

ENGLAND AND WALES / JUDGMENT

LM v Secretary of State for Work and Pensions & Anor

COURT

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Appeal No. UA-2025-001012-CSM, UA-2025-001013-CSM
and UA-2025-001014-CSM

RULE 14 Order: No person shall publish or disclose the name of the appellant or second respondent in connection with this appeal, or their address, or any information likely to identify them or their address. Breach of this order may be dealt with as a contempt of court, punishable by imprisonment, fine or other sanctions.

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between: LM
- v -
Appellant
SECRETARY OF STATE FOR WORK AND PENSIONS
NO
First Respondent
Second Respondent
Before: Upper Tribunal Judge Stout
Decided on consideration of the papers

Representation:

Appellant: First Respondent: Holly Taylor, DMA Leeds

Respondent: In person
In person

On appeal from:

Tribunal:

Panel:

First-tier Tribunal Case First-Tier Tribunal (Social Entitlement Chamber)
Nos: Judge V Ly and Mr J Agboola FQTM
SC242/23/06703, SC242/24/01900 and
SC242/24/01910

First-tier Tribunal Digital Case No:**First-tier Tribunal Venue:****First-tier Tribunal Hearing****Date:**

Fox Court (by video)

10 April 2025

LM v SSWP and NO (CSM)

Appeal no. UA-2025-001012-CSM

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal was made in error of law. Under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remit the case to be reconsidered by a fresh tribunal in accordance with the following directions.

DIRECTIONS

- 1.
- 2.
- 3.

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

The new First-tier Tribunal should not involve the tribunal judge or financially qualified member who previously decided this case on 10 April 2025.

The new First-tier Tribunal is not bound in any way by the decision of the previous tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different outcome to the previous tribunal.

These Directions may be supplemented by later directions by a Tribunal Caseworker, Tribunal Registrar or Judge in the Social Entitlement Chamber of the First-tier Tribunal.

REASONS FOR DECISION**Introduction**

1. 2. This case concerns the appellant and second respondent's liabilities and entitlements to child support under the Child Support Act 1991 (CSA 1991) and the Child Support Maintenance Calculation Regulations 2012 (CSMCR 2012). The facts of this case are unusual because the appellant and the second respondent are still living in the same house, albeit that the second respondent has a private living space in a converted garage in the property, and only has access to the kitchen and living room in the main house. The appellant appeals, and the second respondent cross-appeals, against the First-tier Tribunal's decision of 10 April 2025. In that decision, the First-tier Tribunal determined that the second respondent is a "non-resident parent" (NRP) within the meaning of section 3(2) of the Child Support Act 1991 (CSA)

- 1991) and regulation 50 of the Child Support Maintenance Calculation Regulations 2012 (the 2012 Regulations), but that he should have a shared care reduction of 50% (Band D). LM v SSWP and NO (CSM) Appeal no. UA-2025-001012-CSM 3. The appellant was granted permission to appeal by the First-tier Tribunal; I granted the second respondent permission to appeal. Their appeals are the mirror image of each other. Why I am deciding the case on the papers 4. 5. 6. I directed the Secretary of State to respond to the appeals, which he did by submissions received on 23 December 2025. The Secretary of State supported the appeal on the ground that the First-tier Tribunal had erred in law in determining that the second respondent should have a shared care reduction of 50% (Band D). I directed the appellant and second respondent to say whether they were content for the appeal to be allowed and the case remitted for re-hearing on the basis set out in the Secretary of State's submissions. They have confirmed that they are. The second respondent's email of 30 March 2026 did indicate an intention to make further submissions 'shortly', but a month has passed and none have been received. I consider it appropriate to determine the case on the papers without further delay. The second respondent has had the opportunity to put in further submissions if he wished to. There is no prejudice to any party because they are in agreement, and I am satisfied that it is appropriate to dispose of the appeal on the basis that is agreed between the parties. Why I am allowing the appeal 7. 8. 9. I agree with the Secretary of State that there is no arguable error of law in the approach that the First-tier Tribunal took to determining that the second respondent was the NRP for the purposes of section 3(1) of the CSA 1991 and regulation 50 of the CSMCR 2012. However, as I am allowing the appeal and setting aside the decision of the First-tier Tribunal, this part of the First-tier Tribunal's decision will also be set aside and the new First-tier Tribunal will need to consider all issues afresh. I do not consider that I should seek to preserve the First-tier Tribunal's decision that the second respondent was the NRP because the First-tier Tribunal will need to hear the evidence again in order to decide the shared care aspect of the decision in any event. It is not appropriate to create a risk of inconsistent decision-making as a result of preserving any part of the First-tier Tribunal's decision now under appeal. As to the First-tier Tribunal's decision on shared care, I am largely able to adopt the submissions of the Secretary of State, with which I agree. I am grateful to the Secretary of State's representative for setting out the issue so clearly. Having determined that the NRP was residing at the same address as his children (despite not being part of the same household) and was involved in his children's lives, it was open to the FTT to consider whether the provisions of regulation 46 of the CSMCR 2012 applied.
10. Regulation 46 provides: LM v SSWP and NO (CSM) Appeal no. UA-2025-001012-CSM 46.— (1) This regulation and regulation 47 apply where the Secretary of State determines the number of nights which count for the purposes of the decrease in the amount of child support maintenance under paragraphs 7 and 8 of Schedule 1 to the 1991 Act.

