

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1 I allow the appeal. The decision of the tribunal is set aside.

2 This is an appeal by the husband of a married couple who were joint claimants for tax credits. I refer to him and his wife as Mr and Mrs T. He brings the appeal with my permission. The appeal is from a decision of the London appeal tribunal (at Fox Court) on 29 04 2005 under reference U 42 242 2005 03063.

3 DIRECTIONS FOR THE NEW HEARING

A The appellant's wife has the right to be heard in these proceedings. She is to be given copies of all relevant documents and notice of the new hearing. She is directed to notify the tribunal within one month of this decision if she wishes to attend an oral hearing of this appeal and if she wishes to be represented in this appeal (and if so by whom).

B The appeal is to be heard by a new tribunal.

C This case is to be heard at an oral hearing.

D The parties are reminded that the tribunal may consider only the decision under appeal by reference to circumstances at the time of that decision.

E The tribunal should be supplied by the Respondents with copies of the claim form and other missing papers within one month of issue of this decision, and a full submission on late claims.

These directions are subject to any further direction by a district chairman.

REASONS

4 I assume that Mr and Mrs T jointly claimed both working tax credits and child tax credits on 15 12 2004. They have one child. I make this assumption because there is no claim form in the appeal papers. There should be.

5 The Inland Revenue (now Her Majesty's Commissioners for Revenue and Customs ("HMRC")) awarded child tax credits of £307.50 for a defined period and a nil award of working tax credits. The award was from 15 09 2005, three months before the date of claim. There is no copy of the notification of the decision in the papers. There should be. I cannot tell from these papers what decision was notified, when or to whom.

6 Mr T appealed against the decision. He stated that he had not been informed of the changes to the children's tax credit system. As a result he had missed out on credits due from April 2003 to September 2003. That is in the papers. The form is filled in in the first person singular. There is no mention of Mrs T. It is not clear whether his grounds of appeal apply to Mrs T. Any children's tax credit award was to Mr T. Any child tax credits payments would normally be to Mrs T.

7 The appeal went to an appeal tribunal that heard the case, at Mr T's request, at a paper hearing. The tribunal confirmed the decision of HMRC, noting that there was no provision to backdate a claim more than three months. The decision was issued to Mr T. At Mr T's request, the tribunal issued him brief reasons for its decision. The decision of the tribunal, and its reasons, were applied to Mrs T in the same terms as Mr T.

8 Mr T applied for permission to appeal to the Commissioner. He stated that he had been receiving children's tax credit with his income tax code for several years but lost it without notice to him. Mrs T did not take part in that application.

9 I granted permission to appeal for two reasons. (1) Mrs T seemed not to have been mentioned by anyone at any stage of the proceedings although she was a joint claimant with Mr T. I granted permission to establish her position in the appeal process as a matter of law. (2) It was arguable in the light of CTC 389 2005 (copied to the papers) that the decision of the tribunal was inadequate. I requested a full submission from HMRC. I received submissions from Mr Tim Eicke of counsel for HMRC on issue (1) but not issue (2). Mr T, in reply, commented on issue (2) but not issue (1). He submitted that the tribunal failed to consider any ground on which backdating could occur beyond three months and that the matter should therefore be reheard. Neither party asked for an oral hearing and I did not hold one.

Was the decision adequate?

10 I deal briefly with issue (2). HMRC did not dissent from Mr T's final submission and I agree with it. The submission by HMRC to the tribunal did not deal with all the circumstances under which there can be backdating of a tax credits claim. The submission stated that "there is no provision within the legislation which would all Mr and Mrs T's award to be backdated further than the statutory three months". As the HMRC representative accepted in CTC 389 2005, that is not good law. There are exceptions, and the tribunal should be reminded of them if only to exclude them. The tribunal did not make good the error of law in the submission. Accordingly, I must set aside the tribunal decision for the same reasons as in CTC 389 2005. The new tribunal should check when the claim was first made, and that backdating has been applied correctly. This has been assumed rather than decided by the previous tribunal. It is for this reason that HMRC are directed to produce a full set of papers to the tribunal, as they should in all such cases.

Was this a joint appeal?

