



Neutral Citation: [2024] UKFTT 00142 (TC)

Case Number: TC09077

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

[By remote video/telephone hearing]

Appeal reference: TC/2022/14004

INCOME TAX – High Income Child Benefit Charge – whether taxpayer entitled to an amount in respect of child benefit – yes – appeal dismissed

Heard on: 23 January 2024

Judgment date: 12 February 2024

Before

**TRIBUNAL JUDGE MALCOLM FROST
DEREK ROBERTSON**

Between

ADRIAN WARD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Adrian Ward represented himself

For the Respondents: Nathaniel Campbell litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. This is an appeal against an assessment to the High-Income Child Benefit Charge (“HICBC”).
2. With the consent of the parties, the form of the hearing was V (video). Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

BACKGROUND FACTS

3. The documents to which we were referred were a Document Bundle of 90 pages, a Generic Bundle of 846 pages and a copy of the decision in *Meades v HMRC* [2023] UKFTT 00544 (TC) (“*Meades*”).
4. Mr Ward was available to give evidence, and HMRC made two officers available as witnesses (Matthew Almond and Richard Lambert). In the event, there was no evidential dispute between the parties. We find the facts as follows.
5. Mr Ward was awarded child benefit from 27 September 2004 to 02 November 2020. The claim for child benefit was made in Mr Ward’s name rather than the child’s mother. We refer to the “Child” and the “Child’s Mother” throughout this decision.
6. In around February 2012 Mr Ward separated from the Child’s Mother. As a part of a financial agreement between them, Mr Ward directed that child benefit payments be made to the Child’s Mother’s bank account. The Child lives with the Child’s Mother.
7. In tax year 2018/19:
 - (1) Mr Ward’s Adjusted Net Income (“ANI”) exceeded £60,000.
 - (2) The total child benefit paid to Mr Ward’s ex-wife was £1,076.
 - (3) There was no person who was a partner of Mr Ward and whose ANI exceeded Mr Ward’s
8. On 11 July 2022 HMRC issued an assessment to HICBC of £1,076. On 5 August 2022 Mr Ward appealed against that assessment.

THE LAW

9. There are a number of statutory provisions relevant to the issue to be determined by the Tribunal. For ease of reference, we set them out in full here.
10. Liability to HICBC is provided for in s. 681B Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”). That section provides:
 - 681B High income child benefit charge
 - (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.

(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.

11. The amount of the charge is then determined pursuant to s 681C ITEPA by reference to “any amounts in relation to which condition A is met” or “any amounts in relation to which condition B is met”

12. The entitlement provisions for Child Benefit are set out in s 141 Social Security Contributions and Benefits Act 1992 (“SSCBA”), which provides:

141 Child benefit.

A person who is responsible for one or more children or qualifying young persons in any week shall be entitled, subject to the provisions of this Part of this Act, to a benefit (to be known as “child benefit”) for that week in respect of the child or qualifying young person, or each of the children or qualifying young persons, for whom he is responsible.

13. As a result, the basic entitlement to child benefit relies upon a person being responsible for a child.

14. The meaning of being “responsible for” a child is set out in s 143 SSCBA, which provides (so far as relevant):

143 Meaning of “person responsible for child or qualifying young person”.

(1) For the purposes of this Part of this Act a person shall be treated as responsible for a child or qualifying young person in any week if—

(a) he has the child or qualifying young person living with him in that week; or

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

15. There are therefore two groups which may be considered responsible for a child – those living with the child, and those contributing to the cost of providing for them. As a result, multiple individuals may be considered to be responsible for a particular child.

16. Where there are multiple persons entitled in respect of the same child, s 144(3) SSCBA provides for a tie breaker in the following terms:

144 Exclusions and priority.

...

(3) Where, apart from this subsection, two or more persons would be entitled to child benefit in respect of the same child or qualifying young person for the same week, one of them only shall be entitled; and the question which of them is entitled shall be determined in accordance with Schedule 10 to this Act.

17. It is important to note that the above section is exclusionary: where Sch 10 of the act deems one person to take priority over another, the individual with the lesser priority is deemed not to be entitled to child benefit.

18. Schedule 10 SSCBA then sets out a number of prioritisation rules. Each rule takes priority over those that follow it. We set out the first three rules:

SCHEDULE 10 Priority between persons entitled to child benefit

1. Person with prior award

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

(2) Sub-paragraph (1) above shall not confer any priority where the week to which the claim relates is later than the third week following that in which the claim is made.

