KI v SSWP
[2023] UKUT 212 (AAC)

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Appeal No. UA-2018-000285-TC

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

Between:

KI

Appellant

- v –

HM Revenue and Customs

Respondent

Before: Upper Tribunal Judge Hemingway

Appeal heard: 15 September 2002

Representation:

Appellant: Mr M Williams of the Child Poverty Action Group

Respondent: Mr S Pritchard of Counsel

DECISION

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

REASONS FOR DECISION

Introduction

1. This is the claimant's appeal to the Upper Tribunal, brought with permission given by Upper Tribunal Judge Gray on 12 September 2018, from a decision of the First-tier Tribunal (F-tT) which it made following a hearing of 16 February 2018 and which it explained in a statement of reasons for decision (statement of reasons) of 14 April 2018, to dismiss her appeal to it. The F-tT, in dismissing the appeal, upheld a decision of Her Majesty's Revenue and Customs (HMRC) of 12 January 2017.

2. I held an oral hearing of the appeal which took place on 15 September 2022. The claimant was represented, at that hearing, by Mr M Williams of the Child Poverty Action Group (CPAG). HMRC was represented by Mr S Pritchard of Counsel. I am grateful to each of them. Following the hearing I received further written submissions the last of which was received on 11 July 2023.

3. The decision of 12 January 2017 (subsequently confirmed by way of mandatory reconsideration on 13 March 2017) was, in essence, a decision to refuse to pay to the claimant backdated disability element of child tax credit for any tax year other than the tax year running from 6 April 2016 to 5 April 2017. The claimant had sought to have the child disability element backdated to 18 March 2010. But HMRC did subsequently (see below) decide to backdate payment of the above element for the tax year running from 6 April 2015 to 5 April 2016.

Some relevant legislation

4. Adjudication on claims for tax credit is governed by the Tax Credits Act 2002 (the 2002 Act) and the Tax Credits (Claims and Notifications) Regulations 2002 (the C and N Regulations). A claim for tax credit is made under section 3(1) of the 2002 Act. According to that sub-section, "*Entitlement for the whole or part of a tax year is dependent on the making of a claim for it*". Section 5 limits an award to a maximum of one tax year, and then a new claim must be made for each subsequent tax year. HMRC makes an initial decision on the application under section 14 of the 2002 Act, as to whether or not to award tax credit and, if so, at what rate. Payment is then made on that basis. At or around the end of the tax year in respect of which an award has been made under section 14, HMRC sends the claimant a notice under section 17. That notice specifies the relevant circumstances held by HMRC and requires a claimant to make a declaration either confirming that those circumstances are correctly recorded or notifying the respects in which they are not. Then, once the relevant tax year has ended, HMRC makes what is intended to be a finalised decision as to what entitlement, if any, the claimant had during that tax year.

5. Regulation 11 of the C and N Regulations provides that the section 17 declaration (see above) also constitutes a new claim for tax credits for the following tax year. That then leads to a further initial decision under section 14 of the 2002 Act and the process set out above continues. It is also worth pointing out, at this stage, that section 6 of the 2002 Act provides for the making of regulations providing that "*any change of circumstances of a prescribed description which may increase the maximum rate at which a person or persons may be entitled to a tax credit is to do so only if notification of it has been given*".

6. The Tax Credits (Official Error) Regulations 2003 (the OE Regulations) are made pursuant to section 21 of the 2002 Act. Regulation 2(1) defines "official error" as follows:

> "*Official Error"* means an error relating to a tax credit made by –
> (a) an officer of the Board
> (b) an officer of the Department for Work and Pensions
> (c) an officer of the Department for Social Development in Northern Ireland, or
> (d) a person providing services to the Board or to an authority mentioned in paragraph (b) or (c) of this definition, in connection with a tax credit or credits, to which the claimant or any of the claimants, or any person acting for him, or any of them, did not materially contribute, excluding any error of law which is shown to have been an error by virtue of a subsequent decision by a Social Security Commissioner or by a court".