11 The claim, I assume, was made jointly. I also assume that Mr and Mrs T were a couple jointly looking after their child at the relevant time. So the claim must be a joint claim: section 3(3) of the Tax Credits Act 2002 ("the 2002 Act"). The appeal documentation was sent between HMRC and Mr T alone. In so far as the appeal is concerned Mrs T signed nothing, was sent nothing, and made no comment. The enquiry form TAS1 was sent to Mr T alone, and replied to by him alone. The notification of the appeal to HMRC was notification of an appeal by Mr T alone. Indeed, I have no information that Mr and Mrs T are still a couple, though I have no reason to believe they are not. It is not relevant to the issue before the tribunal that a couple decides to split up after the tax year in question. But it is relevant to continuing entitlements and liabilities of both members of a former joint claimant couple.

12 This raises the question whether Mrs T is or should be a party to this appeal, or is bound by the decision on this appeal. The first issue is whether she is, or is to be treated as, an appellant. If not, the question is whether she is a party to the proceedings in any other capacity. If she is not a party, then the effect on her of the decision requires consideration. As it was not clear on the face of the legislation whether she was an appellant, or otherwise a party before the tribunal, I have not separately joined her to the appeal to the Commissioner. Nor have I been asked to do so. But it is important that this issue be clarified before it goes back to the tribunal.

13 The status of a non-appellant partner of a joint claimant couple has not so far been considered by the appellate authorities in tax credits cases. At my request, Mr Eicke

presented a fully argued submission for HMRC on whether Mrs T was properly a party to the appeal or bound by the decision on appeal. The formal submission is that Mrs T is either to be regarded as included with Mr T as a party to the appeal or is in any event bound by the decision of the tribunal. I received no detailed reply from Mr T on this point and have not heard from Mrs T.

14 Mr Eicke drew my attention to sections 3 and 9 of the 2002 Act, and to the definition of “claimant” in section 9(8) of the Act. This is:

“(8) “Claimant” means –
(a) in the case of a single claim, the person who makes the claim; and
(b) in the case of a joint claim, the persons who make the claim.”

He argued that this meant that Mrs T is, with Mr T, “the claimant” in this case and so a party to the appeal.

15 The immediate context of that definition is the preceding subsection, section 9(7). That deals with cases where more than one claimant may be entitled to child tax credit in respect of the same child for the same period and it is necessary to decide between rival claims. The term “claimant” is not used in section 3 at all. Nor is it used in several other sections. Section 8(1) refers to “the entitlement of the person or persons by whom a claim for child tax credit has been made” rather than “claimant” and there is similar wording in sections 9(1), 10(1), 11(1), and 12(1). The formula “person or persons entitled” is used in sections 13, 15, and 16, and there are other words reflecting multiple entitlements in sections 14 and 19. More clearly, section 17(1)(b) deals expressly with notification to joint claimants of the final notice. It provides:

“for awards made on joint claims, the Board must give such a notice to the persons to whom the tax credit was awarded with separate copies of the notice for each of them if the Board consider appropriate).”

In other words, the two members of the couple must be regarded separately for all these purposes. And, as I stress below, they are jointly *and severally* liable for any overpayment.

16 Mr Eicke drew attention to other provisions in the Act and regulations that deal with joint claims. Section 4(1)(g) allows regulations to treat a claim made by one member of a couple as being also made by the other member of the couple. He pointed out that this was the authority for regulation 13 of the Tax Credits (Claims and Notifications) Regulations 2002 (SI 2002 No 2014). But that deals with the case where a section 17 notice is given to both of a couple and only one replies, but where regulation 12 of those regulations nonetheless treats the reply as a claim. Regulation 13 then further treats it as a joint claim.

17 I do not agree that “claimant” is used as Mr Eicke submits throughout the 2002 Act. The pattern of the Act is to refer to the two joint claimants separately, not as a notional single claimant. Nor do I accept his conclusion that the structure of the Act and regulations, in effect, mean that one of the couple can be regarded as included with the other or, putting it more bluntly, ignored as a separate individual for most purposes.

18 An assumption that joint claimants have only one common interest when it comes to an appeal raises fundamental issues of equality and fairness. For those reasons, to regard two individuals as one party for appeal purposes because they are a couple must in my view require clear language. There is no such language in the Act. Clear language is important because there are now four groups of couples who may be required to be joint claimants:

married couples; couples living together as husband and wife; civil partners; and couples living together as if they are civil partners. "Couple" for present purposes now includes any two individuals linked by any of those relationships. And in this and similar cases we must also pay attention to the position of the members of former couples. If and in so far as there has been any assumption on anyone's part in this appeal that Mrs T, as the wife of Mr T, is not entitled to and subject to the same rights and duties as all other partners in any of these relationships or former relationships, it is wrong. Each partner of a couple or former couple is entitled to the same treatment as all other partners of all couples or former couples.