19. The above provision gives a person with a pre-existing award priority over a person making a claim to benefit. The provision does not give priority over anyone else (i.e. someone who is entitled under s 141 but has not made a claim), and the priority only lasts for three weeks following the new claim. We shall return to the relevance of this provision in discussion.

20. The other two priority rules of some relevance are in the following paragraphs of Sch 10:

2. Person having child or qualifying young person living with him

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.

3. Opposite-sex spouses or civil partners

Subject to paragraphs 1 and 2 above, as between a man and woman who are married to, or civil partners of, each other and are residing together, the woman shall be entitled.

21. These rules mean that a person living with the relevant child takes priority over a person who is contributing to the cost of providing for them.

ISSUES TO BE DETERMINED

22. There is no dispute between the parties as to the sums involved, nor as to the validity of HMRC's discovery assessment. We find that HMRC validly exercised their power to issue a discovery assessment.

23. It is common ground that it is condition A of s 681B ITEPA that is relevant to the present case. It is also agreed that subsection (b) of that condition is met. The dispute between the parties relates to whether subsection (a) is met.

24. In other words, the sole issue between the parties is whether or not Mr Ward is "entitled to an amount in respect of child benefit" for the relevant period.

POSITIONS OF THE PARTIES

25. HMRC submit that the phrase “entitled to an amount in respect of child benefit” is to be read as meaning “entitled to child benefit within the meaning of s 141 SSCBA”. The natural consequence of this is that the Tribunal should simply follow the entitlement rules set out in that section and following sections in order to determine entitlement.

26. HMRC argue that the *Meades* decision (and particularly paragraph 64) supports their view.

27. Mr Ward maintains that he should not be liable to the HICBC as it is his ex-wife rather than himself who is in receipt of the relevant child benefit. As soon as he discovered that he may be liable to HICBC he cancelled his child benefit claim. His ex-wife then made a replacement claim and is now receiving the benefit (with no possibility of a HICBC liability arising to Mr Ward).

28. He submitted that the fact that the claim had previously been in his name should not make a difference as his ex-wife had been in receipt of the money throughout. The difference was purely of form rather than substance.

29. Mr Ward submits that the provisions of SSCBA are intended to guide the decision makers making awards of child benefit and are not relevant to the question of liability to HICBC. He notes that the HICBC provisions were brought into force many years after the child benefit rules and the child benefit rules were therefore not drafted with a view to determining liability to a tax charge.

30. Mr Ward argues that the correct test is the receipt of the actual cash payments of child benefit.

DISCUSSION

31. In our view, the correct interpretation lies somewhere between the position of the two parties.

32. HMRC’s position is to follow the definition of ‘entitled’ in SSCBA, without reference to payments or claims. However, that approach runs into potential difficulties quite quickly. We provide two illustrations of such difficulties.

33. Firstly, HMRC’s approach would result in individuals who had never made a claim to child benefit potentially being liable to HICBC.

34. For example, taking a simple case of a lone parent living with their child. That parent would, under s. 143 SSCBA, be ‘entitled’ to child benefit. If that parent has ANI of over £60,000 they would suffer full clawback of any child benefit they received. That parent may therefore decide not to apply for the benefit.

35. However, under HMRC’s suggested approach, we are to only apply the meaning of ‘entitled’ under SSCBA. That would mean that a parent who had not made a claim to receive the benefit could nonetheless be liable to HICBC. This does not seem likely to be a result envisaged by Parliament.

36. It might be suggested that no issue of the type described above would arise in practice as no amount would arise to be taxed. However, HMRC were unable to satisfactorily explain what the proper measure of liability would be if only the bare entitlement were considered for condition A.