7. Although a decision made under section 18 of the 2002 Act is described or regarded as a final decision, section 21 of that Act provides that "*Regulations may make provision for a decision under section 14(1), 15(1), 16(1), 18(1), (5), (6) or (9), 19(3) or 20(1) or (4) to be revised in favour of the person or persons to whom it relates if it is incorrect by reason of official error (as defined by the regulations)*". The OE Regulations then provide for revision on the grounds of "*official error*" being an error "*relating to a tax credit*" to which the claimant "*did not materially contribute…*". However, regulation 3(3) of the OE Regulations limits the reach back period to "*any time not later than five years after the date of the decision".*

8. The Tribunals, Courts and Enforcement Act 2007 relevantly, for the purposes of this appeal, provides:

> "**Review of decision of First-tier Tribunal**
> **9.** – (1) The First-tier Tribunal may review a decision made by it on a matter in a case, other than a decision that is an excluded decision for the purposes of section 11(1) (but see subsection (9)….
> (4) Where the First-tier Tribunal has under subsection (1) reviewed a decision, the First-tier Tribunal may in the light of the review do any of the following –
> (a) correct accidental errors in the decision or in a record of the decision;
> (b) amend reasons given for the decision;
> (c) set the decision aside.
> (5) Where under subsection (4)(c) the First-tier Tribunal sets a decision aside, the First-tier Tribunal must either –
> (a) re-decide the matter concerned, or
> (b) refer that matter to the Upper Tribunal…
> (8) Where a tribunal is acting under subsection (5)(a) or (6), it may make such findings of fact as it considers appropriate…"

9. It is to be noted that Rule 40(2) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 provides that the F-tT may only review a decision where it first identifies an error of law.

The Factual Background and the Previous Adjudication History

10. The claimant commenced receiving tax credits in 2006 as a single parent. At the time of initial receipt, she had one child whom I shall call child A. In February 2011 her second child was born. I shall call that child, Child B. Child A has disabilities and, in 2010, he was awarded disability living allowance (DLA). From that date and subject to the requirements of notification to HMRC, the claimant was entitled to have the child disability element included within her entitlement to her child tax credit. There is dispute as to whether the claimant ever notified HMRC as to the award of DLA. She says she did so during the course of telephone conversations with HMRC staff which took place in August 2010 and February 2011.

HMRC's position is that no such notification was made at those times. So, the child disability element was not put into payment.

11. At some point in 2016, as a result of what is sometimes referred to as a data sharing exercise, a part of which involved comparing HMRC data with data held by the Department for Work and Pensions (DWP) it became known to HMRC (though of course the claimant says she had disclosed this to HMRC already) that DLA had been awarded with respect to A. On 12 January 2017, as a result of that information then coming to its attention, HMRC amended the tax credits award to include the child disability element in the claimant's child tax credit award from the start of the relevant tax year (tax year commencing 6 April 2016). That decision was made under section 16 of the 2002 Act which permits amendment or termination of an award "*at any time during the period for which an award of a tax credit is made*" if HMRC have "*reasonable grounds for believing*" that an award ought not to have been made or an award ought to have been made at a different rate to that which it has. The claimant sought to challenge that decision (specifically she was seeking to challenge the fact that there had not been backdating to the date when DLA had been awarded) by way of a letter which is not dated but which was apparently received by HMRC on 8 February 2017. The letter is in the form of a "*template*" but it did not make reference to the claimed telephone notifications. Instead, the argument contained in the letter relied upon what was said to be an administrative failure caused by "*a gap in the data feed between the DLA unit and the Tax Credits Office*". The thrust of the contention was that the failure of automatic notification from the DWP to HMRC amounted to an "*official error*" which enabled HMRC to revise decisions for the relevant earlier tax years notwithstanding the previous decisions made under section 18 of the 2002 Act with respect to those tax years. On 13 March 2017, HMRC issued a mandatory reconsideration notice "*for the tax year 2016 – 2017*" in which it indicated that its decision of 12 January 2017 was not to be changed. The claimant appealed to the F-T.

