IN THE UPPER TRIBUNAL **Appeal No. CCS/2714/2013**

ADMINISTRATIVE APPEALS CHAMBER

Before: Upper Tribunal Judge Gray

The decision of the Upper Tribunal is to dismiss the appeal. The decision of the Port Talbot Tribunal made on 3 April 2013 under number 204/10/03585 did not involve a material error of law and it stands.

I direct that my decision should form part of any information placed before the Magistrates Court in relation to any application for, or enforcement of, a liability order.

In a nutshell

a) The case was governed by the old (original 1993) child support scheme. It concerned whether, and if so the date from which, a maintenance assessment should be cancelled due to an absent parent ceasing to be habitually resident but notifying the agency of that some 10 years after the event, during which period both children had grown up and ceased to be qualifying children. I consider the meaning of *'ceased to have effect'* in paragraph 16 schedule 1 Child Support Act 1991 and related provisions.
b) There is a distinction in relation to the need for formal adjudication in relation to a potentially supervening event which calls for investigation as to the need for cancellation, and the position where a supervening event inevitably causes a maintenance assessment to cease to have effect. In the latter case a formal decision (as opposed to simple notification) is not required.
c) Prior to notification of, and during the period of investigation as to whether there has been a loss of habitual residence resulting in a lack of jurisdiction for the making of a maintenance assessment, continuation of a maintenance assessment then in place is provided for pending cancellation under paragraph 16(5) schedule 1 Child Support Act 1991.
d) Regulation 7 of the Maintenance Arrangements and Jurisdiction Regulations 1992 provides for the cancellation of an assessment where such an assessment *"is in force".*
e) A maintenance assessment which has ceased to have effect because the only remaining qualifying child has turned 19 is not in force. Accordingly the Secretary of State cannot take steps to cancel it.
f) Where an assessment is no longer in force the Secretary of State has no power under the child support legislation to make decisions affecting the assessment whilst it was in force.
g) Although my analysis differs from that of the First Tier Tribunal the purport of the decision is not affected and it stands.

REASONS FOR DECISION

1. In this child support case, the appellant and the second respondent are the parents of two children, L and J, both of whom have now ceased to be qualifying children. After their parents separated they lived with their mother the second respondent. She is the Parent with Care and their father is the Absent Parent in the terms of the applicable legislation, but I will refer to the parents as the mother and the father. The Secretary of State for Work and Pensions is the respondent, the functions of CMEC (formerly the CSA) having been transferred to the DWP under a transfer of functions order effective from 1/8/12. I will refer to the body that has from time to time been administering child support maintenance as the agency.
2. Child support maintenance for the children was based on the original statutory scheme, generally referred to as the old rules or old scheme. That being so it should be noted that a number of the regulations with which I am concerned here are no longer applicable in the vast majority of cases.
3. The issue before the First Tier Tribunal (FTT) was the status of the maintenance assessment and the father's liability to pay maintenance if, during that time he had ceased to be habitually resident in the UK but had not notified the agency that he had left until after his return some 10 years later.

The procedural background

4. In January 1995 the mother applied to the agency for a maintenance assessment; to her knowledge that the father was gainfully employed.
5. The effective date of the assessment made was 4/1/1995.
6. On 6/11/1996 an interim maintenance assessment (IMA) of £126.90 per week was made under section 12 of the Child Support Act 1991 (the Act). The IMA was necessary because the father had failed to provide information upon which a full maintenance assessment could be made; an IMA could be made only after notice to the father of the intention to do so and it took effect as of the date of that notification.
7. On 8/9/99 L, the older qualifying child became 19, and to take account of that change the IMA required modification. The agency did not act to do this until 27/4/2006 when the decision imposing the IMA was superseded for this change of circumstance, reducing to £95.93 per week. That decision took effect from the first day of the payment period in which the relevant birthday occurred under the version of regulation 23(19) Child Support (Maintenance Assessment Procedure) Regulations 1992 then in force for the 'old' (1993) scheme cases[1]. There is unlikely to have been any practical effect in this case, given that there were no payments being made.
8. On 4/1/07 J, the younger qualifying child, became 19. That is an important event as after that date there was no qualifying child who could be the subject of an assessment.

[1] In fact although replaced in 2011 the regulation has remained to similar effect. See Jacobs: Child Support Legislation 8th edition 2007/2008 and 12th edition 2015/16.

9. No formal decision appears to have been made at or around this date in relation to J's attaining 19. Unlike the position when the elder child had attained 19 there was no need for one to be made, as I explain below.

