DECISION ON THE APPEAL OF THE UPPER TRIBUNAL (ADMINISTRATIVE APPEALS CHAMBER)

The DECISION of the Upper Tribunal is to allow the appeal by the Appellant.

The decision of the Bexleyheath First-tier Tribunal dated November 24, 2016 under file reference SC168/15/00457 involves an error on a point of law. The Tribunal's decision is therefore set aside.

The Upper Tribunal is in a position to re-make the decision under appeal. The decision that the First-tier Tribunal should have made is as follows. The Upper Tribunal re-makes the decision accordingly:

> **"***The Appellant's appeal against HMRC's decision dated July 29, 2013 (and communicated by letter dated July 31, 2013) is allowed. HMRC's decision that the Appellant was not entitled to working tax credit and child tax credit for the 2012/13 tax year is set aside.*
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> *The reason for this is that the Appellant was engaged in qualifying remunerative work of 16 hours a week or more. There has been no challenge to the other conditions of entitlement."*

This decision is given under section 12(2)(a) and 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

REASONS FOR DECISION

Introduction

1. Well, here we go yet again.

2. I used the phrase "Well, here we go again" with a sense of frustration, bordering on despair, to open my decision in *NI v HMRC* [2015] UKUT 160 (AAC), a case in which I criticised Her Majesty Revenue and Customs (HMRC) for both its decision-making processes and its conduct of appeals in relation to tax credits claims. That phrase has been echoed in other tribunal jurisdictions where HMRC's conduct has come under similar critical scrutiny: see e.g. *Pandey v Revenue and Customs (Income Tax/Corporation Tax: Penalty)* [2017] UKFTT 216 (TC).

3. So, yes, in short this is yet another sorry tale of HMRC institutional incompetence and inefficiency which could well have led to injustice, were it not for the persistence of the Appellant.

A summary of Upper Tribunal's decision

4. I am allowing the Appellant's appeal to the Upper Tribunal. The First-tier Tribunal ("the FTT")'s decision involves an error on a point of law. That Tribunal's decision is set aside. Fortunately I can make the decision that the FTT should have made and do so. Although this is now a supported appeal, I am giving my reasons in some

detail as a warning to Tribunals handling tax credit appeals as to what to look out for in other cases.

An honourable exception

5. I should also make it clear that I exempt Mr A Hignett of HMRC, who has had conduct of this appeal before the Upper Tribunal for the Respondent, from my criticisms of HMRC. Mr Hignett's written submission to the Upper Tribunal is a model of clarity and helpfulness. It is a shame (or, being frank, a disgrace) that the same standards are not always achieved in HMRC responses to appeals at first instance before the FTT. Given that only about 1-2% of all FTT decisions are appealed to the Upper Tribunal, and given that many appellants are unrepresented, the FTT judiciary must be alert to the need to interrogate HMRC written responses with a combination of studied scepticism and searching if not anxious scrutiny.

The Appellant's appeal to the First-tier Tribunal, at least as presented by HMRC

6. The HMRC written response to the Appellant's appeal made the case look very straightforward. In a nutshell, the Appellant had failed to reply to a request from HMRC to provide evidence of her entitlement to tax credits. She was therefore no longer entitled to tax credits for the relevant tax year and was liable for a substantial overpayment. So, according to HMRC, it was an open and shut case. End of story.

7. However, it is not the end of the story, thanks to the Appellant's perseverance and Mr Hignett's investigations. But I start with the case as presented by HMRC to the FTT – with some commentary as to some of the warning signs that the FTT should have picked up on.

8. In rather more detail than is contained in paragraph 6 above, HMRC's case was as follows. In the tax year 2012/13 the Appellant had been paid £3,876.30 in working tax credit (WTC) and £5,858.35 in child tax credit (CTC), the latter sum including the childcare element. On May 15, 2013 HMRC sent the Appellant a letter asking for information and evidence regarding her work, her responsibility for her child and the childcare charges she had paid. According to the HMRC submission to the FTT, "the claimant did not reply to the information request. HMRC therefore terminated the award with effect from 7 April 2012."[1] HMRC's letter and decision notice terminating the Appellant's tax credits award for 2012/13 were dated July 29 and July 31, 2013 respectively.[2]

9. HMRC further explained that the Appellant appealed on August 28, 2013. In her notice of appeal, the Appellant stated that "*as I previously explained, I forwarded all the information required from me and to my surprise you never received the documents*" (emphasis added). I interpose here that I have underlined the phrase "*as I previously explained*" as this statement alone should have rung alarm bells for the FTT. This is because there was nothing at all in the HMRC evidence provided with

[1] Mr Hignett for HMRC helpfully reminds me that, in the parallel universe that is tax credits adjudication, the HMRC computer is set up in such a way that where a decision-maker concludes a claimant is not entitled to tax credits for an entire tax year, a nominal one day's entitlement (April 6) remains on the computer system.

