IN THE UPPER TRIBUNAL **Appeal No. UA-2021-000866-CHB**
ADMINISTRATIVE APPEALS CHAMBER

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

Between:

The Commissioners for HM Revenue & Customs

Appellant

- v -

BZ

Respondent

The Secretary of State for the Home Department

Interested Party

Before: Deputy Upper Tribunal Judge Gullick KC

Decision date: 30 September 2022
Hearing date: 20 September 2022

Representation

Appellant & Interested Party: Mr Azeem Suterwalla of Counsel, instructed for the Appellant by the General Counsel & Solicitor to HM Revenue & Customs and for the Interested Party by the Government Legal Department.

Respondent: Mr Michael Spencer of Counsel, instructed by the Refugee and Migrant Forum of Essex and London (RAMFEL).

DECISION

The decision of the Upper Tribunal is to dismiss the appeal.

REASONS FOR DECISION

Introduction

1. This appeal concerns the Respondent's entitlement to Child Benefit over the period of more than three years between the birth of her child in April 2016 and the date from when the Commissioners for HM Revenue & Customs (below, "HMRC") determined that she was entitled to that benefit, 17 June 2019. Unlike many other types of state benefit, Child Benefit is administered by HMRC and not by the Department for Work & Pensions (below, "DWP").

2. During most of the period that is in issue on this appeal, the Respondent's claim for refugee status in the United Kingdom, which she had made in February 2016, was under consideration by the Interested Party (below, "the SSHD"). Prior to the determination of her asylum claim, the Respondent was in receipt of support provided by the SSHD and was not eligible to receive Child Benefit.

3. Regulation 6(2)(d) of the Child Benefit and Guardian's Allowance (Administration) Regulations 2003, SI 2003/492, (below, "the 2003 Regulations") provides that an asylum-seeker whose claim for refugee status succeeds may have their claim for Child Benefit backdated to the date of their asylum claim. However, for the entitlement to be backdated in this way the claim for Child Benefit must be made within three months of the claimant receiving notification that she has been recorded by the SSHD as a refugee. Otherwise, the earliest date on which entitlement to Child Benefit commences is three months prior to the date of the claim for Child Benefit being made. Regulation 6 of the 2003 Regulations provides, so far as is material to this appeal:

> "**Time within which claims to be made**
>
> (1) The time within which a claim for child benefit… is to be made is 3 months beginning with any day on which, apart from satisfying the conditions for making the claim, the person making the claim is entitled to the benefit or allowance.
>
> (2) Paragraph (1) shall not apply where—
>
> …
>
> (d) a person who has claimed asylum and, on or after 6th April 2004, makes a claim for that benefit… and satisfies the following conditions—
>
> (i) the person is notified that he has been recorded as a refugee by the Secretary of State; and
>
> (ii) he claims that benefit or allowance within 3 months of receiving that notification;
>
> …
>
> (3) In a case falling within paragraph (2)(d)… the person making the claim shall be treated as having made it on the date when he submitted his claim for asylum."

4. The issue raised by this appeal is whether or not the Respondent's claim for Child Benefit, made to HMRC on 16 September 2019, was made within the three-month period referred to the Regulation 6(2)(d) of the 2003 Regulations. If it was, then the entitlement would run from the birth of the Respondent's child in April 2016. If it was not, then the Respondent would, as HMRC determined, only be entitled to Child Benefit from 17 June 2019. The First-tier Tribunal (Social Entitlement Chamber) concluded that the Respondent had made her claim for Child Benefit within the relevant period and that her entitlement to Child Benefit was therefore to be backdated to April 2016. HMRC now appeals against that decision, with the permission of the First-tier Tribunal.

5. For the reasons which follow, I have concluded that HMRC's appeal to the Upper Tribunal should be dismissed.

Factual Background

6. The Respondent arrived in the United Kingdom in February 2016 and immediately claimed asylum, following which she was in receipt of support from the SSHD pending the outcome of her asylum claim. Her child was born in April 2016.

7. On 18 May 2019, a Home Office official acting on behalf of the SSHD wrote to the Respondent stating that she had been granted asylum. It appears that the decision had been taken internally within the Home Office on 16 May 2019; nothing turns on that for the purposes of this appeal. The letter to the Respondent read, materially:

> "**DETERMINATION OF YOUR CLAIM**
>
> **Your grant of Asylum**
>
> You have been granted asylum for five years. Your leave ends on 15-May-2024…
>
> **Biometric Residence Permit**
>
> This letter **does not** confirm you have leave, give you the right to work or allow you access to benefits. To do this you have to enrol for a Biometric Resident Permit…
>
> If you do not enrol your biometrics (photographs / fingerprints) we will be unable to issue you with a Biometric Resident Permit. You will have no proof that you have leave in the United Kingdom and you will not be able to work or claim benefits. You may also be fined up to £1000.
>
> Your asylum support will end 28 days after your claim was decided. It is important that you enrol your biometrics quickly and are issued with a Biometric Residence Permit…
>
> **Department of Work and Pensions Leaflet**
>
> This leaflet explains how the Department of Work and Pensions can help you to find work and claim benefits…
>
> **Your Asylum Decision**
>
> This leaflet provides more information about the grant of asylum and the help available to you…"
>
> (emphasis in the original)

8. Enclosed with the letter were two leaflets, one from the DWP and one from the Home Office. The leaflet from the DWP stated, materially:

> "Your asylum support will stop 28 days after you receive your Biometric Residence Permit (BRP). If you need to claim benefits you must contact the Department for Work and Pensions as soon as you receive this or you may not get payment of benefits arranged in time. Do not wait until your asylum support stops…
>
> You can get help and financial support through the UK benefits system if you are:
>
> - Looking for work
> - Not well enough to work
> - A lone parent (including if you have a partner but they are not living with you)
> - On a low income
> - Have reached the qualifying age for Pension Credit
>
> …

> DWP provides help with finding work and claiming benefits for people of working age; and benefits for people of pension age.
>
> The main working age benefits are Universal Credit, income-based Jobseeker's Allowance, income-related Employment and Support Allowance and Income Support.
>
> These benefits are paid by Jobcentre Plus, which is part of DWP…"

The leaflet went on to set out how to contact the DWP. The Home Office leaflet stated, materially:

