IN THE UPPER TRIBUNAL **Case No.** CTC/1474/2011
ADMINISTRATIVE APPEALS CHAMBER

Before UPPER TRIBUNAL JUDGE WARD

Attendances:

For the Appellant: in person

For the Respondent: Mr Christopher Stone, Counsel, instructed by the solicitor to HM Revenue and Customs

Decision: The appeal does not succeed in the result. Although the decision of the First-tier Tribunal sitting at Birmingham on 14 January 2011 under reference 024/10/08511 involved the making of an error of law and is set aside, having made further findings of fact I substitute a decision to like effect. Accordingly, the decision of the respondent variously stated in the evidence as having been made on 8 June and 22 June 2009 to the effect that the amount of child tax credit payable to the appellant should include (in respect of his son, H) the disability and severe disability elements with effect from 20 December 2008, but no earlier date, is upheld.

REASONS FOR DECISION

1. The appellant's son, H, has a disability. On 3 February 2004 Disability Living Allowance (DLA) was awarded in respect of him with effect from 9 December 2003 (p64). Subsequently, on 23 September 2004 the award was increased so as to include the higher rate of the care component, with effect from 2 April 2004 (p60). (Page references are to the Upper Tribunal bundle).

2. On an unknown date in April 2004 (p403), the appellant was awarded carer's allowance in respect of looking after H, with effect from 12 April 2004 (p362).

3. Both DLA and carer's allowance are, of course, the responsibility of the Department for Work and Pensions rather than HM Revenue and Customs, the respondent in the present proceedings.

4. The appellant had received tax credits from the respondent since 23 August 2003 (p147). This had not included any additional element in respect of the disability of H.

5. On 20 March 2009 the respondent became aware following a data matching exercise conducted between its databases and information held by the DWP that DLA was payable in respect of H. The award was at a rate sufficient to attract the disability element and severe disability element to the calculation of the appellant's tax credits (see section 9 of the Tax Credits Act 2002 and regulations 7 and 8 of the Child Tax Credit Regulations 2002/2007 ("the 2002 Regulations")). This was implemented by the respondent with effect from 20 December 2008, allowing the maximum backdating of three

months for which regulation 25 of the Tax Credits (Claims and Notification) Regulations 2002/2014 ("the CN Regulations") then provided.

6. Regulation 20(1) of the CN Regulations provided throughout the relevant period that:

> "Any change of circumstances of a description prescribed by para.(2) which may increase the maximum rate at which a person or persons may be entitled to tax credit is to do so only if notification of it has been given in accordance with this Part."

The award of DLA in respect of H, firstly at all and secondly as increased so as to include the highest rate of the care component would both fall within para (2) of the regulation. The appellant sought the application of the increase from an earlier date than 20 December 2008, claiming that he had previously notified the respondent of the relevant facts. When this was refused he appealed to the First-tier Tribunal. The Citizens Advice Bureau assisted him with a submission, but did not attend the hearing. The appeal failed. I subsequently gave permission to appeal.

7. It is common ground that the First-tier Tribunal erred in law.

8. An earlier tribunal had adjourned in the light of the case the appellant was putting forward, giving Directions to the parties for various items of evidence to be produced. The appellant complied (unfortunately a large number of the documents he produced which it is common ground were before the tribunal were missing from its file and I am grateful to the parties for their assistance in clarifying and remedying the position before me.) The respondent was directed to produce "copies of such claim forms and other documents submitted by the appellant since the inception of his claim and as are still held by [HMRC]". The respondent's response was accompanied by a single document, of no relevance to the time under consideration in the case and a submission that "Unfortunately as the claim form was received more than five years ago, this has now been destroyed." This was not a satisfactory answer in part because it was entirely silent as to other documents which fell within the terms of the Direction and for which the stated document destruction policy after five years did not provide a sufficient answer. This does not appear to have troubled the tribunal.

