



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Case No. UA-2021-001197-CIC

On appeal from First-tier Tribunal (Social Entitlement Chamber)

Between:

TH

Applicant

- v -

First-tier Tribunal (Social Entitlement Chamber)

Respondent

Criminal Injuries Compensation Authority

Interested Party

Before: Upper Tribunal Judge Rowley

Hearing date: 2 February 2022

Representation:

Applicant: Ms Carin Hunt, Counsel
Respondent: Did not participate
Interested Party: Ms Victoria Webb, Counsel

DECISION

Under section 15 of the Tribunals, Courts and Enforcement Act 2008, the proceedings for judicial review of the decision dated 26 November 2020 of the First-tier Tribunal (reference CI011/15/00300) are **dismissed**.

REASONS FOR DECISION

Introduction and summary

1. The Applicant brings these judicial review proceedings with the permission of Upper Tribunal Judge Levenson. The Applicant's husband (who was born in 1977) sadly died on 23 November 2009 as a consequence of a criminal injury which he had sustained on 2 August 2009. The Applicant witnessed the horrific, violent attack on her husband, which had taken place outside the

family home. All aspects of a claim for criminal injuries compensation for the Applicant and her six children have been resolved, with the exception of the one with which this case is concerned. Intending no disrespect, but in order to preserve anonymity, in this decision I will refer to the Applicant's husband as 'the deceased'.

2. The Respondent First-tier Tribunal has taken no part in the proceedings. The Criminal Injuries Compensation Authority ('CICA') is an interested party. At an oral hearing held on 2 February 2022 the Applicant was represented by Ms Hunt of Counsel and CICA was represented by Ms Webb. As I said at the conclusion of the hearing, I am grateful to them both for their helpful submissions.
3. The case is governed by the Criminal Injuries Compensation Scheme 2008 ('the Scheme'). The part of the Applicant's claim with which I am concerned was for 'additional compensation' for loss of financial dependency under paragraph 40 of the Scheme. No award may be made under that paragraph if the deceased person's only normal income was from social security benefits. The main issue in this case is whether Working Tax Credit ('WTC') should be categorised as a 'social security benefit' for the purposes of paragraph 40 of the Scheme. This issue is considered at paragraphs 29 - 48 below.
4. CICA refused to make an award under paragraph 40 of the Scheme. The Applicant appealed to the First-tier Tribunal, which conducted an oral hearing of the appeal over the telephone on 26 November 2020. The Applicant, who was also represented by Ms Hunt at that hearing, gave evidence to the tribunal about the deceased's work history and plans. The tribunal dismissed the Applicant's appeal on the basis that the deceased's only normal income was from social security benefits. On 14 January 2021 it provided Written Reasons for its decision.
5. The Applicant applied to bring judicial review proceedings. She relied on two grounds of appeal. The first was that the tribunal had incorrectly characterised WTC as a social security benefit within the meaning of paragraph 40 of the Scheme. The second was that the tribunal had erred in its approach to the evidence in a number of respects.
6. Upper Tribunal Judge Levenson gave permission to proceed with the application for judicial review on the basis that:

The grounds of appeal are reasonably arguable (although, at this stage, I put it no higher than that).

7. CICA opposes the application for judicial review.

The relevant provisions of the Scheme

8. Paragraphs 37 - 44 of the Scheme provide for 'compensation in fatal cases'. The relevant parts of paragraph 38 provide that if a deceased's death was in consequence of an injury, compensation may be payable to a qualifying claimant under paragraphs 39 - 43.
9. Paragraph 40 concerns a claim for loss of dependency, and paragraph 41 makes provision for the calculation of such a claim. Paragraph 40 is in these terms:

40. (1) Additional compensation calculated in accordance with paragraph 41 may be payable to a qualifying claimant where a claims officer is satisfied that the claimant was financially or physically dependent on the deceased. A financial dependency will not be established where the deceased's only normal income was from social security benefits.

(2) For the purposes of this Scheme, "social security benefits" includes all United Kingdom social security benefits, other state or local authority benefits and all such benefits or similar payments paid from the funds of other countries.

10. For the purposes of this case, the references to a claims officer are to be taken as references to the First-tier Tribunal.