[2] In the parallel universe that is tax credits adjudication, the file does not actually include something as elementary or fundamental as the actual decision notice. As HMRC's original response to the FTT appeal explained, the HMRC computer cannot provide a copy of a decision notice – only the claimant can do that. So, in a classic Orwellian doublespeak, the response continues: "HMRC has not omitted to include the decision notices from the bundle; it is simply unable to provide copies". How are we supposed to respond to this? "Oh well, that's alright then." Who designed this computer system? Did anyone think to check it was compatible with basic tenets of good public administration, let alone the principles of administrative justice?

the appeal response to suggest that the Appellant had made any contact with HMRC before her notice of appeal of August 28, 2013.

10. The HMRC response then included a bundle of further correspondence between itself and the Appellant, running from October 2013 through to January 2015. HMRC's letter of October 3, 2013, from an "appeal settlement officer", stated that "by my calculations, you worked for an average of 14.94 hours per week during the period 6 April 2009 to 31 November 2009". The letter stated that hours spent "networking and promoting your business" did not count towards the 16 hour test. Accordingly, "you have not met the minimum requirement of working for 16 hours per week". Leaving to one side the reference to dates in 2009 – an HMRC transcription error which understandably caused both the Appellant and the FTT to be confused – again alarm bells should have been ringing even more loudly by now. The calculation of an average working week of 14.94 hours showed the appeal settlement officer must have had some raw data on which to reach such a precise figure. That data must presumably have come from the Appellant. But where was that information? It certainly was not contained in the HMRC response to the FTT.

11. The HMRC written response to the FTT concluded by making the following arguments. First, the decision dated July 31, 2013 had been taken under section 16(1) of the Tax Credits Act (TCA) 2002. Second, the Appellant had failed to respond to the request for evidence dated May 15, 2013. Third, HMRC therefore had reasonable grounds for believing that the Appellant was not entitled to tax credits for the 2012/13 tax year. Fourth, HMRC's decision was therefore correct and the appeal should be dismissed. End of story. By now, however, the FTT's alarm bells should have reached eardrum-piercing decibel levels, for reasons that will be explored later.

The Appellant asks "what is happening to my appeal?"

12. It will be recalled the Appellant sent in her notice of appeal to HMRC on August 28, 2013. On November 29, 2013 the Appellant wrote to HMRC asking for an update on her appeal. On December 15, 2013, the Appellant again wrote to HMRC asking for an update on her appeal. On March 15, 2014, the Appellant wrote yet again to HMRC asking for an update on her appeal. On April 4, 2014 HMRC replied, stating that it was unable to change the overpayment decision but the appeal was ongoing. On April 30, 2014 – eight months after lodging her appeal with HMRC – the Appellant (who might possibly have been beginning to lose patience) wrote to HMRC asking for the contact details for the FTT.

13. The appeal bundle prepared by HMRC contains no evidence of any further communications between HMRC and the Appellant for another eight months. Perhaps there were none. Perhaps the Appellant wrote again asking for an update but such letters have not found their way into the bundle. In any event, on January 7, 2015 a different HMRC appeals settlement officer wrote to the Appellant asking for further information and evidence relating to the 2012/13 tax year. In terms of the level of detail required, this letter was effectively in the same terms as the original letter of May 15, 2013. So, 20 months further on, the Appellant was back to square one.

14. On February 5, 2015, the Appellant replied to HMRC, asking yet again for an update on her appeal and reasserting that she had provided documents as requested which had never been returned to her, and adding, in a masterly understatement, "*I have been writing you concerning the above mentioned [appeal against tax credits overpayment] for some time. I do not know why my appeal is taking a long time.*" Good question.

