

## DECISIONS OF THE SOCIAL SECURITY COMMISSIONER

*CTC/3981/2005 (section 16):*

1. My decision is given under section 14 of the Social Security Act 1998 as applied under section 63(6) and (8) of the Tax Credits Act 2002. It is:

The decision of the Oxford appeal tribunal under reference U/04/048/2004/01435, held on 11 November 2005, is not erroneous in point of law.

*CTC/2662/2005 (section 18):*

2. My decision is given under section 14(8)(a)(ii) of the Social Security Act 1998 as applied under section 63(6) and (8) of the Tax Credits Act 2002. It is:

I SET ASIDE the decision of the Oxford appeal tribunal, held on 11 May 2005 under reference U/04/048/2005/00679, because it is erroneous in point of law.

I make findings of fact and give the decision appropriate in the light of them.

I FIND as fact that the claimant's child care arrangements are as set out in her reply to the Revenue dated 6 April 2004 by mistake for 6 May 2004.

My DECISION is to confirm the decision of the tribunal save that the claimant's entitlement to tax credit under section 18 of the Tax Credits Act 2002 is to be adjusted in line with the above finding of fact.

### **The issues**

3. This case concerns the claimant's tax credits for the tax year 2003-2004. She appealed against two decisions made in respect of her tax credits for the tax year 2003-2004. One was a decision given under section 16 of the Tax Credits Act 2002. (All references to sections in this decision are to sections of that Act, unless otherwise stated.) The other was given under section 18. *CTC/3981/2005* is the section 16 case; *CTC/2662/2005* is the section 18 case.

4. I have appended to this decision copies of the letters notifying the decisions to the claimant. There has been no argument that the decisions taken were not accurately recorded in those letters.

5. The appeal tribunal dismissed both appeals. I have had to decide if in either case the appeal tribunal went wrong in law. In doing so, I had to understand what decisions had been made in this case, on what basis, under what authority and with what right of appeal. I was unable to do that from the papers, so I directed an oral hearing. It took place in the Commissioners' court in London on 19 May 2006. The claimant attended and was represented by Mr Peter Turville, of Oxfordshire Welfare Rights. The Commissioners for Her Majesty's Revenue and Customs were represented by Mr Jason Coppel, of counsel, accompanied by Ms Esther Isaacs, a solicitor to the Revenue. I am grateful to both representatives for their

arguments. I hope Mr Turville will not mind if I record my special thanks to Mr Coppel for his detailed account of the tax credit adjudication system; I must sorely have tried his patience more than once.

### **The Commissioners**

6. Responsibility for tax credit adjudication lies with the Commissioners for Her Majesty's Revenue and Customs, whom I shall refer to as the Revenue. This case highlights how inappropriate it is for Social Security Commissioners to continue to bear that title. When the persons who hear appeals from decisions made by a public body bear a name that is so similar to that of the public body itself, it is inevitable that claimants will find it difficult to accept that they are separate from and independent of each other. This point was brought home to me by a letter, in which the Revenue referred four times to the Commissioners. In two places this meant the Revenue, in one place this meant the Social Security Commissioners and in the other place it took me several readings to decide which was referred to.

### **Tax credit adjudication**

7. The structure of tax credit adjudication is significantly different from that for social security benefits. I will summarise the key features of social security adjudication in order to highlight the contrasts.

8. In the case of social security benefits, a claimant completes a claim form setting out information relevant to the claim. A decision-maker on the basis of that information, perhaps together with the results of further enquiries, makes a decision on the claimant's entitlement. If that decision is favourable to the claimant, it will contain an award. That award will embody the claimant's entitlement to the benefit and payment will be made in accordance with it. The award is conclusive on the claimant's entitlement, subject to the possibility of revision, supersession or appeal. If it was wrongly made, it can be changed to embody the correct entitlement. If that change results in an overpayment, the law apportions responsibility between the Secretary of State and the claimant. Decisions on entitlement and recoverability of overpayments carry the right of appeal. Decisions on actual recovery are discretionary and subject to challenge only on judicial review.

9. In the case of tax credits, the arrangements are significantly different. As Mr Coppel was at pains to point out, it is important to distinguish between award, entitlement and payment. The relationship between those concepts in tax credits is different from social security law.