The decisions made after J was 19

10. On 27/6/07 the father, by that time represented, provided the agency with certain information and asked it to convert the IMA into a full maintenance assessment. At the same time, for the first time, he said that he had moved to the Republic of Ireland in August 1997.
11. The information which he provided is part of the appendix to the most recent submission of the Secretary of State. Regrettably that is the first time it has been produced; the agency, the respondent before the FTT has been in breach of its duty under rule 24(4) (b) to provide the FTT with copies of all documents relevant to the case in the decision maker's possession. Those documents show, contrary to submissions made on behalf of the father before me, that the habitual residence issue was far from clear cut, and there had been contact by the father and indeed by his partner with the agency, notably in 1999 following their return to live in the UK.
12. On 16/7/07 the father's representative from Durham Legal Services had a telephone conversation with the agency. On 17/07/07 a decision was made cancelling the IMA from 29/8/1997, the day that it was said by the representative that the father had left England to live in Ireland. The mother was informed of that decision and, unsurprisingly since it wrote off some 10 years of arrears, exercised her right to appeal, however that appeal did not go ahead due to the effect of a number of subsequent decisions.
13. On 27/7/07 a revision decision was made converting the IMA into a full maintenance assessment with effect from 4/1/1995, the outset, in the sum of £86.20 per week; this must have been on the basis that the decision maker thought the information provided made it possible to make a maintenance assessment under Part 1 of the Act. The power to do so is in regulation 17 (3) (a) Child Support (Maintenance Assessment Procedure) regulations 1992.
14. On 21/11/07 the decision of 27/7/07 which had calculated a full maintenance assessment was itself revised (for presumed error of law) because housing costs had not been included. That reduced the amount payable further to £26.26 per week and closed the case from 29/8/97 on the basis that the father had from that date ceased to be habitually resident in the UK.
15. On 6/2/09 the mother appealed that decision, claiming that the father was still habitually resident. Her appeal will have been lapsed by a decision made on 21/4/09.
16. That further revised the decision of 17/7/07.Liability was reinstated under the old IMA, but cancelled with effect from 4/1/07, the date that the younger child, J, attained the age of 19.
17. On about 4/6/10 the father appealed that decision out of time, and his reasons for lateness were accepted.

The appeal to the FTT

18. The matter proceeded before the FTT where directions were made for the provision of further information as to the regulations applicable at the relevant dates. The agency tried to answer the questions posed by the FTT; their inadequacy in so doing may well be understood in view of the complexity of the legal provisions, but it hampered the judge at the oral hearing on 3/4/13.

19. The judge confirmed the agency decision made on 21/4/09. This was the decision to the effect that the case was closed from J's 19th birthday, 4/1/07, which left the IMA figures in place until that date. The FTT judge accepted the correctness of that position, although he was without the detailed submission which the FTT had requested in relation to the regulations which pertained at the relevant time, and he took issue with certain submissions by the Secretary of State on the basis that some of the regulations said to have been relied on were not then in force.
20. The father sought permission to appeal. This was refused by the FTT but later granted by me.

The appeal to the Upper Tribunal

The grounds of appeal

21. The father's grounds of appeal, put forward by his representatives Durham Legal Services, was that the FTT had made errors of law in its interpretation of an "absent parent" and "qualifying child" when considering section 44 and paragraph 16 of schedule 1 of the Child Support Act 1991 and regulation 23 (19) of the Child Support (Maintenance Assessment Procedure) Regulations 1992. Essentially the argument was that because of the definitions of those terms the decision maker who converted the Interim Maintenance Assessment into a full Maintenance Assessment could not calculate any new Maintenance Assessment from August 1997, because the father was no longer habitually resident and accordingly the agency lacked jurisdiction by virtue of section 44 (1). The imperative upon the agency to bring the habitual residence issue into account arose, it was argued, because in going back to the outset of the child support claim the decision maker was bound to take all changes of circumstance into account; accordingly he was bound to cancel the assessment once the father was no longer habitually resident in the UK.

The other parties

22. I had directed submissions by the Secretary of State and the mother if she wished to make any. I was conscious of the fact that this is a highly technical area of law, and the mother was unrepresented. It seemed to me probable that the issues would be identified within the legal submissions of the other parties who had access to the relevant expertise.

The mother

23. Her stance from the outset was to argue the habitual residence issue on the facts. There had been little if any contact between the separated parents, and indeed the father and the children, over the years, and it was wholly right, given the impact on maintenance, for the mother to put the father to proof of that. I am assuming only for arguments sake that the father could establish that he ceased to be habitually resident; on the basis of the information he provided to the agency which has come to light only within this appeal that is by no means established, but it is not necessary to determine that factual issue.

The Secretary of State

24. The Secretary of State's representative Mrs Tarver provided the initial written submission to the Upper Tribunal. I am grateful to her for setting out the procedural

background to this difficult case which has provided the foundation of my chronology. At that stage the Secretary of State supported the appeal, considering that the matter needed to be remitted to the FTT for further fact-finding as to the actual position regarding habitual residence.

