



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. UA-2021-001169-TC

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

Between:

His Majesty's Revenue and Customs (HMRC)

Appellant

- v -

A.S.

Respondent

Before: Upper Tribunal Judge Wikeley

Hearing date: 19 December 2022

Decision date: 13 March 2023

Representation:

Appellant: Mr D P Eland, HMRC

Respondent: In person

DECISION

The decision of the Upper Tribunal is to allow HMRC's appeal.

The decision of the First-tier Tribunal made on 16 April 2021 under number SC065/19/00810 was made in error of law. Under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007 I set that decision aside and re-make the decision as follows:

The claimant's appeal is dismissed. The claimant's final entitlement for the tax year 2019/20 was £0.00 WTC and £36.74 CTC for the part tax year from 6 April 2019 to 22 April 2019.

REASONS FOR DECISION

The parties to this appeal

1. His Majesty's Revenue and Customs ('HMRC') is the Appellant in this Upper Tribunal appeal but was the respondent before the First-tier Tribunal. To avoid confusion, I refer to the lady who was the appellant in the First-tier Tribunal proceedings but is now the Respondent as 'the claimant'.
2. I held a telephone hearing of HMRC's appeal on 19 December 2022. Mr David Eland represented HMRC and the claimant represented herself. I am grateful to them both for their contributions. I then directed a further round of written submissions after the hearing, which mostly explains the delay in finalising this decision.

Introduction to the issues

3. On one level this appeal might appear to be about a relatively straightforward dispute to do with the calculation of the claimant's earnings for the purposes of her entitlement to tax credits.
4. Shorn of all the legal complexities, the question is how the claimant's earnings should be calculated for a short part-year period of just over a fortnight from 6 April 2019 to 22 April 2019. This question was prompted by the claimant applying for universal credit, as a result of which her award of tax credits terminated.
5. The claimant and the First-tier Tribunal say that her earnings for that period were £693.43. The First-tier Tribunal arrived at this figure by the following process. First, it identified the claimant's monthly earnings received in the 17-day period from 6 April 2019 to 22 April 2019 (£1,244). Secondly, it multiplied that figure by 12 to arrive at an annual amount (£14,928). Thirdly, this total was divided by the number of days in the (leap) year (366), producing a daily figure of £40.79. Fourthly, and finally, it multiplied the daily rate by 17, generating an apportioned earnings figure for the 17-day period of £693.43.
6. In contrast, HMRC say that her earnings for that period were £1,127.85. HMRC rely on some complicated methodology in the secondary legislation governing tax credits. At this stage I will not even try to summarise the steps in the process of calculation advocated by HMRC. Suffice to say that the HMRC method focusses on the total earnings actually received in the course of the 17-day period and not (as the First-tier Tribunal concluded) the income attributable to that period by a process of apportionment.
7. My decision is that HMRC's approach to the calculation is correct, and so the First-tier Tribunal erred in law, for the reasons that follow. I re-make the First-tier Tribunal's decision accordingly.

The background

8. The claimant is a teaching assistant on a modest salary. Her P60s showed her annual pay was £10,413.30 for the 2017/18 tax year, £11,428.73 for 2018/19 and £15,352.52 for 2019/20. For the first two of those three tax years, her annual pay was below the threshold for paying income tax. She was paid monthly on the 15th of each month. So, for example, on 15 April 2019 she received net pay of £1,131.70 (her total gross pay for that pay period was £1,320.70 and her taxable pay £1,244.10). The figures for her taxable pay and

net pay on 15 April 2019 were confirmed by an HMRC RTI Payment Record Information print-out. The claimant had been in receipt of tax credits for a number of years.

9. However, this all changed when the claimant applied for universal credit on 23 April 2019. The effect of this, in plain English, was that her tax credits award ended, as provided for by regulation 8 of the Universal Credit (Transitional Provisions) Regulations 2014 (SI 2014/1230; referred to in this decision as 'the 2014 Transitional Regulations'). This development then prompted HMRC to make a final assessment of the claimant's tax credits entitlement for the period from 6 April 2019 (the start of the 2019/20 tax year) to 22 April 2019 (the day before the claimant's universal credit award commenced).
10. On 4 June 2019 HMRC sent the claimant a final award notice for the 2019/20 tax year. This gave her a tax credits entitlement of £36.74 for child tax credit and £0 in working tax credit for the 17-day period from 6 April 2019 to 22 April 2019. According to the HMRC screen-print associated with the decision, "DUE TO THE LEVEL OF YOUR INCOME, YOUR WORKING TAX CREDIT IS REDUCED TO NIL". This final decision was taken under section 18 of the Tax Credits Act 2002. A side-effect of that decision was that the claimant had been overpaid tax credit for the period in question.
11. On 11 July 2019 the claimant applied for a mandatory reconsideration. Her contention, in short, was that HMRC had been wrong to take into account the whole of the payment made on 15 April 2019. Her argument was that the earnings paid on that date related to an entire month and not just to the 17 day period.
12. On 26 July 2019 HMRC responded but did not change its decision. Its reasoning, as set out in the mandatory reconsideration notice, was as follows:

On 29 April 2019 the Department for Work and Pensions (DWP) ... told us you had claimed Universal Credit (UC) from 23 April 2019. As you cannot claim tax credits and UC at the same time, we ended your tax credits claim from 22 April 2019.