12. The F-tT held an oral hearing which took place on 9 October 2017. The claimant attended that hearing and gave oral evidence. The F-tT maintained a written record of the proceedings. The F-tT, having accepted the claimant's evidence to it that she had made the above noted telephone notifications to HMRC, allowed the appeal and gave a brief explanation as to why it was doing so in a Decision Notice of 9 October 2017. HMRC asked for a statement of reasons for decision (statement of reasons) which was issued on 5 December 2017. On the same date the F-tT issued a directions notice in which it was said that the Tribunal Judge who had decided the appeal on 9 October 2017 had detected an error of law in his own decision which was described in this way: "*The Tribunal did not take sufficient account of the definition of "official error" in the Tax Credits (Official Error) Regulations 2003 and the impact of the Upper Tribunal decision in AM v HMRC (TC) [2015] UKUT 345 (AAC). In consequence, the Tribunal did not adequately consider whether the appellant had contributed to the "official error" and made no findings of fact on the point*". The directions notice invited the parties to consider applying for permission to appeal. By letter of 14 December 2017 HMRC did so. On 11 January 2018 a District Tribunal Judge of the F-tT conducted a review under rule 40(2) of the F-tT's above Rules of Procedure and decided that the F-tT which had determined the appeal had erred in the manner in which it had been suggested in the directions notice that it had. In the Decision Notice of 11 January 2018, the District Tribunal Judge continued "*The decision of is [sic] therefore set aside, and the appeal is to be considered afresh by a differently constituted tribunal on the first available date after twenty-eight days from the date of issue of this notice*". Accordingly, the appeal was re-heard, by a differently constituted F-tT (that is to say a different Tribunal Judge) on 16 February 2018.

13. The hearing of 16 February 2018 was, as before, a face-to-face hearing at which the claimant gave oral evidence. On this occasion, however, the F-tT disbelieved the claimant's evidence regarding telephone notification. As to that, the F-tT, according to its statement of reasons which was issued on 16 April 2018, was concerned by the claimant's failure to

mention the claimed telephone calls in the letter received by HMRC on 8 February 2017 at the time she was seeking mandatory reconsideration, by her failure to chase up the claimed telephone notification she had made, and by her failure to put anything in writing. The F-tT also noted her evidence to it that although she had received various written communications from HMRC regarding her entitlement she "*did not really read them*". The F-tT rejected any argument based upon a requirement for different government departments to talk to each other" and that, in any event, if there was official error, she had "*caused or materially contributed to the error*" through her failure to (as it had found) to notify. The F-tT said it had regard to the case of AM, cited above. As to the previous F-tT hearing and decision (the decision which was set aside) the F-tT observed "*there was a decision made 16th November 2017 by a different Tribunal. This decision was set aside. This Tribunal completely ignored that decision and those records of proceedings. This Tribunal considered matters completely afresh*."

14. Permission to appeal to the Upper Tribunal was sought and given (see above).

The Appellant's Arguments on the Appeal

15. Understandably the arguments have evolved a little from the initial lodging of the application for permission to appeal to the putting of the case at an oral hearing of the appeal. The arguments as set out in Mr Williams' skeleton argument prepared for the purposes of the appeal hearing may be summarised as follows:

