



Neutral Citation: [2023] UKFTT 00544 (TC)

Case Number: TC08844

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2021/16110

INCOME TAX – High Income Child Benefit Charge – Child Benefit always paid to child’s mother – Appellant divorced from child’s mother – Appellant assessed to HICBC – Appellant had new partner for whole of relevant tax year – HMRC misunderstood the legislation – assessment nevertheless upheld

**Heard on 14 December 2022 and 5 April
2023**

Judgment date: 15 June 2023

Before

**TRIBUNAL JUDGE ANNE REDSTON
MS SONIA GABLE**

Between

MR MEADES

Appellant

and

**THE COMMISSIONERS FOR
HIS MAJESTY’S REVENUE AND CUSTOMS**

Respondents

Representation:

The Appellant in person

For the Respondents: Ms Victoria Halfpenny (for the first day of the hearing and Ms Maria Serdari (for the second day of the hearing), Litigators of HM Revenue and Customs’ Solicitor’s Office

DECISION

1. On 18 October 2021, HMRC issued Mr Meades with a closure notice and an amendment to his 2019-20 self assessment (“SA”) tax return, increasing his liability by £1,076 on the basis that was liable to the High Income Child Benefit Charge (“HICBC”). Mr Meades appealed. .

2. On 26 April 2023, the Tribunal issued a summary decision, dismissing his appeal. On 19 May 2023, Mr Meades made an in-time application for a full decision, and this is that decision. For the reasons explained at §16, some names have been redacted.

Summary

3. Mr Meade married on 5 March 2010, and on inDecember 2012, the couple had a child (“the Child”). During his marriage to the Child’s Mother, Mr Meades took responsibility for paperwork, and he therefore claimed Child Benefit for the Child; the claim was effective from 24 December 2012. From inception, HMRC paid the Child Benefit into the bank account of the Child’s Mother.

4. On 1 July 2017, Mr Meades separated from the Child’s Mother. The Child and the Child’s Mother remained in the family home, and Mr Meades moved out. There was no formal maintenance agreement, but Mr Meades paid £500 a month to the Child’s Mother for her and for the Child; he also paid their household bills, including the mortgage. The marriage was dissolved on 4 April 2019.

5. By that time, Mr Meades had begun a new relationship, and he married again in November 2019; in this Decision Notice, we have called his second wife “Mrs Meades”. Mr and Mrs Meades lived together as partners for the whole of the tax year 2019-20.

6. On 2 August 2021, HMRC opened an enquiry into Mr Meades’ 2019-20 SA tax return, and on 18 October 2021 issued a closure notice and an amendment to that return, increasing his liability by £1,076 on the basis that he had been liable to the HICBC in that tax year.

7. The HICBC was imposed by s 681B of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”). It applies where (a) a person’s Adjusted Net Income (“ANI”) exceeds £50,000, and (b) one or both of Conditions A and B are met.

8. HMRC’s Statement of Case said that Mr Meades came within Condition B; this was also implied by their correspondence during the enquiry. However, Condition B would only have applied if *the Child’s Mother* had been Mr Meades’ partner during 2019-20, whereas Mrs Meades was his partner during that tax year.

9. The Tribunal considered whether to allow Mr Meades’ appeal on the basis that HMRC had misunderstood and misapplied the HICBC legislation. However, we decided it was necessary also to consider whether Mr Meades came within Condition A, having taken into account:

- (1) the wide scope of the closure notice;
- (2) the Tribunal’s duty to have regard to the public interest in the exercise of its statutory function that taxpayers pay the correct amount of tax; and
- (3) the wording of Taxes Management Act 1970 (“TMA”), s 50(7).

10. Condition A would only apply in 2019-20 if (a) Mr Meades was entitled to the Child Benefit in 2019-20, and (b) his ANI was higher than Mrs Meades. In other words, if Mrs Meades had the higher ANI, Mr Meades would not be liable to the HICBC. We observed to the parties that it was surprising that Mr Meades’ liability to the HICBC could depend on the income of Mrs Meades, who was not related to the Child.