10. Let me start with the most straightforward case possible. The claimant for a tax credit must make a claim (section 3(1)). The decision-maker then makes an initial decision under section 14. Payment is made in accordance with the award (section 24). As far as possible the claimant is paid by 'regular payments of similar amounts over the entire period of award.' (Regulation 12(2) of the Tax Credits (Payments by the Board) Regulations 2002). Neither the award nor the payment determine the claimant's legal entitlement to a tax credit. This is done at the end of the tax year. The claimant is sent a notice under section 17 in order to identify the correct circumstances during the year. The decision-maker then makes a decision after final notice under section 18. It is this decision that decides the claimant's entitlement.

11. So far I have assumed that there is no change to the award between the initial decision and the decision after final notice. However, the claimant may report a change of circumstances and the Revenue may become aware of a factor affecting the award. This is governed by sections 15 and 16. In this case, the Revenue acted under section 16:

‘(1) Where, at any time during the period for which an award of a tax credit is made to a person or persons, the Board have reasonable grounds for believing –

- (a) that the rate at which the tax credit has been awarded to him or them for the period differs from the rate at which he is, or they are, entitled to the tax credit for the period; or
- (b) that he has, or they have, ceased to be, or never been, entitled to the tax credit for the period,

the Board may decide to amend or terminate the award.’

Notice the references to entitlement – there is a reference in section 15 as well. But have I not just said that entitlement is not decided until after the end of the tax year? I come back to this, and other issues on this section, later.

12. If an award is amended, payment of it must still be by regular payments of similar amounts under regulation 12(2). However, this is qualified by regulation 12(3), which provides that the amount already paid must be taken into account in determining future payments. One effect of this is to allow payments to be adjusted so that there is no overpayment at the end of the tax year.

13. Overpayments that are identified in the course of the tax year are known as in-year overpayments. Overpayments that are only identified at the end of the tax year and recovered later are known as cross-year overpayments. Mr Coppel told me that overpayments were ‘commonplace’. That is confirmed as I write by the news that £1.8 billion of tax credits have been overpaid to 1.9 million families in the tax year 2005-2006. (I am not sure if that is the total amount of tax credits overpaid or that amount less the total amount of underpayments.)

14. An overpayment may arise because the information on which the award is based was wrong. If the Revenue becomes aware of this, it can rectify the mistake under section 16. An overpayment may also arise because there has been a change of circumstances since the decision was made. Some changes of circumstances have to be notified. If they are, the award may be amended or terminated using section 15 or 16. This may create an overpayment, as a result of the provisions governing the effective date of the change. If the change was detrimental to the claimant, it takes effect from the date it occurred. If it was advantageous to the claimant, it can take effect from the date on which it occurred but only if it is notified to the Revenue within three months (regulation 25 of the Tax Credits (Claims and Notifications) Regulations 2002). In addition to sections 15 and 16, the Revenue can amend an award under section 28(5) if ‘there is likely to be an overpayment of a tax credit for a tax year’. Changes that are not, or do not have to be, notified are taken into account at the end of the tax year. These will inevitably give rise to overpayments or underpayments.

15. Sections 15, 16 and 28(5) allow the Revenue to alter an award; they do not deal with recovery of an overpayment. Section 28(1) confers a discretion on the Revenue whether or not to recover. If it decides to recover, the mechanism is governed by section 29. The exercise of the decision to recover is governed by the Revenue's Code of Practice 26. Section 2 provides

'The Commissioners for Her Majesty's Revenue and Customs shall be responsible for the payment and management of tax credits.'

This is in similar terms to section 1 of the Taxes Management Act 1970, which deals with income, corporation and capital gains taxes. The Revenue regards that section as conferring on it broad powers of discretion and interprets section 2 in the same way. I understand that it is treated as the authority for the practice on the recovery of overpayments that is embodied in Code of Practice 26. Mr Coppel gave me a copy of that Code as it stood at the time with which this appeal is concerned. It is a mixture of: (i) statements of the law on tax credits; (ii) practical advice to claimants; and (iii) statements of the Revenue's approach to overpayments and their recovery. I am concerned only with (iii).

16. The rate at which overpayments are recovered is limited in order to ensure that claimants retain payment under their current award of an amount that reduces the hardship that would otherwise be experienced. This adjustment to the rate at which the overpayment would otherwise be collected has become known by a variety of names: hardship payments, extra payments, top-up payments, additional payments and higher payments. All these names are misleading. The Revenue is not making payments to the claimant; it is reducing the rate of recovery. The matter is confused because the original practice, now I believe abandoned, was to make no adjustment to the rate of recovery from the regular payments of tax credit and instead to pay an amount to the claimant in addition to those payments. In other words, the adjustment was made indirectly through the additional payment rather than directly by reduction in the rate of recovery from the regular payments. Not surprisingly, that created the impression that the claimant was being paid money by the Revenue. It was, however, only a matter of form and convenience. In accounting terms, what was happening was an adjustment to avoid hardship.