> Contention 1. Any requirement there may be for a claimant who notifies HMRC of an award of DLA in order to have the level of Tax Credits increased is not a barrier to the claimant succeeding in the circumstances of this case. That is because:
> 1A. The F-tT which decided the appeal on 16 February 2018 erred through failing to take account of the findings of and the record of evidence given to the F-tT which had allowed the appeal on 9 October 2017.
> 1B. The meaning of "*change of circumstances*" as used in section 6 of the 2002 Act is limited to a change of circumstances since the making of a decision under section 14 of the Act in relation to the tax year in question. That being so, any failure on the part of the claimant to notify during the 2010-2011 tax year is only capable of precluding the addition of the child disability component in that particular tax year.
>
> Contention 2. The failure of the information sharing system between the DWP and HMRC amounts to "*official error*" as the term is used in regulation 2 of the OE Regulations.
>
> Contention 3. Each relevant decision taken under section 18 of the 2002 Act with respect to each relevant tax year, official errors having occurred, were "*incorrect by reason*" of such official error such that they may be revised. That is because either (or both):
> 3A. HMRC had not given information to the claimant such as to place her under a duty to correct the notifications issued to her under section 17 of the 2002 Act so any failure to correct information contained in those notifications could not have been causative with respect to the underpayment of child tax credits which she received.
> 3B. Even if the claimant had been under a duty to correct the information contained in the section 17 Notices, any such failure to notify does not lead to a conclusion that the subsequent decisions taken under section 18 of the 2002 Act were not incorrect by reason of official error.

My Reasoning on the Appeal

16. I start by simply reminding myself, as briefly noted above, that HMRC did agree to pay the child disability element of tax credit for the tax year 2015-2016. That, in fact, had the consequence that arguments which had been put under ground 3 of the initial grounds as set out in the application for permission to appeal and which related only to that particular tax year, no longer required determination as the issue simply fell away.

17. Certain of the arguments contained within Mr Williams skeleton argument and as pursued in oral submissions, went beyond what had been said in the original grounds of appeal. However, I indicated at the hearing of the appeal, that I was content to amend the grounds. Mr Williams, in fact, although acknowledging he had raised new arguments in the skeleton argument, sought to maintain permission to amend was not required. But since I was happy to amend anyway that matter did not seem to require resolution. Finally, as to preliminaries, Mr Pritchard had sought to argue, in his skeleton argument and before me, that the F-tT had lacked jurisdiction to deal with the points under official error which had been argued by the claimant before it. In support of that proposition, it was said that the decision of HMRC under appeal and which had been made on 12 January 2007, was simply a decision taken under section 16 of the 2002 Act in respect of the 2016/2017 tax year. There had, therefore, been no appealable decisions relating to any of the previous tax years. However, in a post-hearing submission of 30 May 2023, HMRC indicated its view that since the claimant had referred to those earlier tax years in her mandatory reconsideration request, and since HMRC had seen fit to revise its decision for the 2015/2016 tax year, "*HMRC submits that it is just arguable that the matter of entitlement in respect of the earlier years… was within the jurisdiction of the tribunal*". I have to say that the tone of HMRC's submission on the point ("*just arguable*") sounds a tad lukewarm. I also have significant doubts of my own as to how it can be said a decision taken in respect of a single tax year (which is what a plain reading of the decision seems to indicate) can be construed as a decision of an appealable nature relating to earlier years. But the parties are now in agreement on the point. Further, given what I have ultimately decided in this appeal, the outcome is the same whether I am to decide the decisions for the earlier tax years were before the F-tT for determination or not. That being so I have, for the purposes of this appeal only, and in light of there being agreement between the parties (I may well have decided otherwise had there not been such agreement), decided to proceed in determining this particular appeal on the basis that such decisions were properly before the F-tT.

18. I turn then to the first argument pursued by Mr Williams (and which formed ground 1 of his original grounds of appeal) to the effect that the F-tT had erred in its treatment of the previous F-tT's decision, its reasoning and its record of proceedings. In the original grounds it was asserted that, in fact, the record of proceedings of the hearing of 9 October 2017 had not been provided to the claimant for the purposes of the hearing of 24 January 2018. It was contended that "*this alone may have produced an unfairness*".

19. The F-tT's appeal bundle contained a copy of the record of proceedings with respect to the hearing of 9 October 2017. That record now appears from page 151 to page 160 of the Upper Tribunal bundle. The F-tT's bundle, containing the record of proceedings, would presumably have been sent to each party, including the claimant, in the usual way, prior to the hearing of 16 February 2018 taking place. The claimant has not, so far as I can see, ever asserted she was not sent a bundle for the purposes of that appeal. I am not able to conclude, on the material before me, that the record of proceedings was not sent to the claimant prior to the hearing of 24 January 2018.