11. The hearing was adjourned with directions for the parties to provide further evidence relevant to Condition A.

12. At the second day of the hearing, in the light of the further evidence and the relevant legislation, we found that Mr Meades' ANI had been higher than that of Mrs Meades. In relation to entitlement, we held as follows:

(1) The Child's Mother was entitled to Child Benefit because the Child lived with her, but Mr Meades was also entitled, because he provided financial support for the Child;

(2) where two people are both entitled to Child Benefit, the general rule is that the person with whom a child is living has priority. However, that rule is subject to an exception: where one person has "already been awarded" that benefit, that person has priority.

(3) Mr Meades' entitlement therefore had priority over that of the Child's Mother, because he had been "awarded" Child Benefit during 2019-20; and that entitlement could not be reversed retrospectively;

(4) Had Mr Meades cancelled the Child Benefit claim before 6 April 2019:

(a) the Child's Mother could have made a new claim; and

(b) Mr Meades would not have been liable to the HICBC.

13. Condition A was therefore satisfied, and Mr Meades was liable to the HICBC. However, it was also the case that:

(1) His separation from the Child's Mother had been very stressful.

(2) He had not realised that he needed to cancel the Child Benefit claim to prevent the risk of liability to the HICBC, especially as the Child Benefit had always been (and continued to be) paid to the Child's Mother.

(3) HMRC had approached the case incorrectly until the very last moment.

14. Mr Meades submitted that the assessment was unfair and unjust. However, the Tribunal has no powers to consider the fairness of the legislation, see *HMRC v Hok* [2012] UKUT 363 (TCC) and related cases.

15. The position is different for HMRC. In *R (Ex p National Federation of Self-Employed and Small Businesses) v HMRC* [1982] AC 617 Lord Diplock held that HMRC had "wide managerial discretion", and in *R (Wilkinson) v HMRC* [2005] UKHL 30 at [21], Lord Hoffman said that HMRC's discretion allowed them to deal "pragmatically with minor or transitory anomalies [and] cases of hardship at the margins". However, the Tribunal understands from Mr Meades' email requesting a full decision that HMRC have not exercised their discretion in his case.

Redactions

16. As is clear from the summary at the beginning of this judgment, this appeal involves not only Mr Meades, but also the Child, the Child's Mother and Mrs Meades.

17. In deciding whether to redact this decision notice to remove the names of those individuals, we considered the principle of open justice as set out in the case law, in particular *Cape Intermediate Holdings v Dring* [2019] UKSC 38; *A v BBC* [2014] 2 All ER 1037 and *Clifford v Millicom Services* [2023] EWCA Civ 50 ("*Clifford*").

18. In *Clifford*, Warby LJ gave the only judgment with which Laing and Lewis LJ both agreed. He held at [31] that in deciding whether to derogate from the principle of open justice:

“the appropriate starting point is the common law. This holds that open justice is a fundamental principle. But it also contains a key qualification: that every court or tribunal has an inherent power to withhold information where it is necessary in the interests of justice to do so.”

19. He continued at [42]:

“the factors that need to be weighed in the balance include (a) the extent to which the derogation sought would interfere with the principle of open justice; (b) the importance to the case of the information which the applicant seeks to protect; and (c) the role or status within the litigation of the person whose rights or interests are under consideration.”

20. The Tribunal decided that the facts and *ratio* of our decision could be fully understood without naming the Child or either of Mr Meades’ wives. We also decided that naming the Child would be an unjustified interference with his/her Article 8 rights as set out in the European Convention on Human Rights, and that there was a significant risk that naming the Child’s Mother and/or Mrs Meades would indirectly lead to the Child being identified. We therefore decided to redact this decision so as to remove the name of the Child and the names of Mr Meades’ wives. This approach was discussed and agreed with the parties.