11. It is not in dispute that it is for an applicant to establish, on a balance of probabilities, that they were financially dependent on the deceased person.

Working Tax Credit

12. WTC was introduced by the Tax Credits Act 2002. It provides state support for low-paid working adults. In general terms, a claimant will qualify for WTC if (among other things) they work at least 16 hours per week and their income is sufficiently low. Administered by Her Majesty's Revenue and Customs ('HMRC'), WTC is calculated as an annual amount and then paid to claimants in instalments every week or every four weeks during the tax year. WTC counts as income for the purposes of entitlement to many means-tested benefits such as housing benefit.

13. The forerunners to WTC were Family Income Supplement (introduced in 1971 and administered by the Department of Health and Social Security¹) and Family Credit (which replaced Family Income Supplement in 1988 and which was administered by the Department of Social Security²). It should also be noted that WTC has now transitioned to Universal Credit, a benefit which is administered by the Department for Work and Pensions³.

14. For completeness, I should add that there is another tax credit which was introduced by the Tax Credits Act 2002. It is called Child Tax Credit. It is received independently of a person's employment.

The First-tier Tribunal

15. If a deceased person was dependent on 'social security benefits' for a time or times, it is a question of fact as to whether those benefits constituted their 'only normal income' for the purposes of paragraph 40 of the Scheme. For those purposes, a tribunal will look at what periods were spent with and without dependence on those benefits. And if a deceased person was dependent on those benefits at the time of death, a tribunal may consider whether that dependency was shortly about to change to the extent that the benefits may not be considered to constitute the deceased person's 'only normal income' or, alternatively, whether that dependency represented matters as they stood.

¹ Family Income Supplement Act 1970

² Social Security Act 1986

³ Welfare Reform Act 2012

16. It was, therefore, incumbent on the First-tier Tribunal to conduct an analysis of the deceased's earning history. Given the rather chequered history, the tribunal accepted the Applicant's invitation to consider the bigger picture of the deceased's employment, rather than focussing on a short period.
17. The following matters were not in dispute:
- a. The deceased had various low paid jobs on unknown dates between leaving school in around 1993 to 2002. Information from the deceased's National Insurance Contributions Records showed that during this period the deceased was either unemployed and in receipt of benefits or working and in receipt of WTC.
 - b. The deceased was employed by Royal Mail as a postman from 25 March 2002 until 31 May 2005 when he resigned. (In 2004 the deceased had had a breakdown in his mental health). He received gross annual earnings of around £16,000 during that period.
 - c. After leaving Royal Mail the deceased received benefits, firstly in the form of Incapacity Benefit and then, from 2007, Jobseeker's Allowance.
 - d. On 10 November 2008 the deceased obtained part-time work at Matalan. At around this time he also worked on a part-time basis for Woolworth's, but that employment ended on 21 December 2008. Whilst working, the deceased claimed tax credits, including WTC.
 - e. The deceased left his job at Matalan on 14 June 2009.
 - f. Thereafter, the deceased was unemployed until the time of the attack on him on 2 August 2009, following which he was hospitalised until his death on 23 November 2009.
18. The Applicant's case to the First-tier Tribunal was that WTC did not constitute a 'social security benefit' for the purposes of paragraph 40 of the Scheme, but rather it should be counted as part of the deceased's income when assessing whether the Applicant had been financially dependent on him.
19. Furthermore, it was submitted on behalf of the Applicant that there was no established pattern of unemployment. Rather, contended the Applicant, the deceased was unusually and temporarily unemployed at the time of his death. The Applicant also submitted that the deceased had been motivated to obtain full-time work, that he had left his part-time work with Matalan in order to achieve this, and that teaching was his long-term goal, with a short-term goal of obtaining full-time work to provide for his family. Thus, although the deceased had been unemployed at the date of his death, the overall picture was one of employment and a fixed intention to return to work. In short, the Applicant argued that she had been financially dependent on the deceased, and so was entitled to additional compensation under paragraph 40.
20. CICA's case to the First-tier Tribunal was that the Applicant had not established that she was financially dependent on the deceased. CICA submitted that WTC fell within the definition of 'social security benefits' for the purposes of paragraph 40 of the Scheme. Its case was that as the deceased's 'only normal income' had been from 'social security benefits', the Applicant had not been financially dependent on the deceased.

