

FIRST-TIER TRIBUNAL

SOCIAL ENTITLEMENT CHAMBER

Held at: [REDACTED]	
On: [REDACTED]	Before: [REDACTED]
NINO: [REDACTED]	Tribunal Reference: [REDACTED]
Appellant: [REDACTED]	
Respondent: HM Revenue & Customs	

Decision Notice

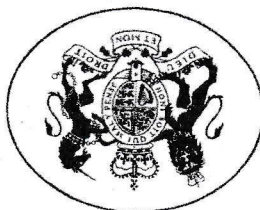
1. The appeal is allowed.

2. The decision made by the Respondent on 10/10/2018 is Set Aside.

3. Mr. [REDACTED] continues to be entitled to Tax Credits in the period from 06/04/2018. The stop notices issued on the 12/08/2018 and the 16/08/2018 in respect of the Appellant's partner, Ms [REDACTED], and Mr. [REDACTED] respectively, are of no effect, for the reasons summarised below.

4. The stop notices referred to above are of no effect because neither the Respondent nor partner agencies, have provided sufficient evidence to show that the basic conditions in relation to the application for Universal Credit made by Ms [REDACTED] were satisfied. In addition, the Tribunal finds that, by virtue of Section 2(1) of the Welfare Reform Act 2012 together with associated regulations, show that a claim for Universal Credit by members of a couple must be made jointly. In the present case Mr [REDACTED] did not complete his claim for Universal Credit with the effect that his partner's claim cannot be treated as effective.

Signed: [REDACTED]	
Decision Notice issued to: [REDACTED]	
Appellant on: [REDACTED]	Respondent on: [REDACTED]
Date: [REDACTED]	



FIRST-TIER TRIBUNAL

**SOCIAL ENTITLEMENT
CHAMBER**

Held at

[REDACTED]

on

[REDACTED] December 2019

Before

[REDACTED] DISTRICT TRIBUNAL JUDGE

Appellant: [REDACTED]	
Respondent: HMRC	
Tribunal Ref. [REDACTED]	NI No [REDACTED]

STATEMENT OF REASONS FOR DECISION

This statement is to be read together with the decision notice issued by the tribunal

1. This is an appeal against the decision of the respondent dated 10 October 2018 that the appellant is not entitled to tax credits from 12 August 2018 because of a claim for universal credit.

Preliminary Matters

2. This appeal was originally listed for hearing before Judge [REDACTED] on 14 August 2019. The matter was ultimately transferred to district tribunal Judge [REDACTED] with a final hearing date of 9 December 2019.
3. The Tribunal considered all the scheduled evidence and the oral evidence of the appellant. The appellant was represented by Ms Cotton, from an organisation known as Equity. Throughout the appeal process Ms Cotton made a number of detailed and substantial written submissions.
4. In the light of the issues arising from those submissions, the respondent had been directed to arrange for the attendance of a presenting officer at the hearing. Accordingly, the tribunal was assisted by a presenting officer, Miss [REDACTED], who was accompanied by observers from HMRC.
5. In opening, Miss [REDACTED] on behalf of the respondent, submitted that that the appellant was not entitled to tax credits with effect from 12 August 18 because, on that date, the appellant had claimed universal credit. In consequence, the department for work and pensions had issued a notice, known as a stop notice, stating that the appellant had made such a claim and that the basic conditions of entitlement to universal credit were met. The respondent relied on that notice to terminate the appellant's award of tax credits. The respondent had not made enquiries subsequently as to whether or not the basic conditions had been met but relied on

Findings of Fact

6. The tribunal considered whether or not to adjourn the hearing in order for enquiries to be made of the department of work and pensions. The tribunal decided that it was neither fair nor just to adjourn. That is because the appellant had already suffered significant delay in having his appeal determined given that the original decision had been made on 10 October 2018; the respondent had had ample opportunity to make such enquiries of its own initiative; and there was a high degree of uncertainty as to whether or not, in any event, the department of work and pensions would engage in the appeal process.
- the notice alone. It was further submitted that any enquiries as to whether or not the basic conditions of entitlement were met should be directed to the department of work and pensions. The respondent had not made any such enquiries. The respondent had been instructed and specifically took the position of not making enquiries because the tribunal had made no directions for such enquiries to be made. The respondent did not intend to make an application for an adjournment.