21. Between the first and second days of the hearing, an HMRC Litigation Manager (“the HMRC Manager”) communicated with Mr Meades about the issues in this case, see §22ff. We decided it was also in the interests of justice to redact his name. That is because he was acting as an employee of HMRC rather than on his own behalf; he was not a witness in the case; the content of his correspondence is explained below, so that the issues raised are fully comprehensible; those issues were decided on the papers before the second day of the hearing; as HMRC did not challenge the Tribunal’s decision on those issues, the HMRC Manager was not required to attend the second day of the hearing, and he did not do so.

The email from the HMRC Manager

22. On 11 February 2023, after the hearing had been adjourned with directions, the HMRC Manager emailed Mr Meades; his email was copied to the Tribunal. As noted above, the issues he had raised were considered and resolved by an interlocutory decision and directions issued before the second hearing day. The key points are repeated below.

The jurisdiction of the Tribunal and Child Benefit decisions

23. The HMRC Manager told Mr Meades that if he were to win his HICBC appeal on the basis that he was not entitled to Child Benefit, HMRC “must give effect” to that decision by issuing him with an “overpayment” decision which would require Mr Meades to repay “several thousand pounds” of Child Benefit.

24. The HMRC Manager had, however, misunderstood the nature and extent of the Tribunal’s jurisdiction in this appeal. The position is as follows:

- (1) Mr Meades had appealed (as he was entitled to do) against the HICBC levied on him for the tax year 2019-20.
- (2) The Tribunal’s jurisdiction was only to decide whether he was liable to the HICBC for that year.
- (3) The Tribunal had no jurisdiction to make a binding decision as to Mr Meades’ entitlement to Child Benefit.
- (4) HMRC were thus not required to take any action with respect to that entitlement.

25. The HMRC Manager also misunderstood how Child Benefit decisions are made, and how they are appealed. The correct position is as follows:

- (1) Under Child Benefit law, decisions to remove entitlement are separate from overpayment decisions.
- (2) Both types of decision are made by HMRC and are appealed to the First-tier Tribunal (Social Entitlement) Chamber.
- (3) Even had HMRC decided Mr Meades was not entitled to Child Benefit for 2019-20, HMRC would then have had separately to consider whether the conditions for recovery of that benefit were met.
- (4) Overpayment decisions require HMRC to take into account “offsetting” provisions and policy approaches, both of which were likely to be relevant where (as here) the Child’s Mother had always received the Child Benefit in question.
- (5) If an overpayment decision were to be made by HMRC, an appeal could be made to the First-tier Tribunal (Social Entitlement) Chamber, which would take into account all the relevant law.

The second hearing

26. The HMRC Manager ended his email by criticising the Tribunal’s directions, stating that “the more documents that are ‘thrown’ at this appeal, the more unnecessarily complicated the issue has become”, and asking Mr Meades to consider whether “a second tribunal hearing, at considerable public expense [was] a cost-effective way to determine what is effectively a domestic issue between a couple”.

27. Given that a second hearing day was required because *HMRC* had failed to understand how the legislation applied to the facts of this case, it was (as Mr Meades said) inappropriate for the HMRC Manager to suggest that he withdraw his appeal on the basis that the second day would constitute a waste of public money, or because the case related only to a “domestic issue between a couple”.

Legislation

28. The legislation about the HICBC is contained in ITEPA and the Income Tax Act 2007 (“ITA”). The relevant Child Benefit legislation is in the Social Security Contributions and Benefits Act 1992 (“SSCBA”) and the Child Benefit (General) Regulations 2006¹.

ITEPA

29. The HICBC was imposed by Finance Act 2012, s 8 and Sch 1, which inserted Chapter 8 into ITEPA, Part 10. The HICBC provisions are set out at ITEPA ss 681B to 681H.

30. Section 681B provides as follows:

- “(1) A person (“P”) is liable to a charge to income tax for a tax year if
 - (a) P’s adjusted net income for the year exceeds 50,000, and
 - (b) one or both of conditions A and B are met.
- (2) The charge is to be known as a “high income child benefit charge”.
- (3) Condition A is that
 - (a) P is entitled to an amount in respect of child benefit for a week in the tax year, and
 - (b) there is no other person who is a partner of P throughout the week and has an adjusted net income for the year which exceeds that of P.