25. The parties were content for me to deal with the case on the basis of the papers and the written submissions; however I was of the view that the matter had a further dimension which I wanted to explore at an oral hearing. Following matters that arose in discussion at the oral hearing, observing that the matter was too complex to expect them to be dealt with on the hoof at that hearing I posed certain questions in order to explore the emerging legal issues. The Secretary of State alone provided a further submission in relation to those questions.
26. The stance of the Secretary of State changed during the appeal. The most recent submission supported the decision of the FTT, aligning with the view of the 21/4/09 agency decision maker that by the time the father's application was made in June 2007 the assessment had ceased to be of effect on J attaining 19, and there was no assessment to which that application could attach.
27. I agree with that conclusion, but I have developed the reasons advanced by Mr Powell on behalf of the Secretary of State.
28. I am extremely sorry as to the delay in this decision following the time allowed for the written submissions.

The issues

29. The legal issue before the FTT was whether, where notification of change of circumstances some 10 years after the change occurred should (if the evidence was accepted) enable closure take effect as of the date of the change, as of the date of notification, or from any other date or whether the Maintenance Assessment had in fact ceased to be of effect by operation of law by the date of the father's notification in June 2007, preventing incorporation of earlier changes. This begged the question as to whether cancellation or a need for cancellation differed from the ceasing of an assessment to be of effect by operation of law.
30. I differentiate in this context the habitual residence issue and the terminal lack of a qualifying child issue, the former being a matter about which the agency would have to be informed and come to a view about, the factual position being one for potential argument; the latter being a fact already within the knowledge of the agency.
31. There was also the related matter of the IMA conversion which may have had an impact on the power of the Secretary of State more generally.

The main relevant legal provisions

Duty to Maintain

32. I cite at the outset the duty to maintain under section 1 of the Child Support Act 1991

(1) For the purposes of this Act, each parent of a qualifying child is responsible for maintaining him.

(2) For the purposes of this Act, an absent parent shall be taken to have met his responsibility to maintain any qualifying child of his by making periodical payments of maintenance with respect to the child of such amount, and at such intervals, as may be determined in accordance with the provisions of this Act.

(3) Where a maintenance assessment made under this Act requires the making of periodical payments, it shall be the duty of the absent parent with respect to whom the assessment was made to make those payments."

Child

33. Section 55, as then enacted and as relevant here, provided:

"(1) For the purposes of this Act a person is a child if—

(a) he is under the age of 16;

(b) he is under the age of 19 and receiving full-time education (which is not advanced education)

34. I pause there to emphasise that at that time the last date upon which a person could then be a child for the purpose of maintenance under the statutory scheme was the day of their 19th birthday. This has not been in dispute.

Termination of assessments

35. Paragraph 16 of Schedule 1 to the Child Support Act 1991, headed *"Termination of assessments"* provided:

"(1) A maintenance assessment shall cease to have effect—

(a) on the death of the absent parent, or of the person with care, with respect to whom it was made;

(b) on there no longer being any qualifying child with respect to whom it would have effect;

(c) on the absent parent with respect to whom it was made ceasing to be a parent of—

(i) the qualifying child with respect to whom it was made; or

(ii) where it was made with respect to more than one qualifying child, all of the qualifying children with respect to whom it was made;

(d) where the absent parent and the person with care with respect to whom it was made have been living together for a continuous period of six months;

(e) where a new maintenance assessment is made with respect to any qualifying child with respect to whom the assessment in question was in force immediately before the making of the new assessment."

(2) a maintenance assessment made in response to an application under section 4 shall be cancelled by the Secretary of State if the person on whose application the assessment was made asked him to do so

(3) a maintenance assessment made in response to an application under section 6 be cancelled by the Secretary of State if –

(a) the person on whose application the assessment was made (the applicant) asks him to do so; and

(b) he is satisfied that the applicant ceased to fall within subsection (1) of that section.

(4) where the Secretary of State is satisfied that the person with care in respect to whom a maintenance assessment was made has ceased to be a person with care in relation to the qualifying child, or any of the qualifying children, with respect to the assessment was made, he may cancel the assessment with effect from the date on which, in his opinion, the change of circumstances took place.

(4A) a maintenance assessment may be cancelled by the Secretary of State if he is proposing to make a decision under section 16 or 17[2] and it appeared to him –

(a) that the person with care with respect to whom the maintenance assessment in question was made has failed to provide him with sufficient information to enable him to make the decision; and
(b) where the maintenance assessment in question was made in response to an application under section 6 , that the person with care with respect to whom the assessment was made has ceased to fall within subsection (1) of that section.

(5) Where –

(a) at any time a maintenance assessment is in force that the Secretary of State would no longer have jurisdiction to make it if it were to be applied for at that time; and

(b) the assessment has not been cancelled, or has not ceased to have effect, under or by virtue of any other provision made by or under this act,

it shall be taken to have continuing effect unless cancelled by the Secretary of State in accordance with such prescribed provision (including provision as to the effective date of calculation) as the Secretary of State considers it appropriate to make.