21. CICA highlighted that the deceased had not been in employment at the time of his death, and that his work history had been inconsistent, with long periods of unemployment outweighing his periods of employment. CICA focussed on the period from 2006. There had been a total reliance upon benefits for the tax years 2006/7 and 2007/8. The following year (2008/9) showed 30 weeks on Jobseeker's Allowance, and earnings from Woolworths and Matalan totalling £2813.94 (i.e. £127.90 per week) plus tax credits.
22. The tribunal dismissed the Applicant's appeal. It decided that Applicant could not establish a financial dependency on the deceased because his 'only normal income was from social security benefits'. Significantly, the tribunal accepted CICA's submissions that WTC constituted 'social security benefits' for the purposes of paragraph 40.
23. The tribunal found that the deceased had not had a solid employment history since he had entered the job market after leaving school at sixteen, save for the three year period working for Royal Mail. The employment history showed a series of part-time and low paid jobs which did not generate income sufficient to support the deceased, let alone his family. From examination of bank statements, the tribunal concluded that the family was living off circa £400 per week. The tribunal found that the only period during which the deceased's income approached this figure was when he was employed by Royal Mail.
24. The tribunal found that until his employment with Royal Mail, the deceased had relied upon social security benefits. Whilst the position had changed during the period of employment with Royal Mail, the deceased had reverted to a reliance on social security benefits following his departure from that employment. Even when working for Woolworths/Matalan:
- the income he received was so low that he continued to be reliant upon social security benefits for the income of the family. (paragraph 59).*
25. In summary, the tribunal found:
- Thus, for 12 years out of the 15 year employment history, the deceased was reliant upon social security benefits to the extent that these must be regarded as his normal income. (paragraph 49).*
26. Looking at the position in the round, the tribunal also found that although the deceased had been fit to work from 2007 (because he had been in receipt of Jobseeker's Allowance rather than Incapacity Benefit), he had been content to remain unemployed and claim social security benefits, as long as there were sufficient savings to enable the family to take days out. His return to work in late 2008 had been prompted by finances, rather than a reluctance to claim social security benefits as the Applicant had claimed; and the work that he had then done had been part-time and temporary.
27. With regard to the circumstances since the deceased had left work in June 2009, the tribunal found that:
- a. The deceased had left the employment with Matalan without having secured any further employment, despite this being his stated objective.
 - b. Although the Applicant had said that the deceased had applied for several jobs after leaving Matalan, he had not got one, and no evidence

had been provided that he had applied for any such jobs. It seemed to the tribunal that the deceased felt he would be better off staying at home and claiming social security benefits.

- c. The deceased had not re-applied for a position at Royal Mail:
- d. No evidence had been provided that the situation which prevailed at the time of the deceased's death was about to change.
- e. There had been no evidence provided that the deceased had any serious, or fixed, intent to become a teacher.

28. In summary, having analysed the periods spent with and without what the tribunal considered to be a dependency on social security benefits, together with an evaluation as to whether or not that dependency was shortly about to change, the tribunal concluded that the deceased's 'only normal income was from social security benefits', including WTC.

The first ground

29. For ease of reference, I will set out again the provisions of paragraph 40 of the Scheme:

40. (1) Additional compensation calculated in accordance with paragraph 41 may be payable to a qualifying claimant where a claims officer is satisfied that the claimant was financially or physically dependent on the deceased. A financial dependency will not be established where the deceased's only normal income was from social security benefits.

(2) For the purposes of this Scheme, "social security benefits" includes all United Kingdom social security benefits, other state or local authority benefits and all such benefits or similar payments paid from the funds of other countries.

30. In the application for a judicial review, the Applicant submitted that the First-tier Tribunal incorrectly characterised WTC as a 'social security benefit' within the meaning of paragraph 40. The Applicant relied on the fact that WTC is paid for by HMRC rather than the Department for Work and Pensions ('DWP').