¹ In the main body of this decision, references to “Reg” or “Regs” are to these Regulations

- (4) Condition B is that
 - (a) a person ("Q") other than P is entitled to an amount in respect of child benefit for a week in the tax year,
 - (b) Q is a partner of P throughout the week, and
 - (c) P has an adjusted net income for the year which exceeds that of Q.”

31. The meaning of “partner” is given by ITEPA s 681G² and is as follows:

- “(1) For the purposes of this Chapter a person is a "partner" of another person at any time if either condition A or condition B is met at that time.
- (2) Condition A is that the persons are married to, or civil partners of, each other and are neither
 - (a) separated under a court order, nor
 - (b) separated in circumstances in which the separation is likely to be permanent.
- (3) Condition B is that the persons are not married to, or civil partners of, each other but are living together as if they were a married couple or civil partners.”

The ITA

32. The meaning of “net income” – the first step in calculating ANI – is given by ITA s 23, read with sections 24 and 25. In summary, a person’s net income is calculated as:

- (1) the sum of all the income chargeable to tax in the tax year (such as trading profits, employment earnings, rental income); less
- (2) certain reliefs, including pension contributions made by the person and trading losses.

33. The meaning of ANI is given by ITA s 58, and subsection (1) provides as follows:

“... an individual's adjusted net income for a tax year is calculated as follows.

Step 1 Take the amount of the individual's net income for the tax year.

Step 2 If in the tax year the individual makes, or is treated under section 426 as making, a gift that is a qualifying donation for the purposes of Chapter 2 of Part 8 (gift aid) deduct the grossed up amount of the gift.

Step 3 If the individual is given relief in accordance with section 192 of FA 2004 (relief at source) in respect of any contribution paid in the tax year under a pension scheme, deduct the gross amount of the contribution.

Step 4 Add back any relief under section 457 or 458 (payments to trade unions or police organisations) that was deducted in calculating the individual's net income for the tax year.

The result is the individual's adjusted net income for the tax year.”

The Child Benefit provisions

34. SSCBA s 141 provides that a person is entitled to Child Benefit if that person is “responsible” for a child in any week.

² This section was amended part way through the tax year 2019-20 by the Civil Partnership (Opposite-sex Couples) Regulations, SI 2019/1458 reg 25(1), (5) with effect from 2 December 2019, but the amendment does not change the substance of the provision as it applies to opposite-sex couples who were married, as is the case here.

35. Section 143 is headed “meaning of person responsible for a child...”, and subsection (1) reads:

“For the purposes of this Part of this Act a person shall be treated as responsible for a child...in any week if—

(a) he has the child...living with him in that week; or

(b) he is contributing to the cost of providing for the child...at a weekly rate which is not less than the weekly rate of child benefit payable in respect of the child...for that week.”

36. Schedule 10 of that Act is headed “priority between persons entitled to child benefit” and begins:

“1—

(1) Subject to sub-paragraph (2) below, as between a person claiming child benefit in respect of a child...for any week and a person to whom child benefit in respect of that child...for that week has already been awarded when the claim is made, the latter shall be entitled.

(2)

2.—Subject to paragraph 1 above, as between a person entitled for any week by virtue of paragraph (a) of subsection (1) of section 143 above and a person entitled by virtue of paragraph (b) of that subsection the former shall be entitled.”

37. Reg 15 of the Regs is headed “Modification of priority between persons entitled to child benefit” and begins:

“(1) If a person entitled to child benefit in respect of a child or qualifying young person in priority to another person gives the Commissioners notice in writing at an appropriate office or gives an officer of the Inland Revenue and Customs notice by telephone at such an office that he does not wish to have such priority, the provisions of Schedule 10 to SSCBA...priority between persons entitled) have effect with the modification that that person does not have such priority.

(2) A notice under paragraph (1)—

(a) is not effective in relation to any week, before the date on which the election becomes effective, for which child benefit in respect of that child or qualifying young person is paid to the person who made the election or to another person on his behalf...”

