

ENGLAND AND WALES / JUDGMENT

ABH v Secretary of State for Work and Pensions & Anor

COURT
IN THE UPPER TRIBUNAL

DECIDED

not specified

14 September 2023

First-tier Tribunal (Social Entitlement Chamber)

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved the making of an error in point of law. Under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 I set the First-tier Tribunal's decision aside and remit the case to the First-tier Tribunal (Social Entitlement Chamber) to reconsider in accordance with the following directions.

ABH -v- SSWP and DC (CSM)

Appeal no. UA-2023-001929-CSM

DIRECTIONS

1. The case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.

2. The First-tier Tribunal hearing the remitted appeal shall not involve the judge who decided the appeal on 14 September 2023.

3. The appeal shall be decided on the following basis:

a.

b.

that the decision appealed against is the decision taken by the Respondent, under s17 Child Support Act 1991, on or around 3 March 2022, which determined that the Appellant had child support maintenance liability with effect from 28 January 2019; and that regulation 14A Child Support Maintenance Calculation Regulations 2012 does not apply to the Appellant's appeal against that decision.

4. Subject to the above, the First-tier Tribunal must (by way of an oral hearing) undertake a complete reconsideration of the issues that are raised by the appeal and, subject to the First-tier Tribunal's discretion under section 20(7)(a) Child Support Act 1991, any other issues that merit consideration.

5. A copy of this decision should be included in the appeal bundle before the First-tier Tribunal dealing with the remitted appeal.

6.

If either party has any evidence or submissions to put before the First-tier Tribunal (different to, or in addition to, that before the First-tier Tribunal when it made the decision of 14 September 2023) this should be sent to the regional office of His Majesty's Courts and Tribunals Service within one month of the date on which this decision is issued. For the avoidance of doubt, submissions and/or evidence provided by a party in the course of the Upper Tribunal proceedings, which are disposed of by this decision, will not be before the First-tier Tribunal, unless the party chooses to send them

to the First-tier Tribunal under the terms of this direction.
These directions may be supplemented by later directions by a judge in the
Social Entitlement Chamber of the First-tier Tribunal.

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Appeal No. UA-2023-001929-CSM IN THE UPPER TRIBUNAL ADMINISTRATIVE APPEALS CHAMBER

Between: ABH
- v -
Appellant
Secretary of State for Work and Pensions
DCC
First Respondent
Second Respondent
Before: Upper Tribunal Judge Citron
Decided on consideration of the papers

Representation:

Appellant:

First Respondent:

Second Respondent: by his mother
by Lauren Foody of the Decision Making and Appeals
section of the Department for Work and Pensions
by herself

On appeal from:

Tribunal: Tribunal Case No: SC173/22/00266

Tribunal Venue:

Decision Date: not specified
14 September 2023
First-tier Tribunal (Social Entitlement Chamber)
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These directions may be supplemented by later directions by a judge in the Social Entitlement Chamber of the First-tier Tribunal.

REASONS FOR DECISION The appeal to, and decision of, the First-tier Tribunal 1. The decision of the First-tier Tribunal (the "FTT") in question dismissed the Appellant's (who I will refer to as "Father") appeal against a decision of the ABH -v- SSWP and DC (CSM) Appeal no. UA-2023-001929-CSM 1st Respondent (who I will refer to as the "SoS") of 14 April 2022 as revised (on mandatory reconsideration) on 20 May 2022. The 14 April 2020 decision of the SoS had applied a "shared care deduction" to Father's child support maintenance liability, with effect from 3 March 2022 (when he had provided certain information to the Child Maintenance Service); the revision of 20 May 2022 removed that deduction. The FTT decision found that as at the effective date of the SoS's 14 April 2022 decision, namely, 3 March 2022, Father was having no direct contact with the qualifying child, and this had been the case since 1 October 2021; there was, as at 3 March 2022, no sharing of day-to-day care to any material extent; the 2nd Respondent (who I will refer to as "Mother") was the de facto sole carer; there was no overnight care expected to take place in the next 12 months. The FTT decision identified the SoS's 14 April 2022 decision as the decision under appeal, with an effective date of 3 March 2022. The FTT decision said that this was clear from the SoS's appeal response; and was set out in directions of the FTT dated 14 February 2023. The FTT decision said that those directions explained the basis for the SoS's decision and identified

