

Neutral Citation Number: [2026] UKUT 415 (AAC)
Appeal No. UA-2025-001710-USTA

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

Lisa Riley

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Wikeley
Decided on consideration of the papers

Representation:
Appellant: Mr T Grigoriou, Citizens Advice, Gateshead
Respondent: Mr R Jennings, Decision Making and Appeals, DWP

On appeal from:
Tribunal: First-Tier Tribunal (Social Security and Child Support)
Judge/Panel: Judge J E Callan
Tribunal Case No: SC295/24/00124
Digital Case No: 1716-8865-0454-8970
Tribunal Venue: Gateshead
Hearing Date: 18 February 2025

JUDICIAL SUMMARY

13.5 Earnings and other income – calculation: employed
45.9 Universal credit: other

The Appellant, who worked in employment subject to the RTI arrangements, had gross taxable earnings of £725.34 for her UC assessment period from 16 February 2024 to 15 March 2024. This figure was just enough to exempt her from the operation of the

benefit cap, for which the relevant threshold at the material time was £722.00. However, her employer deducted £27.60 in income tax, apparently due to an incorrect PAYE coding, meaning that the Appellant only actually received a net payment of £697.74 in the relevant assessment period. This was the figure reported under RTI, thereby triggering the benefit cap. The employer later acknowledged that the £27.60 in tax had been deducted in error and reimbursed that sum to the Appellant. However, by then the Appellant had lost in excess of £1,264 in just one month's UC entitlement through the operation of the benefit cap. The issue was whether the Appellant could invoke one of the exceptions to the use of RTI so as to avoid this calamitous consequence. This turned on whether "it appears to the Secretary of State that the amount of a payment reported to HMRC is incorrect, or fails to reflect the definition of employed earnings in regulation 55 (employed earnings), in some material respect" (as provided for by regulation 61(3)(b) of the Universal Credit Regulations 2013). The FTT ruled that this exception did not apply, a decision upheld on appeal by the Upper Tribunal.

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 dismiss the appeal. The decision of the First-tier Tribunal did not involve any material error of law (section 11 of the Tribunals, Courts and Enforcement Act 2007).

REASONS FOR DECISION

Introduction

1. This appeal concerns the proper interpretation of regulation 61(3)(b) of the Universal Credit Regulations 2013 (SI 2013/376). This provides for one of the permissible exceptions to the use of Real Time Information (RTI) in calculating a claimant's employed earnings for the purposes of entitlement to Universal Credit (UC).

The nub of the problem

2. The Appellant, who worked in employment subject to the RTI arrangements, had gross taxable earnings of £725.34 for her UC assessment period from 16 February 2024 to 15 March 2024. This figure was (just) sufficient to exempt her from the operation of the benefit cap, for which the relevant threshold at the material time was £722.00. However, her employer deducted £27.60 in income tax, apparently due to an erroneous PAYE coding, meaning that the Appellant only actually received a net payment of £697.74. This was the figure for her earnings reported under RTI, so triggering the benefit cap. The employer later acknowledged that the £27.60 in tax had been deducted in error and reimbursed that sum to the Appellant. However, by then it was too late, and the Appellant had lost £1,264.83 in just one month's UC entitlement through the operation of the benefit cap.

3. This had an immediate and not surprisingly devastating impact on the Appellant's finances. As she explained in her subsequent appeal to the First-tier Tribunal

(FTT), "this has literally ruined me I'm in rent arrears and struggling I just don't agree with what they've done it wasn't my fault … it was tax mistake not mine. I've got six children to care for and half my money was deducted so I couldn't pay myself rent and have been struggling with other bills etc because of this."

4. The question that arises on this Upper Tribunal appeal was whether the Appellant could invoke one of the exceptions to the use of RTI so as to avoid this calamitous consequence. Accordingly, the legal issue was whether "it appears to the Secretary of State that the amount of a payment reported to HMRC is incorrect, or fails to reflect the definition of employed earnings in regulation 55 (employed earnings), in some material respect" (as provided for by regulation 61(3)(b)).