15. On February 25, 2015, the HMRC submission writer prepared the HMRC response to the appeal, as summarised at paragraphs 8-11 above. It was received by HMCTS on March 9, 2015. The HMRC submission did not bother to include the Appellant's letter of February 5, 2015.[3] The Appellant therefore sent a copy of that letter to the FTT office with a handwritten annotation pointing out the omission and concluding "*I do not know why it was excluded*". Good question again.

The proceedings before the First-tier Tribunal

16. The bundle then shows the FTT issued a number of sets of directions in an attempt both to define and refine the issues under appeal. Replies were received from both HMRC and the Appellant. All such replies sounded like scratched records.

17. HMRC reasserted its case. For example, "to date no evidence has been received by HMRC … A person in the claimant's circumstances ought to be able to provide the evidence which has been requested. The fact that [the Appellant] was unwilling or unable to do so means that HMRC was entitled to decide the point against her by finding that the entitlement conditions in question were not satisfied" (supplementary response, June 1, 2015).

18. The Appellant reasserted her case. For example, "*As previously mentioned, most of my documents which I submitted to support my claim at the time of review were never returned back to me. I am still certain that in support of any documentations sent to the court, my receipts, invoices etc should have been attached to the supporting documents, which was never done. This makes me question where are my documents?*" (letter dated June 28, 2015). Another very good question.

19. On September 14, 2015 the FTT issued an adjournment notice. This notice also required the Appellant "to supply copies of the information requested by HMRC of her in their letter dated 15.05.2013". By this stage I was beginning to wonder if the FTT judge in question had read the file and in particular the Appellant's explanation of events. The Appellant's reply, dated October 19, 2015, included the fateful sentence "*As much as I desire to send supporting documents, I am unable to do so because I sent all original documents via registered mail back in 2012 to tax credit office.*"

20. On November 24, 2015 a different FTT judge dealt with the appeal 'on the papers', as both parties had requested. The FTT dismissed the appeal. The parties' conflicting positions were briefly set out in the decision notice. The decision notice continued:

> "7. It will be clear from looking at the dates of the correspondence … that if she sent in information in 2012, it could not relate to enquiries that were first raised in May 2013. In 2012 she must have sent in information for an earlier tax year – and those are the documents that have apparently never been returned to her.
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> 8. I see no evidence that she has additionally sent in the information first required in May 2013. Without that information, HMTC cannot find that the awards made for 2012/13 were correct and in such circumstances they are entitled to terminate that award from the outset."

[3] I think it is fair to say (see n.2 above) this letter was 'omitted' from the bundle by HMRC. HMRC was surely able to provide a copy as it had received the letter. It did not need to rely on its own non-retentive computer system. Fortunately the Appellant had kept a copy.

21. The FTT judge later prepared a short statement of reasons, stating "I can add little to the Decision Notice issued at the hearing on 24/11/2015". That admission was entirely correct – the statement of reasons added nothing of substance.

The application for permission to appeal to the Upper Tribunal

22. The Regional Tribunal Judge refused the Appellant's application for permission to appeal to the Upper Tribunal. I gave permission on the renewed application. In giving my reasons, I also made the following observations:

> *'The overpayment decisions*
> 4. The Appellant is faced with a large overpayment bill – which seems to be £9,707.97 for tax year 2012/13 and £2,621.43 for tax year 2013/14 (see p.23). However, under the Tax Credits Act 2002 there is no right of appeal against an overpayment decision. But there is a right of appeal against a tax credit entitlement decision (which, of course, may have a knock-on effect on any recoverable overpayment).
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> *The application for permission to appeal: the Appellant's case*
> 5. The present appeal seems to be against the HMRC decision of 29 July 2013 (p.7), which was to terminate the Appellant's tax credit claim for 2012/13. This in turn was said to be because she had not provided the necessary information requested by letter of 15 May 2013 (p.4). The Appellant's case is quite simple. She says that she sent the Tax Credits Office (TCO) the information that had been requested of her.
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> *The reasons why I am giving permission to appeal*
> 6. I am giving permission to appeal as it is arguable the Tribunal went wrong in its legal approach to this question. I have two main concerns. However, it may be that neither of these points actually affects the validity of the Tribunal's decision.
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> 7. First, the Tribunal (p.53) plainly took the view that there was no evidence from the Appellant that she had answered the May 2013 letter. Rather, the Tribunal focussed on the expression "back in 2012" in the letter at p.51. However, one possibility is that the Appellant may have provided the information in relation to some earlier request, and it was either lost in the post or mislaid by HMRC, in which case she obviously could not send it in again.
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> 8. Second, regrettably on past experience the fact of the matter is I am not at all confident that all relevant evidence was presented to the Tribunal by HMRC. In that context I note that the original submission to the Tribunal, dated 25 February 2015, stated (p.C, para 17) that the Appellant did not respond to HMRC's letter of 7 January 2015. I am not at all sure that is right, given her letter of February 5, 2015 (see p.29 and handwritten query). I also recognise that the HMRC letter of 3 October 2013 understandably confused both the Appellant and the Tribunal.
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> 9. In those circumstances I think it is only fair to give permission to appeal.'