> "This information sheet contains important information about the decision that has been made in relation to your application for asylum in the United Kingdom. It also sets out the restrictions and entitlements of your status. It should be read in conjunction with the other documents that have been handed to you, or sent to you or your representative. This document is not a Notice of Decision, and should not be construed as such.
>
> **IMMIGRATION STATUS**
>
> You have been recognised as a refugee as defined by the 1951 Geneva Convention relating to the Status of Refugees and its Protocol ('Refugee Convention') and have been granted asylum in accordance with the Immigration Rules. You have permission to stay in the United Kingdom for the period of time specified on your Immigration Status Document / Biometric Residence Permit…
>
> **Your Immigration Status Document / Biometric Residence Permit is your evidence of your permission to stay and has been endorsed with your leave to enter or remain in the United Kingdom.**
>
> **You should keep this document safe as you may have to produce it to confirm your immigration status.**
>
> **EMPLOYMENT AND SOCIAL SECURITY**
>
> **Persons of working age (usually under 65 for men and 60 for women)**
>
> You are free to take a job and do not need the permission of any Government Department before doing so. You are also free to set up in business or any professional activity within the regulations that apply to that business or profession. Jobcentre Plus can help you find a job, claim benefits, if you meet the conditions, or train for work. You can find their phone number in your local telephone directory…"
>
> (emphasis in the original)

9. A second letter from the Home Office to the Respondent, also dated 18 May 2019, informed the Respondent how to provide her biometric information so that a Biometric Residence Permit (below, "BRP") could be issued to her. It stated, materially:

> "You have been notified that your claim for asylum has been considered and you have been granted Refugee Status. To allow us to issue evidence of this leave you must have your biometrics (scanned fingerprints and photograph) taken…
>
> **What happens if I fail to enrol my biometrics?**
>
> **You must enrol your biometrics within 7 working days after your have received your new enrolment letter.** If you do not, we will be unable to issue you with this proof of your immigration status in the United Kingdom. This means that your asylum support (if you are in receipt of it) will end and you will not be able to claim benefits or start work…"
>
> (emphasis in the original)

10. Although the material sent to the Respondent by the Home Office on 18 May 2019 contained a number of references to "benefits", there was no specific reference within it to Child Benefit and also no reference to HMRC. Further, although the First-tier Tribunal was aware that correspondence had been sent to the Respondent by the Home Office on 18 May notifying her that she had been recognised as a refugee, it appears that copies of these letters and the accompanying documents were not provided to the First-tier Tribunal. No party objected to me considering that material for the purposes of determining this appeal.

11. The Respondent provided her biometric information to the Home Office, but her BRP was not issued until 29 August 2019. The BRP was received by the Respondent's immigration solicitors on 4 September. The covering letter stated, materially:

> "Your BRP is an important document and you should look after it carefully. It is proof of your right to stay, work or study in the United Kingdom and may be used as a form of identification (for example, when setting up a bank account). You can also use the online right to work checking service to demonstrate your right to work to an employer…"

12. On 12 September 2019, the Home Office sent a further letter to the Respondent regarding the termination of the support that had been provided to her whilst her asylum claim was under consideration. This letter stated, materially:

> "Following your grant of Asylum and grant of Leave to Enter / Leave to Remain in the United Kingdom, I am writing to advise that you no longer qualify for support under section 95 of the Immigration and Asylum Act 1999.
>
> Your Biometrics [sic] Residence Permit (BRP) was issued on 30 August 2019…
>
> Your asylum claim was fully determined on 16 May 2019 when you were notified grant of Asylum and grant of Leave to Enter / Leave to Remain. As such you are no longer entitled to receive the support you are in receipt of. Your support will end 28 days from the date of this letter on 11 October 2019…
>
> You may now take employment or claim benefits to support yourself and your dependants. If you would like further information about your employment rights or the availability of benefits, further education or employment training, you should contact Migrant Helpline… They may be able to assist you to contact the local housing office to help you find accommodation.
>
> Information about how to apply for benefits provided by the Department of Work and Pensions (DWP) is enclosed. You must show this letter and your Biometric Residence Permit (BRP) to the DWP if you require assistance from them, as they will need to see these documents to process your claim…"

13. On 12 September 2019, the Respondent completed a claim form for Child Benefit. This was sent to HMRC's Child Benefit office on the Respondent's behalf by an officer of the Refugee and Migrant Forum of Essex and London (below, "RAMFEL"), the organisation that has been assisting the Respondent. The claim form was received by HMRC on 16 September. In the covering letter, RAMFEL requested that the entitlement to Child Benefit should be backdated as a result of the Respondent's successful claim for asylum.

14. On 6 October 2019, an official of HMRC determined that the Respondent was entitled to Child Benefit but not in respect of the period prior to 17 June 2019, i.e. three months prior to HMRC receiving her claim form. A letter setting out this decision was sent to the Respondent on 7 October. It did not refer to the issue of backdating

because of the Respondent's successful asylum claim. On 29 October, an officer of RAMFEL wrote to HMRC to request a mandatory reconsideration, on the basis that Child Benefit should have been backdated. Relevant pages of the HMRC Child Benefit Technical Manual were enclosed with the letter.

15. On 20 January 2020, HMRC wrote to the Respondent with the outcome of the mandatory reconsideration. HMRC maintained its position that the Respondent was not entitled to Child Benefit prior to 17 June 2019. As in the original decision letter, the reasons for refusing to alter the decision on mandatory reconsideration did not address the issue of backdating as a result of the Respondent's successful asylum claim or refer to Regulation 6(2)(d) of the 2003 Regulations:

> "We received your claim on 16 September. As your claim was made more than 3 months after the date on which you first became responsible for [name of the Respondent's child], the earliest date your award can start from is Monday 17 June 2019. This is because a Child Benefit award cannot be backdated for more than 3 months before the date we received the claim."

The Appeal to the First-tier Tribunal

16. On 12 February 2020, the Respondent filed an appeal to the First-tier Tribunal against HMRC's decision. She was represented on the appeal by RAMFEL. The single ground of appeal was that HMRC had wrongly failed to backdate the Respondent's entitlement to Child Benefit to the date of her child's birth in April 2016. RAMFEL submitted that the Respondent had been an asylum seeker with no recourse to public funds until she had received her BRP on 4 September 2019 and that she had applied for Child Benefit on 12 September, making a specific request for backdating. RAMFEL noted that HMRC's decisions, as communicated to the Respondent, had not given any consideration to the issue of backdating Child Benefit payments for refugees.

17. In its response to appeal, HMRC contended that the Respondent had been notified of the determination of her asylum claim in the letter dated 18 May 2019 and that the three-month period provided for in Regulation 6(2)(d) of the 2003 Regulations had therefore ended on 18 August 2019. As the Respondent had not claimed Child Benefit until 16 September 2019, when her claim form had been received by HMRC, her entitlement could not be backdated more than three months prior to the date of application.

18. On 17 August 2020, RAMFEL sent a further submission to the First-tier Tribunal contending that the terms of correspondence sent by the Home Office were to the effect that:

> "… to apply for any kind of benefit the possession of the Biometric Residence Permit (BRP) is essential. That means that [the Respondent] was clearly not able to apply for Child Benefit before the date of issue of her BRP, the 29 August 2019. That means that the three month period within which she had to apply for Child Benefit for it to be back-dated to [the Respondent's child's] birth started from 29 Aug[ust]. She applied on 16 Sept[ember] 2019, well within the three month period."