31. In its written response, CICA submitted that the tribunal correctly characterised WTC as a 'social security benefit' for the purposes of paragraph 40. Highlighting the provisions of paragraph 40(2), which define what is meant by 'social security benefits' for the purposes of the Scheme, CICA contended that it is clear that the concept is broader than just United Kingdom social security benefits; it extends to include 'other state or local authority benefits', as well as benefits and similar payments received from abroad. CICA argued that WTC is quite clearly a 'state ... benefit', administered by HMRC, a department of the state, and thus it falls squarely within the definition of a 'social security benefit' for the purposes of paragraph 40.

32. Furthermore, CICA commented that it was notable that the Applicant had not set out in her grounds the basis on which it was said that WTC is not a 'state benefit', nor had she addressed the Scheme's definition of 'social security benefits' as outlined in paragraph 40(2).

33. The Applicant's written response to CICA's submissions adopted a rather more nuanced position than the one originally taken. It was submitted that a

purposive construction of paragraph 40 was available, because the question whether WTC constituted 'social security benefits' was not clear on the face of the Scheme alone.

34. At the hearing before me, Ms Hunt developed this argument. She submitted that the following analysis pointed to a conclusion that paragraph 40 cannot have been intended to include WTC:

WTC is not a 'state benefit' for the purposes of assessing 'normal income' because:

- a. WTC is only received when a claimant is in work for at least 16 hours a week. Thus, the benefit is intrinsically linked to employment. The fact that it is administered by HMRC, not DWP, is significant.
- b. The purposes of compensation for loss of earnings pursuant to the Scheme is to compensate a claimant for the loss sustained when unable to work due to their injuries.
- c. WTC is lost when a claimant is unable to work.
- d. The starting point under paragraph 40(1) is a 'social security' benefit, not a 'state' benefit, albeit 'state benefits' are expressly referred to in paragraph 40(2).
- e. WTC is sufficiently distinct from other state benefits that it should be treated as income, and not as a 'social security benefit', to achieve the aim of the Scheme and fairly to compensate claimants.

35. Ms Hunt sought to rely on an extract from Hansard from 2008. It was not in dispute that, if a purposive approach were to be adopted, that passage would be admissible as an external aid to construction. Lord Bach, in the Lords Chamber, outlined amendments which would be made in relation to criminal injuries compensation by the introduction of the Scheme (16 July 2008, Vol. 703). Lord Bach said:

As opportunities to amend the scheme arise so rarely, we also want to make a number of other changes. These have become necessary with the passage of time since the scheme was last changed in 2001 and in the light of operational experience. In the main, they are needed to clarify meaning or intent where there is doubt or ambiguity, to provide greater clarity, to restore the original intention of the scheme where court judgments or operational experience suggest that the previous wording was not doing the job, and to help streamline some scheme processes...

Perhaps most importantly, we have substantially recast the paragraphs dealing with additional compensation for loss of earnings and future earning capacity; the payment of awards in fatal cases; and the reduction of compensation on the grounds of benefit received from other sources. Our aim was to modernise the rules to make them simpler and more logical, and to avoid cases of claimants getting double payment from the state in some circumstances.

36. Ms Hunt argued that the amendments to paragraph 40 by the (2008) Scheme may have been to avoid the 'double payment from the state' referred to by Lord Bach. Ms Hunt maintained that by counting WTC as income rather than 'social security benefits' for the purposes of paragraph 40, one would not be

giving claimants 'double payment' as, following the death of the working person on whom they depended, they would not longer receive WTC.

37. After the hearing I saw fit to look at the 2001 Criminal Injuries Compensation Scheme, which was replaced by the 2008 Scheme. The 2001 scheme had provided as follows:

40. Additional compensation calculated in accordance with the following paragraph may be payable to a qualifying claimant where a claims officer is satisfied that the claimant was financially or physically dependent on the deceased. A financial dependency will not be established where the deceased's only normal income was from:

- (a) United Kingdom social security benefits; or
- (b) social security benefits or similar payments from the funds of other countries.

38. I invited the parties to make written submissions with regard to how, if at all, these provisions helped to ascertain the meaning of the cited passage from Hansard insofar as paragraph 40 of the Scheme was concerned.

39. Ms Hunt's position was that a comparison of paragraph 40 of the two schemes did not alter the case that she had put forward. The definition of 'social security benefits' was introduced in the (2008) Scheme. Rather than replace or change the phrase 'social security benefits' in paragraph 40, the (2008) Scheme continued to use the phrase, and then added the definition on. Ms Hunt submitted that this bolstered her submissions that the phrase 'social security benefits' is the dominant phrase in paragraph 40, and should be the starting point for a purposive interpretation of the same.