37. The second potential difficulty arises from the application of the Sch 10 SSCBA priority rules in the present case.

38. As noted above, paragraph 1 of Sch 10 provides for a person who has already been awarded the benefit to take priority over a new claimant for a period of three weeks. It does not apply where there is no new claimant.
39. This provision makes sense in the context of dealing with claims for child benefit, but causes inconsistencies when considering HICBC. This is because there is often no new conflicting claim for the rule to attach to.
40. In the present case, the Child's Mother had not made any claim to benefit (as Mr Ward had simply redirected payments to her account). That would mean that the paragraph 1 priority rule would not apply so as to give Mr Ward priority over the Child's Mother.
41. Applying the prioritisation rule in paragraph 2 of Sch 10 SSCBA, we see that the Child's Mother has priority under that rule, as she is living with the Child. Pursuant to s. 144 SSCBA Mr Ward would therefore be excluded from entitlement.
42. As a result, if we were to apply HMRC's approach and look only at the use of the word 'entitled' in SSCBA, Mr Ward would not be entitled as the Child's Mother would take priority.
43. Overall, we consider that the approach HMRC suggest is flawed.
44. Indeed, we consider that it fails to apply the full statutory wording. Subsection (a) of Condition A in s 681B ITEPA is not concerned with simple entitlement but provides that the taxpayer "is entitled to an amount in respect of Child Benefit".
45. The legislative test therefore requires that the taxpayer has an entitlement to an amount, not simply an overall entitlement to the benefit. This accords with the approach in s. 681C that the amount of the tax charge is calculated by reference to any such amounts.
46. Our understanding of the mechanics of child benefit is that an individual (whether or not they are 'entitled' within the meaning of s 141 SSCBA) does not have a right to receive anything until they have first made a claim and then been awarded the benefit.
47. In our view, it is the award of benefit that is key here.
48. The award entitles a taxpayer to actually receive amounts of money in respect of child benefit. Being entitled to child benefit within the meaning of s 141 SSCBA is not in itself sufficient.
49. We agree with Mr Ward that the rules in SSCBA, and particularly the prioritisation rules in Sch 10, are intended to enable a decision maker to decide whether or not to make an award as a result of a claim. They do not make complete sense outside of the context of a claim and we would suggest that they do not need to be applied in order to determine liability to HICBC. We consider that this Tribunal need only be satisfied that an award has been made in favour of the taxpayer.
50. By concentrating entitlement 'to amounts', rather than entitlement to the benefit in abstract, this should mean that this Tribunal can in most cases simply rely on documents showing the making of an award, rather than considering the application of the provisions of SSCBA.
51. It is of course true that an award of child benefit would normally arise as a result of an underlying entitlement under SSCBA. In some cases, it may be necessary for this Tribunal to look behind an award and consider the underlying entitlement (or perhaps the basis upon which the decision maker made the award), but this should be relatively rare.
52. If there is a dispute as to whether or not a claimant should receive an award of child benefit, there exist dispute resolution processes and a right of appeal to the Social Entitlement

Chamber of this Tribunal. The Tax Chamber would generally defer to the expert view of that specialist Chamber. We do not consider it desirable that the Tax Chamber could potentially consider the same entitlement provisions as may have been considered by the Social Entitlement Chamber and come to a different view.

53. Nonetheless, although we agree with Mr Ward on the relevance of the entitlement and prioritisation rules in SSCBA, we do not agree with his suggestion that the liability to HICBC should not arise where the payments are not actually made to the person with the award of benefit.

54. The statutory wording is clear, the tax charge arises as a result of the taxpayer being entitled to particular amounts. It does not require the taxpayer to actually receive those amounts. It is sufficient that the taxpayer has the right to payments and can direct the payment as they please. If the statute were read any other way, it would be trivial to avoid liability to HICBC by simply directing that payments be made to a third party.

CONCLUSION

55. For the reasons set out above, we consider that the words “entitled to an amount in respect of child benefit” in Condition A of the HICBC legislation must be given their ordinary natural meaning. That is, the taxpayer must have a present right to receive actual payments of the benefit.

56. In order to be entitled to “an amount”, the taxpayer will generally be entitled to receive actual amounts by virtue of having been made an award of child benefit. It should not normally be necessary for the Tribunal to go behind an award of child benefit and consider whether the taxpayer is ‘entitled to child benefit’ within the meaning of s 141 SSCBA.

57. However, if a taxpayer is entitled to receive such amounts, it does not matter that they direct that the sums in question be paid to another person. The taxpayer remains liable to the HICBC whether or not they actually receive the sums they are entitled to.

58. In the present case, Mr Ward had been awarded child benefit and was entitled to receive amounts as a result of that award. He directed that those amounts be paid to the Child’s Mother, but that did not alter his entitlement to those amounts.

59. As a result, we find that Condition A was met and that Mr Ward was liable to HICBC.

60. We therefore dismiss Mr Ward’s appeal and uphold HMRC’s assessment.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

61. 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.

**MALCOLM FROST
TRIBUNAL JUDGE**

Release date: 12th FEBRUARY 2024