RAMFEL submitted that the date on which the BRP had been issued to the Respondent was the date on which the grant of refugee status had been "recorded" for the purpose of Regulation 6(2)(d) of the 2003 Regulations.

19. On 22 September 2020, a judge of the First-tier Tribunal determined the Respondent's appeal against HMRC's decision on the papers, i.e. on the basis of the written submissions and the documentary evidence, without a hearing. No party to the appeal to the Upper Tribunal has taken issue with that approach. The First-tier Tribunal's decision, issued on 1 October 2020, was to allow the appeal against HMRC's decision; reasoning was given in the Decision Notice, but HMRC requested a full Statement of Reasons. This was signed by the judge on 10 November 2020 and issued to the parties on 12 November. I will set out the operative part of the Tribunal's reasoning, by which it found that the Respondent was entitled to Child Benefit from the date of her child's birth in April 2016, in full:

> "12. Having considered all of the available evidence and applied the law the Tribunal finds that the appellant has met the provisions of the Child Benefit and Guardian's Allowance (Administration) Regulations 2003 as amended…
>
> 13. Regulation 6(2)(d) requires the application for child benefit to have been made within 3 months of notification **"that he has been recorded as a refugee by the Secretary of State".**
>
> 14. It is the position of HMRC that the appellant was notified of her refugee status on **18th May 2019** and therefore that her application for child benefit should have been made within 3 months of this date.
>
> 15. It is the position of her representatives "RAMFEL" that the appellant did not receive her refugee's biometric residence permit from the Home Office until **29th August 2019**. They state therefore that the three month period for making a claim for child benefit could only run from this date. According to them, the application made by the appellant for child benefit on **16th September 2019** is in time.
>
> 16. In support of their position, they point to correspondence forwarded to the appellant by the Home Office's UKVI department dated 12th September 2019 terminating the appellant's financial asylum support. This letter inter alia informs her that asylum support will terminate on 11th October 2019 and advising her how to claim mainstream benefits…
>
> 17. RAMFEL underscore the fact that this advice points to the need to have BRP documentation before approaching the DWP etc.
>
> 18. Having considered the relevant legal provisions and the positions taken by the parties, I find myself persuaded by the actual wording of the legislative provisions which I find significant.
>
> 19. Regulation 6(2)(d) does not ask for claims to have been made within 3 months of being [sic] an **applicant having been notified** of the grant of refugee status. If it did, I would find that this would clearly indicate a start date of 16th May 2019.
>
> 20. It asks rather for claims for child benefit to be made within 3 months of having been **"notified that he has been recorded as a refugee by the Secretary of State"**.
>
> 21. I find this is not the same thing at all.
>
> 22. **I find that the issue of the BRP is the formal recording of an applicant's refugee status by the Secretary of State, in this case the 29th August 2019.**
>
> 23. I find that this interpretation is fully supported by [HMRC's] colleagues in the Home Office who only terminate the appellant's asylum support **once her BRP**

> **has been issued**. They do not terminate asylum support following the notification of the grant of refugee status to the appellant.
>
> 24. The appellant's representatives refer to paragraph 3 of the second page of this letter, to support their position (which I accept does support their position).
>
> 25. I however refer to the second paragraph of that letter which also provides persuasive support to my interpretation above. It is worth citing in full:
>
> "*You may now take employment or claim benefits to support yourself and your dependants. If you would like further information about your employment rights or the availability of benefits, further education or employment training, you should contact Migrant Helpline… They may be able to assist you to contact the local housing office to help you find accommodation.*"
>
> 26. Furthermore, the BRP is **not** dated 16th May 2019 but the 29th August 2019.
>
> 27. Finally, the information which accompanies the issue of the BRP clearly that "*Your BRP is an important document and you should look after it carefully. It is proof of your right to stay, work or study in the United Kingdom and may be used as a form of identification (for example, when setting up a bank account)…*"
>
> 28. Reading and considering all the above, it is hard to avoid the conclusion that the issue of the BRP is in fact the formal trigger for access to all of the rights and benefits which come with refugee status.
>
> 29. Any other conclusion would indicate that there is a significant disparity in the approach being taken by the Home Office on the one hand and their colleagues in the DWP on the other, which one would hope is unlikely."
>
> (emphasis in the original)

20. Following receipt of the Statement of Reasons, HMRC sought permission to appeal to the Upper Tribunal. The grounds of appeal asserted that the First-tier Tribunal had erred in law in finding that the BRP constituted notification of the recording of the Respondent's refugee status, and that it was the notification of the decision on the Respondent's asylum claim in the letter of 18 May 2019 that was the operative notification for the purpose of Regulation 6(2)(d) of the 2003 Regulations. It was contended that the BRP was "simply evidence of a claimant's leave to remain status" rather than "formal notification that an asylum claim has been successful". Permission to appeal was granted by the First-tier Tribunal in a decision issued to the parties on 15 February 2021.

The Appeal to the Upper Tribunal

21. Following receipt of the notice of appeal, on 23 July 2021 Upper Tribunal Judge Wright gave directions for a response to be filed by the Respondent and a reply by HMRC. In her response to the appeal, filed on her behalf by RAMFEL, the Respondent relied on the terms of the correspondence from the Home Office sent on 18 May 2019 which stated that the Respondent would not be allowed to claim benefits until she had received a BRP, and that sent on 12 September 2019 which stated that she could at that point access benefits. The Respondent contended that the First-tier Tribunal had reached the correct conclusion, i.e. that the three-month period provided for in Regulation 6(2)(d) of the 2003 Regulations had only commenced following the issue of her BRP. In its reply, HMRC contended that the references to "benefits" in the Home Office's correspondence were only to those benefits administered by the DWP and so should not be construed as referring to Child Benefit and that, in any event, the relevant notification was contained in the

letter of 18 May 2019 informing the Respondent that her asylum claim had been successful.

22. On 14 January 2022, I considered the parties' written submissions and gave further case management directions. I drew the parties' attention to certain provisions of the EU Qualification Directive and to the case of *Tkachuk v Secretary of State for Work & Pensions* [2007] EWCA Civ 515 (below, "*Tkachuk*"), and invited further submissions on their relevance (if any) to the outcome of the appeal and on whether the SSHD ought to be joined as a party. Those further submissions were made in February and March; neither HMRC nor the Respondent objected to the SSHD becoming a party to the appeal. On 22 April 2022, I made directions joining the SSHD as an Interested Party pursuant to Rule 9 of the Upper Tribunal Rules of Procedure, and requiring her to file written submissions on the issue raised in the appeal. I also gave directions for an oral hearing of the appeal, to take place before the end of September.

