

**DECISION OF THE UPPER TRIBUNAL  
(ADMINISTRATIVE APPEALS CHAMBER)**

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

The decision of the First-tier Tribunal sitting at Huddersfield on 13 December 2018 under file reference SC246/18/00464 does not involve any error of law. The First-tier Tribunal's decision stands.

This decision is given under section 11 of the Tribunals, Courts and Enforcement Act 2007.

**REASONS FOR DECISION**

**Background**

1. Prior to about 1 January 2016, the Appellant had been in a relationship for a number of years and lived with her partner ('Mr S') at various addresses. As at 1 January 2016 the Appellant and Mr S had one daughter (whom I will refer to as 'X' to protect her privacy).
2. The Appellant says that she separated from Mr S on 1 January 2016 following a falling out over Christmas. She then moved with X to temporary accommodation and claimed Income Support (IS) as a lone parent.
3. IS was awarded from 7 January 2016.
4. On 18 February 2016 the Appellant says that she moved with X to no 14.
5. The Respondent subsequently received information that the Appellant may, in fact, have been living with Mr S as a married couple at no 14 during some or all of the period during which she has been claiming IS as a lone parent.
6. Following an investigation, the Respondent made two decisions:
  - (i) A decision dated 25 November 2017 by which the previous decision awarding IS was superseded on the grounds that the Appellant had been living together with Mr S as a married couple from 29 February 2016 and as such she was not entitled to IS between 29 February 2016 and 16 October 2016 and between 29 October 2016 and 12 November 2017;
  - (ii) A consequential decision dated 27 December 2017 determining that the Appellant had failed to disclose a relevant change in circumstances (namely, that she had been living together with Mr S as a married couple from 29 February 2016) and as such, had been overpaid IS between 29 February 2016 and 16 October 2016 and between 29 October 2016 and 12 November 2017.
7. The Appellant appealed both decisions to the First-tier Tribunal ('FtT'). The FtT found that the Appellant had been living with Mr S as a married couple from 29 February 2016 and so dismissed the appeal against both decisions.

### The Grounds of Appeal and Permission to Appeal

8. Mr Joe Power of Kirklees Law Centre, acting on behalf of the Appellant, lodged grounds of appeal in which he asserts (in summary) that the FtT erred as follows:
- (i) It failed to make adequate findings of fact in relation to the ‘*criteria*’ set out in **Crake v Supplementary Benefits Commission; Butterworth v Supplementary Benefits Commission [1982] 1 All ER 498** – in particular, in relation to the reasons for Mr S providing financial support, whether there was a ‘stable’ relationship, whether there was ‘public acknowledgment’ of the relationship, and whether they were in fact living in the ‘same household’;
  - (ii) Bearing in mind that there was “*ample evidence of problems with the relationship*”, it failed to deal with the emotional aspects of relationship as highlighted by Upper Tribunal Judge Jacobs in **PP v Basildon District Council (HB) [2013] UKUT 505 (AAC)** – in particular, “*the Tribunal should have made findings on the emotional aspect of the relationship. It was [not] [sic] enough to say that the relationship has “its up [sic] and downs”.*”
9. By an order dated 20 May 2019, Upper Tribunal Judge Jacobs gave permission to appeal on the basis that:

“2. *The evidence as summarised by the tribunal raises an obvious possibility that the couple were going through a bad patch and were for the time being no longer cohabiting, but remained connected in various ways on account of [Mr S]’s lack of accommodation and of their shared parentage. The tribunal’s reasons do not show that it considered that possibility, let alone how the judge decided that it was not an appropriate analysis of the evidence.*”

### The Secretary of State’s Response and Submissions

10. Mr I Hussain, who now acts for the Secretary of State in these proceedings, opposes the appeal. He submits that (in summary):
- (i) In light of **DK v Secretary of State for Work and Pensions (2016) CSIH 84**, whilst it was necessary for the FtT to appreciate that there are ‘signposts’ which may be relevant in deciding whether a couple were living together as a married couple, these are “*not set in stone*” and ultimately the FtT must assess the evidence as a whole and take a “*broad view of the matter*” to decide if the legal test has been met. No one signpost is determinative.
  - (ii) It was not necessary for the FtT to explain why it accepted or rejected each piece of evidence by reference to each signpost.
  - (iii) In the present case, the FtT considered all relevant matters in the round (including the emotional aspect of the relationship (Statement of Reasons (§16)) and gave adequate reasons for determining that the Appellant and Mr S were living together as a married couple during the relevant period.