[2] Pre 1/6/1999 certain reviews were carried out under these sections; after that date the power of review was replaced by revision (s16) and supersession (s17)
3 it was revoked from that date by regulation 31 Miscellaneous Amendments (no 2) Regulations 1999

36. Regulation 52 provided, until 1 June 1999[3] (the emphasis being mine):

Terminations of maintenance assessments

52.- (1) where the Secretary of State ***is satisfied that a question arises as to whether a maintenance assessment has ceased to have effect*** *under the provisions of paragraph 16 (1) (a) to (d) of schedule 1 to the Act, he shall refer that question (a "termination decision") to a child support officer.*

(2) where a child support officer has made a decision on a termination question (a "termination decision") he shall immediately notify the following persons of his decision so far as that is reasonably practicable-

(a) in a case falling within paragraph 16 (1) (a) of schedule 1 to the Act, the surviving relevant persons;

(b) in a case falling within paragraph 16 (1), (b), (c) or (d) of schedule 1 to the Act, the relevant persons.

(3) any notification under paragraph (2) shall give the reasons for the termination decision made, include information as to the provisions of section 18 of the Act, and explain the provisions of paragraph (4)

(4) the persons specified in paragraph (2) may apply to the Secretary of State for a review of the termination decision as if it were a case falling within section 18 of the Act and, subject to modification set out in paragraph (5), section 18 (5) 2 (9) and (11) of the Act shall apply to such a review

(5) the modifications referred to in paragraph (4) are-

(a) section 18 (6) of the Act shall have effect as if for "the refusal, assessment or cancellation" there is substituted "the termination decision",

(b) section 18 (9) of the Act shall have effect as if for (a maintenance assessment or (as the case may be) a fresh maintenance assessment" there is substituted "a different termination decision"

(6) the provisions of regulation 24 is the time limits for an application for review of a decision by a child support officer shall apply to a review under paragraph (4)

(7) where a child support officer has completed a review of the termination decision he shall immediately notify the persons specified in paragraph (2) so far as that is reasonably practicable, of the review decision, give the reasons that decision in writing, and notify them of the provisions of section 20 of the Act.[4]

Jurisdiction to make a maintenance assessment: habitual residence

[4] S 20 of the 1991 Act, then and currently, relates to the right of appeals to the (first-tier) tribunal.

37. Section 44 Child Support Act 1991 at the relevant time in relation to the old scheme, read as follows:

44 (1). The Secretary of State shall have jurisdiction to make a maintenance assessment with respect to a person who is
(b) a person with care;
(c) an absent parent;
(d) a qualifying child,
only if that person is habitually resident in the United Kingdom

(1) the Secretary of State may by regulations make provision as to the cancellation of any maintenance assessment where-
(a) the person with care, absent parent or qualifying child with respect to whom it was made ceases to be habitually resident in the United Kingdom;

38. Cancellation was provided for:

Regulation 7 Maintenance Arrangements and Jurisdiction Regulations 1992 (MAJ regulations) [5]

(1) where
(a) a person with care
(b) an absent parent; or
(c) a qualifying child
with respect to whom a maintenance assessment is in force ceases to be habitually resident in the United Kingdom child support officer shall cancel that assessment.

(2)[ ]

(2) where a child support officer cancels a maintenance assessment under paragraph (1) or by virtue of paragraph (2), the assessment shall cease to have effect from the date that the child support officer determines is the date on which-
(a) where paragraph (1) applies, the person with care, absent parent or qualifying child; or
(b) [ ]
(c) With respect to whom the assessment was made ceases to be habitually resident in the United Kingdom

The father's arguments

[5] Although Regulation 7 was omitted by regulation 8 (2) of the Information, Evidence and Disclosure and Maintenance Arrangements and Jurisdiction Amendment Regulations 2000 Regulation 10 (2) of the Child Support (Miscellaneous Amendments) Number 2 Regulations 2009 *SI 2009/2909* disapplied the omission for old scheme cases.

39. The crux of the argument put forward on behalf of the father is that there was neither a qualifying child, nor an absent parent, in respect of whom an assessment could be made from the date he left the UK.
40. That argument fails because where a lack of jurisdiction arises under section 44 (1) of the Act due to cessation of habitual residence by an absent parent[6] any maintenance assessment (which includes an IMA[7]) remains in force under paragraph 16(5) of schedule 1 to the Act until it is cancelled or has ceased to have effect by virtue of any other provision.
41. The argument as to a child's ceasing to be a qualifying child if there is not for the time being an absent parent in respect of them seems in any event to be an attempt, albeit in a slightly different context, to revive an argument which the Court of Appeal found to be fallacious in *Brough-v-Law [2011] EWCA Civ 1183 (Brough v Law).* To quote from the judgment of Lord Justice Lewison:

"I return, then, to paragraph 16 (1) (b). It applies to a case in which there is "no longer" a qualifying child. To my mind, that is not the same as a case in which there is "not for the time being" a qualifying child. It suggests something more permanent; such as the former child attaining the age of 16, or leaving full-time education, or marrying, or even dying. In essence, this was the reasoning of Upper Tribunal Judge Levenson, and I agree with it."