17. So far I have not mentioned appeals. Decisions under sections 14, 15, 16 and 18 all carry the right of appeal (section 38). However, decisions on payment under section 24, on overpayment under section 28 and on recovery of overpayments under section 29 do not carry that right. This has two effects so far as the recovery of overpayments is concerned. First, unlike social security benefits, the *law* does not apportion responsibility between the claimant and the Revenue. It places the responsibility on the claimant in all circumstances. Any relief that the claimant receives is a matter of concession under the Revenue's Code of Practice 26. Second, as there is no right of appeal in respect of the Code, any challenge to the Revenue's decision can only be made by way of judicial review in the Administrative Court and on judicial review grounds.

### **Two thoughts**

18. Two thoughts came into my mind as I listened to Mr Coppel explaining the tax credit adjudication system. The first was that its complexities and the problems it generates reminded me of the problems created by the child support adjudication system. The second was a question: for whose convenience were the rules devised? Tax credits were introduced to

help reduce poverty. How can it help a family on a relatively low income to budget and plan its finances effectively if it is paid too much money in one year and then to have to repay it from reduced payments the following year?

### **Information and understanding**

19. Turning from general principles to the circumstances of this case, it is convenient to begin with the point that Mr Turville made at the beginning of his presentation. If, from the beginning, he had had the information now available together with the explanation provided by Mr Coppel, these cases would not have reached an appeal tribunal, let alone come before a Commissioner. Mr Coppel replied that the tax credit system was complex but not secret, as all the information about how it worked was publicly available. That is correct, but obtaining and understanding the information are different matters.

20. Mr Turville asked what information, as a matter of good practice, should be provided in the Revenue's submissions to appeal tribunals. The answer to that is that the Revenue must provide (i) all the evidence relevant to the case together with (ii) a statement of the law on which it relies and (iii) an explanation of how it was applied. Mr Coppel drew my attention to the pages of the papers that contained a detailed breakdown of the calculations of the claimant's awards. He told me that these breakdowns had originally been supplied as part of the Revenue's submission to the appeal tribunal in all tax credit appeals, but (at the tribunal's request) were now only included when the calculations were in issue.

21. In reply to a question by Mr Turville and after consulting his instructing solicitor, Mr Coppel said that a breakdown would be provided to any adviser on request without the need for an appeal.

22. Finally on the breakdowns of calculations, Mr Turville commented that he had found it impossible to reconcile the ones provided for the claimant with the amount of the awards made to her. One look at his pages of financial analysis was enough to persuade me not to attempt the task, assuming I had ever been tempted. I am content to accept his word that even experienced advisers find it difficult to follow what the Revenue has done and, therefore, to advise claimants. If advisers like Mr Turville find it difficult to understand the tax credit system, how much more difficult is it for claimants.

23. Mr Turville also asked what information the Revenue's notification of a decision should contain. Mr Coppel referred me to section 23(1) and (2) which provide that the Revenue 'must give notice of the decision' which 'must state the date on which it is given and include details of any right to appeal'. He accepted that there might be a limited public law right to give reasons. I am not going to consider any public law issues of reasons. I approach the matter as one of statutory interpretation. Section 38 confers a right of appeal. If that right is to be effective, the claimant must be given sufficient information to know whether to lodge an appeal. That does not necessarily mean that a claimant must be given a full statement of the calculation. Too much detail can be as confusing as too little information can be uninformative. But the claimant must at least know the key facts on which the decision is based in order to check whether they are correct. And, ideally, the claimant should be told the basic structure of the calculation in order to check, with advice if necessary, whether there are any obvious mistakes. The documents I have appended to this decision were the ones issued in the early days of the scheme. Mr Coppel told me that they are frequently revised, but that it

can take as long as 18 months for the necessary change to be made to the computer software. After the hearing, Ms Isaacs kindly sent me a copy of the latest version of the tax credit award notice. It confirms Mr Coppel's submission that the forms are regularly revised. It is much more detailed than the ones used in 2003-2004 and provides claimants with more information to allow them to make informed decisions on whether to appeal.