### Applicable Legal Principles

11. Regulation 2 of The Income Support (General) Regulations 1987 (‘the Regulations’) provides that for the purposes of the Regulations:

“couple” means –

- (a) Two people who are married to, or civil partners of, each other and are members of the same household; or
- (b) Two people who are not married to, or civil partners of each other but are **living together as a married couple;**”

(emphasis added)

12. As there is no dispute in this case that the Appellant would not have been entitled to IS between 29 February 2016 and 16 October 2016 and between 29 October 2016 and 12 November 2017 if she and Mr S were a ‘living together as a married couple’ within the meaning of Regulation 2, there is no need for me to set out the legislative provisions dealing with entitlement to IS.
13. This also meant that the FtT was concerned with one discreet issue, namely whether the Appellant and Mr S had been ‘living together as a married couple’ since 29 February 2016.
14. In considering whether two people are ‘living together as a married couple’, two separate questions must be asked: (i) are they in fact living together; and if so (ii) are they living together as a ‘married couple’. The second of the two questions requires the decision maker to assess and determine ‘why’ they are living together.
15. The traditional starting point for an analysis of whether two people are living together as husband and wife (and now as a married couple) has long been **Crake**. Woolf J held as follows (at 502c-d):

*“... it is not sufficient, to establish that a man and woman are living together as husband and wife, to show that they are living in the same household. If there is the fact that they are living together in the same household, that may raise the question whether they are living together as man and wife, and, indeed, in many circumstances may be strong evidence to show that they are living together as man and wife; but in each case it is necessary to go on and ascertain, in so far as this is possible, the manner in which and why they are living together in the same household; and if there is an explanation which indicates that they are not there because they are living together as man and wife, then they would not fall within [the relevant statutory definition]; they are not two persons living together as husband and wife....”*

16. Woolf J considered that the stage of the relationship is a relevant factor (at 502):

*“Once one has established the relationship to exist then it is much easier to show that it continues, and it may well be that although many of the features of living together between husband and wife have ceased, perhaps because of advancing years or for other reasons, the paragraph will still continue to apply”.*

17. Woolf J continued (at 504d-e):

*“If the only reason that Mr Jones went to that house temporarily was to look after Mrs Butterworth in her state of illness and, albeit, while doing so, acted in the same way as an attentive husband would behave towards his wife who suffered an illness, this does not amount to living together as husband and wife because it was not the intention of the parties that there should be such a relationship. Looked at without*

*knowing the reason for Mr Jones going to live there, it would appear that they were living together as husband and wife, but when the reason was known that would explain those circumstances, and once the explanation was accepted by the tribunal, as clearly as it was here, and it was a matter for them, they should have come to the conclusion that in this case [the statutory definition] did not apply."*

18. Woolf J then referred to the 6 factors listed in the Supplement Benefits Commission's 'Supplementary Benefits Handbook' (namely, shared household, stability, financial support, sexual relationship, children and public acknowledgement) for assessing whether two people were 'living together as husband and wife' (the former version of the relevant test). Woolf J considered it wrong to describe the 6 factors as 'criteria' and instead described them as "*admirable signposts to help a tribunal, or indeed the commission, to come to a decision whether in fact the parties should be regarded as being within the words 'living together as husband and wife'*" and noted that "*the approach indicated in that handbook cannot be faulted*" (at 505).

19. In **PP** Upper Tribunal Judge Jacobs considered the status of the 'admirable signposts' and held as follows:

*"13. Whether a man and a woman are living in the same household or as husband and wife depends on an analysis of the overall significance of a number of facts individually and collectively. No single fact is decisive. In many cases, there is no right or wrong answer. Different decision-makers can, quite properly, form different judgments on the same underlying facts..."*

*29. The guidelines summarised by Woolf J remain relevant to that test, but they are not exhaustive. They are relevant both for what they show in themselves and for what they show of the nature and degree of the emotional attachment between the parties. This attachment must almost always be a matter for inference rather than direct evidence..."*

*30. Tribunals (and decision-makers) should not limit themselves to those guidelines and what can be learnt from them. They should identify any relevant features of the emotional relationship between the parties such as those set out in the authorities above..."*

*32. Ultimately, every 'living together' case depends upon an analysis of the evidence in the particular case. It is time that that analysis recognised the importance of the emotional aspect of a marriage. This does not replace the other aspects of marriage; rather, it adds a perspective and depth to the analysis. Doing so, does not resolve all of the problems that I have identified with the guidelines and their application. No doubt, the evidence on the parties attachment can be as equivocal as, and probably more difficult to obtain than, the evidence that is generally available. But the law requires a comparison with the standard of a married couple and that standard can only be properly applied if all aspects of marriage are taken into account, so far as the evidence allows..."*