42. Whilst that dicta deals with the father's argument on the point the position in this case differs from the situation in *Brough v Law* where the event, a reconciliation between the parents, was not "terminal" in that the reconciliation was short lived and the child still under age; suspension during the period of reconciliation and then automatic resumption of the maintenance assessment upon the subsequent separation without the need for a fresh assessment was the effect of the decision of the Court of Appeal.
43. The point as to whether, where a permanent terminal event had occurred, the assessment simply ceased to operate, or whether it remained in force until the Secretary of State took steps to terminate it was not settled by the Court of Appeal in that case; it was not necessary for their decision, and in upholding Upper Tribunal Judge Levenson's reasoning on the central issue his obiter dicta, or 'by the way' reasoning on that point was not discussed. I treat it as one that I am at liberty to consider. It is the key to my decision in this case.
44. I do not need to deal with the arguments concerning the conversion of the IMA because my judgement is that the maintenance assessment ceased to be of effect and was not in force at the date of the application for that conversion, and there was, therefore, no jurisdiction in the Secretary of State to admit it.

Automatic cessation on the occurrence of a terminal event?

45. The question of whether the maintenance assessment ceased to have effect (some might say by operation of law) when J attained the age of 19, which was prior to the father's contacting the agency with information in June 2007, is critical to the issue of whether the Secretary of State was entitled to go back into the maintenance assessment and change decisions made over the years.
46. Under paragraph 16(5) of schedule 1 to the Act the liability continued until the assessment was either cancelled or ceased to have effect.

[6] Or indeed a parent with care or qualifying child under section 44 of the Act

[7] Section s 54 of the 1991 Act (the interpretation section) stating that it does so except in prescribed circumstances that do not apply here

47. Judge Levenson's view was that termination under paragraph 16 (1) was not automatic, but required from 1999 a supersession or revision decision. This was because appeal rights existed only in respect of a decision, and an end to entitlement by operation of law might be thought not to involve a decision and therefore not to carry rights of appeal. Although he did not have argument on the matter he felt that on the face of it that would be incompatible with Article 6 European Convention on Human Rights. [8]
48. He referred to the repeal of regulation 52 of the Child Support (Maintenance Assessment Procedure) Regulations 1992 [9] on the introduction in 1999 of the new adjudication procedures of revision and supersession. That regulation had provided a procedure for the termination of maintenance assessments where paragraph 16 applied[10]. Judge Levenson drew from that the implication that the new system would cover the apparent hiatus by providing a decision making route which would then be subject to the statutory appeal process, hence his view of the need for formal adjudication to provide a decision that carried a right of appeal. He said *"it cannot be the case that it was intended by the introduction of these procedures to make paragraph 16 (1) take effect by operation of law when it had not previously done so. It is much more likely that the intention was to have the new procedures apply."*
49. The issue as to whether the two concepts were practically different was not central to the case of *SM v CMEC & NW (CCS 3144 2009)* but Upper Tribunal Judge Williams considered the proposition that paragraph 16 took effect under section 11 of the 1991 Act, and imposed a duty on the Commission to decide any maintenance application *"in accordance with the provision made by or under this Act."* The effect of a decision being under section 11 is that it would be a decision that gave rise to a right of appeal.
50. I mention this because of the argument put forward by Mr Powell that under the post-1999 adjudication process provision was made for supersession of a decision[11]under section 17 of the (amended) 1991 Act only in respect of decisions made under that section, or sections 11 or 12. Sections 11 and 12 provided for the making of maintenance assessments and interim maintenance decisions, and section 17 did not enable a decision to be made about the cessation of an assessment.
51. Judge Williams said :

17There is, however, no obvious link between section 11(1) and paragraph 16. The one deals with applications. The other deals with terminations, and it is not clear that any decision is required…The scope of paragraph 16(1)(a) is clear. If either the person liable to pay the assessment or the person entitled to receive it dies, then the assessment becomes ineffective. As assessments are personal to the individuals, it is not clear that this provision is more than declaratory…"

52. He then made some observations in respect of the meaning of paragraph 16 (1) (b) as to the situation which was clarified by the Court of Appeal in *Brough-v-Law*, and so are not of relevance here, and following that he opined once more *"Paragraph 16(1) provides that an assessment ceases to have effect. The balance of the*

[8]At the Upper Tribunal stage of *Brough –v- Law*(*SL v CMEC[2009]UKUT 270 (AAC))*

[9] Revoked by regulation 31 Miscellaneous Amendments (No. 2) Regulations 1999 from 1/6/1999

[10] From 1 June 1999 Regulation 52 was revoked by regulation 31 Miscellaneous Amendments (No2) Regulations 1999.

[11] revision not being relevant in this instance, because both the alleged loss of habitual residence and the final child in the assessment attaining 19 were changes in circumstances and as such part of the supersession process

paragraph provides for situations when the assessment must or may be cancelled. Cancellation requires a positive decision.