The legislative framework

5. Regulation 54(1) of the Universal Credit Regulations 2013 provides that "The calculation of a person's earned income in respect of an assessment period is, unless otherwise provided in this Chapter, to be based on the actual amounts received in that period." Regulation 61 then deals with the provision of information for calculating earned income for the purposes of entitlement to UC. The fall-back position, according to regulation 61(1), is that "a person must provide such information for the purposes of calculating their earned income at such times as the Secretary of State may require". However, this is subject to regulation 61(2), which provides for RTI (where available) to be the normal basis of the assessment:

> *Real time information*
>
> (2) Where a person is, or has been, engaged in an employment in respect of which their employer is a Real Time Information employer—
>
> (a) the amount of the person's employed earnings from that employment in respect of each assessment period is to be based on the information reported to HMRC under the PAYE Regulations and received by the Secretary of State from HMRC in that assessment period; and
>
> (b) in respect of an assessment period in which no information is received from HMRC, the amount of employed earnings in relation to that employment is to be taken to be nil.

6. However, regulation 61(3) and (4) then deal with exceptions to the use of RTI (with the key passage for the purposes of this appeal highlighted in bold):

> *Exceptions to use of Real Time Information*
>
> **(3) Paragraph (2) does not apply where—**
>
> (a) in relation to a particular employment the Secretary of State considers that the employer is unlikely to report information to HMRC in a sufficiently accurate or timely manner;

> **(b) it appears to the Secretary of State that the amount of a payment reported to HMRC is incorrect, or fails to reflect the definition of employed earnings in regulation 55 (employed earnings), in some material respect;** or
>
> (c) no information is received from HMRC in an assessment period and the Secretary of State considers that this is likely to be because of a failure to report information (which includes the failure of a computer system operated by HMRC, the employer or any other person).
>
> (4) Where paragraph (2) does not apply by virtue of any of the exceptions in paragraph (3) the Sectary of State must determine the amount of employed earnings for the assessment period in question (or, where the exception in paragraph (3)(a) applies, for each assessment period in which the person is engaged in that employment) in accordance with regulation 55 (employed earning) using such information or evidence as the Secretary of State thinks fit.

7. These are the material provisions of regulation 61 as they have been in place sine the amendments made by regulation 2 of the Universal Credit (Earned Income) Amendment Regulations 2020 (SI 2020/1138), following the judgment of the Court of Appeal in *Secretary of State v Johnson & others* [2020] EWCA Civ 778. The Explanatory Note to the 2020 amending regulations explains the purpose of regulation 61(3) and (4) as follows:

> The exceptions are set out in paragraph (3). The first is where the Secretary of State considers that the information provided by the employer is unlikely to be sufficiently accurate or timely. The second exception is where the information about a particular payment appears to be inaccurate. The third is where the absence of RTI information in an assessment period is likely to be due to failure to report, rather than the claimant having not received a payment of earnings. In such cases the Secretary of State will determine the earnings in relation to the affected assessment period (or, in relation to the first exception, for each assessment period while the person is in that employment), using such information as the Secretary of State considers appropriate.

The factual background

8. The essential facts of the present case are not in dispute. They are summarised in paragraph 2 above and in more detail in the FTT's Statement of Reasons, which appears below.

The First-tier Tribunal's decision

9. The FTT's Decision Notice, issued after an oral hearing on 18 February 2025, read as follows:

> The appeal is refused.

> The Appellant's appeal [is] against the decision made [on] 16th March 2024 in respect of the calculation of her Universal Credit which, due to the application of the benefit cap reduced the sum due for the period of 16th February 2024 to 15th March 2024.
>
> The Appellant's case was as a result of the incorrect Real Time Information for the above period being used, she had a reduced payment of Universal Credit. This was because the wrong tax code was applied by her employer. It was argued that this fell in the exceptions to the use of Real Time Information set out in regulation 61(3)(b) of the Universal Credit Regulations 2013. Her representative argued that the correct tax code should have been applied retrospectively. He argued that the Government's payroll errors correcting website should have been used by the employer so as to notify HMRC that the employer made an incorrect deduction. He argued that this can correct a mistake with an employee's pay or deductions by updating the year to date figures in the next Full Payment Submission, this being addressed to HMRC.

