction with this outcome is understandable but the reasons for his dissatisfaction do not, in my view, impinge on its correctness. He points out that the Department for Work and Pensions’ website did not reflect this analysis; counsel for the Secretary of State has said in the course of these proceedings that this was regrettable; but what is on this website does not affect

the correct legal analysis. I understand Mr Buckley's point that, had the changes in the law effected by the remedial order (in 2023) been in place in the year or so after the bereavement (when he could have claimed child benefit in respect of his youngest child), he would have done so; and that, whilst the remedial order enabled him to claim bereavement support payment retrospectively, it did not enable him to claim child benefit retrospectively, so as to qualify for the higher rate of bereavement support payment; but these points do not assist in defending the First-tier Tribunal's analysis, which I have found to be in error; and neither the First-tier Tribunal nor the Upper Tribunal have the power to change the law from what it is, to what Mr Buckley says it ought to be.

Disposal

24. The decision of the First-tier Tribunal erred in law in a material way and so falls to be set aside. No further fact-finding is needed in order to re-make the decision and so I have done so, dismissing Mr Buckley's appeal against the decision of the Secretary of State dated 13 February 2023, to the effect that Mr Buckley was not entitled to the higher rate of bereavement support payment.

Zachary Citron
Judge of the Upper Tribunal

Authorised by the Judge for issue on 31 July 2026