24. Returning to the documents issued in this case, the claimant, who now works for the Revenue, made some contemporaneous annotations on them. Her comments speak volumes for the confusion and frustration that she felt in understanding what was happening. Even Mr Coppel was unable to explain why letters setting out different payment schedules had been issued on successive days, which means that the Revenue could not explain it to him. I am sure that the Revenue tries to make its documents clear and informative, but the ones I saw failed to make clear to this claimant why they had been issued and the significance they had. And, on one occasion, the Revenue itself could not explain what it had done.

25. Finally, Mr Turville asked who had the burden of proof on an appeal against a tax credit decision. I can see no reason why the normal rules about the burden and standard of proof should not apply in tax credit appeals.

### Section 16 issues

26. Any issues that were raised by the section 16 appeal are effectively redundant, because the tax year has now ended and there has been a section 18 decision. Strictly, therefore, no issue arises for decision on this appeal. However, I will set out the arguments and give my views on the points raised, for whatever use they may be in the future.

#### *Was there an appeal against the section 16 decision?*

27. The section 16 decision was given on 15 October 2003. The following day a further document was issued. Strictly, this contained the same 'decision' as the section 16 decision, but it altered the payment of the claimant's tax credits. The claimant's appeal to the appeal tribunal identified the decision under appeal as that of 16 October 2003. Mr Coppel argued that the tribunal had no jurisdiction over that decision. That was correct, but I suggested to him that the letter of appeal should be taken as referring to the section 16 decision of 15 October 2003. I can only describe his response to that as unenthusiastic, but I am going to do it anyway. For as long as there have been Commissioners, we have insisted that claimants should not be prejudiced by their failure to understand the correct procedures. As the Commissioner wrote in *R(I) 50/56*:

'18. ... it must be remembered that claimants may well fail to appreciate the appropriate legal procedures by which their rights ought to be protected and it is essential that the determining authorities should not defeat a meritorious claim by a legal technicality.'

28. I have treated the claimant's appeal as relating to the section 16 decision issued on 15 October 2003 for the following reasons. First, her grounds of appeal apply to the terms of that decision. Second, she would have needed instruction on tax credit adjudication in order to interpret the documents she received and to understand that the document of 16 October 2003 was not technically a decision that could be the subject of an appeal. Third, that document

wrongly states that the claimant did have the right of appeal in respect of it. Fourth, the Revenue itself did not notice the claimant's mistake until a week before the Commissioner's hearing. Fifth, in reading my notes as I wrote this decision, I noticed that the page number Mr Coppel used for the section 16 decision was actually the letter of 16 October 2003. If the Revenue did not realise the claimant's mistake and its counsel was himself confused at one point, it is difficult to expect more of the claimant.

29. Although Mr Coppel did not support my suggestion, he did admit that there was some authority for it in the decision of the House of Lords in *Mannai Ltd v Eagle Star Assurance Co Ltd* [1997] AC 749, especially in the speech of Lord Hoffmann. I am grateful to Mr Coppel for mentioning that case and to Ms Isaacs for providing the reference after the hearing. That case concerned a notice to determine a lease. The tenant gave notice that the leases should be determined on 12 January 1995. That date was wrong; it should have been 13 January 1995 and the House of Lords, by a majority, so interpreted it. There are certainly aspects of Lord Hoffmann's reasoning that support my approach. However, I consider that *R(I) 50/56* is a more apposite authority. The process that I have undertaken is not interpretation, but rather correction. It is a beneficial power by which an action taken by a claimant is redirected to remedy the lack of understanding on which it was based. So in *R(I) 50/56*, a new claim was treated as an application for a review; now that would be an application for a revision or supersession. And in *R(CS) 2/06*, an appeal was treated as an application for a departure direction. In this case, an appeal against one decision has been redirected as an appeal against a different decision.

*What were the terms of the section 16 decision?*

30. This was notified to the claimant on 15 October 2003 and the notification is the first document appended to this decision. Mr Coppel argued that the decision was contained in the box on the first page. The basic structure of the calculation that led to the award is on the second page and payments under the award are detailed on the third page.

31. I accept Mr Coppel's argument that the terms of the decision are set out in the box on the first page (apart from the bottom paragraph that sets out the basis of the award). An initial decision under section 14 deals only with the rate of the award. Section 16 allows that decision to be amended if the claimant is no longer entitled or entitled at a different rate. It follows that those are the matters that are dealt with in the decision under section 16. The payment of the award is governed by a different section, section 24, and does not form part of the award. It is notified together with the decision under section 16, but it is not part of that decision.