53. He ended by posing the question which was considered in Brough-v-Law, "*What happens when there is a reconciliation but no decision?"* He thought that at least part of the answer lay in the Child Support (Information, Evidence and Disclosure) Regulations 1992. Regulation 6 and set out that regulation in the form that it was then enacted.

"Where a person with care with respect to whom a maintenance assessment has been made believes that, by virtue of section 44 or 55 of, or paragraph 16 of Schedule 1 to, the Act the assessment has ceased to have effect … she shall, as soon as reasonably practicable, inform the Secretary of State of that belief, and of the reasons for it, and shall provide any other information as the Secretary of State may reasonably require, with a view to assisting the Secretary of State in determining whether the assessment has ceased to have effect…".

54. Prior to those regulations being amended in 2000, however, the regulation quoted concluded with the following words "**or should be cancelled**" (my emphasis). That form of the provision remained in force for old scheme cases such as this. Judge Williams felt that the wording of the regulation before him militated towards the need for a determination in respect for a cessation. He said

19 The wording of this regulation appears to link expressly with paragraph 16(1) as it echoes the term "ceased to have effect" and does not link with the other provisions in paragraph 16 referring to cancellation. This also suggests that the drafter expects the Secretary of State to make a determination about any cessation. This must be so because if the Secretary of State does not intend to make a determination then, at least arguably, Secretary of State has no power to seek further information, and the person with care no duty to assist.

55. Under the wording of regulation 6 as applicable in this case, however, the dichotomy is preserved; there is no conflation of the concepts of ceasing to have effect in cancellation. They echo the wording of Paragraph 16 (10) which reads:

a person with care with respect to whom the maintenance assessment is in force shall provide the Secretary of State with such information, in such circumstances, as may be prescribed, with a view to assisting the Secretary of State… in determining whether the assessment has ceased to have effect, or should be cancelled[12].

56. The wording with the use of the past tense, together with the disjunctive 'or' suggests that the cessation has happened without the intervention necessary for cancellation, clearly a prospective event.
57. Regulation 6 applies where a person with respect to whom a maintenance assessment has been made[13] believes that by virtue of section 44 (jurisdiction) or

[12] Paragraph 16 (11) empowers the Secretary of State to make supplemental provisions in relation to the paragraph, and the Child Support (Information, Evidence and Disclosure) Regulations 1992 are a consequence of that.

[13] Note that there has never been a similar statutory duty upon the absent parent/non-resident parent

section 55 (meaning of "child") or paragraph 16 of schedule 1 to the Act the assessment *"has ceased to have effect or should be cancelled…."*

58. That person is under a duty to inform the Secretary of State and provide information with a view to the Secretary of State determining whether the assessment has ceased to have effect or should be cancelled.
59. The information in this case as to the father's place of residence however, was not within the knowledge of the mother, and the information as to the age of the child was already within the knowledge of the Secretary of State; there was no 'question' to be determined.
60. Under the old scheme the 'determination' of the Secretary of State triggering the information requirement under regulation 6 could be that there was a question to be determined under regulation 52 as to whether the assessment has ceased to have effect or should be cancelled.

Did cessation under paragraph 16 (1) take effect by operation of law under the old adjudication regime?

61. In my judgment it did, in cases where the circumstances could brook no argument.
62. Regulation 52 (1) deals with the position *"where the Secretary of State is satisfied that a question arises as to whether a maintenance assessment has ceased to have effect".* Only in those circumstances is the question referred to a child support officer to determine the issue and make a termination decision. Automatic cessation was applicable in cases where no 'question' arose as it concerned an event about which there could really be no argument, such as the attainment by the (only remaining) Qualifying Child of the terminal age.
63. A termination decision was only made where a genuine question arose as to whether the maintenance assessment had ceased to have effect; such a question was referred to a Child Support Officer the key point being whether a question arose that required administrative (quasi-judicial) determination. If so the matter was referred for investigation and a termination decision. Where the information raised issues of fact such as a claimed reconciliation about which the other party might disagree or, as in this case, whether or not a party remained habitually resident, these demand initial adjudication and are ultimately best resolved under the statutory appeals process. Making such an issue subject to a decision to cancel gives rise to rights in relation to the appellate process.
64. There is relevance in the actions to be taken in the context of the then "review" based adjudication structure.

The old adjudication system

65. Under the pre-1999 power of review, the right to apply for a review under section 17 of the 1991 Act was limited to an application in respect of a maintenance assessment *"in force"* at the date of application, and section 17 (1) provided for rights of appeal by the various parties *"where a maintenance assessment is in force "*
66. After 1995 section 17 (4A) provided

"Where a child support officer is conducting a review under this section, and the original assessment has ceased to have effect, he may continue to review as if the application for a review related to the original assessment and any subsequent assessment.