We sent you an in-year notice on 6 May 2019 to confirm your circumstances and income for the 17 days of your award period from 6 April 2019 to 22 April 2019. We asked you to check this information by 31 July 2019 and to tell us if anything was missing or incorrect.

You returned your annual declaration to us on 28 May 2019 informing us that your income for the period 6 April 2019 to 22 April 2019 was £1,244.

We used income of £1,127.85 to calculate your final award for the period 6 April 2019 to 22 April 2019. We calculated this amount as follows.

We divided £1,244 by 17, which is the number of days from the start of the tax year to the date your award ended and multiplied by 366, the number of days in the tax year. This gave us an income figure of £26,782.

Because this income figure was higher than your previous year income, we disregarded £2,500 of the increase, reducing the annual amount of income we used to £24,282. We then divided this by 366 the number of days in the tax year and multiplied it by 17 days to get £1,127.85 which we used to calculate your award.

...

The in-year review notice we sent you on 4 June 2019 showed that you were entitled to £36.74. As we have paid you £452.10, you have been overpaid £415.36.

13. The Appellant lodged an appeal, stating again that “The information you used to calculate my award for 6th April 2019 to 22nd April 2019 is not the figure that I supplied you with. I clearly remember having a telephone conversation and I advised that the figure you used of £1,244.10 was for my taxable pay – the whole month of April my salary was £1,131.70 ... I cannot understand why a salary of £26,782 [p.a.] has been used, I have never suggested in any way that was my salary.”

The First-tier Tribunal’s decision

14. On 16 April 2021 the First-tier Tribunal held a remote hearing by telephone and allowed the claimant’s appeal. It directed HMRC to recalculate the claimant’s tax credits entitlement for the 2019/20 tax year based on her part tax year income being £693.43 (and not £1,127.85). In its detailed Decision Notice, the First-tier Tribunal explained how it arrived at that figure:

In [the claimant’s] case the part tax year runs from 6 April 2019 to 22 April 2019. To obtain her income for that period her taxable pay of £1,244 is to be apportioned to 17 days being the number of days in her part tax year. The calculation is as follows: £1,244 x 12 = £14,928 divided by 366 to obtain the daily taxable pay. Daily taxable pay is £40.79. This is multiplied by 17 to obtain the income for the part tax year. £693.43 is [the claimant’s] income for the current part tax year.

15. This explanation was repeated in the First-tier Tribunal’s Statement of Reasons.
16. On 14 June 2021 a District Tribunal Judge gave HMRC permission to appeal. She neatly summarised HMRC’s grounds of appeal as follows: “[HMRC’s] argument is that the level of income to be taken into account when calculating notional current income is income actually received whereas the tribunal has used income attributable to the period in question”.

The Upper Tribunal’s analysis

Introduction

17. There is nothing wrong, at least in the abstract, with the First-tier Tribunal’s arithmetic. The problem lies in its application of the relevant law. The Tribunal’s failure to apply the correct legal principles led it astray into asking itself the wrong arithmetical questions. The discussion that follows falls into two parts – the first considers in outline ‘end of year’ final decisions and the second deals in more detail with ‘in-year’ final decisions.

The relevant legislation governing an ‘end of year’ final decision

18. The standard model for tax credits decision-making is that entitlement is assessed at the end of the tax year, As tax credits are means-tested, entitlement depends in part on a person’s “relevant income” (see section 7(1) of the Tax Credits Act 2002). An individual’s “relevant income” is defined in several different ways by section 7(3), but in each case depends on three variables: (i) the individual’s current year income; (ii) that person’s previous year income; and (iii) two thresholds, each of £2,500, which are set by regulation 5 of the Tax

Credits (Thresholds and Determination of Rates) Regulations 2002 (SI 2002/2008). The figure for a recipient’s “relevant income” then feeds into the calculations for the determination of the actual rates of entitlement to working tax credit and child tax credit, as governed by regulations 7 and 8 respectively of the Tax Credits (Thresholds and Determination of Rates) Regulations 2002. The former requires a 12-step calculation process while the latter mandates a marginally simpler 8-step process. However, both regulations share Step 3 (‘Finding the income for the relevant period’) in identical terms:

Step 3 – Finding the income for the relevant period

Find the income for the relevant period by using the following formula:

$$\frac{I}{N1} \times N2$$

where:

“I” is the relevant income for the tax year to which the claim for the tax credit relates;

“N1” is the number of days in that tax year;

“N2” is the number of days in the relevant period.