23. I readily admit that the statement in the grant of permission that "regrettably on past experience the fact of the matter is I am not at all confident that all relevant evidence was presented to the Tribunal by HMRC" was 'economical with the actuality'. The truth was I had no confidence whatsoever that HMRC had complied with its disclosure obligations under rule 24(4)(b) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2685).

The proceedings on the appeal before the Upper Tribunal

24. Mr Hignett's exemplary submission on behalf of HMRC echoes and indeed confirms my doubts as stated above. He concedes the point at the very outset: "Regrettably the background as set out by HMRC in the submission to the F-tT is not an accurate reflection of what appears to have actually happened in this case".

25. It will be recalled that HMRC and the FTT decided the case essentially on the basis that the Appellant had failed to respond to the information request of May 15, 2013. Guess what? According to Mr Hignett, his enquiries have established that "HMRC did receive some correspondence from the claimant on 30 May 2013, although the content of this letter is unknown". Mr Hignett explains that the HMRC tax credits computer system shows that a letter was definitely received on that date, and has produced a screenshot of that entry although, as he says, the content of the letter is obscure.

26. Mr Hignett also points out that, contrary to HMRC's written response to the FTT, the decision of July 31, 2013 could not have been a decision taken under s.16(1) of the TCA 2002, which is concerned with decisions taken in the same tax year as the tax credits award in issue. Given that a section 17 notice had been issued to the Appellant, it followed that the decision of July 31, 2013 must have been a final section 18 decision.

27. Mr Hignett goes on to support the Appellant's appeal, essentially for three reasons.

28. First, in his analysis the FTT failed properly to revolve a conflict of evidence as to the facts. The HMRC letter of October 3, 2013 could only make sense if the Appellant had responded to the letter of May 15, 2013, at least as regards her normal weekly hours of work (see paragraph 10 above). In addition, we now know that HMRC did indeed receive some correspondence from the Appellant at the end of May 2013. As Mr Hignett fairly points out as regards the latter issue, "the F-tT could not have known this as HMRC did not include this information in the submission to the F-tT".

29. Second, Mr Hignett expresses concern that the FTT applied the wrong approach to its task. Paragraph 8 of the decision notice can be seen as the FTT adopting what is in effect a judicial review approach – was the decision taken on July 31, 2013 one that was reasonably open to HMRC? However, it was the FTT's task to conduct a full merits review and establish whether or not the Appellant was entitled to tax credits for the 2012/13 tax year.

30. Third, and on that same issue, Mr Hignett notes that insofar as HMRC addressed the question of the Appellant's entitlement to tax credits at all, its decision appeared to be based on whether or not the Appellant was engaged in qualifying remunerative work for the purposes of WTC, being 16 hours a week or more. In doing so, HMRC had focussed on the *average* number of hours the Appellant worked. That, Mr Hignett correctly observed, is the wrong test. The starting point is the number of hours the claimant *normally* works: see CTC/2103/2006.

31. In CTC/2103/2006 Deputy Commissioner White helpfully explained the correct approach to assessing the number of hours of work per week as follows:

> 28 The claimant compliance officer has determined the number of hours worked each week by computing the average hours worked each week from monthly pay slips. As the representative of the Revenue now concedes that was not

the correct basis on which to calculate whether the appellant normally works for at least 16 hours a week.