9. More significantly as things have turned out, the respondent does in fact record telephone conversations on its Helpline and recordings and summaries and, where appropriate, full transcripts of 16 of these involving the appellant, covering the period in question, have been produced to me, but were not produced to the First-tier Tribunal. The respondent had been in breach of rule 24 of the First-tier Tribunal's rules of procedure by failing to provide these in the first place and missed the opportunity to correct the breach by means of its response to the tribunal's Direction. Rule 24(4)(b) of the First-tier Tribunal's rules requires the decision maker in this class of case to provide with the response to an appeal:

> "copies of all documents relevant to the case in the decision maker's possession, unless a practice direction or direction states otherwise."

"Document" in this context is a defined term under rule 1(3):

> ""document" means anything in which information is recorded in any form, and an obligation under these Rules to provide or allow access to a document or a copy of a document for any purpose means, unless the Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can readily be made into a legible form."

Accordingly, the scope of rule 24(4)(b) extended to the recordings of telephone calls which recorded information, as on any view at least some of them did. The non-compliance with rule 24 in such a major respect meant that the tribunal necessarily was unable to take into account potentially material evidence and meant that its decision was in error of law: see e.g. *MN v SSWP (ESA)* [2013] UKUT 262.

10. I need not deal with any other error of law there may be in the tribunal's decision.

11. With the benefit of the reconstructed material that had been before the tribunal and with such further evidential material as it was open to the Upper Tribunal to obtain, I decided to substitute a decision on the facts. There appeared little or nothing to be gained from remitting the voluminous paperwork to a judge of the First-tier Tribunal who would in all probability be sitting alone, as does an Upper Tribunal judge, and who would have had to engage with the matter from scratch. Further, some of what it has proved possible to establish in this case may be of assistance to a wider audience who may have access to it if it is promulgated as a decision of the Upper Tribunal. An oral hearing was held on 12 December 2012 at which I received oral evidence from the appellant and a written submission on his behalf which the CAB had prepared and submissions from Mr Stone on behalf of the respondent. It proved necessary to obtain further evidence from the carer's allowance unit of the DWP and, when it was received, to invite submissions upon it. Time has then passed before the opportunity could be found at a time when the Upper Tribunal's caseload is high to give the matter the necessary detailed consideration and I apologise to the parties for that.

12. The appellant's case about exactly when and how he claims to have notified the respondent that H was in receipt of DLA has not been altogether consistent, nor are the written submissions filed on his behalf consistent with what he said at the oral hearing, or earlier in the litigation. In some places he has said he told the officials previously (though he is unspecific as to what he told them); in others, he has said that he informed the tax credit office by way of sending in the DLA documentation either "in 2004" or "on several occasions". Elsewhere, he has said he sent up his accounts which referred to the DLA.

13. In view of this I had directed the appellant (via the CAB) to provide full particulars in respect of each instance when he informed HMRC that DLA had been awarded in respect of his son, the particulars to include (a) how i.e. orally or in writing (b) to what office and (c) approximately when. In reply the CAB submitted that he notified the respondent's tax credit office:

> (a) by telephone shortly after the date of the decision to award DLA (i.e. as seen above, 3 February 2004);
>
> (b) by telephone shortly after the date on which he was awarded carer's allowance (i.e. on or around 12 April 2004);
>
> (c) by telephone shortly after the date on which DLA payable was increased so as to include the higher rate of the care component (i.e. 23 September 2004); and
>
> (d) both by telephone and by supplying copies of his earnings and benefits to the tax credit office as part of the regular process of renewal of tax credit claims.

I deal with each of these below.

14. There is evidence before me in the form of a witness statement dated 4 December 2012 by Mr David Eland of the respondent's Legislative Advice Team (Benefits and Credits), the text of which, insofar as it deals with matters of potentially wider applciation, is set out in the Schedule to this decision. For ease of reference I repeat here what it says about the respondent's practice with regard to the recording of telephone calls:

> "Telephone calls made to the Helpline are electronically recorded and retained. These calls are normally retained for five years plus the tax year or from the date of the last decision on that claim.
>
> Telephone calls made to other areas of the department (for example, to a specific caseworker) are not recorded electronically. A written record of the call is usually retained on the paper file instead."

15. The respondent has provided recordings of 16 telephone calls made by the appellant in the period from 4 December 2003 to 24 April 2008. The appellant and the CAB have had the opportunity to listen to the recordings.