Findings of fact

38. Mr Meade married on 5 March 2010, and in December 2012, the couple had a child (“the Child”). During his marriage to the Child’s Mother, Mr Meades took responsibility for paperwork, and it was therefore he who claimed Child Benefit for the Child; the claim was effective from 24 December 2012. From inception, HMRC paid the Child Benefit into the bank account of the Child’s Mother.

39. On 1 July 2017, Mr Meades separated from the Child’s Mother. The Child and the Child’s Mother remained in the family home, and Mr Meades moved out. There was no formal maintenance agreement, but Mr Meades paid £500 a month to the Child’s Mother for her and for the Child; he also paid their household bills, including the mortgage. The marriage was dissolved on 4 April 2019.

40. By that time, Mr Meades had begun a new relationship, and in November 2019 he married Mrs Meades; they lived together as partners for the whole of 2019-20. The weekly amount of Child Benefit for that tax year was £20.70.

ANI and SA enquiry

41. In the 2019-20 tax year, Mr Meades' ANI was £93,364 and Mrs Meades' was £89,836. On 2 August 2021, HMRC opened an enquiry into Mr Meades' 2019-20 SA tax return. The opening letter said:

“For the tax year ended 5 April 2020, you have to pay the High Income Child Benefit Charge if:

- you had an individual income of over £50,000
- either you or your partner received Child Benefit payments during the tax year ended 5 April 2020
- your income for the tax year was higher than your partner's - the partner with the higher income has to pay the charge if both partners have income over £50,000

The information we hold means you should pay the High Income Child Benefit Charge for the tax year ending 5 April 2020.”

42. On 4 August 2021, Mr Meades called HMRC's Child Benefit department and discussed the position. He asked that his Child Benefit claim be ended. On 5 August 2021, he responded to HMRC's opening letter by saying that he had not “received Child Benefit payments” and that the Child's Mother was not his “partner”.

43. On 11 August 2021, HMRC replied, saying that the Child Benefit Office had confirmed that the claim was (and had always been) in Mr Meades' name and had been paid into another bank account at his instruction.

44. On 7 September 2021, Mr Meades responded, saying that a fresh Child Benefit claim should have been made by the Child's Mother when they separated, but that had not been done by “oversight at a very stressful time”; that there was no impact on the Child's Mother as she had always received the Child Benefit directly from HMRC into her bank account. He added that the assessment was “totally contrary to the intention and spirit” of the HICBC legislation.

45. On 29 September 2021, HMRC replied, referring to SSCBA Sch 10 and saying that the Child's Mother could not make a claim because Mr Meade was “already claiming”.

46. Mr Meades replied on 11 October 2021, referencing the SA return guidance notes, which state that the relevant box on the SA return only requires completion if three conditions are satisfied, one of which was that “you or your partner (if you have one) got Child Benefit”. Mr Meades said that neither he nor his partner Mrs Meades “got Child Benefit”.

47. On 18 October 2021, HMRC issued Mr Meades with a closure notice. This said:

“We have received your letter dated 11 October 2021, in which you advise that you do not agree that you need to pay the High Income Child Benefit Charge. We refer to our letter dated 29 September 2021 which sets out your liability to the charge as the child benefit claimant. We have not received any evidence to support your position that this is not the case, as requested in our letter dated 11 August 2021.”

48. On the same date, HMRC issued an amendment to Mr Meades' 2019-20 SA return, increasing his liability by £1,076 on the basis that he was liable to the HICBC. Mr Meades appealed.

Liability for the HICBC

49. As set out above, liability to the HICBC applies where (a) a person's ANI exceeds £50,000, and (b) one or both of Conditions A and B are met. It was common ground that Mr Meades' ANI was over £50,000, so the issue was with the Conditions.

Condition B

50. HMRC's Statement of Case said that "it is condition B which is applicable and which means the Appellant is liable to the HICBC". This was also implied by the correspondence during the enquiry.

51. Condition B applies if the following points are satisfied:

- “(a) a person ("Q") other than P is entitled to an amount in respect of child benefit for a week in the tax year,
- (b) Q is a partner of P throughout the week, and
- (c) P has an adjusted net income for the year which exceeds that of Q.”