67. There is no case law in respect of that provision, but Edward Jacobs and Gillian Douglas the learned commentators to "Child Support: The Legislation" 1997 edition

interpreted it thus: if, whilst a Child Support Officer was conducting a review the original assessment ceased to have effect the Child Support Officer could continue the review, but *"an application may only be made so long as an assessment remains in force. Once it ceases to be so it is too late for an application to be made"* [14].

68. By necessary implication a maintenance assessment could cease to have effect without a decision from the adjudicating authority. Indeed, it could do so during the decision making process in respect of an application within the case made prior to the event triggering cessation, the fact that the application was under consideration affording protection in relation to that ongoing process (and any rights of appeal in respect of it, subject to time limits); without such application the assessment simply ceasing to have effect would have automatically ended any possibility of alteration. That was the position where there was no ongoing review; no further application within the case could be made.
69. There was a similar provision for the conduct of periodical reviews[15] under section 16

> *(1) on completing any review under this section, the child support officer concerned shall make a fresh maintenance assessment, unless he is satisfied that the original assessment has ceased to have effect or should be brought to an end.*

70. Again, the original scheme preserves the distinction between a cessation (in my view by operation of law) and a deliberate act to bring an assessment to an end. It *'has ceased to have effect'* where a permanent terminal event has occurred; it *'should be brought to an end'* if the Child Support Officer in the course of the periodical review has acquired information upon which he needs to make a quasi-judicial decision, for example whether a child aged 16 was still receiving full time education, a matter which (still) provokes debate upon the issue of what constitutes such education, and therefore requires a reasoned decision as to the facts and the application of the law to them.
71. In relation to the section 16(1) review the commentary[16] reads at page 62

"the words "cease to have effect" are used in schedule 1 paragraph 16. However they do not cover every way in which an assessment may come to an end. The question, therefore, arises as to whether the words are being used here in the same sense as in schedule 1, para 16 so as to apply only when the assessment has come to an end in the particular circumstances and manner set out in that paragraph, or in a more general way to cover any case in which the assessment is no longer in force. The more general sense is preferred in this context. That does not alter the force of the provision being to the effect that a cessation can operate without the adjudicative process being invoked."

The new (post 1999) adjudication regime

72. In my judgment the omission of any replacement for regulation 52 was not because the new decision making arrangements covered these circumstances, but because it was not necessary.

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[14] (Following a section 17 review there was an early form of what is now be called Mandatory Reconsideration (a section 18 review) the conclusion of which triggered the right of appeal to a tribunal

[15] Under the old scheme initially annually, later biennially and finally abandoned

[16] Jacobs and Douglas ibid

73. Paragraph 16 draws the distinction between cancellation, which requires specific further action, and cessation, which does not. Paragraph 16 (1) (b) was interpreted by the court in *Brough-v- Law* as requiring something permanent to happen. The example in that case was the difference between there not being a child who could for the time being be a qualifying child and there being no qualifying child at all. Those parts of paragraph 16 which invited of dispute were provided for by the new system; the other parts did not need to be.
74. From 1 June 1999, the amendments dealing with the new adjudication regime under the Social Security Act 1998 afforded a right of appeal[17] in respect of the refusal of an application for a maintenance assessment, and rights *"where a maintenance assessment is in force"* against the amount of the assessment or the date from which it takes effect. Rights also arise where a maintenance assessment is cancelled or where an application for cancellation is refused.
75. The new adjudication regime put in place the concepts of revision and supersession which supplanted the more general "review". [18]
76. There is no general right of appeal in relation to a maintenance assessment ceasing to have effect. All other apparently relevant matters being provided for one would have expected provision for that should the making of any potentially contentious decisions on such an occurrence have been in contemplation.
77. There is a provision referring to there ceasing to be a qualifying child which does provoke a decision and therefore a right of appeal. Regulation 23 (19) Child Support (Maintenance Assessment Procedure) Regulations 1992:

"where a superseding decision is made in the case and the material circumstances is the death of the qualifying child or qualifying child ceasing to be a qualifying child, the decision takes effect as from the first day in the maintenance period in which the change occurred."

78. This applies in cases in which a child ceases to be a qualifying child but the maintenance assessment must continue because there are younger qualifying children. That circumstance requires clarity both as to the date of change (the assessment being calculated and operating on a weekly basis) and of the amount of the fresh assessment; that differs from a situation where the date upon which an event happens must finish the maintenance assessment, such as death of a child or absent parent, or the youngest child reaching the terminal age. Further, it reinforces the idea of a meaningful difference in the cancellation of a maintenance assessment (for example on application under paragraph 16 (2)) and the position under paragraph 16(1) under which the assessment ceases to have effect, because provision is made for the date of cancellation but none is made for the cessation; from that it appears that the (obvious) terminal event causes the cessation at the time of its occurrence.
79. The cancellation provisions apply to matters about which there may be argument. For example paragraph 16 (4A) (supra) provides for the cancellation of a maintenance

[17] Section 20 of the Child Support Act 1991 contains the right of appeal to what is now the First Tier Tribunal and was previously a similar process of appeal to an independent tribunal.