10. The third (and longest) paragraph in the Decision Notice essentially summarised the case advanced on behalf of the Appellant before the FTT. However, the FTT's explanation for rejecting the Appellant's submission was set out in the Statement of Reasons. This read as follows:

> **Decision of the Tribunal**
>
> 1. The appeal is refused and the decision made by the Secretary of State on 16 March 2024 is confirmed. The appeal was against the decision that the amount of earned income the appellant received for the period 16 February 2024 to 15 March 2024 should be the amount advised by HMRC Real Time Information (£697.74) and not a revised figure to reflect what the appellant asserted was the correct sum, adjusting for the applicable tax rate for that assessment period, (no evidence having been given as to the correct tax rate applicable). The decision is set out in the Decision Notice dated 18 February 2025.
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> **Attendance**
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> 2. The appellant attended the hearing, and was represented by Mr. T. Grigoriou of Gateshead CAB who relied upon written submissions which he expanded upon at the hearing. The respondent did not attend but relied upon the papers in the appeal bundle numbering 80 pages which included the response and a letter dated 29 May 2024 from the DWP Complaints Team addressed to the appellant's Member of Parliament.
>
> **Findings of Fact**
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> 3. On 18 March 2024, the appellant contacted the DWP as the Benefit Cap had been applied to her for the assessment period 16 February to 15 March 2024 whereas it had not been applied previously as her reported earnings were above the monthly earnings threshold. The monthly earnings threshold at that point was £722.00.

4. Her earnings in the assessment period were £697.74 due to tax deductions made following a change in her tax code from 1257L to 763T. The latter tax code appears to have been applied from on or about 3 February 2024and reverted to 1257L from 6 April 2024. During the assessment period in question, she had had £27.60 tax deducted and her taxable pay in that period was £725.34.

5. The appellant's Universal Credit (UC) calculation for the assessment period in question took into account the standard allowance of £368.74, housing allowance of £795.00, and an allowance of £1,662.90 for the children. The total before adjustments was therefore £2,826.64 to which was added child benefit of £448.50. Total adjustments were calculated to be £175.31 which was deducted from the amount of £3,275.14 (£3,099.83). From this the maximum monthly benefit for those living outside London (£1,835.00) was applied, The benefit cap limit was calculated as £1,264.83. This resulted in a payment of £1,386.50 for the period 16 February 2024 to 15 March 2024.

6. The appellant queried the application of the benefit cap due to her net pay falling below the threshold of £722, resulting in her losing £1,264.83 that month because tax had been applied to her income derived from her employment by Greggs Ltd.

7. On 19 April 2024, the matter was referred for mandatory reconsideration which was undertaken on 24 May 2024 but the decision was not changed. The position of the Secretary of State was that there were no grounds to revise the decision.

Legal provisions

8. The payment of UC is subject to the Universal Credit Regulations 2013. Regulation 52 provides that "earned income" includes remuneration derived from employment under a contract of service (that is, a contract of employment). Regulation 52(2) provides that where the person has been employed by an employer who is a Real Time Employer, which was the situation in the appellant's case, then the amount of employed earnings from that employment in respect of each assessment period is based on the information reported to HMRC under the PAYE regulations and received by the Secretary of State for Work and Pensions from HMRC in that assessment period.

9. Regulation 55 provides that the calculation of a person's earned income in respect of an assessment period is, unless otherwise provided in Part 6 of the Regulations, to be based on actual amounts received in that period. Again, Regulation 54(1) stipulates that the calculation of a person's earned income in respect of an assessment period is, unless otherwise provided, to be based on the actual amounts received in that period.