HMRC's initial position

52. HMRC's position until after the first hearing was that Mr Meades was "P" and the Child's Mother was "Q". This is plainly wrong: as applied to Mr Meades, the subsection would then read

- “(a) the Child's Mother is entitled to an amount in respect of child benefit for a week in the tax year,
- (b) the Child's Mother is a partner of P throughout the week, and
- (c) Mr Meades has an adjusted net income for the year which exceeds that of the Child's Mother.”

53. Point (a) is satisfied: the Child's Mother was entitled to Child Benefit because she was responsible for the Child (see SSCBA s 141). However, point (b) is not satisfied: the Child's Mother was not Mr Meades' "partner" as defined by ITEPA s 681G. Their marriage had been dissolved on 4 April 2019, and they were not living together as if they were married at any point during 2019-20.

HMRC's revised submission

54. In their submission for the second day of the hearing, HMRC said that had Mrs Meades had earned more than Mr Meades, Condition B would have been satisfied because Mr Meades was Mrs Meades' partner during the tax year, and he would be "Q" because he was entitled to Child Benefit. On that analysis, the statutory test would be applied as follows:

- “(a) Mr Meades is entitled to an amount in respect of child benefit for a week in the tax year,
- (b) Mr Meades is a partner of Mrs Meades throughout the week, and
- (c) Mrs Meades has an adjusted net income for the year which exceeds that of Mr Meades.”

55. The HMRC manager's email to Mr Meades took the same position: he described the law as "very straightforward", saying:

- “Mrs Meades is Person P. Mr Meades is person Q. The liability for the HICBC falls to Mrs Meades”.

56. The problem with this submission is that ITEPA s 681B(1) defines "P" as the person who has been assessed to income tax. The assessment under appeal had been issued to Mr Meades, so he is therefore "P". It is not possible for him to be "Q".

Whether the appeal should be allowed

57. We considered whether HMRC's misunderstanding of the legal position meant that Mr Meades' appeal should be allowed. The starting point here is the wording of the closure notice. The leading case law is *Tower MCashback v HMRC* [2011] UKSC 19 ("*Tower MCashback*") and *Fidex v HMRC* [2016] EWCA Civ 385 ("*Fidex*").

58. These and other cases were helpfully summarised by the UT (Marcus Smith J and Judge Brannan) in *Daarsalp LLP v HMRC* [2021] UKUT 0087 (TC) at [21]ff. So far as relevant, that summary includes the following principles:

(1) There is no obligation on the HMRC officer who issues the closure notice to set out or state the reasons which have led him to his conclusion(s). What matters is the conclusion that the officer has reached upon the completion of his investigation, not the process of reasoning by which he has reached those conclusions: *Tower MCashback* at [15]; *Fidex* at [45]. This means that, on any appeal, the conclusions in the closure notice may be justified by reasons that were not articulated either at the time the closure notice was issued or during the enquiry that preceded it.

(2) It follows that when justifying a conclusion that has been reached by the officer and stated in the closure notice, reasons other than those in play at the time of the closure notice may be relied upon to justify it. On any appeal, the FTT will form its own view on the law, without being restricted to what HMRC state in their conclusion or the taxpayer states in the notice of appeal. Either party can change its legal arguments, but such changes in argument cannot be used as an ambush, and the FTT must be astute to prevent this, by using its case management powers: *Tower MCashback* at [15], [18].

(3) That does not, however, mean that an appeal against a closure notice opens the door to a general roving inquiry into the return. The scope and subject matter of the appeal will be defined by the conclusions stated in the closure notice and by the amendments (if any) made to the return (as well as the overriding question of fairness): *Tower MCashback* at [15].

59. TMA s 50(7) is also relevant. This provides that:

"If, on an appeal notified to the tribunal, the tribunal decides

(a) that the appellant is undercharged to tax by a self-assessment...,

the assessment or amounts shall be increased accordingly."