*Why does section 16 refer to entitlement?*

32. I accept Mr Coppel's argument that it is important to keep distinct the award, entitlement and payment. I also accept that entitlement is only decided under section 18 after the end of the tax year and following a section 17 notice. However, that does not mean that entitlement is irrelevant before that. All that section 18 does is to *decide* on entitlement. Entitlement can still be a relevant concept before that decision. Broadly speaking, awards reflect the claimant's likely entitlement on the basis of the information presently available, assuming that it is accurate and complete and does not change. The language of section 15 reflects this. It refers to 'the maximum rate at which a person or persons *may* be entitled to a

tax credit'. The language of section 16 is perhaps less appropriate. It requires a comparison between the award and the claimant's entitlement. However, it only applies if the decision-maker had reasonable grounds to believe that they may not be correctly reflected by the existing award. There is, therefore, nothing incompatible between (i) the references to entitlement in sections 15 and 16 and (ii) the fact that entitlement is only decided at the end of the tax year.

33. I said that awards reflect entitlement 'broadly speaking', because decisions under sections 15 and 16 are discretionary. The decision-maker might decide to leave changes to be dealt with in the section 18 decision, for example because it is too late in the tax year to bother changing an award or because the changes are so frequent and varying in their effects that it is better to leave the award as it is until the end of the tax year. I am not saying that the Revenue would refuse to amend an award in those circumstances. I am merely making the point that it has a discretion that would allow it do so.

*What is the scope of an appeal against a section 16 decision?*

34. Mr Coppel began by arguing that an appeal against a section 16 decision lay only on judicial review grounds. I was doubtful about this argument. The need for reasonable grounds is a condition for amending or terminating the award; it is not a condition on the right of appeal. On general principle, an appeal to an appeal tribunal is by way of a rehearing and the tribunal is entitled to consider the case afresh (*R(IB) 2/04* at paragraph 25). That means that the tribunal must decide for itself whether there are reasonable grounds for the relevant belief.

35. The decision of the Tribunal of Commissioners in *R(H) 3/04* is some authority for an appeal being limited to judicial review grounds. However, that was in the special and very different circumstances of appeals against overpayment decisions by landlords. And it only applies to 'a right of appeal against an exercise of discretion that is non-justiciable because the relevant considerations cannot be discerned' (*CH/4234/2004* at paragraph 39).

36. Later, Mr Coppel put a more limited argument. He argued that a claimant was not entitled to rely on appeal on a change of circumstances that had not been put to the decision-maker. I found this argument more persuasive. The issue for the tribunal on an appeal is whether the decision-maker had reasonable grounds for belief. If the decision-maker did not know of the change of circumstances, it cannot provide a reasonable basis for belief. Moreover, if the change was favourable to the claimant, the date from which it could be taken into account would be fixed by reference to the date of notification to the Revenue at an appropriate office (regulation 25 of the Tax Credits (Claims and Notifications) Regulations 2002). Notification to the tribunal would not be of any significance.

37. The scope of the appeal is governed and limited by its terms. It deals only with two matters: entitlement and the rate of the award. On appeal, a claimant may raise issues on either matter. In this case, the claimant could raise any issues on the decision in the box on the first page. That included issues relating to the basic structure of the calculation or the underlying calculations. But she could not raise any issue relating to matters that were outside the scope of the section 16 decision. In particular, she could not raise any issue relating to payment.

*What is the point of an appeal against a section 16 decision?*

38. This was a question asked by Mr Turville. There is no doubt that it is possible to appeal against a section 16 decision, but he was right to doubt whether it was likely to be of much value. He was concerned with timing and with the substance of the appeal.

39. First, timing. It takes time to make an appeal, for a submission to be made to an appeal tribunal, for the case to be listed and heard, and finally for the decision to be implemented. If the decision under appeal is made early in the tax year, it is likely that an appeal will be decided and implemented within that year. But the later in the tax year the decision is made, the greater the risk that an appeal will not be decided and implemented before the end of the tax year. And there will come a point at which this is just not feasible. This is particularly important if the claimant's main concern is regular budgeting.

40. Second, substance. An appeal lies only against the matters covered by a section 16 decision. As I have explained, that means it lies against the award. It does not lie on payment, which is a separate issue governed by section 24 and not appealable. Likewise, an appeal does not lie against a hardship adjustment to the rate of recovery of an overpayment. However, a change to an award will affect the amount of payment and of any overpayment. To that extent, an appeal can have an impact on payment and the recovery of an overpayment.