20. Mr Williams, at one point, seemed to contend that the F-tT had taken a positive and specific decision not to admit the record of proceedings and the findings of the F-tT of 9 October 2017, as set out in its statement of reasons. He argued it had been wrong to do so. However, I do not think what the F-tT did or said can properly be characterised as a decision to refuse to admit evidence. That evidence (the record of proceedings and the statement of reasons) was already before it in the F-tT's appeal bundle. It did not say, in terms, that it was excluding that evidence, it simply said that it was ignoring it (in other words not taking it into account or according no weight to it). As to the findings or reasoning of the previous F-tT as set out in the statement of reasons or, for that matter in the Decision Notice, it is the case that the decision itself had been set aside. The legislation provides for that. I am not able to detect any error on the part of the F-tT, therefore, in its not having regard to the content (either the findings or the reasoning which underpinned them) of a decision which had been set aside. As a related point Mr Williams argues that some form of signal ought to have been sent to the claimant to put her on notice that the F-tT might not, in re-hearing the appeal, adopt the findings of fact of the previous F-tT. But given that the previous F-tT's decision had been set aside I see no basis for the existence of any such duty or obligation. For similar reasons I would reject a related contention made by Mr Williams to the effect that an F-tT reaching a different outcome to a previous F-tT, in circumstances where the previous F-tT's decision had been set aside, is required to give specific reasons for departure from the previous findings of fact. The setting aside meant those findings had ceased to exist.

21. Before me Mr Williams focused largely upon the F-tT's disregarding of the record of proceedings. I would accept that, in this case, the record of proceedings regarding the first hearing did not simply disappear but remained, for what it was worth, as a record of what had been said at that hearing. Accordingly, the F-tT which heard the appeal on 16 February 2018 was not required to completely ignore the record of proceedings. But it did not say that, as a matter of law, it was. What it said amounts to it having chosen to disregard it. Given that it heard oral evidence from the claimant for itself which, on any view, was likely to be of more evidential value than a hand-written note of evidence given to a different F-tT at an earlier stage, it was entitled not to take that record of proceedings into account and, instead, to give primacy to the evidence it actually received and had a proper opportunity to evaluate. I do not, therefore, detect any error of law on its part. That deals with contention 1A as set out in the claimant's skeleton argument.

22. I next turn to contention 1B. Section 6 of the 2002 Act allows for the making of regulations which provide that "*changes of circumstances*" of the sort specified in those regulations will only take effect "*if notification of it has been given*". Regulation 20 of the C and N Regulations provides that changes which increase the maximum rate are not to do so unless notified. Mr Williams contention, on behalf of the claimant, as noted above, is to the effect that the obligation to report a change of circumstances as required by the legislation arises only in respect of the tax year in which the relevant change occurred. So, runs the argument, the failure to notify does not act as a barrier to receipt of the child disability element for any tax year other than the one in respect of which DLA had been awarded. Mr Williams suggests that that interpretation is in keeping with the plain meaning of the words used in the legislation, that it fits with the overall structure of tax credits legislation and that it is, "*better in policy terms because of the fairness it produces both as between the duties of the claimant and their interest in obtaining correct awards and the equal treatment it produces between claimants in similar situations*".

23. I am not able to accept the above submission. I am not taken to and cannot find anything in the legislation to suggest the duty to disclose is so limited. I am not taken to anything in case-law which suggests such an interpretation is correct. If Parliament had intended that to be the case, it could have easily said so. Further, the whole tenor of the legislation regarding tax credits, as set out above, is geared towards placing a duty upon a

claimant to inform HMRC as to circumstances and changes in circumstances relevant to entitlement to tax credit. Decisions taken in relation to tax credit entitlement are based on the information available to the decision-maker at the time of the decision. Limiting the duty to disclose a relevant change of circumstances to the individual tax year in which that change arose would seem to be entirely artificial. Further, it seems to me that interpreting the legislation in the way it is argued on behalf of the claimant it should be interpreted would, in effect, require additional words to be read into that legislation. There is no basis for doing so. I would, therefore, reject contention 1B.