40. Ms Hunt further submitted that if the definition provided in the (2008) Scheme had been intended to include WTC (which had been introduced in the interim) the drafters would have included reference to WTC in the definition, or made its inclusion within the definition much clearer, in keeping with the aim to make the rules 'simpler and more logical'.

41. Ms Webb argued that it was not possible to read into the Scheme the meaning contended for by Ms Hunt. The natural and ordinary meaning of 'social security benefits' is clear on its face and there is no gap to be filled. Ms Webb firmly relied on the definition in paragraph 40(2). She submitted that WTC clearly fell within its terms. The crucial point, argued Ms Webb, was that WTC is a financial benefit from the state. Therefore, contended Ms Webb, this is not a case where a purposive approach is required or should be adopted.

42. Ms Webb's alternative submission was that even if a purposive construction were to be considered, there was no supporting material which helped to ascertain the relevant purpose. Ms Webb submitted that the cited passage from Hansard did not take matters further, not least because it was not clear whether the stated intention in relation to avoiding double recovery applied to paragraph 40 or some other paragraph(s). The passage did not add clarity and did not provide support for the proposition that the straightforward reading of the Scheme should be undermined.

43. In her written submission following the hearing Ms Webb stressed that Lord Bach had stated that the drafters had 'substantially recast' paragraphs of the scheme dealing with matters including 'the payments of awards in fatal cases'.

The passage also referred to modernising the rules to make them 'simpler and more logical'. Ms Webb also relied on the first paragraph of the extract which cited the purpose for the changes to the scheme.

44. Ms Webb submitted that the fact that paragraph 40 of the 2001 scheme provided no definition of the term 'social security benefits', whereas the (2008) Scheme did, suggested that this was an area where it was felt that clarification of meaning was required or was desirable. Therefore, argued Ms Webb, the most likely relevance of the cited passage from Hansard insofar as paragraph 40 of the Scheme is concerned, is to underline that the broad definition of paragraph 40(2) under the Scheme is intended to be applied simply, logically and in a straightforward manner, in line with CICA's submissions.
45. I begin my analysis with well-established propositions. The ultimate task of construction is to ascertain the meaning of what the drafters have said in the context of the Scheme. Where the meaning is plain, it must be followed. If the words are capable of more than one meaning, a purposive construction may be adopted. Such an approach would interpret the language used, so far as possible, in a way which would best give effect to the Scheme's purpose insofar as that can be ascertained.
46. In my judgment the words of paragraph 40(1) of the Scheme, taken together with 40(2), are not capable of more than one meaning. The provisions are clear on their face and unambiguous. WTC is undoubtedly a 'state benefit' irrespective of which government department administers it. In providing that the term 'social security benefits' includes not only all United Kingdom social security benefits but also 'other state ...benefits', it is abundantly clear that WTC is included in the definition.
47. Given this conclusion, it is not necessary to resort to a purposive approach. However, for completeness I will briefly address the parties' submissions on the issue. In summary, I agree with Ms Webb. I am satisfied that the cited extract from Hansard does not assist in establishing the purpose of paragraph 40. It is by no means clear that the stated intention to avoid claimants getting double payment played any part in the amendments to paragraph 40. In other words, even if I had been persuaded that a purposive construction may have been appropriate in this case, in my judgment it is not possible to detect from the cited passage a purpose which throws significant light on the construction of the words in issue.
48. For these reasons, the first of the Applicant's grounds fails. Put simply, my conclusion is that WTC is to be categorised as a 'social security benefit' for the purposes of paragraph 40 of the Scheme.

The second ground

49. The second ground relied on by the Applicant is that the tribunal erred in its approach to the evidence.
50. Both parties agreed that Gross LJ helpfully set out the approach to be adopted on a judicial review in *CICA v Hutton and others* [2016] EWCA Civ 1305:
 - i) First, this Court should exercise restraint and proceed with caution before interfering with decisions of specialist tribunals. Not only do such tribunals have the expertise which the "ordinary" courts may not

have but when a specialised statutory scheme has been entrusted by Parliament to tribunals, the Court should not venture too readily into their field.