41. Taking timing and substance together greatly reduces the practical effectiveness of an appeal.

*What happens to an appeal once a decision is given under section 18?*

42. If a claimant's appeal against a section 16 decision has not been decided before a decision is given under section 18, the former is redundant and of no possible benefit to the claimant. The sensible thing to do is to withdraw the appeal, but claimants may not understand this. Ideally, the legislation would provide for the appeal to lapse in these circumstances, but it does not do so. On general principle, a decision lapses if the decision ceases to be of any force or effect in respect of any period. See the analysis of Stuart-Smith LJ in *Chief Adjudication Officer v Eggleton*, reported as *R(IS) 23/95*. And if the decision has lapsed, there can be no appeal against it and any appeal that has been made must lapse also. The Tax Credits Act 2002 makes no provision for the effect of a section 16 decision after a section 18 decision has been made. However, section 18(11) provides that the decision under that section is conclusive, which carries with it the implication that the section 16 decision is no longer of any force or effect. That is lapsing in all but name. The disadvantage of this approach is that it is automatic. In most cases that would not matter, but there may be cases in which it would be appropriate to proceed with the appeal despite the fact that it had been overtaken by the section 18 decision.

43. Another analysis is that the tribunal should treat the appeal as raising only hypothetical issues. Courts decline to deal with such issues in public law cases. The appeal tribunal could do the same, simply declaring that the only issues raised are hypothetical and declining to decide them. The advantage of this approach over the lapsing of a decision or an appeal is that it gives the tribunal a discretion. The courts are prepared to decide hypothetical issues in public law cases if 'there is a good reason in the public interest for doing so', as Lord Slynn explained in *R v Secretary of State for the Home Department, ex parte Salem* [1999] 1 A.C.

450 at 457. This would allow a tribunal to proceed with an appeal against a decision under section 16 (or for that matter under section 14 or 15) if, for example, it raised an issue of general importance, such as the scope of an appeal under that section.

### **Section 18 issue – the child care costs**

44. I have appended the section 18 decision of 4 February 2005.

45. The only issue that arises on this decision is the calculation of the claimant's child care costs. No issue of general principle arises, so I will deal with it briefly. It is sufficient to say this.

46. The tribunal went wrong in law by making a finding that it was not entitled to make. The tribunal should have accepted the claimant's statement of her child care arrangements as set out in the document she dated 6 April 2004. That date was obviously a mistake. The document was sent to the claimant with a covering letter dated 29 April 2004. She could not have replied to the letter before it was written. She must have meant to date it 6 May 2004. As I pointed out at the hearing (on 19 May), I had just received a batch of files from the Commissioners' office, all of which were dated June. These things happen.

47. I have directed the Revenue formally to correct the section 18 decision, but I doubt whether this will be of any practical benefit to the claimant. I believe that the Revenue has decided not to collect any of the overpayment for 2003-2004 and the practical effect of my decision is likely to be a reduction in the amount it has written off.

### **Payment and overpayment issues**

48. Mr Turville put a number of arguments all of which sought to bring payment and overpayment issues within the appeal system.

#### *Hardship adjustments*

49. Mr Turville's argument was this. Code of Practice 26 was not authorised under section 2. That section would allow the Revenue's discretion to be exercised in an individual case so that a schedule of payments could be agreed with a claimant. But the claimant in this case had asked for and been refused an individual schedule. The Code was too rigid to be authorised. As such hardship payments were not lawful and, as such, could not be tax credit. The result of that was that the payments were not tax credits and, therefore, not governed by section 28. It followed that recovery could not be affected through the adjustment of payments.

50. This was an ingenious argument. It has to fail before me for this simple reason. It is outside my jurisdiction. However attractively Mr Turville presented his argument, it all came down to an attempt to bring payment and recovery of overpayments within the scope of an appeal against a decision under section 16 or section 18. That attempt has to fail, because those matters are governed by sections against which there is no right of appeal. Anyone who wishes to raise these arguments can only do so on a judicial review.

51. In reply to Mr Turville's argument, Mr Coppel referred me to a decision of Mr Commissioner Mesher, *CIS/1064/2004* at paragraphs 48 and 49. I do not need to refer to that decision.