20. In **DK**, the Inner House of the Court of Session stressed that:

*"12. ...in reaching a conclusion as to whether a particular legal test, such as living together as husband and wife, is satisfied, a court or tribunal must have regard to the totality of the evidence led that has a bearing on the issue. The individual items of evidence do not require to be assessed individually for their probability; what matters is the probability of the ultimate conclusion, and that depends on an assessment of the whole of the evidence that may have a bearing upon it..."*

13...*The critical point is that a tribunal must address the applicable legal test on the basis of the whole of the evidence, but in doing so it is not necessary that it should provide a detailed analysis of the evidence divided into discrete components; nor is it necessary that the tribunal should explain what evidence it accepts or rejects in relation to each of those components and the relevance or otherwise of each component.*"

21. It went on to hold that:

*"15...a tribunal must address the fundamental issue, such as whether a couple are living together as husband and wife, and must give some explanation, albeit briefly, as to why it has reached a particular conclusion on that issue. Nevertheless nothing in Crake indicates that that conclusion requires to be based on anything other than an assessment of the evidence as a totality, in the manner described in Karanakaran and Asif. Indeed, the reliance on the factors set out in the supplementary benefits handbook as "signposts" is a strong indication that what is required is an appraisal of the totality of the evidence, treating each of these factors as no more than that, and certainly not as determinative...*

*17. The same is true of the decision of the Upper Tribunal (Administrative Appeals Chamber) in PP v Basildon District Council, [2013] UKUT 0505 (AAC), where it is indicated (at paragraph 29) that the guidelines summarized by Woolf J remain relevant to the test of whether parties were living together as husband and wife, but they are not exhaustive. They are particularly relevant as showing the degree of emotional attachment between the parties, which must nearly always be a matter for inference rather than direct evidence. We agree with such an approach; it focuses on the ultimate issue in the case, whether the parties are living together as husband and wife, without giving undue weight to any individual factor that may be relevant to that issue. A single factor, such as sexuality or the existence or otherwise of a sexual relationship, is a factor to be taken into account, but no more than that...*

*18...the evidence must be considered as a totality, with a view to answering the critical question before the Tribunal: whether the appellant and GO were living together as husband and wife."*

22. As to the reasoning that is required from a tribunal when determining whether two people are 'living together as a married couple':

(i) In **Crake** Woolf J stated (at 506):

*"It has got to be borne in mind, particularly with tribunals of this sort, that they cannot be expected to give long and precise accounts of their reasoning; but a short and concise statement in clear language should normally be possible which clearly indicates to the recipient why his appeal was allowed or dismissed".*

(ii) In **DK** the Inner House stated:

*"15...The reasons given could be short, and could consist of not accepting the evidence of the applicant and preferring other evidence which indicated that a relationship as husband and wife went beyond, for example, that of a mere housekeeper..."*

## Discussion

### Ground 1

23. The use of the word '*criteria*' by Mr Power when describing the 'signposts' demonstrates the flaw in the Appellant's argument. The Appellant seeks to treat the 'signposts' as a set criteria or checklist by which the FtT ought to have made its decision. This is precisely what Woolf J considered to be the wrong approach and why he chose to describe them as 'signposts'. This is also why the Upper Tribunal in **PP** and the Inner House in **DK** were keen to stress that (i) the 'signposts' were not exhaustive; (ii) no single fact or 'signpost' is decisive; (iii) there need not be a detailed analysis of every piece of evidence "*divided into discrete components*"; (iv) individual pieces of evidence "*do not require to be assessed individually for their probability*"; (v) there is no requirement in every case for there to be a 'finding' on each 'signpost'; and (vi) the question was not whether a particular 'signpost' was or was not established but rather, whether taking all the evidence into account, the primary question, namely whether two people were 'living as a married couple', was established on a balance of probabilities.
24. I am satisfied that the FtT followed the approach identified in **PP** and **DK**. The FtT:
- (i) Correctly identified at the outset that the issue it had to determine was whether the Appellant and Mr S were 'living together as a married couple' during the relevant period (Statement of Reasons §4).
  - (ii) Set out the key evidence both for and against the Appellant in detail (Statement of Reasons §7-15).
  - (iii) Considered that evidence in the round and as a whole and gave adequate reasons for why it rejected parts of the Appellant's evidence: e.g. "*The Tribunal did not find, on the balance of probabilities, [the Appellant]'s evidence to be credible or plausible. There were inconsistencies and contradictions in her explanation that were not reconcilable...*" "[*the Appellant*]'s explanation that [*Mr S*] made it clear that this was a care of address wasn't accepted by the Tribunal. Nowhere in any of the documents was this recorded as a care of address..." "*In relation to financial support [the Appellant]'s evidence was inconsistent. At times she accepted being given money when short and not being required to repay it and yet at other times she sought to maintain that she always repaid Mr S monies which he had given her...*" "*The tribunal did not find the supporting evidence presented by [the Appellant] to be reliable or consistent. Mr S's parents in their witness statements to the DWP did not appear to have a great deal of knowledge as to Mr S's circumstances at the time yet their letter seeks to try and rescue the situation...*" (Statement of Reasons §16-17).
  - (iv) Made reference to "*the signposts set out in ... R(SB) 17/81*" but correctly noted that "*It must be emphasised that these are only signposts...*" (Statement of Reasons §18).
  - (v) In any event, determined by reference to all the evidence that each of the 'signposts' was met (Statement of Reasons §18).