19 The section authorising appeals is section 38 of the 2002 Act. This uses the formula "person or persons" on three occasions and does not use the word "claimant". The section does not expressly say who can appeal. The implication is that there is a right of appeal by anyone against whom a decision is made. The rules for notification of an appeal are in the heavily amended version of section 39 as read with section 63. That also does not say who may appeal. Nor is identification of who may appeal assisted by the Tax Credits (Notice of Appeal) Regulations 2002 (SI 2002 No 3119), made under sections 39(1) and 65(3). Regulation 2(2)(c) of those regulations provides that the notice of appeal must "be signed by or on behalf of the appellant" but does not define "appellant", a term used nowhere in the 2002 Act. The only provision in which the term "appellant" used is the form of section 54 of the Taxes Management Act 1970 that applies to tax credits. I do not consider that is of any assistance.

20 As Mr Eicke suggests, I turn to the provisions in and made under the Social Security Act 1998 and absorbed into tax credits procedure by section 63(8) of the 2002 Act. Section 12(1) of the 1998 Act, as applied to tax credits appeals by regulation 4 of the Tax Credits (Appeals) Regulations 2002 (SI 2002 No 2926) ("the TC Appeals Regulations"), provides that:

"(1) An appeal which is to an appeal tribunal by virtue of section 63 of the Tax Credits Act 2002 ... may be brought by –
(a) a claimant whose claim for a tax credit is the subject of the appeal;
(b) the person on whom the penalty to which the appeal relates was imposed;
(c) the person applying for the direction under section 19(9) of that Act; or
(d) such other person as may be prescribed."

21 Regulation 12(2)(b) gives a meaning of "claimant" for the purposes of this provision. It is:

"' claimant' means a person who makes (whether or not jointly with another) a claim for a tax credit in accordance with sections 3 and 4 of the Tax Credits Act 2002, and includes a person entitled to make such a claim on behalf of another person by virtue of regulation 17 or 18 of the Tax Credits (Claims and Notifications) Regulations 2002."

That definition has the opposite effect to the definition in section 9(8) of the 2002 Act. The need to provide two separate definitions for tax credits purposes emphasises the differences in the definitions. The operative definition here clearly provides that Mr T and Mrs T are separately to be regarded as claimants. Reading that into the modified section 12(1), the conclusion must be that either member of a couple making a joint claim may appeal, and the appeal does not have to be made by the other member of the couple.

22 Mr T was entitled to appeal in his own name. This is not a joint appeal. It follows that Mrs T is not an appellant in this appeal.

Is Mrs T a party to the proceedings?

23 The machinery for decision making and appeals under the 1998 Act does not deal clearly with joint claims. There is a reason for this. The only other joint claims that must or can be made and that fall within the jurisdiction of social security appeal tribunals are those under the Jobseekers Act 1995. That Act contains specific definitions of a “joint-claim couple” and “claimant” that do not assist here. Apart from claims under that Act, there is no procedure for handling social security appeals by both or either of joint claimants under the Social Security Act 1998 because none is needed. I mention this because tax credits were originally handled under the procedures of the 1998 Act. The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“the Social Security Appeals Regulations”) (SI 1999 No 991) were expressly amended to deal with tax credits appeals so as to make good some of that deficiency. But those provisions no longer apply to tax credits. Under the 2002 Act those procedures were replaced in entirety by the TC Appeals Regulations noted above, and also by the Tax Credits (Appeals) (No 2) Regulations 2002 (SI 2002 No 3196) (“the TC Appeals No 2 Regulations”).

24 Does one of two joint claimants for tax credits have any status in an appeal by the other joint claimant under these regulations? Regulation 1(2) of the TC Appeals No 2 Regulations defines “party to the proceedings” for the purposes of those regulations as meaning, among others:

“... any other person –

(a) who is an appellant in an appeal brought against a decision or determination set out in section 38 of the 2002 Act;

...

(d) who is a person with a right of appeal or a right to make an application for a direction under regulation 3”.