16. In the light of Mr Eland's evidence and given that the respondent can produce recordings of so many calls made during the relevant period, I take that as representing the totality of calls made to the Helpline by the appellant in that period. There has been no suggestion that the appellant made calls to the respondent otherwise than to the Helpline. The appellant made one call on 4 December 2003 and two more on 9 December. I find that in the phone call of 4 December he asked about how to claim for DLA. He was told and also that he would have to contact the Helpline again once DLA had been awarded. and on 9 December 2003 he indicated that DLA had been applied

for. It was not at that point payable as no decision had been taken. The next telephone call was not until 8 September 2004. It was made in response to a letter from the respondent dated 10 May 2004 notifying him of his tax credit award and discussed estimated figures of income, maximum entitlement and childcare. The call does not contain any reference to the award of DLA to H. I therefore do not accept that the appellant made the claimed notifications referred to at [13] (a) and (b) above.

17. The first telephone call after 23 September 2004 (the date on which H's DLA was increased) was not until 10 January 2005. The call concerned the income figures from the appellant's small business , what would happen next in relation to his claim and what the rates would be when they went up in April. Again, there was no mention of DLA. I find that the claimed notification referred to at [13](c) was not made.

18. I turn to the point at [13](d) above. As indicated in Mr Eland's evidence, as part of the tax claim procedures and as required by section 17 of the Tax Credits Act 2002, a letter in form TC603 is sent out by the respondent following the end of each tax year, by which a claimant finalises and may renew his entitlement. The form requires him to check the respondent's understanding of his personal circumstances and to provide his actual income figures for the tax year recently expired. I return to TC603 in more detail below. Mr Eland's evidence in relation to this case is that he has interrogated the respondent's computer records to establish the dates recorded by the respondent as the dates of the appellant's responses to form TC603. On two occasions in the relevant period the respondent's records show the replies as having been given by telephone and on three in paper form. Clearly they were found by the respondent to be satisfactory, as payment of tax credits continued.

19. Dealing with the phone calls first, the appellant's response for the tax year 2004/05 was made on 2 August 2005. He gave his total earnings as £2000. He says now that that figure included carer's allowance. If it did, it was an inaccurate figure, as the weekly amount of carer's allowance for that year was £44.35 and thus a 52 week figure would be £2306.20 and the discrepancy would be somewhat greater by the time the small net profit from the appellant's business was also taken into account. I find that in that call, no mention was made of either DLA or carer's allowance and that the figure given was not such as to put the respondent on notice that carer's allowance was in payment (though for the reasons in [21] it would not have made any difference if it had been).

20. The appellant's response for the tax year 2007/08 was made by phone call on 24 April 2008. In the course of that conversation he was asked whether he was receiving a taxable benefit (as it is essentially those that are taxable which also fall to be taken into account for tax credit purposes). He replied that he was getting carer's allowance. He was neither asked nor volunteered the name of the person for whom he was caring so as to give rise to this entitlement. Nor was any reference made otherwise to H being in receipt of DLA.

21. It does not follow that because a claimant is claiming carer's allowance in respect of caring for someone, the person being cared for is the child who founds the claim to child tax credit. It might, for instance, be a disabled adult relative. While the official on 24 April 2008 might have asked, I do not consider that the respondent was obliged to do so. The general rule is that it is for the claimant to establish that he meets the conditions of entitlement and in the present case the respondent had taken a number of steps by way of the Notes referred to in [25] below to draw attention to the need to inform it if the child concerned was in receipt of DLA, because of the potential for a higher rate of tax credit to be paid as a result.

22. Turning to the replies in documentary form, Mr Eland has provided evidence of the enquiry he made to obtain copies of the TC603 replies and of the response that none could be found. Mr Eland's evidence explains that through a process known as Rapid Data Capture if written responses to the TC603 letter were capable of successful scanning direct to the respondent's computer system, they were. If they were not, the response would have ended up on the paper file. Mr Eland's evidence is that the computerised images and the paper files are usually retained for five years plus the tax year or from the date of the last decision on the claim. Given that the last paper response was in respect of the tax credit year 2006/07, one would have expected that at any rate that response would still have been available to the respondent in one form or the other when Mr Eland searched for it in October 2011, a fortiori when his colleague Ms Guzik did so in October 2010 (p21). It follows that this is not a case where the respondent's document retention policy can account for the non-availability of material evidence. There is no indication that this is a case of spoliation of documents i.e. deliberate destruction of documents with the intention of destroying evidence. As we are concerned with more than one missing document, covering more than one tax year, misfiling recedes as a possibility and the most likely explanations are either that whole files have been mislaid or that the documents have been jettisoned by the respondent in a file weeding process, albeit prematurely if one goes by their policy (and in marked contrast with the implementation of the policy with regard to phone calls, which go back a good deal longer). It is appropriate in these circumstances to rely on secondary evidence as to what was likely to have been in the missing documents: see R(IS)11/92.