[18] Revision concerns the alteration of a decision from its inception; it is an acknowledgement that the decision was incorrect. Supersession, which appears in the amended section 17 of the 1991 Act provides for the replacement of decisions made under section 11 (full maintenance assessments) or 12 (Interim Maintenance Assessments) either on application or on the Secretary of State's own initiative where changes in circumstances occur.

assessment in certain circumstances[19]. It was effective from 1/6/1999 to provide for adjudication under the new system if the Secretary of State is *"proposing to make a decision under section 16 or 17"*[20] . The matters set out in paragraph 16(4A) (a) and (b) are those upon which an exercise of discretion, and thus a quasi-judicial decision is required. Notably it does not deal with the position where a maintenance assessment has ceased (or would obviously cease) to have effect.

80. It seems to me that where there is a factual event, here whether or not a child had turned 19, a matter easily determined from the information already held by the Secretary of State, or, regrettably, where a child had died, when the information would be uncontentious and confirmed by public records, there is simply no "question" to be answered by an administrative decision maker. In the unlikely event of a dispute on such an issue and there being no statutory right of appeal Mr Powell argues that judicial review is a sufficient remedy. I agree.
81. These matters combine to lead me to the conclusion that there is a distinction in relation to the need for formal adjudication in relation to a potentially supervening event which calls for investigation and the position where a supervening event will inevitably cause the assessment to end. In the latter case a formal decision, as opposed to simple notification, is not required.
82. Accordingly I accept the position contended for by the Secretary of State in relation to automatic cessation under paragraph 16.[21]

The effect of the above on the extant decision of the FTT

83. Although my decision is made for different reasons it replicates the effective date of cancellation in the decision made by the FTT which confirmed the decision of the agency which was under appeal, which was a cancellation of the maintenance assessment from the date upon which J ceased to be a qualifying child under section 55, 4 January 2007. That decision is therefore correct as a matter of law and it stands.

Concluding observations

84. I now have all relevant information in the possession of the Secretary of State. I do not need to determine the factual issues but I note that the father's representatives argued at one point that the father was not aware of the involvement of the agency at all until about 2003 when he received some phone calls asking for information as to his accounts. The information provided to me shows clearly that the father had contacted the agency, as had his partner, in response to documentation at least as early as 1999. It was also strongly suggestive of his having been away from UK for only as little as a year, and, even if Habitual Residence in Ireland had been properly established during that period the position is likely to have replicated that in *Brough- v- Law* in which the maintenance assessment would have been resuscitated without the need for a fresh application.
85. I would add, without I think the need to set out the relevant provisions, that the jurisdiction of the court to make an order for child maintenance is ousted where the agency has jurisdiction, or would have if an application was made; section 8 Child Support Act 1991. However where a maintenance assessment is cancelled or has ceased to have effect because the Secretary of State no longer has jurisdiction under the Act and an application is made to the court within 6 months for child maintenance

[19] inserted by section 14 (2) of the Child Support Act 1995, taking effect on 22/1/1996, and again amended by paragraph 48 (5) (a) schedule 7 Social Security Act 1998,
[20] Which deal respectively with revision and supersession
[21] Corrected from original version which erroneously read 'section 16'.

to replace the assessment, the order made can be backdated to the date of cancellation or cessation[22] The provision is to ensure minimal or no loss of income for the child and does not envisage a position where notification of an alleged change of circumstance resulting in a lack of agency jurisdiction is so delayed. Although the decision has turned on other points this is a matter to which I have given some thought.

86. If the father had notified the agency at the time he went to live in Ireland, and if it had been appropriate to cancel the maintenance assessment the mother would have been entitled to approach the court for a maintenance order for the upkeep of the children and for leave to serve notice of the proceedings outside the jurisdiction. It seems to me likely, bearing in mind the fact that the father was in regular and well remunerated employment in the public sector in a local jurisdiction with certain reciprocal arrangements that such an application would have been looked upon favourably. Where effectively retrospective cancellation occurs the placing of an onus upon a non-resident parent to notify of any matter for which cancellation might take place due to lack of jurisdiction, failing which the usual supersession rule of change from the date of notification would apply, would provide a seamless continuation of maintenance. Such an onus would also be in accordance with the principles set out by Baroness Hale in the case of *Kerr-v- Department for Social Development [2004] UKHL 23*: where there is information which is within the purview of one party it is for that party to put the relevant information before the decision making authority.

Upper Tribunal Judge Gray

Signed on the original on 5 October 2016

[22] The Child Maintenance Orders (Backdating) Order 1993 amends section 29 of the Matrimonial Causes Act 1973; Section 5 of the Child Maintenance Orders (Backdating) Order 1993 amends section 29 of the Matrimonial Causes Act 1973 Section 5 of the Domestic Proceedings and Magistrates Courts Act 1978 and schedule 1 paragraph 3 to the Children Act 1989