“shared care” as the sole issue. The FTT decision then went on to say that “mandatory reconsideration” was a pre-condition for any appeal against a decision of the SoS. It said that only the SoS’s decision of 14 April 2022 had been subject to mandatory reconsideration (the request was in fact made by Mother – but the right of appeal could be exercised by either party). The FTT decision stated that it was considering the arrangements in effect as of 3 March 2022 up to the date of the SoS’s decision on 14 April 2022 as revised on 20 May 2022. In its summary facts and reasons, the FTT decision found that the terms of an order made on 5 March 2019 amounted to a shared care arrangement within in the meaning used in the Family Court. It found that those arrangements broke down and all forms of direct contact between the qualifying child and Father came to an end from 1 October 2021. In its final paragraph, after reaching its conclusion, the FTT decision noted that Father also believed that earlier decisions of the SoS’s were wrong in relation to periods of shared care or shared day-to-day care prior to the effective date (3 March 2022); the FTT decision stated that the FTT had no jurisdiction to review those decisions; Father would have to seek mandatory reconsideration if he wished to appeal them; it noted there were time limits in relation to the reconsideration process. 2. 3. 4. 5. 6. 7. The grant of limited permission to appeal by the Upper Tribunal ABH -v- SSWP and DC (CSM) Appeal no. UA-2023-001929-CSM 8. The Upper Tribunal on 24 October 2024 issued my decision giving permission to appeal on the sole ground that the FTT decision mis-identified the decision of the SoS against which Father was appealing: it failed to identify that Father’s appeal was against the SoS’s 3 March 2022 decision, imposing a liability of £53.69 with effect from 28 January 2019. The SoS’s response to the appeal 9. In its response, the SoS supported the appeal. It submitted that the FTT erred in law by failing to consider the decision to impose liability from 28 January 2019 as part of Father’s appeal.

10. The response set out two supersession decisions of the SoS (in quick succession) in March 2022: a. the background was that Father was assessed on nil income and therefore nil-rate from 2 October 2017, so was “due to report” when his income increased again;
- b. a first supersession decision was made on 2 March 2022, to put current income of £24,551.40 in place from 28 January 2019. The liability was £48.43. This was a “backdated income change” based on when Father’s income increased by 25%. A notification letter was issued on 2 March 2022, dated 3 March 2022;
- c. as a new current income was put into place from 28 January 2019, the “CMS system completed an auto current income review” on 3 March 2022. HMRC income of £23,329.98 was put into place from effective date 3 March 2022 and liability was £53.69. This was a second supersession decision. A notification letter was issued on 3 March 2022, dated 4 March 2022. 11. I observe that the SoS’s FTT appeal response appears to have rolled the above supersessions (in quick succession) into a single supersession, on 3 March 2022, with the figures as in the second of the supersession decisions set out above.
12. The SoS submitted that it was the second of the above supersession decisions that was revised on 19 May 2022.

13. The SoS submitted that it was clear that Father was appealing against the first of the above supersession decisions, as well as the second.
14. The SoS submitted that it was “likely” that, in making the first of the above supersession decisions have effect prior to the maintenance period in which it was made (the general rule), the SoS was relying on regulation 18(4) Child Support Maintenance Calculation Regulations 2012 – the relevant change of circumstances was a change in Father’s current income which he was ABH -v- SSWP and DC (CSM) Appeal no. UA-2023-001929-CSM required to report, and so the effective date was the date on which the change occurred.
15. The SoS submitted that its first supersession decision, made under section 17 Child Support Act 1991, carried appeal rights, as per section 20 of that Act. The SoS submitted that the FTT should have considered the first supersession decision at the hearing. The FTT had “arguably” erred by failing to consider the level of shared care for the qualifying child for the period 28 January 2019 to 1 October 2021; it was apparent from evidence in the FTT bundle that Father was providing significantly more care for the qualifying child in that period, than he was in 2022 – and that should be reflected in the amount of maintenance Father is liable for.
16. The SoS, in sum, submitted that the FTT had erred in law by failing to consider the supersession decision made on 3 March 2022 as part of Father’s appeal to the FTT, and thus failing to consider whether the level of shared care held by the CMS could have been revised. The SoS invited the Upper Tribunal to remake the decision if there was enough evidence in the bundle to accurately make a decision in regard to shared care under regulations 46, 47 and 50 Child Support Maintenance Calculation Regulations 2012; if there was not, the SoS submitted that the case be remitted to a freshly constituted FTT to make the decision. Mother’s response to the appeal and Father’s reply
17. Neither Mother nor Father is not legally represented. Their response and reply, whilst giving information and views which may be relevant to other forums and issues, did not address, to any significant extent, the sole ground on which permission to appeal had been given by the Upper Tribunal (did the FTT misidentify the decision under appeal?). I note that the information in the reply and response may be relevant to the case I have remitted to the FTT (and I give reasons for my having done this, below) – however, it seems to me fair and just to leave to Father and Mother, respectively, how they want to frame their arguments and evidence at the remitted hearing. Why I have decided that the permitted ground of appeal is made out
18. The SoS’s response to this appeal supports the proposition that Father’s appeal included an appeal against a decision of the SoS, on or about 3 March 2022, under s17 Child Support Act 1991, to make Father liable for child maintenance support with effect from 28 January 2019. The SoS’s response says that decision appealed against was the first of two s17 decisions made by the SoS in quick succession, on or around that date, and that imposed child support maintenance liability of £48.43. This, put euphemistically, is a “clarification” of what was