23. Firstly, there was no reason why the respondent should have referred to H's receipt of DLA on the Form TC603 as a circumstance whose continuation the appellant was required to confirm if it was unaware of the point. I have already found that the appellant had not previously notified the respondent of the award of DLA by telephone.

24. Form TC603 in the version in use in 2006 addressed the issue of children with disabilities. The letter sent to the appellant said:

> "Your children and young people
>
> Extra amounts of Child Tax Credit may be payable if

> ● you receive Disability Living Allowance for any of your children, or
> ● any of your children are registered blind (or were taken off the register in the 28 weeks before your claim), or
> ●You receive the Highest Care Component of Disability Living Allowance for any of your children.
>
> At 05/04/2006 we held the following information for each of your children. If you have already told us that any of the above applied, details will be shown for each child as appropriate. Please check the details shown and tell us if anything is wrong or if you think that any of the above now apply. See the Notes for more information."
>
> [H's name and date of birth, but nothing else, were then stated]

25. There appears to have been a change in the version of TC603 in use the following year (p211) in that the letter itself did not attempt to deal with the above bullet-pointed matters as part of the letter but instead said "The Notes tell you what to look for when you are checking and who can get extra amounts of tax credits.". A copy of the material part of a later version of those Notes (as issued on 18 April 2008) is in evdience at pp22-25. This contains the statement that:

> "A child or young person is regarded as severely disabled if you receive the Highest Rate Care Component of Disability Living Allowance for them."

Though the version of the Notes in evidence was not that in force in 2007 I find that the version which was would have contained substantially the same provision, as there was no reason for it not to have done when the law had not changed.

26. I find therefore that a person who had read the letter in form TC603 in 2006 or the Notes in 2007 with sufficient thoroughness and who had a child that qualified would have had reason to draw the matter to the attention of the respondent if he thought the respondent was not already aware of it.

27. The appellant's circumstances were not easy. His small business , in which he worked each week for a large number of hours, yielded a net profit that was never described as more than £2000 per annum and generally was of a few hundred pounds only. It also appears that he was at the material time the single parent of a son with significant disabilities. It is clear from the tenor of his phone calls that he was, understandably in those circumstances, concerned about the amounts of tax credit he would receive and that the procedures should run smoothly. If he had read the letter in TC603 in 2006 or the Notes in 2007 with sufficient care and thought he was not getting as much tax credit as he should have been, I find that he would have acted upon them. However, had his (missing) paper replies of 10 May 2006 or 10 May 2007 disclosed H's receipt of DLA yet no significant change to his tax credit resulted, I conclude that he would have rung the Helpline, as he did on numerous other occasions, to follow the matter up. However, following 10

May 2006, his next call was not made until 12 January 2007 and purely concerned the latest net profit figure from his business. Following 10 May 2007 his next call was made on 10 December 2007 and once again concerned only net profit figures.