- (vi) Overall, considered all the evidence in the round, with a view to answering the critical question, namely whether the Appellant and Mr S were living together as a married couple (*“taking into account the totality of the evidence and [the Appellant]’s lack of credibility the Tribunal was satisfied that [the Appellant] was living together with Mr [S]”* - Statement of Reasons §18).
25. A summary of the reason(s) why each ‘signpost’ was met is set out in paragraph 18 of the Statement of Reasons. However, paragraph 18 cannot be read in isolation. It must be read in the light of the evidence (§§7-15) and with the specific findings on the evidence in paragraphs 16 and 17. Reading the Statement of Reasons as a whole, I am satisfied that that the FtT gave adequate reasons for its finding that the ‘signposts’ were met. I remind myself that *“with tribunals of this sort, that they cannot be expected to give long and precise accounts of their reasoning; but a short and concise statement in clear language should normally be possible which clearly indicates to the recipient why his appeal was allowed or dismissed”* and that *“the reasons given could be short, and could consist of not accepting the evidence of the applicant and preferring other evidence”* (see §22 above).
26. Further and in any event, as set out in paragraph 23 above, there is no need for a detailed analysis of every piece of evidence *“divided into discrete components”* and there is no requirement in every case for there to be a ‘finding’ on each ‘signpost’ - as long as the FtT has taken all the evidence into account and answered the primary question, namely whether two people were ‘living together as a married couple’. As set out above, I am satisfied that the FtT has done so. As such, in the context of this case, even if there had been a failure to make adequate findings of fact in respect of one or more specific ‘signpost’, it would not have amounted to an error of law and certainly not a material error of law.

Ground 2/Ground Identified by Upper Tribunal Judge Jacobs

27. I am satisfied that the FtT gave adequate consideration to emotional aspects of the relationship and the possibility that the Appellant and Mr S were going through a ‘bad patch’ and only remained connected in various ways on account of Mr S’s lack of accommodation and of their shared parentage but in the end determined, by reference to the evidence as a whole, that the Appellant and Mr S were living together as a married couple and gave adequate reasons for so concluding.
28. The Statement of Reasons makes clear that the FtT considered and took into account (i) the Appellant’s evidence that *“they hadn’t lived together for the last year”*, that *“following a massive argument on Christmas Day they had split up”*, that *“they fell out and split up”*, that *“Mr S visited in the week and at weekends and sometimes stays over”*, that *“she had a volatile relationship with Mr S”*, that *“they’d fallen out around Christmas 2015”* (Statement of Reasons §§7-8 and 14); and (ii) the evidence from Mr S’s father that *“the relationship was unstable”* and that *“his sons [sic] relationship with [the Appellant] was volatile and he didn’t think he stayed there very often”* (Statement of Reasons §§9). This no doubt led the FtT to accept that *“[the Appellant]’s relationship with Mr S had “its ups and downs” and they may well have fallen out on Christmas Day 2015”*.
29. The Statement of Reasons also makes it clear that the FtT considered and took into account (i) the Appellant’s evidence and explanation that she and Mr S were connected because of the children and his alleged lack of accommodation e.g. *“Mr S visited in the week and at weekends and sometimes stays over”*, *“Mr S was sofa surfing, staying with his Mum, Dad and Sister”*, *“Mr S uses her address as a care address”*, *“Mr S was at [the Appellant]’s house at the time of this IUC although it was*