23. The SSHD's submissions were not filed within the time required by my directions; on 7 July, I extended time for them to be filed to 29 July. In her submissions, the SSHD adopted the position taken by HMRC in its response to the appeal. The SSHD accepted that the references to "benefits" in the correspondence sent to the Respondent by the Home Office "could have been clearer", but that the material was intended to refer only to benefits administered by the DWP and so not to Child Benefit. It was also accepted by the SSHD in those submissions that "the suggestion that DWP benefits were only claimable after receipt of a BRP" was incorrect. I should add that at the appeal hearing, Mr Suterwalla informed me that the wording in the letters that had been sent to the Respondent in 2019 stating that benefits may only be claimed following receipt of a BRP is no longer used by the Home Office.

Legislation and Other Material

24. I have set out in paragraph 3, above, the text of Regulation 6 of the 2003 Regulations, so far as material to this appeal. I was also referred at the hearing to other legislative provisions and to material published by HMRC and by third parties.

25. Section 141 of the Social Security Contributions and Benefits Act 1992 provides that a person responsible for a child in a particular week shall be entitled to a benefit for that week in respect of that child, to be known as Child Benefit.

26. Regulation 5 of the 2003 Regulations provides, insofar as material, that a claim for Child Benefit must be made to HMRC in writing, on an approved form. Regulation 5(3) provides that the date on which the claim is made is the date on which it is received by HMRC.

27. The SSHD is empowered by section 3(2) of the Immigration Act 1971 to lay before Parliament statements of the rules to be followed for regulating the entry and stay in the United Kingdom of persons who are not British Citizens and who require leave to enter or remain in the United Kingdom. These are the Immigration Rules. Paragraph 344C of the Immigration Rules, as in force at the time material to this appeal, reads as follows, so far as is material:

> "A person who is granted refugee status… will be provided with access to information in a language that they may reasonably be supposed to understand which sets out the rights and obligations relating to that status. The Secretary of State will provide the information as soon as possible after the grant of refugee status…"

28. Article 22 of EU Directive 2004/83/EC on minimum standards in respect of refugees and other persons granted international protection (below, "the Qualification Directive") provides as follows:

> "Members states shall provide persons recognised as being in need for international protection, as soon as possible after the respective protection status has been granted, with access to information, in a language likely to be understood by them, on the rights and obligations relating to that status."

Similar provision was made in Article 22 of the subsequent Directive 2011/95/EU, to which the United Kingdom was not a party; the SSHD accepts that the United Kingdom nonetheless continued to be bound by the earlier Directive after the later one was adopted.

29. HMRC's internal Child Benefit Technical Manual is published online by HMRC in order to make its internal processes transparent to claimants. It sets out how officials of HMRC should approach decisions on entitlement to Child Benefit. Materially for the purposes of this appeal, it provided at the relevant time as follows:

> "**Refugees and backdating**
>
> The UK has international law obligations to refugees. Those obligations arise because the UK is a contacting [sic] party to the Convention regarding the Status of Refugees 1951.
>
> Where a person is not entitled to Child Benefit because they claimed asylum as a refugee and are therefore subject to immigration control, if they are [sic] subsequently claim Child Benefit within 3 months of… being:
>
> - Notified they have been recorded as a refugee…
>
> Their Child Benefit claim is treated as having been made on the date they first submitted their claim for asylum
>
> A person seeking asylum in the UK is a refugee in the UK from the moment they are recognised as such under the Convention relating to the Status of Refugees 1951. The process of claiming asylum and the Secretary of State allowing that asylum claim is essentially an administrative procedure enabling the Secretary of State to recognise the claimant as a refugee under the 1951 Convention. Where the Secretary of State recognises a person as a refugee he does so from the date they first claimed asylum in the UK…
>
> **The Child Benefit and Guardian's Allowance (Administration) Regulations 2003, regulation 6(2)(d) and (3)**
>
> Since 6 April 2004, a person who has been recorded as a refugee by the Secretary of State may claim child benefit and provided he or she makes a claim within three months of receiving the notification that they have been recorded as a refugee, shall be treated as having made that child benefit claim on the date of their first application for asylum…
>
> Example 3
>
> Mr X… claimed asylum on 23 May 2005. On 23 November 2006, the Secretary State recognised Mr X's refugee status. Mr X makes his claim for child benefit on 15 December 2006. Because Mr X has made his child benefit claim within three months of the Secretary of State recognising his refugee status, his child benefit claim is treated as having been made on the date he first claimed asylum. So his child benefit claim is treated as having been made on 23 May 2005.
>
> Example 3A

> Mr X… makes his claim to child benefit on 20 June 2007. Because this is more than three months after the Secretary of State recognised his refugee status, the claim cannot be treated as having been made on the date he first claimed asylum. His claim must therefore be dealt with under the normal time limit for claims rules…"

30. I was also referred by Mr Suterwalla to information about the backdating of Child Benefit for refugees that has been published online by third party organisations. Again, this material had not been before the First-tier Tribunal but there was no objection to me taking it into account. In an article on the Child Poverty Action Group (below, "CPAG") website titled "Refugees and Benefits", originally published in 2010, it was stated:

> "**CHILD BENEFIT**
>
> Refugees can still claim child benefit backdated to the date when they first applied for asylum in the UK. This only applies to people recognised as refugees under the 1951 Geneva Convention, nor to people granted humanitarian protection or other types of leave, as it is based on rights enshrined in the Convention. Child benefit is universal and is disregarded as income for means-tested benefits, so the arrears are paid in full – there is no deduction for asylum support received. A claim for backdated child benefit must be made within 3 months of the Home Office letter granting refugee status. The backdated child benefit should not be treated as capital for the purposes of means-tested benefits or a community care grant."

On the website www.revenuebenefits.org.uk, the current version of the section on making a claim for Child Benefit (updated on 24 May 2022) contains the following passage:

> "**Backdating**
>
> Claims can normally only be backdated up to 3 months, and there is no need to show why the claim was late.
>
> There are special rules for backdating for refugees. Providing the claim is made within three months of being awarded refugee status, the claim can be backdated to the date the person first claimed asylum. The HMRC child benefit and guardian's allowance manual explains these rules in full."

The Parties' Submissions

31. All parties had the benefit of representation by Counsel at the hearing of this appeal. Mr Suterwalla appeared for both HMRC and the SSHD. Mr Spencer appeared for the Respondent. I am very grateful to them both for the clear and focused submissions made both in writing and orally. I was referred to a number of decided cases; I will address them insofar as relevant to my decision when analysing the parties' arguments in more detail.

32. For HMRC and the SSHD, Mr Suterwalla submitted that the First-tier Tribunal had erred in law in its interpretation of Regulation 6(2)(d) of the 2003 Regulations because the Respondent had received the relevant notification in the letter of 18 May 2019. In that letter, the Respondent had been notified that she had been recorded by the SSHD as a refugee, which was all that was required. Mr Suterwalla submitted that the Regulation did not require an applicant to have been provided with information about her right to claim Child Benefit for time to run under Regulation 6(2)(d) – the Regulation referred only to notification of the recording of refugee status. That was what the letter of 18 May 2019 had done. The Regulation was, he submitted, clear as to when the time limit for a backdated claim commenced. The Respondent had been "recorded" as a refugee when the Home Office had taken

its decision to grant her asylum claim, and had been "notified" of that in the letter of 18 May. Nor, it was submitted, was there any obligation under either the Qualification Directive or the Immigration Rules to provide information about the right to claim benefits at the time when an immigration decision was communicated. In any event, publicly available information from both third party organisations and the HMRC Technical Manual set out the correct position regarding when a backdated Child Benefit claim should be made.