10. Regulation 61 sets out the provisions relating to Real Time Information and at regulations 61(3) identifies the exceptions to the use of Real Time Information. The first instance is where in relation to a particular

employment the Secretary of State considers the employer is unlikely to report information to HMRC in a sufficiently accurate or timely manner. The second relates to where it appears that the amount of the payment reported to HMRC is incorrect or fails to reflect employed earnings in some material respect. The third exception is where no information is received from HMRC in an assessment period and it is considered that this was likely to be because of a failure to report information (including the failure to a computer system operated system operated by HMRC, the employer or any other person).

The appellant's case

11. The appellant does not dispute the amount she was paid in her appeal. Her concern is that the payment was subject to tax when it should not have been. The injustice she feels is that had the payments been made without the deduction of tax, she would not have been subjected to the benefit cap limit for that assessment period. Her case was that the correct tax code should have been applied retrospectively. Mr. Grigoriou submitted that the government's payroll correcting website should have been used by the appellant's employer so as to notify the HMRC that the employer had made an incorrect deduction. He argued this can correct a mistake with an employee's pay or deductions by updating the year to date figures in the next Full Payment Submission, this being addressed to HMRC. Requesting reallocation of payments allows the Respondent to move the reported payments to an earlier assessment period than that in which the payment was actually received (in respect of wrongly reported payments).

Reasons

12. The issue in the appeal was whether the sum paid to the appellant by her employer were correctly taken into account in the calculation of the appellant's UC payments for the assessment period 16/02/2024 to 15/03/2024, her contention being that her employer had applied the incorrect tax code.

13. Having considered the evidence in the appeal in respect of the calculation of the UC payable for the period in question, I am satisfied that the Respondent correctly applied the UC Regulations 2013 to take the sum of £697.74 into account, that being earned income paid to the appellant in the assessment period by her employer.

14. Whereas the appellant's representative urged that one of the exceptions set out in regulation 61(3) (he identified 61(3)(b) as the exception which was applicable) should have been applied, it was apparent that the exception required a prior step, that is, identification that the payment reported to HMRC (and hence to the respondent) was incorrect in some material respect.

15. As noted above, the appellant did not contend what the correct tax code should have been (although it is assumed on her case it would have been

> 1257L), nor was there any explanation as to how the tax code 763T came to be used.
>
> **Conclusion**
>
> 16. For the above reasons, I am satisfied that the Respondent's decisions in respect of the taking into account earned income paid to the appellant in the calculation of payment of UC in the assessment period 16/02/2024 to 15/03/2024 is correct and therefore the appeal failed. For the correction sought by the appellant, she needed to approach her employer to correct the tax code retrospectively and thus notify the HMRC that the employer has made the incorrect deduction. This can be corrected by requesting a reallocation of payments which allows the DWP to move the reported payments to an earlier assessment period in which the payment was received (in respect of wrongly reported payments). However, this is predicated on the appellant (or her employer) contacting the HMRC to correct the tax code applied.
>
> 17. It appears that until and unless this step is taken, the UC Regulations cannot provide the relief sought by the appellant because the correct tax code (and hence the correct payment after deductions) cannot be applied by the Respondent using regulation 61(3)(b) UC Regulations 2013.

11. Permission to appeal was refused by the FTT but granted by the Upper Tribunal.

The grounds of appeal to the Upper Tribunal

12. Mr T Grigoriou, on behalf of Miss Riley, advanced several grounds of appeal against the FTT's decision. In particular, he submitted that the FTT had misinterpreted and misapplied regulation 61(3)(b), notably by imposing a higher threshold than the regulation required. He also argued that the FTT had failed to engage with the DWP's *Advice for Decision Making* guidance. He further contended that the FTT failed to carry out its inquisitorial role, which involved a duty to ensure a just outcome under the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008. As the Upper Tribunal appeal progressed through written submissions, these initial grounds of appeal were further refined.