to look after the children”, “once her benefits stopped she had to go back to work and needed Mr S to look after the children”, “Mr S had taken Paternity leave when [the Appellant and Mr [S]’s second daughter - whom I will refer to as Y to protect her privacy] was born... but this was only to look after [X]” (Statement of Reasons §§7-8 and 15); (ii) Mr S’s written statement to like effect in which he stated “I slept with friends and family...I just continued to pay the bills after all they are my kids living under that roof...As I had no fixed address I use [the Appellant]’s address as a care of address... I would visit my kids as often as I could, on occasion we would have meals together and even, included a holiday, this was purely for our kids more than anything...I would sometimes lend her money... I had no problem doing this as she is the mother of my kids... we both agreed for me not to live there as our arguing would affect our kids...” ([page 63-66 and Statement of Reasons §14).

30. Having considered the above evidence, together with all the other evidence in the round, the FtT gave adequate reasons for why it rejected large parts of that evidence and why it concluded that the Appellant and Mr S were living together as a married couple (see paragraph 24(iii) above). In particular, the FtT noted the following: (i) the Appellant and Mr S had been in a relationship for many years (at least since 2010) had lived together for a number of years, which reflected stability (ii) they had a child (X) during that period; (iii) they were in the process of arranging new accommodation when they had a falling out over the Christmas period; (iv) despite that falling out, within 11 days of the Appellant moving into no 14, Mr S had taken on some of the financial responsibility for that property and had notified a number of institutions that that was his address; (v) there was no evidence to record that the address was used simply as a ‘care of’ address; (vi) the Appellant was inconsistent in her account of whether she repaid Mr S when he provided her with money; (vii) there was no documentary evidence of any repayment whereas there was documentary evidence of payments from Mr S to the Appellant; (viii) Y was conceived in February 2016 (i.e. at about the time the Appellant moved into no 14); (ix) Mr S took paternity leave when Y was born in October 2016; (x) the Appellant, Mr S and the children would go out as a family and went on a holiday abroad in September 2017; (xi) on the Appellant and Mr S’s own account, they got back together and started living together once the decision dated 25 November 2017 was made and as such “*the speed and timing of this, in itself brings into question the assertion that there were not living together as a married couple [during the relevant period]*”; and (xii) there was evidence of emotional and practical support from Mr S “*in terms of his involvement with the family, provision of financial support when needed, taking paternity leave when [Y] was born, as well as shared responsibility for the children and the family unit*”.

31. Bearing in mind that “*investigating and analysing the nature of a human relationship between two people... is inevitably a complex and sensitive thing*” (Commissioner Howell QC in **CP/8001/1995**) and that the determination of whether two people are living together as a married couple depends on an analysis of the overall significance of a number of facts individually and collectively with no single fact being decisive, in many cases, there is no right or wrong answer. Different decision-makers can, quite properly, form different judgments on the same underlying facts.

32. This limits the circumstances in which there can be an error of law, as Lord Hoffmann explained in *Moyna v Secretary of State for Work and Pensions* [2003] 1 WLR 1929:

“*20. In any case in which a tribunal has to apply a standard with a greater or lesser degree of imprecision and to take a number of factors into account, there are bound to be cases in which it will be impossible for a reviewing court to say that the tribunal must have erred in law in deciding the case either way: see George Mitchell*



*(Chesterhall) Ltd v Finney Lock Seeds Ltd [1983] 2 AC 803, 815–816. ... In my opinion the commissioner was right to say that whether or not he would have arrived at the same conclusion, the decision of the tribunal disclosed no error of law...*

*25.... There is a good deal of high authority for saying that the question of whether the facts as found or admitted fall one side or the other of some conceptual line drawn by the law is a question of fact: see, for example, Edwards v Bairstow [1956] AC 14 and O’Kelly v Trusthouse Forte plc [1984] QB 90. What this means in practice is that an appellate court with jurisdiction to entertain appeals only on questions of law will not hear an appeal against such a decision unless it falls outside the bounds of reasonable judgment.”*

33. For the reasons set out above, I am satisfied the FtT performed its task. It addressed the critical question, namely whether the Appellant and Mr S were living together as a married couple during the relevant period and found in fact that they were. The FtT made that determination having considered all the evidence in the round and on the basis of the facts found by it with no one reason being particularly dominant and gave adequate reasons for its decision.

### **Conclusion**

34. For the reasons set out above, I conclude that the decision of the FtT does not involve any material error of law. I therefore dismiss the appeal (Tribunals, Courts and Enforcement Act 2007, section 11).

**Signed on the original  
on 11 October 2019**

**Shakil Najib  
Deputy Judge of the Upper Tribunal**