29 As the representative for the Revenue points out the arithmetic can work in a number of ways. For example, a person working 52 hours in a four week period could be working 13 hours a week for four weeks, or could be working 16 hours a week for three weeks and four hours in the fourth week. In one case the person would clearly not normally be working for at least 16 hours a week, whereas in the other case, it is at least arguable that they are.

30 In my view the question to be asked is whether, having regard to the hours worked each week, a person can properly be said normally to work for at least sixteen hours a week. The issue of the number of hours worked each week, and whether the overall pattern of work constitutes normally working for at least 16 hours a week are questions of fact for determination by the tribunal. The use of the word normally means that there is no requirement that the appellant works at least 16 hours in every week.

31 The tribunal must make a determination as to whether the appellant normally works for at least 16 hours a week on the basis of the evidence before them. The payslips which are calculated on a monthly basis are relevant but are not determinative one way or the other.

32 I agree with the following proposition put to me by the representative of the Revenue:

> "I submit where the evidence of the precise hours worked by the claimant is lacking, then any review of the claimant's usual hours ought to err on the side of caution. I submit that where, on all the information available, 16 hours work in a week or weeks is feasible, then 16 hours work in that week or those weeks should be accepted. By following this process, a rough picture of the claimant's working pattern can be obtained and an overall view taken of whether the hours normally worked over the period of the claim were sufficient."

33 There is, in my judgment, no hard and fast rule as to how many weeks in the year (or part of year where a claimant starts work during the course of the year) must be weeks in which a person works at least 16 hours for the conclusion to be reached that the person normally works for at least 16 hours a week. All the circumstances must be taken into account, including the expectations of the appellant and her employer as well as the actual hours worked each week. What is required is a common sense judgment reflecting an overall view of the pattern of the appellant's weekly hours of work over the year (or part of year) in question.

32. I agree with Mr Hignett that the FTT in this case erred on each of those three points. My reasons for reaching that conclusion should be evident from the discussion and analysis above. I therefore allow the Appellant's appeal and set aside the FTT's decision.

Disposal of the appeal – or what next?

33. Having set aside the FTT's decision, I must either send the case back for re-hearing to a new FTT or re-make the decision myself. Mr Hignett very fairly sets out the main arguments either way.

34. I am entirely satisfied I should re-make the decision under appeal myself. Given the passage of time, I doubt very much that anything of value would emerge from an oral hearing (whether before a new FTT or the Upper Tribunal). The Appellant cannot

really say much more than she has already put in writing (over and over again). There is a powerful argument in favour of any solution that minimises delay, given the inordinate delays the Appellant has experienced to date.

The Upper Tribunal's re-made decision

35. I re-make the decision as follows.

36. The Appellant appeals against HMRC's entitlement decision notified on July 31, 2013. Of course, the FTT bundle does not include a copy of that decision notice (see footnote 2 above). Be that as it may, there is no dispute but that the decision of July 31, 2013 was to the effect that the Appellant was not entitled to tax credits for the 2012/13 tax year. HMRC argued before the FTT that the Appellant had failed to respond to its letter of May 15, 2013, and in the absence of the requested information HMRC was entitled to terminate the Appellant's tax credits award for the relevant year. However, for the reasons already considered above, I am satisfied that the Appellant did in fact respond to the letter of May 15, 2013. I consider the original FTT was mistaken in placing such great emphasis on the Appellant's reference in her letter of October 19, 2015 to "back in 2012" (see paragraph 19 above). That could be a typo for 2013. Or the Appellant could simply have got the date wrong, as she was writing so long after the event. I am also satisfied that HMRC then lost or mislaid that evidence.

37. Why am I satisfied that HMRC lost or mislaid the evidence? In earlier correspondence the Appellant very generously refers to the possibility of her documents as either having been mislaid by HMRC or lost in the post. Bitter, albeit anecdotal, experience in other appeals makes me conclude it is more likely that HMRC mislaid the documents than the Royal Mail lost them. It is also clear that HMRC had relevant information from the Appellant at some time in 2013 as that is the only explanation for the letter of October 3, 2013, averaging her hours of work.

38. It is difficult, of course, with the passage of time to be precise about the nature of the information and evidence provided by the Appellant and then lost or otherwise mislaid by HMRC. However, on the basis of the Appellant's correspondence I am satisfied that she sent HMRC original documents detailing her working hours as well as bookings, a log book, invoices and receipts.