said in the SoS's response to Father's appeal in the FTT bundle – which was that a single decision taken under s17 on 3 March 2022, to impose child support maintenance liability of £53.69 with effect from 28 January 2019, was not the decision under appeal. ABH -v- SSWP and DC (CSM) Appeal no. UA-2023-001929-CSM

19. The FTT decision explained, at [1] and [2], why it considered that Father's appeal was against the decision of the SoS of 14 April 2022 as revised on 20 May 2022 – a decision whose effective date was 3 March 2022. One of the reasons was that this was “clear” from the SoS's response; another was that only the 14 April 2022 decision had been the subject of “mandatory reconsideration” i.e. a decision against which, in the light of regulation 14A Child Support Maintenance Calculation Regulations 2012, Father had a right of appeal. The FTT decision expanded on the latter point at the end of the decision, at [31], where it acknowledged Father's belief that “earlier” decisions (i.e. ones taken before 14 April 2022) of the SoS were wrong in relation to shared care arrangements prior to 3 March 2022; but it considered it had no jurisdiction to review those points (as it had found that the decision appealed against was that of 14 April 2022).
20. Given the SoS's response to this appeal, the first of these reasons (reliance on the SoS's response to the FTT appeal) has, in effect, fallen away. As to the second reason (regulation 14A and restricted jurisdiction), in my decision granting permission to appeal, I posited that regulation 14A arguably did not impede Father's appeal against the 3 March 2022 decision (which had effect from 28 January 2019), either because the circumstances set out in regulation 14A(1)(b) are not satisfied (and there appeared to be nothing in the FTT bundle indicating they were satisfied i.e. no statement in a written notice to Father of the 3 March 2022 decision about mandatory reconsideration), or (even if regulation 14A(1)(b) was satisfied) because, on the evidence, Father did request revision, and the 1st Respondent did consider that request. The SoS's response, whilst supporting this appeal, did not specifically address regulation 14A. It seems to me fair to conclude that the FTT decision erred to the extent it found that the SoS's decision, on or about 3 March 2022, to impose child support maintenance liability with effect from 28 January 2019, was one to which regulation 14A applied – I see no evidence of the required “statement” (per regulation 14A(1)(b)) in the written notice of that decision and, on being provided the opportunity to respond to this appeal, the SoS did not provide any such evidence. Equally, it is fair and just that the remitted case be approached on this basis i.e. that regulation 14A did not apply to Father's appeal against that decision. 21. It follows that I find that the FTT decision erred in law in failing to identify the decision of the SoS on or about 3 March 2022, imposing child maintenance support liability with effect from 28 January 2019, as the decision appealed against: there was clear evidence that this was a, if not the, decision that Father objected to and described in his notice of appeal; it was an error of law for the inquisitorial tribunal not to have identified it (although, I have to say, an understandable error, given the “restatement” of the position as part of the SoS's response to this appeal). This was a material error and so the decision of the FTT falls to be set aside. ABH -v- SSWP and DC (CSM) Appeal no. UA-2023-001929-CSM Why I have decided to remit the case for rehearing,

rather than remake the decision 22. I do not think that a decision on the appeal against the decision to impose child support maintenance liability with effect from 28 January 2019 can be made, fairly and justly, without affording all parties (and particularly Father and Mother) the opportunity to submit evidence and arguments prior to an oral hearing. This has not happened as part of these Upper Tribunal proceedings, as their focus has been on whether there was a material error of law in the FTT decision of 14 September 2023. The right forum for that rehearing is the FTT, the specialist and fact-finding child support tribunal. This is why I have I decided to remit the case to the First-tier Tribunal with directions for its reconsideration (as set out at the beginning of this document). Zachary Citron Judge of the Upper Tribunal Authorised by the Judge for issue on 12 May 2025 7

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