24. I now move on to consider contention 2. By way of brief reminder, it is said that a failure of an automatic information sharing system between the DWP and HMRC led to HMRC not learning timeously of the award of DLA and that such failure amounted to "*official error*".

25. It is accepted on behalf of HMRC that data was not being shared between it and the DWP at the time of the award of DLA. Mr Williams says it is his understanding that there was a "*non-operation of the data feed between the DWP and HMRC*" at the material time. I do not think Mr Pritchard has disagreed with that position. Mr Williams goes on to indicate reliance upon the case of *R (Sier) v HBRB Cambridge CC* [2021] EWCA Civ 1523 which he describes as a "*similar case*" to this one where an error on the part of those who administer income support had been held at first instance (by the High Court) to constitute official error. The error in that case was a failure to send a specific form (form NHB8) to a local authority in the area where the claimant in that case had moved to.

26. The F-tT, albeit that it dealt with the matter quite fleetingly, did not find there had been official error consequent upon any failure to share data between HMRC and the DWP. I have concluded the F-tT did not err in that regard, for the reasons set out below.

27. First of all, the argument put on behalf of the claimant runs up against decided authority in the specific context of data sharing between the DWP and HMRC. In *AG v HMRC* [2013] UKUT 530 (AAC) it was said:

> "I turn finally to the point made on behalf of the appellant that he feels the respondent and the DWP can check each other's systems when it suits them and therefore that the respondent should in some way be fixed with the DWP's knowledge. Even assuming there to be a factual basis for that, which has not been established in evidence, what is important are the specific terms of the tax credit legislation. Reference has already been made at [6] above to regulation 20 of the CN Regulations, which has the effect that a person can only rely on a change of circumstances for the purpose of an increase in tax credits if notification of the change has been give in accordance with the relevant part of the CN Regulations. Accordingly, anything the respondent may have been able to find out from the DWP was not sufficient to confer any legal right on the appellant unless he had made sufficient notification. (Payment to him following the data matching exercise which did not take place thus appears to have been made as a matter of customer care)".

28. The above passage suggests that in the absence of any specific legal duty to do so (and it is accepted there was no legal duty in this case) the lack of information sharing between HMRC and the DWP will not amount to official error. Mr Williams accepts that *AG* is authority against him, but he points out that the claimant in *AG* was not represented (though there had been some assistance from a Citizen's Advice Bureau in preparing written submissions) and that the argument put in this appeal had not been put then. He urges me not to follow *AJ* on the point on the basis that it is wrongly decided. I accept I am not bound to follow *AJ* albeit that for reasons of comity one Upper Tribunal Judge will normally follow the decision of another. But the reasoning in *AG*, as set out above, seems to me to be both

obvious and persuasive. Further, the case is entirely on point and, unlike the case of *Sier* the Upper Tribunal was dealing with the legislation and relevant legal tests which apply in this case.

29. Secondly, *Sier* is readily distinguishable. It was, as Mr Pritchard points out, dealing with a different definition of "*official error*", which appears in Housing Benefit regulations as "*an overpayment caused by a mistake or omission …where the claimant did not materially cause or contribute to that mistake, act or omission*".

30. Thirdly, there was no legal duty nor even any particular obligation upon the DWP and HMRC to share information. There was a power to do so but a power, of itself, especially bearing in mind the emphasis in tax credit legislation upon the reporting of matters by a claimant, did not translate into an obligation.

31. I conclude the F-tT did not err in law in effectively deciding that there had not been an official error. Having reached this point it is clear that, whatever I might make of the further arguments advanced on behalf of the claimant, this appeal to the Upper Tribunal cannot succeed. But I shall, nevertheless, go on to address them.