- ii) Secondly, if a tribunal decision is clearly based on an error of law, then it must be corrected. This Court should not, however, subject such decisions to inappropriate textual analysis so as to discern an error of law when, on a fair reading of the decision as a whole, none existed. It is probable, as Baroness Hale said, that in understanding and applying the law within their area of expertise, specialist tribunals will have got it right. Moreover, the mere fact that an appellate tribunal or a court would have reached a different conclusion, does not constitute a ground for review or for allowing an appeal.
- iii) Thirdly, it is of the first importance to identify the tribunal of fact, to keep in mind that it and only it will have heard the evidence and to respect its decisions. When determining whether a question was one of "fact" or "law", this Court should have regard to context, as I would respectfully express it ("pragmatism", "expediency" or "policy", per Jones), so as to ensure both that decisions of tribunals of fact are given proper weight and to provide scope for specialist appellate tribunals to shape the development of law and practice in their field.
- iv) Fourthly, it is important to note that these authorities not only address the relationship between the courts and specialist appellate tribunals but also between specialist first-tier tribunals and appellate tribunals.

51. Ms Hunt urged me to read the tribunal's Written Reasons as a whole to ascertain whether the effect of the tribunal's decision and comments, taken together, rendered the decision unsafe. Ms Hunt relied on a number of examples. She realistically acknowledged that each alone may not be sufficient, but she submitted that it was their cumulative impact that gave the impression that the tribunal had discounted the Applicant's evidence without good reason. I will address the examples individually before considering the position as a whole.

2007 - 2008

52. The Applicant took issue with the tribunal's conclusion that:

56. Although fit for work from 2007, the deceased was content to remain unemployed, and claiming social security benefits, as long as there were sufficient savings to enable the family to take days out. His return to work was prompted by finances, rather than a reluctance to claim social security benefits, as claimed.

53. Ms Hunt submitted that the tribunal had engaged in mere speculation and its finding was imbued with an unacceptable level of judgment. Ms Webb, on the other hand, maintained that the tribunal's conclusion was consistent with its earlier finding of fact (at paragraph 32 of the Written Reasons) that the deceased had chosen to return to work in 2008 because the family's savings had been exhausted. That finding, argued Ms Webb, had been based upon the Applicant's own evidence.

54. I do not accept Ms Hunt's submissions. The tribunal heard oral evidence from the Applicant and, having considered that evidence, the tribunal made a finding that was open to it to make.

Unemployment post-Matalan

55. Ms Hunt challenged the tribunal's findings in relation to the deceased's unemployment after he had left Matalan in 2009. The tribunal found:

40. The appellant's evidence that the Matalan job was not financially worth him working, is telling. It seems that the deceased felt he would be better off staying at home and claiming social security benefits than he would be continuing with his job at Matalan.

41. The appellant did not re-apply for a position at Royal Mail. According to the appellant there were no positions available. Royal Mail employed in excess of 180,000 people in 2008. The Tribunal did not accept the claim that there were no vacancies of any kind, as credible.

56. As to paragraph 40 of the Written Reasons, Ms Hunt again submitted that the tribunal had engaged in speculation. In response, Ms Webb pointed out that the tribunal had found (at paragraph 37 of the Written Reasons) that the deceased's decision to leave his job before he had another job had been explored with the Applicant, and according to the Applicant's evidence, 'this was because he wished to explore becoming a teacher but also because the Matalan job was not well paid enough to justify him being away from the children'.

57. I accept Ms Webb's submission that the criticism of speculation is ungrounded. The tribunal explained what it made of the evidence before it, and it was entitled to draw legitimate inferences from it. There was material in the Applicant's oral evidence to support a finding that there had been a calculation that financially it made better sense for the deceased to be at home and not working.

58. As to the tribunal's findings in paragraph 41 of the Written Reasons, Ms Hunt submitted that the tribunal appeared to have attributed to the Applicant a claim that she had never made – that there were 'no vacancies of any kind' available with the Royal Mail at the time of the deceased's death. Rather, submitted Ms Hunt, it had been the Applicant's evidence that there had been no 'suitable' vacancies available for which the deceased could apply.