33. Mr Suterwalla submitted that the references to "benefits" in the Home Office correspondence were to benefits administered by the DWP and not to Child Benefit. He further submitted that, in any event, such references could not assist the Respondent's case, even though it was the position of HMRC and the SSHD that receipt of a BRP was not a requirement for a Child Benefit claim to be made. Mr Suterwalla submitted that even if the Home Office letters had incorrectly informed the Respondent that she could not claim Child Benefit until receiving her BRP, that would have no impact on the statutory time limit for a backdated claim to be made which is set out in Regulation 6(2)(d). That time period was, he submitted, determined solely by the statement, in the letter of 18 May 2019, that refugee status had been granted. Thus, Mr Suterwalla contended, anything said in the letter regarding whether or not the Respondent was or was not in a position to claim Child Benefit was irrelevant to the outcome of the appeal. Mr Suterwalla submitted that the Respondent might have other remedies in relation to any misleading information having been provided to her by the Home Office, but that it had no effect for the purposes of HMRC's decision on her entitlement to Child Benefit.

34. For the Respondent, Mr Spencer sought to uphold the First-tier Tribunal's decision on what he termed the "narrow basis". He did not contend that, in every case involving a claim made by someone in the position of the Respondent who had been granted refugee status, the relevant notification for the purposes of Regulation 6(2)(d) was provided by the BRP being issued. He also accepted that, to be effective notification for the purpose of Regulation 6(2)(d), there was not a positive requirement to provide, within the notification itself, information about the rights attendant on refugee status. Mr Spencer however submitted that the notification provided to the Respondent in the Home Office's correspondence of 18 May 2019 could not have legal effect for the purpose of Regulation 6(2)(d) because it was not a proper record of the grant of refugee status. One consequence of the grant of refugee status is the right to the backdated entitlement to Child Benefit provided for by Regulation 6(2)(d) of the 2003 Regulations. The correspondence sent to the Respondent by the Home Office on 18 May 2019 had stated, incorrectly, that she was not allowed to claim Child Benefit at that point. Mr Spencer submitted that the references to "benefits" in the correspondence must be read as including Child Benefit, and that any reasonable reader would conclude that the Respondent was being informed by the Home Office that she could not claim Child Benefit until she had received her BRP. Nothing in the publicly available material from other sources could cure that fundamental defect.

35. Mr Spencer did not dispute Mr Suterwalla's proposition that the requirement of Regulation 6(2)(d) of the 2003 Regulations would otherwise have been satisfied by the first sentence of the letter of 18 May 2019 informing the Respondent that she had been granted refugee status and leave to remain in the United Kingdom. However, by the inclusion of the further misleading wording regarding a claim for benefits only being able to be made on receipt of the BRP, any such notification had become

contingent. Mr Spencer submitted that the notification of 18 May 2019 could not have effect for the purposes of the commencement of the time limit in Regulation 6(2)(d) when it had wrongly stated that a claim for Child Benefit could not be made until receipt of the BRP, and that it would be unfair to hold otherwise. The position had only been corrected once the BRP had been received on 4 September 2019, or alternatively on receipt of the Home Office's letter of 12 September which stated that a claim for benefits could be made. On either basis, the Respondent's claim form was received by HMRC on 16 September and so was within the time limit for backdating under Regulation 6(2)(d).

36. Counsel were agreed that in the event I accepted the submissions made on behalf of HMRC, then I should allow the appeal and re-make the decision of the First-tier Tribunal in HMRC's favour, and that in the event I accepted the submissions made on behalf of the Respondent that I should dismiss the appeal.

Discussion

37. I start by considering what Regulation 6(2)(d) requires, on its face, in order for the three-month period to start running. There was, in any event, no apparent disagreement between the parties on this issue. Mr Spencer did not dispute, for the purposes of this appeal, that had the letter of 18 May 2019 contained only the wording stating that the Respondent had been granted asylum and leave to remain for a period of five years, then that would have been sufficient notification for the purpose of the Regulation. What the Regulation requires is that a record is made of an applicant having been given refugee status and that the applicant is notified of that. As Mr Suterwalla submitted, that is what the first sentence of the letter of 18 May 2019 (had it stood alone) did.

38. To the extent that the First-tier Tribunal held in its decision that the requirements of Regulation 6(2)(d) could only be satisfied once a BRP had been issued – because it is only the BRP that constitutes the relevant notification of the recording of refugee status – then I consider that it was in error. Mr Spencer rightly did not seek to defend the First-tier Tribunal's decision on this basis. Mr Suterwalla is correct, in my judgment, in his submission that the letter of 18 May 2019 did contain a notification of the recording of refugee status in the opening paragraph which, had it stood alone, would have been effective for this purpose. The BRP is evidence of an individual's immigration status, but it does not in and of itself amount to the initial notification of the recording of that status by the SSHD.

39. The issue on this appeal is essentially what, if any, effect the remaining terms of the Home Office's correspondence have on the position that would otherwise apply. Here, the difference between the parties could not be starker. Mr Suterwalla submitted both that the correspondence was not misleading as claimed by the Respondent and that, in any event, it would not matter for the purposes of the appeal if it had been. Mr Spencer submitted that it was clearly misleading and that this had a material impact on the outcome of the appeal.

40. I accept Mr Spencer's submissions on this issue and reject those made by Mr Suterwalla. As to the content of the correspondence sent by the Home Office in May 2019, I consider that it can only reasonably be regarded as informing the recipient that, at least until receipt of the BRP, it is not possible to make a claim for any state benefits (including, for these purposes, Child Benefit):

a. The first letter of 18 May 2019 stated that, "This letter **does not**… allow you access to benefits. To do this you have to enrol for a Biometric Residence Permit." (emphasis in the original)

b. That letter went on to state, "If you do not enrol your biometrics… we will be unable to issue you with a Biometric Residence Permit. You… will not be able to work or claim benefits…"

c. The second letter of 18 May 2019 stated that, "You must enrol your biometrics… If you do not, we will be unable to issue you with this proof of your immigration status in the United Kingdom. This means that your asylum support (if you are in receipt of it) will end and you will not be able to claim benefits or start work."