32. Contention 3, which is divided into two parts, amounts to an argument to the effect that even if the claimant had not notified the award of DLA to HMRC and even if the non-data sharing between HMRC and DWP was not an official error, the non-payment of the element had a cause other than "*official error*". In his skeleton argument, Mr Williams introduces the two-pronged argument he makes with respect to contention 3 in this way: "*The appellant must show that the s.18 decisions in question were incorrect by reason of the official error discussed at issue 2. The appellant will argue firstly (in issue 3A) that she was not required by the s.17 notices to tell HMRC about the DLA and secondly (in issue 3B) that in any event if such a duty does exist a breach of that duty does not render decisions other than incorrect by reason of the error*".

33. The argument under 3A (an argument not put in the original grounds, but which is before me for reasons set out above, is to the effect that the precise wording in notes issued with the section 17, 2002 Act notifications did not say, in terms, that a claimant must report the event of the award of DLA for a child. However, as Mr Pritchard points out in his skeleton argument, the legislative framework places the onus upon a claimant to ensure that HMRC is aware of the relevant considerations for the purposes of making entitlement decisions. HMRC must send a section 17 notice setting out the information it is proposed to use when making a section 18 determination, to the relevant claimant in each case. If the information is incorrect or incomplete, the claimant is required to inform HMRC accordingly. Further, the section 17 notifications in this case, as is again pointed out in Mr Pritchard's skeleton argument, instructed the claimant to check that the "personal circumstances at the start of *the renewal period were correct and complete*" and to "*contact us as soon as possible*" in the event of any of those details being "*wrong*". Although it is not now strictly relevant for the purposes of this appeal to the Upper Tribunal, the claimant was required to correct the section 17 notice by confirming the award of DLA.

34. The alternative argument is the effect that even assuming the appellant was under a duty to correct the section 17 notices and did not do so, that does not lead to the result that the decisions were incorrect by reason of anything other than official error.

35. Mr Williams relies upon the case of *Sier* once again, though this time, reliance is placed on the judgment of the Court of Appeal itself. The argument pursued on behalf of the claimant places emphasis upon what was said in the judgment regarding the importance of the legislative purpose in determining how a court should approach "*the elastic concept of causation*".

36. A difficulty for Mr Williams is that in both *AM v HMRC (TC)* [2015] UKUT 345 (AAC) and *JP v HMRC (TC)* [2013] UKUT 519 (AAC) it was decided that a failure to notify a change of circumstances by a claimant was the cause of an underpayment of tax credit. Whilst it is argued by Mr Williams that those decisions were wrongly decided on the point through a failure to appreciate the proper legislative intent, I accept Mr Pritchard's contention that the two are virtually indistinguishable from the circumstances obtaining in this case. Mr Williams points out that neither in *AM* nor *JP* was the claimant represented. He points out that each decision was made by a single Upper Tribunal judge. He suggests that neither decision contains a detailed analysis of the applicability of Sier to the issue of underpayments. I do follow *AM* and *JP*. They are, as I say, virtually indistinguishable. They are both cases, unlike *Sier*, where the failure to report a change of circumstances related to tax credits and the particular legislative scheme concerning them. The reasoning in each decision seems to me to be straightforward and logical. There is no reason to depart from what is said therein and I do not do so.

37. To conclude then, the F-tT did not err through failing to consider the record of proceedings or the earlier F-tT determination. Accordingly, its finding to the effect that the claimant did not make telephone notification to an HMRC of the award of DLA for her child, was not infected by legal error. The F-tT did not err in proceeding on the basis that a failure to notify could only preclude the addition of the child disability element in the tax year in which DLA had been awarded. Although it did not say very much about why it was doing so, it was correct to decide that the lack of information sharing between the DWP and HMRC did not amount to official error. It was correct to conclude, in the circumstances obtaining before it, that had there been an official error it was an error to which the claimant had contributed.

Decision

36. I conclude that the F-tT did not err in law. Accordingly, this appeal to the Upper Tribunal is dismissed.

M R Hemingway
Judge of the Upper Tribunal
Authorised for issue on 23 August 2023