28. His oral evidence though was that he did not realise that extra tax credit was available where a child receives DLA but sent up the DLA documents out of thoroughness and a desire to avoid an overpayment. It is hard to see on the income figures and practices then adopted by the respondent any objective basis for the latter ground. In any event, among the documentary evidence which the appellant has supplied, even though there is some evidence that he has a tendency to annotate documents, there is nothing (such as a note on a document indicating that a copy was sent to the tax credit office on such-and-such a date) providing any positive support for a view that a copy of DLA award notices was ever forwarded to the tax credit office. Unless the appellant thought he was entitled to an increased rate of tax credit but was not receiving it (which he says he was not, having failed to read the relevant documents sufficiently thoroughly) there was no objective reason to send up papers in respect of the DLA award as part of the annual renewal process (or otherwise). DLA is not income for tax credit purposes. That, as part of the annual renewal process, he may have notified the office of his receipt of carer's allowance (as he was required to do, for it does count as income for tax credit purposes), does not help him for the reasons at [21]. Nor is it intrinsically likely that, if as he suggests, he sent up DLA award notices as a matter of routine, the respondent, to whose tax credit office the significance of such notices would be obvious, would have repeatedly failed to act upon them. As regards the suggestion that his accounts showed the receipt of DLA, one would not expect them to have done so, given that DLA was payable to him as appointee for his son and was non taxable and the only accounts that are in evidence (p178), for the year ending 5 April 2006, patently do not.

29. In the light of its tendency to vary in the proceedings, the lack of objective support from such records as are available and its implausibility in some respects, I regard the appellant's evidence, though given in good faith, as impaired by the passage of time (anyone may find it hard to recall essentially routine matters of the administration of their personal finances after as long as nine years) and possibly by a subconscious desire to rationalise a position that would support his perception that he had lost out.

30. While I note the existence of the screen print at p26 of an entry on one of the respondent's systems which refers to H as an "interested party" and refers to the award of DLA with a "start date" of 15 January 2004, there is no indication that this was a contemporaneous entry and thus that the point was known to the respondent before 20 March 2009, so I regard this evidence as neutral.

31. Looking at the available evidence in the round, I conclude that the appellant did not as part of the annual renewal process notify the respondent that DLA was payable to H. The most likely explanation is that he thought he

was already getting the proper amount of tax credit, as indeed he has said in evidence was the case, and I so find. Whether this was based on being unaware of the potential for DLA to increase the amount of a tax credit (because he had not read the paperwork sufficiently thoroughly) or because of the mistaken belief that he had already told the tax credit office – perhaps in the December 2003 conversations - about the award of DLA, I cannot say, but it does not matter.

32. If it was the latter, there is a certain ambiguity in the way the relevant part of the letter in Form TC603 (as in use in 2006) is written. One has to infer what the respondent would have said on the form had one previously reported that a child was receiving DLA and then to notice that it is not there. It would be possible to read the letter, wrongly, as saying that because a child's details were "shown below" he had been noted to fall within one of the categories covered by the bullet points. This ambiguity would have meant that there was no sufficiently unequivocally stated indication that the respondent was not aware that H was getting DLA to correct any mistaken view he may have had that in his earlier discussions with the Helpline, he had already notified the respondent to that effect. Once the matter was moved to the Notes, they would merely have stated the law in general terms and thus would not have served to disabuse the appellant of any mistaken view that he was already getting what he was entitled to.

33. The other time when the appellant's response was made in written form was on 7 May 2004 (for the tax year 2003/04). As there is no reason to think that the TC603 process would have run any differently in the tax year 2003/04 to how it ran for the year 2005/06 and there is no call following up the non-change in the amount of tax credit in respect of the earlier year either, I conclude that there was likewise no disclosure of H's receipt of DLA in the responses made on 7 May 2004.

34. There are several further matters with which it is necessary to deal.

35. The appellant sought to rely on the decision in *LV v HMRC (TC)* [2010] UKUT 483 (AAC) (previously known as CTC/720/2010). That turns on regulation 26A of the CN Regulations as they then stood:

> "(1) In the circumstances prescribed by either paragraph (2) or (3), the notification of a change of circumstances referred to in sub-paragraph (f) of either of those paragraphs is to be treated as having been given on the date specified by paragraph (4).
>
> (2) [Not material]
>
> (3) The circumstances prescribed by this paragraph are where–
> (a) a notification was given of a change of circumstances which might result in the person or any of the persons by whom the claim was made becoming entitled to the disability element or the severe disability element of child tax credit ("the original notification");

(b) on the notification, the decision of the Board under section 15(1) of the Act was not to amend the award of the tax credit made to him or them;
(c) the reason for that decision was that the person or any of the persons was not entitled to the element because regulation 8(2) or (3), as the case may be, of the Child Tax Credit Regulations 2002 was not satisfied in respect of the child in relation to whom the claim was made;
(d) at the notification date in relation to the original notification, the person or either of the persons had made, in respect of the child, a claim that had not been determined for a disability living allowance ("the other claim");
(e) after that date, the other claim was determined in favour of the person by whom it was made; and
(f) a further notification of the change of circumstances is given by the person or any of the persons, within three months of the date that the other claim was determined.