We have seen that Mrs T is not an appellant. Paragraphs (b) and (c) are not relevant on the facts. Is Mrs T within paragraph (d)? Regulation 3 is headed “Other persons with a right of appeal or a right to make an application for a direction”. It sets out four categories of person with a right to appeal or make an application for a direction in either of two cases where an individual has made a claim but is unable for the time being personally to appeal or make an application. Paragraph (d) is on its face ambiguous. It can be read conjunctively or disjunctively. In my view it must be read conjunctively, in the context of the wording of regulation 3. That regulation makes it clear that the provision is for individuals who may wish either to appeal or make an application, but can for the time being do neither. The reference in paragraph (d) to “a person with a right of appeal” does not apply to all individuals with a right to appeal but only those within the scope of regulation 3.

25 On that basis, Mrs T is not a party to the proceedings before the appeal tribunal.

26 Mr Eicke argued that nonetheless Mrs T must have a status within the appeal. He pointed to regulation 8 of the TC Appeals No 2 Regulations as indicating this. Regulation 8 deals with the death of a party to an appeal or application for a direction. It provides that:

“... the following persons may proceed with the appeal or application for a direction in the place of [the] deceased party –

...

(b) where the proceedings are in relation to a joint claim, where once one of the persons by whom the claim was made has died, the other person with whom the claim was made ...”

It also makes provision where both have died for the personal representatives of one of the couple to act. I do not consider that this is authority for saying that the non-appellant claimant is a party to an appeal by an appellant claimant before that appellant's death when it is clear from the definitions that the non-appellant partner is not a party to the proceedings if the other partner remains alive.

27 Mr Eicke made submissions about parties before the Social Security Commissioners in tax credit cases. Commissioners have, and use, wider powers than those available to appeal tribunals. I do not consider that an analysis of those powers assists in deciding the nature of proceedings before an appeal tribunal that has narrower powers and different rules.

28 Most of the regulations in chapters 2 to 5 of Part II of the TC Appeals No 2 Regulations (procedure in connection with determination of appeals) apply to parties to the proceedings and no one else. Regulation 14 deals with non-disclosure of medical evidence in joint claim cases. It refers throughout to the individuals as “claimants” and not as appellants or parties to the proceedings, and gives no clue as to the status within the appeal of a claimant. Regulation 18 (procedure at an oral hearing) is couched in terms of the procedure as it affects parties to the proceedings. Regulation 18(9) and (12) also refer to those with a right to be heard. But this does not assist, as regulation 18(8) gives the right to be heard only to parties to the proceedings. There is no right in either set of regulations for a chairman to direct that some additional person become a party to the proceedings, or that someone who is not a party to the proceedings may be heard save as a witness or representative.

29 I conclude that, on a straightforward reading, none of the relevant Acts of Parliament deal with the status of joint claimants in an appeal. The regulations made under those Acts give no status at all in a hearing to a non-appellant joint claimant where one, but not the other, of the joint claimants has appealed. Mrs T is not a party to the proceedings.

What is the effect of a decision of a tribunal on a joint claimant who is not a party to the proceedings before it?

30 I agree with Mr Eicke that a decision awarding tax credits on a joint claim is a decision with statutory effect with regard to both joint claimants. Under section 14 of the 2002 Act HMRC may seek information about a claim from either of the joint claimants. The procedure under section 17 for a final notice at the end of the year to both claimants has already been noted. Under section 24 HMRC may pay the tax credit to whichever of the couple is prescribed. That will follow from a decision of HMRC or a decision on appeal.

31 Most important in my view is the provision in section 28(4) that the couple are “jointly and severally liable to repay” an overpayment. This applies unless HMRC decides to recover a specified amount from each of the couple (or former couple) separately. In other words, each of the two joint claimants may be made directly and individually financially responsible for any overpaid amount of tax credits even if the payment was made in full to the other. Further, that individual liability continues after a breakup of the partnership whenever it happens. So each of the joint claimants has a continuing individual liability for, and therefore direct interest in, any decision taken about the joint claim, whether that decision is a decision of HMRC or made on appeal.

32 It was argued for HMRC that in order to ensure that the non-appealing member of the couple has had a fair opportunity to put her case (in so far as that is at all capable of being different from that of the appealing members) the tribunal (regulation 15 of the TC Appeals (No 2) Regulations) has the ability and the power to summon the non-appealing member of the couple as a witness. This assumes a continuing relationship between the members of a couple that may not in fact have continued also assumes an identity of interest that may not exist. Nor do I agree that the limited (and in practice unenforceable and rarely used) power of a chairman to summon someone as a witness helps solve the problem. In what other court or tribunal is someone who should be a party to the proceedings let in through the back door if, but only if, summoned as a witness? How can a chairman fairly know when to use that power? That Mr Eicke found himself making this submission confirms that there is a clear weakness in the system.