13. Mr R Jennings, the Secretary of State's representative in these proceedings, does not support the appeal to the Upper Tribunal. In essence, Mr Jennings's central submission was that regulation 61(3)(b) did not apply because "the information reported to HMRC was correct. The claimant's gross pay was £725.34. Income tax of £27.60 was deducted from the gross pay and paid to HMRC. £697.74 was paid to the claimant in assessment period 16.2.2024 to 15.3.2024. The employer may have applied an incorrect tax code and paid an incorrect amount of employed earnings, but what the claimant was paid were employed earnings and the amount of those employed earnings was faithfully reported to HMRC and received by the Secretary of State."

14. I directed two rounds of written submissions the better to understand the parties' respective positions on the interpretation and application of regulation 61(3)(b).

Analysis

Introduction

15. This appeal involves a question of statutory construction, namely the proper interpretation of regulation 61(3)(b) of the Universal Credit Regulations 2013. This sub-paragraph comprises two limbs. The first ('Limb 1') is that "it appears to the Secretary of State that the amount of a payment reported to HMRC is incorrect … in some material respect". The second ('Limb 2') is that "it appears to the Secretary of State that the amount of a payment reported to HMRC … fails to reflect the definition of employed earnings in regulation 55 (employed earnings), in some material respect".

16. Mr Grigoriou's case, as refined, is that the Appellant in fact met the criteria for both Limb 1 and Limb 2 and as such she could, on either basis, rely on the regulation 61(3)(b) exception to disapply the usual regulation 61(2) reliance on the RTI-generated figure. This submission undoubtedly has the potential to result in an attractive outcome to the appeal but sadly is unpersuasive for the following reasons.

Limb 1

17. Limb 1 is that "it appears to the Secretary of State that the amount of a payment reported to HMRC is incorrect … in some material respect". There is no escaping the fact that the use of the term "incorrect" here is somewhat ambiguous. Potentially it has both a narrow meaning and a broad meaning. The narrow meaning is that the amount of the payment reported to HMRC under RTI is incorrect in the sense that it does not properly reflect the actual amount of the net payment made to the employee. The broad meaning is that the amount of the payment reported to HMRC is incorrect in the sense that the underlying accuracy of the amount of the figure reported to HMRC is itself disputed in some way.

18. Mr Grigoriou's submission is that the broad meaning is the correct construction. He argues that the RTI information reflected a temporary PAYE coding error which in turn led to an incorrect deduction of income tax, resulting in the amount of the payment reported to HMRC as being "incorrect" within the ordinary meaning of that word.

19. However, attractive though this submission may appear to be in commonsense terms, it is misconceived. The first limb of regulation 61(3)(b) cannot be read in isolation. Rather, it must be read in the context of regulation 61 as a whole. In particular, the phrase "the amount of a payment reported to HMRC is incorrect" in Limb 1 must be read against the backdrop of regulation 61(2), to which it acts as an exception. Notably, regulation 61(2)(a) stipulates that "the amount of the person's employed earnings from that employment in respect of each assessment period is to be based on the information reported to HMRC under the PAYE Regulations and received by the Secretary of State from HMRC in that assessment period". Thus, the reference in Limb 1 of regulation 61(3)(b) to "the amount of a payment reported to HMRC" is shorthand for the figure to be relied on for regulation 61(2) purposes, namely "the information reported to HMRC under the PAYE Regulations and received by the Secretary of State from HMRC

in that assessment period". Accordingly, in order for regulation 61(3)(b) to bite, it must be the "information" about the payment which goes through that reporting process which is "incorrect". In the instant case, £697.74 was "the information reported to HMRC under the PAYE Regulations and received by the Secretary of State from HMRC in that assessment period" – and that figure was correctly reported and received.