In my judgment, the references to "benefits" in these letters must be construed in the way contended for by Mr Spencer on behalf of the Respondent. There is no suggestion by HMRC or the SSHD that Child Benefit is not a type of "benefit" (which would, in any event, be contrary to the definition of Child Benefit in section 141 of the Social Security Contributions and Benefits Act 1992). Rather, Mr Suterwalla submitted that the references to "benefits" in this correspondence must be taken to refer only to working-age benefits administered by the DWP, and so not including Child Benefit administered by HMRC. That not only imputes a knowledge of the detail of the system of the administration of state benefits which it is unrealistic to suppose that the reader of such a letter would possess, but also reads additional words into the letters, which do not refer to "working-age benefits administered by the DWP" but only to "benefits". I do not regard the references within the letters to the DWP (and the absence of references to HMRC), or the content of the accompanying DWP leaflet (which makes no specific reference to Child Benefit) as displacing this conclusion. The letters expressly inform the recipient that they are not allowed to claim "benefits" (a term which is not qualified by reference to the DWP or to the benefits which it administers) until they receive their BRP.

41. Although it was sent much later on, the Home Office's letter of 12 September 2019 terminating the Respondent's asylum support was written on a similar basis. It stated that, "You may now take employment or claim benefits to support yourself and your dependants," despite the position being that the Respondent could have – on the case now advanced by HMRC and the SSHD – made a claim for Child Benefit more than three months previously. Again, the other references within that correspondence to the DWP are not sufficient to alter the clearly expressed language within it.

42. I reject Mr Suterwalla's alternative submission that, on the premise that the Home Office's correspondence was misleading in this respect, the error was cured by the presence of publicly available information setting out the correct position. As to the content of the HMRC Technical Manual, this only repeats the statutory language in Regulation 6 of the 2003 Regulations; it does not provide any more detailed explanation of what constitutes the notification of the recording of refugee status and nor does it contradict what the Home Office's correspondence of 18 May 2019 stated regarding the significance of the BRP for making benefits claims. Whilst the articles on the third party websites relied on by Mr Suterwalla did refer to the need to make a claim within three months of "the Home Office letter granting refugee status" or "within three months of being awarded refugee status", there is no evidence that the Respondent visited either website and, in any event, I do not accept that a materially

incorrect statement by a public authority in a decision letter of this sort can be deprived of its effect merely by reason of a non-governmental organisation such as CPAG having set out the correct position in an article on its website.

43. On this basis, therefore, the correspondence sent to the Respondent by the Home Office on 18 May 2019, which HMRC relies on as constituting the relevant notification for the purpose of Regulation 6(2)(d), incorrectly stated that the Respondent could not make a claim for Child Benefit until she was in receipt of her BRP. Mr Suterwalla accepted that this would have been an incorrect statement of the position. He nonetheless contended that HMRC's appeal should be allowed because, irrespective of that incorrect statement having been made regarding the Respondent's ability to make an application for Child Benefit on receipt of the 18 May 2019 correspondence, the only material requirement for these purposes was the provision of the notification of the recording of refugee status: as the first letter of 18 May 2019 contained that notification in its opening paragraph, time began to run irrespective of anything else said in the letter.

44. The case advanced by HMRC and the SSHD is, as Mr Suterwalla accepted, based on the premise that the three-month time limit for a claim for backdated Child Benefit begins to run against a refugee who is in a position to apply for backdated Child Benefit under Regulation 6(2)(d) of the 2003 Regulations, even where the correspondence notifying them of their refugee status (which is what triggers their entitlement) includes an express statement that they are not allowed to make the application until a future time and the happening of a further event (in this case, receipt of the BRP). Indeed, Mr Suterwalla accepted that this argument would also apply even if the letter had, incorrectly, positively stated that the Respondent could never, in any circumstances, make a claim for Child Benefit.

45. In common with the First-tier Tribunal (see paragraph 29 of the Statement of Reasons), I would regard the case now advanced by HMRC and the SSHD as producing a highly unsatisfactory result in practice, whether or not the recipient of the correspondence might be able to pursue another remedy as a result of such an error (a question to which I will return). But sometimes the law requires tribunals to reach highly unsatisfactory results. The question is: does the law require it in this case?

46. In my judgment, the answer is that it does not, because Mr Spencer is correct in his submission that a notification provided in these terms is not a sufficient notification for the purpose of Regulation 6(2)(d) of the 2003 Regulations. In my judgment, it is fundamentally unfair to any refugee in the position of the Respondent for the SSHD's notification of the recording of their refugee status to then include (as I consider this one did, on its proper construction) a positive statement that it is not then possible to make an application for Child Benefit. In the present case, the correspondence sent to the Respondent on 18 May 2019 did that not just once, but three times. In those circumstances, for the reasons which I shall endeavour to explain, the notification was not a valid notification for this purpose.

47. Although I was referred to a considerable number of authorities dealing with the approach to statutory interpretation, there was no real dispute between Counsel as to the basic principles that apply in this context. In *Uber BV v Aslam* [2021] UKSC 5, [2021] ICR 657, Lord Leggatt stated at paragraph 70:

> "The modern approach to statutory interpretation is to have regard to the purpose of a particular provision and to interpret its language, so far as possible, in the way which best gives effect to that purpose. In *UBS AG v Revenue and Customs Comrs* [2016]

> UKSC 13; [2016] 1 WLR 1005, paras 61-68, Lord Reed (with whom the other Justices of the Supreme Court agreed) explained how this approach requires the facts to be analysed in the light of the statutory provision being applied so that if, for example, a fact is of no relevance to the application of the statute construed in the light of its purpose, it can be disregarded. Lord Reed cited the pithy statement of Ribeiro PJ in *Collector of Stamp Revenue v Arrowtown Assets Ltd* (2003) 6 ITLR 454, para 35: "The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically.""

48. To like effect is what Singh LJ said at paragraph 119 of his judgment in *R (on the application of Kaitey) v Secretary of State for the Home Department* [2021] EWCA Civ 1875, [2022] 3 WLR 121:

> "The modern approach to statutory interpretation is to give the words used by Parliament their true meaning in the light of their context and their purpose. In my view, therefore, it is preferable to speak of the purpose of the legislation rather than the intention of Parliament, a phrase which is sometimes apt to mislead."

In reaching this conclusion, Singh LJ rejected the proposition that a "purely linguistic" approach to statutory construction should be adopted: see at paragraphs 115 and 117.

49. In *R (on the application of Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3, [2022] 2 WLR 343 (below, "*PRCBC*"), at paragraph 31, Lord Hodge said that, "Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered…" Earlier, at paragraphs 29-30, Lord Hodge stated that statutory language derives its meaning from its context and that external aids to interpretation play a secondary role.

50. Mr Spencer also referred to several authorities addressing the question of fairness, including *R v Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531. At paragraph 41 of his judgment in the *PRCBC* case, Lord Hodge cited *ex parte Doody* for the proposition that, "where Parliament confers an administrative power there is a presumption that it will be exercised in a manner that is fair in all the circumstances." However, as Mr Suterwalla pointed out (correctly, in my judgment), authorities such as *ex parte Doody* were dealing with the different issue of procedural fairness in executive decision-making.