- (2) Subject to paragraph (3), the determination is to be based on the number of nights for which the non-resident parent is expected to have the care of the qualifying child overnight during the 12 months beginning with the effective date of the relevant calculation decision.
- (3) The Secretary of State may have regard to a period of less than 12 months where the Secretary of State considers a shorter period is appropriate (for example where the parties have an agreement in relation to a shorter period) and, if the Secretary of State does so, paragraphs 7(3) and 8(2) of Schedule 1 to the 1991 Act are to have effect as if— (a) the period mentioned there were that shorter period; and
 - (b) the number of nights mentioned in the Table in paragraph 7(4), or in paragraph 8(2), of that Schedule were reduced proportionately.
- (4) When making a determination under paragraphs (1) to (3) the Secretary of State must consider— (a) the terms of any agreement made between the parties or of any court order providing for contact between the non-resident parent and the qualifying child; or
 - (b) if there is no agreement or court order, whether a pattern of shared care has already been established over the past 12 months (or such other period as the Secretary of State considers appropriate in the circumstances of the case).
- (5) For the purposes of this regulation— (a) a night will count where the non-resident parent has the care of the qualifying child overnight and the child stays at the same address as the non-resident parent;
 - (b) the non-resident parent has the care of the qualifying child when the non-resident parent is looking after the child; and
 - (c) where, on a particular night, a child is a boarder at a boarding school, or an in-patient in a hospital, the person who would, but for those circumstances, have the care of the child for that night, shall be treated as having care of the child for that night.
- 11. Regulation 46(2) makes it clear that it is overnight stays only which are to count towards shared care. LM v SSWP and NO (CSM) Appeal no. UA-2025-001012-CSM
- 12. The First-tier Tribunal at [47] of its statement of reasons referred to R(CS) 7/08. In that case Commissioner C Turnbull held that, for the purposes of regulation 46, a night counts where: (i) the qualifying child stays “at the same address as the non-resident parent”; and (ii) the non-resident parent is “looking after the child”. That was a case in which the non-resident parent stayed at the person with care’s address in order to look after the child on some nights. The Commissioner held that was sufficient. 13. In this case the First-tier Tribunal’s reasons for concluding that a 50% reduction for shared care is appropriate are to be found at [42] and [43] of the written reasons as follows:
- 42. The Regs do not required the qualifying child(ren) to be also in the same household as the non-resident parent.

43. The Tribunal was satisfied that the conditions of Reg 46 were met to apply a shared care reduction. The Tribunal found [the second respondent] and [the appellant] share the care of their children, which would include notionally dividing overnight responsibilities between them. [The second respondent] lives at the same address (but not in the same household). This would equate to over 175 nights or more a year. The Tribunal found this was the expectation of the parties during the 12 months from each of the effective dates.
14. However, earlier in the decision the First-tier Tribunal held:
32. On the totality of the evidence, the Tribunal concluded that [the second respondent] not living in the same household as [the appellant] and the children. He has a private living space (converted garage) within the property. Whilst he has access to the main house, this was limited to the living room and kitchen. Household activities e.g. washing, laundry, eating, were separate.
15. There is no reasoning in the decision to explain how the second respondent could be providing care for the children overnight if he did not have access to their bedrooms. 16. It was incumbent on the First-tier Tribunal as inquisitorial tribunal to make the findings of fact necessary to enable it to determine whether the second respondent was providing overnight care, and to what extent, and to give adequate reasons for its conclusion. 17. In my judgment the First-tier Tribunal decision involved errors of law and must be set aside. I allow the appeal and remit the case for re-determination in accordance with the directions set out at the top of this decision. Rule 14 Order
18. The Upper Tribunal's practice of using a parties' initials rather than their names see decisions has recently ceased: on published final LM v SSWP and NO (CSM) Appeal no. UA-2025-001012-CSM <https://www.judiciary.uk/guidance-and-resources/upper-tribunal-administrative-appeals-chamber-open-justice-practice-guidance/>. In this case, however, I am satisfied that it is appropriate to make an anonymity order under rule 14 of my own motion in respect of the appellant and the second respondent. In doing so, I take full account of the importance of open justice and freedom of expression, but this decision contains personal information about the parties' private lives, and those of their children, that needs to be protected in order to safeguard the rights of them and their children under Article 8 of the ECHR. The public interest in open justice is sufficiently met by the publication of this judgment.
19. Anyone who objects to this order may make an application to the Upper Tribunal for it to be varied. The parties will be notified if any such application is made and given an opportunity to comment. Holly Stout Judge of the Upper Tribunal Authorised by the Judge for issue on 1 May 2026 6

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Prepared on 23 October 2026 · Esheria