20. There is a further reason why the broad meaning of "incorrect" cannot be accorded to the phrase "it appears to the Secretary of State that the amount of a payment reported to HMRC is incorrect … in some material respect" in Limb 1 of regulation 61(3)(b). This is that all three exceptions in regulation 61(3) are concerned with some problem to do with the RTI reporting regime. The broad construction of "incorrect" advocated by Mr Grigoriou would cast the net much wider by potentially bringing in within its scope disputes about the underlying earnings figure. How, for example, is the Secretary of State supposed to respond if there is a disagreement between employer and employee about e.g. the hourly rate associated with a particular job, and so a dispute over the aggregate wages figure? Does that potentially mean that "the amount of a payment reported to HMRC is incorrect"? Mr Grigoriou's broad reading of Limb 1 would throw wide open the regulation 61(3)(b) category of narrowly-drawn exceptions to the use of RTI information. That cannot have been the intention of those responsible for drafting the regulations.

Limb 2

21. Limb 2 is that "it appears to the Secretary of State that the amount of a payment reported to HMRC … fails to reflect the definition of employed earnings in regulation 55 (employed earnings), in some material respect". Mr Grigoriou submits that regulation 61(3)(b), and in particular Limb 2, provides a mechanism for earnings to be treated differently where the RTI figure does not reflect actual earnings in an assessment period. The present situation, he argues, where an emergency tax coding has distorted the net pay figure, is just such a case. The net earnings reported by RTI in the affected assessment period were not a true reflection of the Appellant's actual earnings. Thus, the RTI figure may have been correctly transmitted, but it did not accurately represent the Appellant's true earnings position.

22. This submission fares no better than that relating to Limb 1. In his written submissions Mr Grigoriou at one stage states that Limb 2 applies where it appears the RTI figure "fails to reflect employed earnings in some material respect". However, the effect of that paraphrasing is to distort the meaning of the statutory provision. Limb 2 applies where it appears to the Secretary of State that the RTI figure "fails to reflect the definition of employed earnings in regulation 55 (employed earnings) in some material respect". Accordingly, it is not the individual's employed earnings that the RTI figure must fail to reflect but rather the statutory definition of employed earnings that applies to all UC claimants.

23. The point is well illustrated by *NM v Secretary of State for Work and Pensions* [2021] UKUT 46 (AAC). This decision concerned the preceding version of regulation 61 but the differences are not material for present purposes. The then regulation 61(3)((b)(ii) provided for an exception to using the RTI figure where

"the Secretary of State considers that the information received from HMRC is incorrect, or fails to reflect the definition of employed earnings in regulation 55, in some material respect". One of the issues arising on the appeal was whether the FTT had been correct to treat the return by an employer of the deposit paid by the claimant for his uniform at the start of his employment as earned income. Upper Tribunal Judge Jacobs ruled as follows:

> **D. How the legislation applies – returned deposit**
>
> 9. The Secretary of State's representative has conceded that the First-tier Tribunal made an error of law by treating the amount of this deposit as earned income. This ultimately comes down, via regulation 55, to the application of section 62 of ITEPA. As the representative succinctly submitted: 'a refund of money previously paid by an employee to their employer does not, I submit, fall within that section and is not employed earnings.' I accept that.
>
> 10. The consequences were also conceded. It follows that regulation 61(3)(b)(ii) applies because 'the information received from HMRC … fails to reflect the definition of employed earnings in regulation 55'. That, in turn, triggers the discretion in regulation 61(4). Given that the money received by the claimant was not employed earnings, there is only one way that that discretion could properly be exercised – the amount must be removed from the calculation of the claimant's entitlement. I have remade the tribunal's decision to that effect.

24. Mr Grigoriou submits that *NM v SSWP* should not be read as limiting Limb 2 of regulation 61(3)(b) exclusively to cases in which all or part of a reported payment falls outside the statutory definition of employed earnings. His argument is that regulation 55 does considerably more than merely identify what constitutes employed earnings, as it also prescribes how employed earnings are to be calculated. In particular, regulation 55 makes provision for deductions for income tax. As such, the phrase "the definition of employed earnings in regulation 55" in Limb 2 necessarily incorporates the statutory method by which employed earnings are calculated.