(4) The date prescribed by this paragraph is–
(a) the first date in respect of which the disability living allowance is payable; or
(b) if later, the date on which–
(i) in the circumstances prescribed by paragraph (2), the original claim was made (or treated as made under regulation 7); or
(ii) in the circumstances prescribed by paragraph (3), the original notification was given (or treated as given under regulation 25)."

It is evident from the decision in *LV* that for the regulation to operate, there must not only have been notification that DLA had been claimed (which is not in dispute) but must also have been a second notification (i.e. of the award of DLA), which is precisely what is lacking here. Where there is one, the regulation has the effect of shifting forward the date from which the higher level of tax credit can be claimed, but on the facts, that cannot help the present appellant.

36. Although no point has been taken on it by the appellant or on his behalf, I should also deal for the sake of completeness with the letter dated 19 December 2006 which appears at page 219. This letter is from the National Insurance Contribution Office , which is a part of the Respondent, although both organisationally and geographically separate. The letter is about avoiding duplication between the Class 2 national insurance contributions which the claimant was paying as a self-employed person and the credits he was getting by reason of receiving carer's allowance which, accordingly, the respondent (in the widest sense) knew about as at that date. This does not help the appellant because even if (which I should not be taken as accepting) the knowledge of the National Insurance Contribution Unit could be attributed to the tax credit office, the evidence does not show that the person in respect of whose care carer's allowance was being paid was H and thus the point at [21] once again applies.

37. I need then to deal with what I find to be the first date when the appellant did mention to the tax credit office that DLA was in payment. This occurred on 12 March 2008. The call was to notify the tax credit office of the appellant's change of address. The appellant asks (p365): "Can you put it across the whole board with Child Benefit and everybody? Can you put it on the system because it goes through to all the systems?" He goes on to indicate that he would like the change notified to those concerned with disability living allowance and carer's allowance also (though no reference is made to the person whose disability founded those entitlements). The official indicates that "we are not directly linked to" the sections [sc. of the DWP] concerned with those benefits and suggests that the appellant ring them himself. I am unable to infer that an unparticularised request to notify a change of address to the authorities concerned with DLA was to be construed as a notification to the tax credit office of receipt of DLA for the child in respect of whom child tax credit was payable for the purposes of seeking an increase in the amount of the tax credit awarded.

38. I turn finally to the point made on behalf of the appellant that he feels the respondent and the DWP can check each other's systems when it suits them and therefore that the respondent should in some way be fixed with the DWP's knowledge. Even assuming there to be a factual basis for that, which has not been established in evidence, what is important are the specific terms of the tax credit legislation. Reference has already been made at [6] above to regulation 20 of the CN Regulations, which has the effect that a person can only rely on a change of circumstances for the purpose of an increase in tax credits if notification of the change has been given in accordance with the relevant part of the CN Regulations. Accordingly, anything the respondent may have been able to find out from the DWP was not sufficient to confer any legal right on the appellant unless he had made sufficient notification. (Payment to him following the data matching exercise which did take place thus appears to have been made as a matter of customer care.)

39. By regulation 22(2) (as it has stood throughout the relevant period):

> "A notification must be given to a relevant authority at an appropriate office."

The definition of "appropriate office" has since been changed (by SI 2009/697). Up to and including 5 April 2009 it read:

> ""appropriate office" means an office of
> (a) the Board,
> (b) the Department for Work and Pensions, or
> (c) the Department for Social Development in Northern Ireland;"

The definition of "relevant authority" need not be set out but extends to the Secretary of State.

The CAB seeks to rely on this but it seems to me that a "notification" must indicate, at least in general terms and whether expressly or impliedly, the

purpose for which it is being made. In the present case, there is no evidence that the appellant ever notified any part of the DWP that DLA was payable in respect of H for the purpose of seeking an increase in the amount of his tax credit as opposed to, for instance, for the purposes of claiming carer's allowance. The appellant confirmed in oral evidence that his dealings with the carer's allowance unit were solely for the purpose of claiming that benefit.