59. Ms Webb submitted that the tribunal had clearly understood the Applicant's evidence to be that there were no vacancies available. A transcript of the hearing has not been provided to determine the issue definitively⁴, but nonetheless it was CICA's position that nothing turned on the issue in any event. Whether the evidence had been that there were no vacancies or no suitable vacancies available, the undisputed evidence was that the deceased had not re-applied for a position at the Royal Mail. Furthermore, Ms Webb argued that the central issue in this case was whether the deceased's only normal income was from social security benefits. The question of job applications to one particular employer was at best marginal to the factual analysis.

60. Ms Webb's submission that there is limited scope for challenging a tribunal's findings of fact in proceedings for judicial review is well-founded. As Gross LJ said in *Hutton* (above), 'it is the FTT – not the UT – which is the tribunal of fact

⁴ The parties agreed that it would be disproportionate to adjourn the hearing for a transcript to be provided.

and which heard the evidence' (at [58]). There is no objective or uncontentious evidence before me which could point to a mistake of fact on the part of the tribunal in its treatment of the Applicant's evidence on this point. In any case, I accept Ms Webb's submissions on materiality.

61. Also in relation to paragraph 41 of the Written Reasons, Ms Hunt submitted that, in finding that the Royal Mail employed in excess of 180,000 people in 2008, the tribunal improperly relied on evidence obtained outside the course of the hearing. Ms Hunt said that there had been no evidence adduced at the hearing to that effect.
62. I must say that this submission gave me pause for thought. Whilst there was no transcript of the hearing, I take notice that Ms Hunt had been present at the hearing and I have no reason to doubt what she told me. If the tribunal had, in fact, found this information for itself, the principles of natural justice require that the evidence should have been put before the parties so that they may have had a chance to comment on it. The tribunal's failure to do so would have constituted an error of law.
63. In many cases such an error would amount to a sufficiently material one such that an appeal or judicial review (as appropriate) would be allowed. However, Ms Webb submitted that in this case any such error would not have given rise to a different result to the appeal.
64. After having given the matter careful consideration, I have concluded that in the particular circumstances of this case any error there may have been would not have affected the outcome of the proceedings. Like the question of job applications to Royal Mail, the question of how many people Royal Mail employed was, put at its highest, a peripheral one to the central issue on the appeal. I am, therefore, of the view that the tribunal's decision would have been the same notwithstanding any such error. Put another way, any error the tribunal may have made does not amount to a material error such as to justify the tribunal's decision being set aside.
65. For the avoidance of doubt, nothing I have said should be taken to condone a tribunal actively consulting online sources of information and then failing to put them before the parties for comment. As Upper Tribunal Judge Jacobs said in *HI v Secretary of State for Work and Pensions* [2014] UKUT 0238 (AAC) at [17]: 'tribunals need to take the greatest care before relying on information obtained in this way'.

Future plans

66. The next challenges to the tribunal's reasons related to the findings with regard to the deceased's future working potential:
 62. No evidence has been provided that [the deceased] applied for any jobs following his resignation from Matalan. The appellant states that there is compelling evidence that the deceased would have gone on to work. There is no such evidence that this would have happened. The appellant was not able to point to a single job application that the deceased had made.
67. Ms Hunt argued that the tribunal was not entitled to find that 'no evidence' had been provided, as the tribunal had already recorded (at paragraph 39 of the Written Reasons) that the Applicant had stated that the deceased had applied

for several jobs after leaving Matalan. In response, Ms Webb submitted that the tribunal had recorded that the question of job applications had been explored in the evidence, and it would be a fair reading of the Written Reasons that the tribunal had found that there was no evidence of any job applications having been made *other than* the Applicant's oral statement that the deceased had made applications. Such a reading was consistent with the tribunal's explanation for the basis of its decision, in the same paragraph, that the Applicant had been unable to point to a single job application that the deceased had made.

68. I prefer Ms Webb's submissions. Whilst it may, perhaps, have been better if the tribunal had said that it had not been persuaded by the Applicant's oral evidence in the absence of any written evidence of job applications, that absence was not fatal to the tribunal's decision.