25. In this context it is accordingly important to consider regulation 55 of the Universal Credit Regulations 2013, which provides as follows (what follows is the current version, which differs slightly from that in force at the relevant time, but the differences are immaterial for present purposes):

> *Employed earnings*
>
> **55.**—(1) This regulation applies for the purposes of calculating earned income from employment under a contract of service or in an office, including elective office ("employed earnings").
>
> (2) Employed earnings comprise any amounts that are general earnings, as defined in section 7(3) of ITEPA, but excluding—
>
> (a) amounts that are treated as earnings under Chapters 2 to 11 of Part 3 of ITEPA (the benefits code); and

(b) amounts that are exempt from income tax under Part 4 of ITEPA.

(3) In the calculation of employed earnings the following are to be disregarded—

(a) expenses that are allowed to be deducted under Chapter 2 of Part 5 of ITEPA; and

(b) expenses arising from participation as a service user (see regulation 53(2)).

(4) The following benefits are to be treated as employed earnings—

(a) statutory sick pay;

(b) statutory maternity pay;

(c) ... statutory paternity pay;

(d) …

(e) statutory adoption pay ...

(f) statutory shared parental pay ...

(g) statutory parental bereavement pay; and

(h) statutory neonatal care pay.

(4A) A repayment of income tax or national insurance contributions received by a person from HMRC in respect of a tax year in which the person was in paid work is to be treated as employed earnings unless it is taken into account as self-employed earnings under regulation 57(4).

(5) In calculating the amount of a person's employed earnings in respect of an assessment period, there are to be deducted from the amount of general earnings or benefits specified in paragraphs (2) to (4)—

(a) any relievable pension contributions made by the person in that period;

(b) any amounts paid by the person in that period in respect of the employment by way of income tax or primary Class 1 contributions under section 6(1) of the Contributions and Benefits Act; and

(c) any sums withheld as donations to an approved scheme under Part 12 of ITEPA (payroll giving) by a person required to make deductions or repayments of income tax under the PAYE Regulations.

26. Mr Grigoriou draws attention to regulation 55(5)(b). This provides for deductions for income tax to be applied when calculating a person's employed earnings. He submits that the RTI figure generated by the PAYE coding error does not accurately reflect the definition of employed earnings as determined under regulation 55. On this basis, he argues, the position is covered by Limb 2. However, that requires that "it appears to the Secretary of State that the amount of a payment reported to HMRC … fails to reflect the definition of employed earnings in regulation 55 (employed earnings), in some material respect". The short answer to Mr Grigoriou's submission is that the figure reported under the RTI arrangements reflected the fact that income tax had been deducted and so did not fail to reflect the statutory definition of employed earnings. Regulation 55

provides a series of statutory definitions as to what is, and what is not, counted as employed earnings in terms of various categories of payments. It does not qualify any of those definitions by reference to the underlying accuracy or correctness of the payment (or deduction) in question.

27. The Respondent's narrower construction of Limb 2 of regulation 61(3)(b) is also supported by regulation 55(4A). This provides that a repayment of income tax is to be treated as employed earnings (unless it counts as self-employed earnings). However, this would result in an element of double recovery if the tax wrongly deducted on account of a PAYE coding error were added back into the RTI figure.

Conclusion

28. I therefore conclude that the decision of the First-tier Tribunal does not involve any material error of law. I accordingly refuse the appeal (section 11 of the Tribunals, Courts and Enforcement Act 2007). My decision is also as set out above.

29. Finally, I note that policy-makers often seek to justify changes to the benefits system on the basis that they "make work pay". The reality in practice, given the complexity of that system, is that such changes may sometimes have unintended consequences which have quite the opposite effect, as the Appellant in this case has had the great misfortune to experience.

Nicholas Wikeley
Judge of the Upper Tribunal

Authorised by the Judge for issue on 26 October 2026