33 Mrs T may therefore be directly and individually affected by a decision of a tribunal on an appeal to which she is neither an appellant nor a party to the proceedings and in which she has no rights to be, or to apply to be, joined as a party. I conclude that these procedural rules do not deal with the position of a non-appellant joint claimant. And there is nothing in the rules that allows an easy practical answer to that problem.

Should Mrs T be heard on the appeal?

34 The principles to be applied in considering the rights of Mrs T to be heard about an appeal, the decision on which may affect her individually, must be the same principles that apply to all marriage, civil or similar informal partners. The view of one individual of a couple may, indeed, be that there is no partnership (or that the members of the married couple are no longer living together) while the other does not take that view. A sharp reminder of the problems that can arise on appeal even between the members of a married couple is given by the recent Commissioner's decision CTC 1630 2005. That explores difficulties applying the definition of "married couple" in section 3 of the 2002 Act.

35 The assumption by Mr Eicke of automatic and continuing commonality of interest in an appeal between individuals who were a couple at the time of the joint claim that is now the subject of an appeal is not justified. I do not know in this case what is the view of Mrs T, or what are the facts, or whether she has a continuing commonality of interest, because no one has asked. That might not matter, on a practical analysis, if there were no individual liability on her for a decision made by a tribunal. Section 28 is however unambiguously clear on that. If as the result of a tribunal decision there is an overpayment, then she is separately liable for the overpayment even though she has no capacity to appear before the tribunal and the tribunal has no means of knowing her views about it. It is only fair therefore that she be heard in the appeal that gives rise to that decision.

General principles

36 I find no other help in Mr Eicke's reliance on general principles to suggest that Mrs T is either "the claimant" with her husband or in some other way granted a common interest with him as appellant. But I must consider the general principles of fairness that apply to all judicial decision making: those of natural justice as encompassed in the common law and as reflected in the Human Rights Act 1988 and the underlying provisions of Article 6 of the European Convention on Human Rights. Under those general principles, Mrs T should have a right to be heard as she is directly and individually subject to the decisions.

37 Although I heard no argument in this case, I am fortified by full argument on the application of human rights principles to tax credits in CTC 1271 and 2326 2002. In those cases I explored a concession made before the courts by the predecessors to HMRC that the former working families tax credit was within the scope of Article 8 of the Convention. I decided that this also covered the former disabled persons tax credit. That decision was not appealed. I went on to find that in one case, but not others, there was discrimination under Article 14, considered with Article 8, in the application of a specific rule of the disabled persons' tax credit to a severely disabled child. That discrimination no longer exists under the new tax credits. But I have little hesitation in concluding that the new tax credits, and in particular the child tax credit, are equally within the scope of Article 8.

38 I am considerably further fortified by the clarification given by the Grand Chamber of the European Court of Human Rights in its Admissibility Decision in *Stec and Others v United Kingdom*, (Applications 65731/01 and 65900/01). The Grand Chamber made clear that individuals can rely on Article 1 of Protocol 1 to the European Convention on Human Rights (protection of rights to property) in connection with claims for a non-contributory social security benefit (in those cases the British reduced earnings allowance). The Grand Chamber ruled that any previous indications in its caselaw that there was a distinction between contributory benefits and non-contributory benefits for this purpose were now to be disregarded. There is no ground to justify the continued drawing of such a distinction.

39 If the rights of claimants for tax credits are within the scope of both Article 8 and Article 1, paragraph 1, then it is clear that any dispute about them is a dispute about the "civil rights and obligations" of those claimants. Even before the ruling of the Grand Chamber in *Stec*, the European Court had ruled that social security disputes involved "civil rights and obligations". See, for example the earlier decision in *Feldbrugge v Netherlands* (1986) 8 EHRR 425, the oft-cited decision in *Salesi v Italy* (1993) 26 EHRR 187, and more recently *Miller v Sweden*, (Application no 55853/00). The confirmation in *Stec* that entitlement to non-contributory benefits involves property rights must strengthen that approach.

40 On that basis, Article 6 paragraph 1 of the European Convention on Human Rights and the relevant sections of the Human Rights Act 1998 apply to Mrs T's position. Article 6, paragraph 1, first sentence, provides:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Given that there are clear rights of appeal in tax credits cases for both of two joint claimants, the question in this and all similar cases can be put as follows. What does fairness require in handling an appeal that directly affect the civil rights and obligations of both partners of a couple or former couple where one of them has appealed and is a party to the proceedings, and the other one has not and is not?