7. The appellant and his partner, Miss [REDACTED], were jointly in receipt of tax credits with effect from 2011. Miss [REDACTED] generally took responsibility for organising the appellant's financial affairs.

8. The appellant was in paid employment in the period prior to August 2018. His contract of employment ended on or about to August 2018.

9. The appellant made enquiries as to his entitlement to benefits. He was directed to make a claim for universal credit.

10. On 12 August 2018 Ms [REDACTED] submitted an application fee universal credit. On the same day, the appellant began making an online application for universal credit but did not complete the process. The appellant decided that he wished to take further advice about his benefit position.

11. As a result of his failure to complete the process online, the appellant received an email on 12 August 2018 stating that the appellant needed to confirm his identity in order to complete his application for universal credit; and failure to do so, would mean that a new application would have to be made.

12. On 12 August 2018, at a time unknown, the respondent received a stop notice in respect of Ms [REDACTED]

13. Over the course of the next day or 2 the appellant sought advice from a welfare rights adviser. He decided that he did not want to make a claim for universal credit. The appellant decided, in the light of the email dated 12 August 2018, that it was not necessary for him to take further steps because the email indicated that his claim for universal credit would not be treated as valid.

14. On 16 August 2018, at a time unknown, the respondent received a stop notice in respect of the appellant.

15. The respondent formally made the decision against which appeal is brought under section 18 of the Tax Credit Act 2002 on 10 October 2018

Decision and Reasons

16. Aspects of the relevant law are referred to in the various submissions within the schedule of evidence. The tribunal also takes account of the guidance of the upper tribunal as set out in the case of **HMRC v LH [2018] UKUT 306**. It is not necessary to set out the law in full in this statement of reasons. Relevant aspects of the law are referred to below as necessary.

17. In broad terms, the relevant statutory provisions relating to transition from tax credits to universal credits, creates a system whereby, on the making of a claim for universal credit and, on the secretary of state being satisfied that the basic conditions for universal credit are met, for a claimant's pre-existing award for tax credits to terminate on the date of claim for universal credit.

18. In terms of making findings of primary fact, the tribunal finds the appellant to be a credible witness and that his account is supported by documentation in part originating from the department for work and pensions. The tribunal therefore makes primary findings of fact as set out in the preceding section of the statement of reasons.

19. In applying the relevant law to the facts as found, the tribunal further finds as follows.

20. The tribunal finds that there is insufficient evidence to show that the department for work and pensions had satisfactorily verified the identity of either the appellant, or Ms [REDACTED] in order to determine whether or not the basic conditions for entitlement to universal credit as set out in section 4 (1) (a)-(d) of the welfare reform act 2012 were met. In particular, the respondent had failed to establish the appellant's identity based on the partial information as set out in his claim form.

21. The tribunal notes the guidance of the upper tribunal in the case of **LH**. At paragraph 9 of that decision, upper tribunal judge Jacobs specifically rejected the submission, made on behalf of the respondent, that the mere existence of the stop notice was sufficient for it to taken as accepted that the basic conditions were met.

22. The tribunal further finds that no explanation in relation to the system by which the notice has been provided, despite such opportunity being afforded to the respondent.

23. Accordingly, the tribunal finds that no effective stop notice in respect of the termination of the appellant's award has been made in this case. In consequence, the appellant's pre-existing entitlement to tax credits continued from and including 12 August 2018.

24. The tribunal finds that there is a further basis for deciding that no effective stop notice has been issued for the reasons set out below.

25. Section 2(1) of the Welfare Reform act 2012, together with associated regulations, makes provision for the making of a claim for universal credit by members of a couple. The associated regulations provide exceptions to the general rule that a couple should jointly make a claim for universal credit. It is not necessary to set out in full those exceptional circumstances, save to note that on the basis of the tribunal's primary findings of fact, none of the exceptions apply, given lack of evidence about verification of the identity of the appellant and Ms [REDACTED]

Appellant:	Tribunal Ref:	Date of Hearing:
		159

26. Accordingly, the appeal is allowed.

The above is a statement of reasons for the Tribunal's decision, under rule 34 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

Signed District Tribunal Judge:		Date:
		
Statement issued to		Appellant on:
		Respondent on:
		17.03.2020