40. Accordingly, in my judgment the appellant at no time before 20 March 2009 notified either the respondent or (sufficiently for the matter to fall within the scope of the 2002 Regulations) the DWP of H's award of DLA. The higher rate of tax credit is payable only from 20 December 2008 and though the decision of the First-tier Tribunal involved the making of an error of law, the respondent's original decision was correct. Unfortunately, the appellant failed to act and has lost out as a result. It does not follow that the respondent is legally obliged to make that good.

CG Ward
Judge of the Upper Tribunal
24 October 2013

SCHEDULE

Extracts from the witness statement of Mr David Eland, HMRC, dated 4 December 2012

2. I will briefly set out HMRC's policy on retention of documents and telephone transcripts to the extent that it is relevant to this appeal.

3. All claims and renewal claims for Tax Credits coming into HMRC are electronically scanned at our building in Netherton. This process is called Rapid Data Capture or "RDC".

4. The RDC process serves two purposes. The first is that a scanned image of the claim form is retained electronically. This means that the original paper version of the form need not be retained. The second is that the information contained within the claim form (the claimant's answers to the questions on the form) is populated onto the tax credit computer system. This means that the information does not need to be recorded onto the system manually.

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5. Whilst scanning claim forms by RDC, certain claims will be identified that cannot be fully captured. This arises where the clams (i) do not contain the minimum data set or (ii) contain more than eight critical errors.

6. The RDC computer captures a list of all such claims that fail on the basis of the two scenarios above. The list shows the date that the claim form was received.

7. In the case of documents as per (i) above, HMRC staff will attempt to repair the exception and resubmit the clam for scanning. If the document cannot be repaired then the claim is returned to the claimant, providing that they have a full address. As a last resort, the claim will be disregarded.

8. In the case of documents as per (ii) above, HMRC staff at Netherton will manually capture the claim.

9. These images are normally retained for five years plus the tax year or from the date of the last decision on that claim.

10. The RDC process may also be applied where the claimant responds to the section 17(1) notice issued at the end of each tax credit award year ("the finalisation and renewal process"). In particular, where the claimant responds to the notice by properly completing it and returning it, the image obtained by the RDC process is retained and the information on the notice is populated onto the tax credit computer system.

11. If the section 17 notice is not properly completed, or has been completed otherwise than in accordance with the instructions (for example, the claimant has provided additional information by writing in the margins), it may not be possible to scan the notice. In such a case, the notice is sent to the Manage Finalisations Team ("MFT") in Tax Credit Office. The MFT will capture the information manually and/or make any further enquiries as necessary.

12. These images are normally retained for five years plus the tax year or from the date of the last decision on that claim.

13. Telephone calls made to the Helpline are electronically recorded and retained. These calls are normally retained for five years plus the tax year or from the date of the last decision on that claim.

14. Telephone calls made to other areas of the department (for example, to a specific case worker) are not recorded electronically. A written record of the call is usually retained on the paper file instead.

15. Any documents received which cannot be scanned are retained on the paper file. Depending on the documents provided, copies may be taken (and retained) and the originals returned to the claimant.

16. The paper file, if any, is retained in the archive. Depending on the service used when archiving the papers, they are retained by Iron Mountain or National Storage.

17. Paper files are usually retained for five years plus the tax year or from the date of the last decision on that claim.

Retrieving scanned images

18. In order to retrieve scanned images a request form entitled "TC116" is sent to the RDC team in Netherton. If the scanned image can be found it will be provided to the requestor within a week.

19. In order to retrieve recorded telephone calls, the requestor must first obtain authorisation to access from their line manager. Once authorised, the request for the call (or calls) is made to the Call Retrieval Team (CRT). If the call recordings exist, the CRT will provide them. The time frame for provision of calls can vary depending on the medium in which the calls have been stored. Some older calls, for example, are retained on tape. Newer calls will exist as electronic files on a computer server and are easier to obtain.

20. For the retrieval of paper documents and case papers a request is sent to Iron Mountain or National Storage depending on which service was used when originally stored.