41 The answer must be found in the Article 6 principles developed by the European Court, and in particular those of equality of arms and of effective participation, together with the avoidance of any discrimination under Article 14 of the Convention. The duty on tribunal judiciary in dealing with this issue is dictated by sections 3 and 6 of the Human Rights Act 1998. Under section 3, legislation must be read and given effect in a way that is compatible with Convention rights "so far as it is possible to do so." Under section 6, it is unlawful for a public authority (including a court or tribunal) to act in a way that is incompatible with a Convention right. This does not apply if the inconsistency arises from primary legislation. That may only be considered in the courts. In this case the problems arise entirely from the

secondary legislation. The 2002 Act is neutral to whether Mrs T has the same rights as Mr T with regard to any appeal either of them make.

42 This tribunal reached a decision that directly affects Mrs T's rights and obligations without her being heard. It based its decision affecting Mrs T on a series of assumptions about her of which it had no evidence or information. It treated Mr T as if he represented Mrs T when there is nothing on the record to justify that assumption. That unfairness is incompatible with the right of "everyone" to a fair hearing if his or her civil rights and obligations are in question. That is so even if the only statement Mrs T chose to make was that her husband represented her. That is because of a general procedural failure to deal fairly with the position of the non-appealing member of any couple or former couple. I pause only briefly to note that I can see no possible justification for this failure to provide a fair hearing.

43 That unfairness, having been identified, must be remedied: section 6 of the Human Rights Act. Mrs T is entitled to a fair hearing in the appeal. So are all non-appealing members of a joint claimant couple or former couple in appeals by the other member.

44 I cannot reasonably interpret the TC Appeals and Appeals No 2 Regulations as drafted to cover these rights of Mrs T or any other non-appellant partner of a couple or former couple. The only effective way of doing that involves rewriting rules, perhaps by bringing the definition of "party to the proceedings" into line with definitions in other similar rules, or by giving appeal tribunals the wider powers to deal with non-appellant parties that other similar tribunals have. That cannot be done by interpretation alone. And, as the courts have commented on a number of occasions, it is not the task of the judiciary to rewrite non-compliant rules. The judicial task is limited to disapplying any adverse provisions and empowering a remedy of any breach. I must consider how to remedy the breach of Mrs T's rights under section 6 of the Human Rights Act.

45 I remedy the defect in this case by the direction I make to the tribunal and to HMRC in sending this case to a new tribunal. This decision must also be copied to Mrs T. She must be given the right to be heard in the proceedings at the new hearing before the tribunal. So that she has an effective right to be heard, she must be given the same notices as Mr T, and the papers – including the new papers – must be copied to her, unless she herself indicates that she is happy to be represented by Mr T (or someone else) or to receive one set of papers with Mr T. As I have directed an oral hearing, any defect about the form of the hearing will be cured if Mrs T is given proper notice of that oral hearing. I need make no specific direction about the procedure of the tribunal on the rehearing as the tribunal chairman has a wide discretion about procedure. It suffices only to direct the chairman that section 6 of the Human Rights Act imposes the duty to apply Article 6 of the European Convention on Human Rights to ensure that if Mrs T wishes to be heard or to make representations to the tribunal, then she is given a fair hearing. Equally, HMRC must handle its side of the appeal on that basis.

46 More generally, tribunals are required to ensure that section 6 of the Human Rights Act and Article 6 of the Convention are honoured in all similar cases. This approach applies in any case where there are rights of appeal given to each of two joint claimants in a tax credits case. The rights of appeal are separate rights of each of the claimants. Both must be notified of the rights of appeal. If one appeals and not the other, then the non-appellant partner must, if he or she wishes, be given a fair hearing. That must involve rights to receive notices, to elect for an oral hearing, and to be heard at that hearing.

47 The final issue is the effect of a decision of a tribunal on a non-appellant joint claimant. If that claimant has an effective right to be heard on any appeal that leads to a tribunal decision directly affecting her or him, and is fairly heard if he or she wishes, then there is in my view nothing in the 2002 Act or relevant regulations to prevent the decision of the tribunal applying directly to both the appellant claimant and the non-appellant claimant.

Conclusion

48 The decision must therefore go to a new tribunal for the reasons set out in paragraph 10 subject to rehearing under the directions given in paragraph 3 (subject to any further directions by a district chairman).

David Williams
Commissioner
23. 05. 2006

[Signed on the original on the date stated]