51. In support of his submissions, Mr Spencer principally relied on the decision of the House of Lords in *R (on the application of Anufrijeva) v Secretary of State for the Home Department* [2003] UKHL 36, [2004] 1 AC 604 (below, "*Anufrijeva*"). In that case, the issue was whether a decision to refuse an asylum claim which had not been communicated to the claimant was nonetheless "recorded by the Secretary of State as having been determined" once it had been made by Home Office officials on behalf of the SSHD. The consequence of the decision taking effect on this basis had been the withdrawal of the claimant's income support on the basis that she was no longer entitled to it, despite not been notified of the refusal of her asylum claim. By a majority, the House of Lords allowed the applicant's appeal and held that the decision to refuse asylum did not have legal effect for the purpose of the regulations dealing with income support until the applicant had been notified of it. The leading speech for the majority was given by Lord Steyn, with whom Lord Hoffmann and Lord Scott agreed. He stated at paragraph 26:

> "The arguments for the Home Secretary ignore fundamental principles of our law. Notice of a decision is required before it can have the character of a determination with legal effect because the individual concerned must be in a position to challenge the decision in the courts if he or she wishes to do so. This is not a technical rule. It is simply an application of the right of access to justice. That is a fundamental and constitutional principle of our legal system…"

Lord Steyn went on to state at paragraph 28:

> "This view is reinforced by the constitutional principle requiring the rule of law to be observed. That principle too requires that a constitutional state must accord to individuals the right to know of a decision before their rights can be adversely affected…"

52. At paragraphs 30-34 of his speech, Lord Steyn held that the Court of Appeal had wrongly decided the case of *R v Secretary of State for the Home Department, ex parte Salem* [1999] QB 805:

> "30. Until the decision in *Ex p Salem* it had never been suggested that an uncommunicated administrative decision can bind an individual. It is an astonishingly unjust proposition. In our system of law surprise is regarded as the enemy of justice. Fairness is the guiding principle of our public law. In *R v Commission for Racial Equality, Ex p Hillingdon London Borough Council* [1982] AC 779, 787, Lord Diplock explained the position:
>
> > "Where an Act of Parliament confers upon an administrative body functions which involve its making decisions which affect to their detriment the rights of other persons or curtail their liberty to do as they please, there is a presumption that Parliament intended that the administrative body should act fairly towards those persons who will be affected by their decision."
>
> Where decisions are published or notified to those concerned accountability of public authorities is achieved. Elementary fairness therefore supports a principle that a decision takes effect only upon communication.
>
> 31. If this analysis is correct, it is plain that Parliament has not expressly or by necessary implication legislated to the contrary effect. The decision in question involves a fundamental right. It is in effect one involving a binding determination as to status. It is of importance to the individual to be informed of it so that he or she can decide what to do. Moreover, neither cost nor administrative convenience can in such a case conceivably justify a different approach. This is underlined by the fact that the bizarre earlier practice has now been abandoned. Given this context Parliament has not in specific and unmistakeable terms legislated to displace the applicable constitutional principles.
>
> 32. The contrary arguments can be dealt with quite briefly. Counsel for the Home Secretary submits that before a "determination" can be "notified" there must be a determination. This is legalism and conceptualism run riot. One can readily accept that in this case there must have been a decision as reflected in the file note. That does not mean that the statutory requirement of a "determination" has been fulfilled. On the contrary, the decision is provisional until notified.
>
> 33. Counsel for the Home Secretary relied strongly on some niceties of statutory language. He pointed out that regulation 21ZA of the Regulations, as well as in section 6 of the Asylum and Immigration Appeals Act 1993, the draftsmen provided expressly for notification. In contrast regulation 70(3A)(b)(i) makes no reference to notification. The fact, however, that other provisions made the requirement of notification explicit does not rule out the possibility that notification was all along implicit in the concept of "the determination". For my part a stronger indication of

> Parliamentary intent is provided by the Statement of Changes in Immigration Rules (HC 395), which were laid before Parliament on 23 May 1994 under section 3(2) of the Immigration Act 1971. The concept of a "refusal" of asylum to be found in rules 331, 333 and 348 plainly contemplates notification of an adverse decision. These rules are part of the contextual scene of regulation 70(3A)(b)(i). They support the argument that notification of a decision is necessary for it to become a determination. But the major point is that the semantic arguments of counsel for the Home Secretary cannot displace the constitutional principles outlined above.
>
> 34. For all these reasons I would reject the submissions of counsel for the Home Secretary and hold that *Ex p Salem* was wrongly decided. It follows that in my view the present appeal should be allowed."

53. In his concurring speech, Lord Millett stated:

> "39. I agree that a determination must actually be made before it can properly be recorded; and that it is not necessarily merely provisional until it is notified to the person or persons adversely affected by it. But it does not follow that it has legal effect before it has been notified; and it is fallacious to suppose that an uncommunicated decision must be effective for all purposes or for none.
>
> 40. I am satisfied that the appellant's asylum application was determined on 20 November 1999, that the determination was final and not provisional, and that it had immediate legal effect for some purposes. Thus it returned the responsibility for deciding the appellant's immigrant status to the immigration officer, so that he could consider whether she should be granted exceptional leave to remain. But she could not be removed from or required to leave the United Kingdom until she had been given notice of the decision on her claim: section 6 of the 1993 Act expressly so provided. The question is whether the refusal of her application had immediate effect for the purpose of ending her entitlement to income support or took effect for this purpose only when she was notified of it.
>
> …
>
> 43. … The presumption that notice of a decision must be given to the person adversely affected by it before it can have legal effect is a strong one. It cannot be lightly overturned. I do not subscribe to the view that the failure to notify the appellant of the decision invalidated it, but I have come to the conclusion that it could not properly be recorded so as to deprive her of her right to income support until it was communicated to her; or at least until reasonable steps were taken to do so. This does not require any violation to be done to paragraph (3A) of regulation 70 of the Regulations. It means only that the word "determined" in that paragraph should be read as meaning not merely "actually determined" but as meaning "determined in such manner as to affect the claimant's legal rights". The presumption against legal effect being given to uncommunicated decisions does the rest. The determination must have been made and appropriate steps must have been taken to communicate it to the claimant before it can lawfully be recorded so as to have the effect contended for."

54. In my judgment, these passages from the speeches of the majority in *Anufrijeva* do support the Respondent's case on this appeal. I reject Mr Suterwalla's submission that they are not relevant because they are concerned solely with the effectiveness of a decision taken without providing notification of it to the person affected. They are also of assistance in the present context. In my judgment, it is manifestly unfair for a public authority such as the SSHD to state in the very decision that would otherwise set the time limit for a refugee's backdated Child Benefit claim running that such a claim cannot be made until a future event has occurred (see *Anufrijeva* at paragraph 30). The present case involves an important and fundamental right, namely the level

of support consequent upon the recognition of an individual's refugee status, and indeed support which is directed towards the maintenance of the children of refugees. It also involves statutory provisions with a benevolent purpose, designed to ameliorate the situation in which a refugee has not (whilst their asylum claim was pending) received payments of Child Benefit to which they were otherwise entitled – as the decision to recognise someone as a refugee is an official recognition of a state of affairs which has always existed, rather than creating that state of affairs (see *R (on the application of DK) v HMRC* [2022] EWCA Civ 120 at paragraphs 47-48). The ultimate purpose of these statutory provisions is not, therefore, simply to impose a time limit on the making of a claim for Child Benefit.