69. Ms Hunt also submitted that the tribunal erred in taking no account of the effect of the passage of time on the ability of the Applicant to recall details, particularly bearing in mind the horrific experience that the Applicant had endured in 2009 and its impact on her and her family thereafter.

70. Ms Webb responded that it is apparent from the Written Reasons that the tribunal had fully engaged with the Applicant's evidence, and had properly explored matters with her. It does not follow that the mere fact that the tribunal did not refer to the effect of the passage of time on the Applicant's memory means that it did not properly apply its mind to it. A tribunal is not expected to deal with every matter raised in the case.

71. I do not accept that the tribunal erred in the respect suggested by Ms Hunt. It is settled that a generous interpretation ought to be given to a tribunal's reasoning. The fact that the tribunal did not specifically refer to the impact of the passage of time on the Applicant's memory does not render its reasons inadequate when read in the round.

72. Ms Hunt then challenged the tribunal's findings concerning the deceased's plans to become a teacher. The tribunal found:

57. There has been no evidence provided that the deceased had any serious, or fixed, intent to become a teacher. The deceased had not applied for any teaching course or set aside the required deposit. The extent of his interest had been to obtain a brochure. The deceased was aware that the job centre will assist with the deposit but he had not pursued this.

73. Ms Hunt submitted that the tribunal failed to take account of the Applicant's oral evidence to the tribunal, which had described in clear terms the deceased's intention to become a teacher. Ms Hunt also submitted that the tribunal had disregarded the Applicant's evidence which it had summarised at paragraph 12 of its Written Reasons – the Applicant had said that the deceased had 'researched the possibility online and had obtained some leaflets'.

74. Ms Webb submitted that the finding that the deceased did not have any serious or fixed intent to become a teacher was one which was open to the tribunal to reach on the evidence for exactly the reasons that it gave.

75. I agree with Ms Webb's submissions. The fact, whether accepted or not, that the deceased may have expressed an intention to become a teacher, obtained some leaflets and researched the possibility online, was not incompatible with the tribunal's findings on this issue and was consistent with, and supported, the tribunal's conclusion that the deceased's intention was not serious or fixed.
76. In summary, for the reasons given above, each individual challenge to the tribunal's reasons fails.

Looking at the Written Reasons overall

77. I now turn to Ms Hunt's submission that I should consider the Written Reasons as a whole. Ms Hunt stressed to me that the Applicant had been disheartened to read how her evidence had been treated by the tribunal. Ms Hunt submitted that, when read overall, the tribunal's Written Reasons give the impression that the tribunal discounted the Applicant's evidence from the outset without due consideration. Thus, when all the individual matters set out above are considered cumulatively, Ms Hunt submitted that the overriding impression was that the tribunal erred in its approach to the Applicant's evidence.
78. Ms Webb contended that the tribunal was entitled to reach the decision that it reached on the basis of clear and sustainable findings of fact. It had engaged with the Applicant's evidence and then drawn supportable conclusions upon its assessment of it. The fact that the conclusions were contrary to points made by the Applicant did not mean that those points were not considered. Ms Webb accordingly argued that, when read overall, the Written Reasons did not disclose any error of law.
79. I remind myself of the limited scope for challenging a tribunal's findings of fact in proceedings for judicial review. I also remind myself that it is fundamental that the evaluation of evidence is a matter for the fact-finding tribunal which has had the advantage of hearing oral evidence. The Upper Tribunal should, accordingly, be very wary of trying the case on the papers. On a fair reading of the Written Reasons as a whole, having given due consideration to the grounds of challenge, I am unable to find that Ms Hunt's submissions disclose a material error of law in the way that the tribunal approached the evidence or explained its decision.

Conclusion

80. The answer to the central question in this case is that WTC is a 'social security benefit' of the purposes of paragraph 40 of the Scheme. Furthermore, the tribunal did not make a material error of law in its approach to the evidence or in relation to the reasons that it gave for its decision. Accordingly, these proceedings for judicial review of the tribunal's decision are dismissed.

81. I would like to add that I understand this is not the decision that the Applicant had hoped for. I do not underestimate the toll that these proceedings must have taken on the Applicant, and, like the tribunal, I extend every sympathy for her bereavement.

A. Rowley

Judge of the Upper Tribunal

Authorised for issue on 17 March 2022