60. In *Glaxo v HMRC* [1996] STC 1919 at p 199 the Court of Appeal held that if an assessment was too low, the Tribunal had a "duty" to increase it; this was confirmed, albeit *obiter*, by the Supreme Court in *Project Blue v HMRC* [2018] UKSC 30 at [86].

61. Taking into account the wide terms of the closure notice issued to Mr Meades; the Tribunal's duty to have regard to the public interest in the exercise of our statutory function that taxpayers should pay the correct amount of tax, and TMA s 50(7), we decided we could not allow Mr Meades' appeal on the basis that HMRC had misunderstood the scope of Condition B, but had to go on to consider whether he came within Condition A.

Condition A

62. Condition A applies if:

(1) the assessed person, P, is entitled to an amount in respect of child benefit for a week in the tax year, and

(2) there is no other person who is a partner of P throughout the week who has an ANI for the year which exceeds that of P.

63. In the light of the evidence provided, the second leg is satisfied: Mrs Meades was Mr Meades' partner in the tax year and her ANI was lower than that of Mr Meades.

64. The issue was therefore whether Mr Meades was "entitled" to Child Benefit. Although that term is not explicitly defined in the HICBC provisions at ss 681B to 681H, one of those sections cross-references to the SSCBA (see s 681D). We therefore find that in ITEPA, the meaning of "entitled" in relation to Child Benefit is the same as that in the SSCBA.

65. SSCBA s 143(1)(a) provides that a person with whom the child lives is entitled to Child Benefit, so the Child's Mother was therefore entitled. SSCBA s 143(1)(b) provides that a person who is "contributing to the cost of providing" for a child" is also entitled to Child Benefit, as long as the contribution is at a weekly rate which is not less than the weekly rate of child benefit payable in respect of the child for that week. In *RK v HMRC* [2015] UKUT 357 (AAC), Judge Knowles QC held that the statutory test was satisfied as long as there was evidence of contributions at the relevant child benefit rate towards the upkeep/cost of the relevant child.

66. Mr Meades paid £600 per month to the Child's Mother for her and for the Child, and he also paid all the household bills. We find that he was contributing at least £20.70 per week for the Child and was therefore entitled to Child Benefit.

67. Section 143(1) therefore gives both Mr Meades and the Child's Mother entitlement to Child Benefit. The general rule is that where two people are both entitled to Child Benefit, the person with whom a child is living has priority, see Sch 10, para (2). However, that general rule is subject to the exception in para 1(1), which provides that where one of the persons has "already been awarded" that benefit, that person has priority.

68. Although Mr Meades sought to modify the priority as between himself and the Child's Mother when he called HMRC on 4 August 2021 to close his child benefit claim, it is clear from Reg 15(2) that the notification could not take effect in relation to weeks for which the Child Benefit had already been paid. Mr Meades therefore retained entitlement as against the Child's Mother.

69. In summary:

- (1) Mr Meades had been "awarded" Child Benefit in 2012, when the Child was living with him.
- (2) He did not terminate the claim when he separated from the Child's Mother.
- (3) In 2019-20 he remained entitled to Child Benefit under Reg 14(1)(b), even though the Child no longer lived with him, because he paid sufficient child support.
- (4) HMRC continued to pay the Child Benefit in accordance with Mr Meades' original claim.
- (5) The fact that the money was at all times paid directly to the Child's Mother does not change the position.

70. It follows that Condition A is satisfied. Mr Meades is therefore liable to HICBC for the 2019-20 tax year.

Fairness?

71. Mr Meades submitted that it was unfair and unjust for HMRC to assess him to the HICBC. However, the Tribunal has no inherent jurisdiction to consider fairness, see *HMRC v Hok* [2012] UKUT 363 (TCC) and *Birkett v HMRC* [2017] UKUT 89 (TC).

Conclusion

72. For the reasons set out above, Mr Meades' appeal is dismissed and HMRC's closure notice and related amendment confirmed.

Right to apply for permission to appeal

73. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**ANNE REDSTON
TRIBUNAL JUDGE**

RELEASE DATE: 15 JUNE 2023