52. After the hearing, Ms Isaacs sent me a letter setting out the Revenue's position on the authority under which overpayments are recovered. As I have decided that this is outside my jurisdiction, I hope she will not mind if I do not deal with those arguments. I would, of course, have allowed Mr Turville a chance to comment on that letter if I had considered that the issue was within my jurisdiction.

53. Mr Turville also argued that the hardship payments as he called them (I prefer hardship adjustments) were really loans by the Revenue to claimants that were later recovered. As such, they were outside the scope of the Revenue's powers under section 2. As I have explained, that is not so. I can understand why they may appear to be loans, especially when they were made by a payment to the claimant. They may even fulfil the same economic function as a loan. But they are only a reduction in the rate of recovery of an overpayment. The claimant is allowed to retain for the time being money that is owed to the Revenue.

*Sections 7(2) and 13(1)*

54. Section 7 provides that entitlement to a tax credit is dependent on the claimant's income. Section 7(2) provides that this does not apply for so long as the claimant is entitled to a prescribed social security benefit. Section 13(1) then provides that a person is entitled to a tax credit at the maximum amount.

55. Mr Turville juxtaposed those provisions to argue that for so long as a social security benefit was in payment a claimant for a tax credit was entitled to an award at the maximum rate. This argument neatly bypassed the overpayment and recovery provisions. As Mr Coppel pointed out, this would mean that an overpayment was not recoverable from any claimant who was receiving a social security benefit. That would be a surprising interpretation. But I do not need to rely on the consequences of the interpretation to reject Mr Turville's argument. Both section 7 and section 13 refer to and deal with entitlement. Neither section deals with payment and it is through adjustment of payments that overpayments are recovered. That is how those sections are reconciled with the Revenue's powers to recover overpayments and why Mr Turville's argument does not work.

*Outcome decisions*

56. Mr Turville reminded me of my use of this term in *CIB/2338/2000* to identify those decisions are that are appealable in social security law. I identified appealable decisions by an analysis of the social security legislation and described outcome decisions, crudely, as those decisions that affected the money in the claimant's pocket. That analysis does not apply under the tax credit legislation. In particular, my emphasis on payment needs modification in the tax credit context, where issues of payment are kept out of the appeal system. Mr Turville cannot bring payment into the scope of a tax credit appeal by relying on my social security analysis.

**Signed on original**

**Edward Jacobs**

**on 16-June 2006**

**Commissioner**



Keep this copy for your records.

[Redacted text]

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Helpline 8.00 am to 8.00 pm  
(except Christmas Day, Boxing Day, New Years Day and Easter Sunday)

England, Scotland and Wales 0845 300 3900  
Northern Ireland only 0845 603 2000

For people with hearing or speech difficulties  
England, Scotland and Wales 0845 300 3909  
Northern Ireland only 0845 607 6078

Date 15 October 2003

TCO PRESTON 5  
TCO ST MARKS HOUSE  
ST MARYS STREET  
PRESTON  
LANCS  
PR1 5LL

**TAX CREDITS AWARD**  
from 06/04/2003 to 05/04/2004

National Insurance number [Redacted]

**Award Summary**

Child Tax Credit (with childcare element) of £3511.35  
will be paid to [Redacted]

Working Tax Credit of £1084.75  
will be paid to [Redacted]

The total award is £4596.10

This award is based on information given by you. You have 2 qualifying children and have an annual income of £3257.00.

**WHY WE ARE WRITING TO YOU**

The change in your circumstances means that no further payments of Working Tax credits are due. Your employer may continue to include the Tax Credit with your pay for a period. After 05 April 2004 we will tell you if your Tax Credit has been overpaid or underpaid for that year.

**WHAT TO DO NOW**

Please check that information in this notice is correct. If the details are wrong, phone the Helpline because the amount of your award may be too low or too high.

**OTHER HELP YOU MAY GET**

This award may mean you can get other financial help or benefits. To find out more about this, phone the Helpline.

**ABOUT YOUR AWARD**

This award is based on the facts shown below, so please check that they are correct. If they are wrong please phone the Helpline.

Claimant  
see notes

Qualifying children and young people  
see notes

Between 1 and 16 years old **2**  
Total number of qualifying children **2**

Childcare costs  
see notes

02 qualifying children are cared for by an approved child care provider. Your average weekly child care costs are £6.00. You must tell us if your childcare costs go up by £10.00 a week or down by £10.00 a week.

Your income from 06/04/2001  
to 05/04/2002

see notes  
Total income **£3257.00**

Changes in income  
Please tell us if your annual income

goes above **£7560.00**  
as you may receive too much tax credit and we may ask you to pay back the amount overpaid.