55. I do accept Mr Suterwalla's submission that it is not the purpose of the statutory provisions in issue on this appeal to ensure that refugees are provided with information as to their rights. Thus, as Mr Spencer accepted, if the correspondence of 18 May 2019 had stated only that the Respondent had been recognised as a refugee (and no more than that), there would not have been any issue with the time limit in Regulation 6(2)(d) having started to run at that point. The difficulty in the present case is that the correspondence went to make the positive statement that the Respondent was not, at that point (and until receipt of her BRP), permitted to make a claim. On HMRC and the SSHD's case, the very opposite was true and the time limit in the Regulations was running against her.

56. In my judgment, adopting the approach to statutory construction which I have set out above, the notification of refugee status of the type sent to the Respondent on 18 May 2019 was not valid notification of the recording of refugee status for the purpose of Regulation 6(2)(d) of the 2003 Regulations. That is because the notification incorrectly stated that a claim for Child Benefit could not be made until receipt of the BRP. In my judgment, a notification of this sort which contains a statement denying the existence of the very right to claim an entitlement which it would otherwise confer cannot, in this context, be a valid notification. To construe the language of Regulation 6(2)(d) otherwise would, in my judgment, be to ignore its purpose and would be to adopt precisely the sort of "purely linguistic" approach rejected by Singh LJ in *Kaitey*. I accept Mr Spencer's submission that the 2003 Regulations should be construed on the basis that they were intended (at least unless the contrary is shown) to operate in a fair manner. I do not accept that an objective construction of the notification provisions of the 2003 Regulations, having regard to their purpose, should result in the notification sent to the Respondent on 18 May 2019 being effective to start the three-month time limit.

57. I reject Mr Suterwalla's submission that the only relevant part of the letter, for present purposes, is the part notifying the Respondent that she had been granted refugee status, and that anything else said in the letter is of no relevance to the outcome of this appeal. As Mr Spencer submitted, the notification of the recording of refugee status in that correspondence was only a limited recognition of that status, because it positively denied (at least until there had been receipt of the BRP) the existence of an entitlement arising, on HMRC and the SSHD's own case, as a direct consequence of the grant of refugee status. What is required by the word "record" in a statute depends on the context in which the word appears: see *R (on the application of Nigatu) v Secretary of State for the Home Department* [2004] EWHC 1806 (Admin) at paragraphs 21-22; and I do not regard anything said by Lord Bingham in his dissenting speech in *Anufrijeva* (upon which Mr Suterwalla relied) as to when a claim for asylum was "recorded as having been determined" in the context

of the issues arising in that case as requiring a different outcome to be reached in the present case.

58. Even if the notification sent to the Respondent on 18 May 2019 may have been effective for other purposes, such as the grant of leave to remain, in my judgment it was not effective notification for the purpose of the commencement of the time limit under Regulation 6(2)(d) of the 2003 Regulations until the error in the contingent element of the notification had been corrected. As Mr Spencer submitted, that occurred when the BRP issued to the Respondent at the end of August was received by her solicitors on 4 September or, at the latest, as a result of the Home Office's letter to the Respondent of 12 September 2019 stating that she could make a claim for benefits. On either basis, the Respondent's claim for Child Benefit was therefore submitted in time for it to be backdated as she now contends.

59. Mr Suterwalla also submitted that someone in the position of the Respondent might have other remedies available to them, outside the context of the statutory appeal with which I am concerned (such as a claim for judicial review or a civil claim for damages), in the event that they had received a letter such as that sent to the Respondent containing an inaccurate statement about their right to claim Child Benefit. I do not regard that argument as having any weight, either way, for the purpose of deciding this appeal. Firstly, it is not at all clear what (if any) other remedies might be available to someone in the Respondent's position. Secondly, I do not regard the availability of potential alternative routes of redress (or the lack thereof) as affecting the proper construction of the statutory provisions and their application to the circumstances of this case.

60. I ought also to refer to the Qualification Directive and to the case of *Tkachuk*, both of which I had drawn to the attention of the parties. *Tkachuk* was a case involving a claim for backdated payment of income support to a claimant who had been recorded as a refugee. The issue was whether the relevant time limit started to run from notification of the SSHD's decision on refugee status that had been sent to the claimant's solicitor or whether personal notification to her was required. The Court of Appeal held that, on the proper construction of the relevant provisions, notification to the solicitor was effective. Mr Spencer relied on what Lloyd LJ said at paragraph 23 of his judgment, where after determining the proper construction of the statutory provisions in that case he went on to state:

> "… Nor does it seem to me that this would be inconsistent with the statutory context… with regards income support. It is true that the solicitor could not claim income support on behalf of the refugee in the sense of signing the form, but the solicitor, receiving the letter which tells the client a number of consequences of refugee status, including a possible entitlement to income support, can advise the client about these consequences and could, if instructed, assist with the completion of the income support claim form. That would be sufficient, if it were necessary, to find that the recipient was able not only to receive the notice but also to deal with it. However, I would rest my judgment principally on the question of statutory construction…"

Mr Spencer submitted that Lloyd LJ's reference to the recipient being "able not only to receive the notice but also to deal with it" provided at least some support for the Respondent's case. This was an *obiter* passage; I do not consider that I can place weight on this paragraph of Lloyd LJ's judgment when determining the result of the present appeal. It is, however, consistent with the result that I have in any event reached.

61. As to Article 22 of the Qualification Directive (and the corresponding provision in Paragraph 344C of the Immigration Rules) these were not really relied upon by Mr Spencer in support of his arguments; and, as Mr Suterwalla submitted, they do not apparently contain a requirement to provide information regarding the right to claim benefits at precisely the same time as a decision is taken. I do not, in those circumstances, regard them as being decisive of the present appeal.

Conclusion

62. In concluding that the Respondent's claim for Child Benefit that was received by HMRC on 16 September 2019 should be backdated to April 2016, because the three-month time limit did not begin to run for the purpose of Regulation 6(2)(d) of the 2003 Regulations until she had received her BRP, the First-tier Tribunal reached the correct conclusion in relation to the Respondent's particular case. Although I have differed from some of the reasoning of the First-tier Tribunal (which was not provided with copies of some of the documents that formed the basis of the argument before me), there was no material error of law in the decision made below. HMRC's appeal is dismissed.

Mathew Gullick KC
Judge of the Upper Tribunal
Signed on the original on 30 September 2022