39. There is a fundamental contradiction in the case for HMRC as presented to the FTT. HMRC argued that the Appellant failed to respond to its information request. HMRC's correspondence also shows that (presumably on the basis of information she supplied) it calculated her average hours of work for WTC purposes to be 14.94 a week. It has to be one or the other. Given that the real issue is whether there is entitlement, I conclude that the letter of October 3, 2013 sets out the real reason for HMRC's decision that the Appellant was not entitled to WTC. There is no suggestion of any substantive challenge to her entitlement to CTC; that decision can only be based on the alleged failure to provide information.

40. As regards WTC, I am satisfied on the balance of probabilities that the Appellant was normally working at least 16 hours a week during the 2012/13 tax year. I say that for the following four reasons.

41. First, the original HMRC award notice for 2012/13 (dated September 6, 2012), and helpfully provided by the Appellant with her reply to Mr Hignett's submission,[4] was expressly premised on the basis that the Appellant was working 19 hours a week. That starting point had been accepted by HMRC. As HMRC was now proposing retrospectively to remove the Appellant's entitlement to tax credits, it seems to me the onus cannot be on her to prove her case. Rather, it is for HMRC to show that she was not so entitled – see by analogy Judge Ovey's observations in *TS v HMRC (TC)* [2015] UKUT 507 (AAC) at paragraph 14.

42. Second, as Mr Hignett has already identified, the HMRC letter of October 3, 2013 adopted the wrong approach to calculating the normal weekly hours of work. A strict arithmetical averaging approach is not the correct method. Given the difference between qualifying and not qualifying on the basis of the letter of October 3, 2013 was just one hour a week (or, if one wishes to adopt the spurious arithmetical precision of 14.94 hours, just 1 hour 3 minutes and 36 seconds), it is more likely than not that the 16 hour threshold was reached.

43. Third, and in any event, it is clear that the HMRC letter of October 3, 2013 adopted the incorrect approach to calculating normal weekly hours of work in another respect. The letter categorically stated that hours spent "networking and promoting your business" did not count. That approach was wrong, being too strict – see *JF v HMRC (TC)* [2017] UKUT 334 (AAC). The inclusion of just one hour a week in advertising the business would have been enough to tip the case over the 16 hour threshold.

44. Fourth, Mr Hignett has provided a copy of the Appellant's 2012/13 income tax self-assessment return, which reports a turnover of £3,300 and a profit of £1,805 in the year. On any reckoning this is a very modest enterprise, but the Appellant has not suggested it was anything else. If – given her childcare responsibilities – the Appellant worked say 40 weeks a year, and normally worked 16 hours a week, then the gross income would translate into an hourly rate of £5.16. The national minimum wage during the same year was either £6.08 or £6.19, depending on the time of year. Given this was a very small self-employed undertaking, and that some of the hours were in terms of business development, and so not actually charged out to customers, the figures are broadly consistent with that level of economic activity.

45. I should note that Mr Hignett was apologetic about introducing fresh factual evidence (in a number of respects) at this stage of the appeal. However, no objection can be properly taken, especially given that HMRC was very properly now supporting the appeal. In addition, the information has assisted the overriding objective in allowing the Upper Tribunal to resolve this appeal more promptly than would otherwise be the case had the Appellant's appeal been remitted for a fresh hearing.

46. As regards CTC, there is simply no evidence on file leading me to doubt that the Appellant was properly entitled to that form of tax credit for the year in question.

47. It follows that I allow the Appellant's appeal against the HMRC decision dated July 31, 2013. As the entitlement decision is set aside, the consequential overpayments decision necessarily falls away, even though it is not technically a matter within the jurisdiction of the tribunals.

[4] There was, of course no question of HMRC itself supplying a copy of this fairly obviously relevant document (see rule 24(4)(b)) because the HMRC computer system does not retain a copy (see n.2 above).

Conclusion

48. The Appellant's appeal to the Upper Tribunal is allowed. I conclude that the decision of the First-tier Tribunal involves an error of law. I allow the appeal and set aside the decision of that Tribunal (Tribunals, Courts and Enforcement Act 2007, section 12(2)(a)). The FTT's decision is now of no effect. I re-make the FTT's decision in the terms as set out above (section 12(2)(b)(ii)).

Signed on the original
on 18 August 2017

Nicholas Wikeley
Judge of the Upper Tribunal