**CHANGES IN YOUR CIRCUMSTANCES**

see notes

You must tell us if

- you claim as a single person and then marry or start to live with someone
- you claim as a couple but stop living together
- your average weekly childcare costs change

To make sure you get the correct tax credits, tell us if

- the number of children you are responsible for changes, for example, when a baby is born or a child leaves full time education
- the hours you work change, see Notes
- you change your job
- your income changes, see above
- you stop receiving Income Support, income-based Jobseeker's Allowance or Minimum Income Guarantee
- a person named on your claim dies

We will send you a new award notice showing the up to date details.

**CHILD TAX CREDIT PAYMENTS**  
 plus childcare element of Working Tax Credit  
 We will pay [REDACTED]

Child Tax Credit Due	£3511.35
Paid (See Notes)	£2057.42
Balance to be paid	£1453.93

**WORKING TAX CREDIT PAYMENTS**

Working Tax Credit Due	£1084.75
Paid (See Notes)	£1147.92
Amount overpaid	£63.17

A first payment of £201.25  
 will be made on 17/10/2003  
 and paid into the account for which you gave us details

We will pay your childcare element with Child  
 Tax Credit  
 All Payments will be made direct to you.

Further payments of £198.25 will be paid into  
 the account every 4 weeks

**YOUR RIGHT TO APPEAL**

You have 30 days from the date of this notice to appeal. But you may want to phone us first to see if we can reach an agreement without a formal appeal. You will still have the right to appeal if you do this.

If you make a formal appeal it will be heard by an independent appeal body.



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**Helplines 8am to 8pm**

England, Scotland and Wales 0845 300 3900  
 Textphone 0845 300 3909  
 Northern Ireland 0845 603 2000  
 Textphone 0845 607 6078

**Keep this copy for your records**

[Redacted]

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TCO PRESTON 5  
 TCO  
 GOVERNMENT BUILDINGS  
 PRESTON  
 LANCS  
 PR1 0YP

Date 04 February 2005

**Your tax credits award from 06/04/2003 to 05/04/2004**

National Insurance number [Redacted]

**Summary**

This summary shows the tax credits due from 06/04/2003 to 05/04/2004

Child Tax Credit (including the child care element of Working Tax Credit)	£3493.43
Working Tax Credit	£1084.75
The total for the period was	£4578.18

See page 4 for payment details.

These tax credits are based on the information given by you.

You received the child element for 2 children.

Your annual income for tax credit purposes was £3257.00

Please read What to do now carefully and follow the instructions it gives.

**Please read this**

We have finalised the amount of tax credits due to you for the period 06/04/2003 to 05/04/2004 based on information we held.

**What to do now**

Please check the details on this form and tell us if anything is wrong, missing or incomplete.

## About your tax credits

Your tax credits were based on the personal circumstances as shown below. Please check they are correct for the period shown. The Notes tell you what to look for when you are checking. If anything is wrong, missing or incomplete, please contact us.

### Claimant

You claimed as an individual. You must tell us if you start to live with someone as if you are married. You may be able to make a new claim as a couple.

████████████████████

### Qualifying children and young people

The total number of children and young people included in your claim is 2. You receive the following element(s).

2 child element(s) for children aged between 1 and 16 years old.

### Child care costs

You have no qualifying child care costs. If you start to pay child care, the Notes explain the rules for claiming the child care element of Working Tax Credit. You cannot claim if you do not qualify for Working Tax Credit.



**Child Tax Credit**

Your payments include the child care element of Working Tax Credit.

**Amount for the period**  
 The full amount for the period is £3493.43  
 Amount you have paid back to us £274.75  
 Less amount we have already paid you for this period £3929.74  
 Amount you have to pay back £161.55

Our records show that you have received too much tax credit for the year(s) to . As we are no longer paying you tax credits we cannot collect the amount overpaid by reducing your tax credits. We will contact you shortly to tell you how to pay back the amount overpaid.

**Working Tax Credit**

We paid your child care element with your Child Tax Credit.

**Amount for the period**  
 The full amount for the period is £1084.75  
 Less amount we have already paid you for this period £1547.87  
 Amount you have to pay back £483.12

Our records show that you have received too much tax credit for the year(s) - . As we are no longer paying you tax credits we cannot collect the amount overpaid by reducing your tax credits. We will contact you shortly to tell you how to pay back the amount overpaid.



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