19. The “relevant period” is defined by regulations 7(2) and 8(2) respectively for each type of tax credit. In summary, it means any part of the period of award throughout which the recipient’s entitlement to tax credits remains the same. The effect of Step 3 is that the relevant income (see section 7(3) and letter ‘I’ in the equation) is reduced to a daily rate by dividing the amount by the number of days in the tax year (‘N1’), and that daily rate is then multiplied by the number of days in the relevant period (regulation 7(2) and ‘N2’). This produces an income figure for the relevant period. If there are changes in entitlement, such that there are different relevant periods, the Step 3 calculation will need to be repeated for each such period.

The relevant legislation governing an ‘in-year’ final decision

20. The position as summarised above for end of year final decisions is modified where a tax credit recipient makes a claim for universal credit, so bringing their tax credit award to an end. The process of assessment for an in-year final decision necessarily involves following a somewhat tortuous path through the dense thicket of tax credits primary and secondary legislation.
21. The best place to start is regulation 12 of the 2014 Transitional Regulations, entitled ‘Modification of tax credits legislation: overpayments and penalties’. Regulation 12(1) defines the scope of the regulation:

12.—(1) This regulation applies where—

- (a) a claim for universal credit is made, or is treated as having been made; and
- (b) the claimant is, or was at any time during the tax year in which the claim is made or treated as made, entitled to a tax credit; and
- (c) the Secretary of State is satisfied that the claimant meets the basic conditions specified in section 4(1)(a) to (d) of the Act (other than any of

those conditions which the claimant is not required to meet by virtue of regulations under section 4(2) of the Act).

22. Pausing there, the claimant in the present case had made a claim for universal credit and so regulation 12(1)(a) was undoubtedly satisfied. She had also been entitled to tax credits in the same tax year (albeit for a brief 17-day period) and so met regulation 12(1)(b). Additionally regulation 12(1)(c) was fulfilled, as the Secretary of State was satisfied that she met most of the basic conditions of entitlement to universal credit as set out in section 4(1)(a)-(d) of the Welfare Reform Act 2012 (this third requirement has since been revoked by regulation 5 of the Universal Credit (Transitional Provisions) Amendment Regulations 2022 (SI 2022/752)). It follows that the claimant was covered by regulation 12.

23. That being so, regulation 12(5) modified section 48 of the Tax Credits Act 2002 to include the following new definition:

“part tax year” means a period of less than a year beginning with 6th April and ending with the date on which the award of a tax credit terminated.

24. It will be evident from the discussion above that the “part tax year” in the claimant’s case was the 17-day period from 6 April 2019 to 22 April 2019.

25. The next provision of note is regulation 12A of the 2014 Transitional Regulations, as inserted by the Universal Credit (Transitional Provisions) (Amendment) Regulations 2014 (SI 2014/1626). Regulation 12A is promisingly headed ‘Modification of tax credits legislation: finalisation of tax credits’ and at the material time provided as follows:

12A.—(1) This regulation applies where—

(a) a claim for universal credit is made, or is treated as having been made; and

(b) the claimant is, or was at any time during the tax year in which the claim is made or treated as made, entitled to a tax credit; and

(c) the Secretary of State is satisfied that the claimant meets the basic conditions specified in section 4(1)(a) to (d) of the Act (other than any of those conditions which the claimant is not required to meet by virtue of regulations under section 4(2) of the Act).

(2) Subject to paragraph (3), where this regulation applies, the amount of the tax credit to which the person is entitled is to be calculated in accordance with the 2002 Act and regulations made under that Act, as modified by the Schedule to these Regulations (“the modified legislation”).

(3) Where, in the opinion of the Commissioners for Her Majesty’s Revenue and Customs, it is not reasonably practicable to apply the modified legislation in relation to any case or category of cases, the 2002 Act and regulations made under that Act are to apply without modification in that case or category of cases.

26. The claimant here met all the criteria specified in regulation 12A(1), just as she had met the identical provisions in regulation 12(1). That being so, then “the amount of the tax credit to which the person is entitled is to be calculated in accordance with the 2002 Act and regulations made under that Act, as modified by the Schedule to these Regulations (“the modified legislation”)” (see regulation 12A(2)).

27. The purpose of regulation 12A was explained in the following terms by the Explanatory Memorandum to the Universal Credit (Transitional Provisions) (Amendment) Regulations 2014:
- 7.4 The Regulations re-instate provision for in-year finalisation of tax credits. By doing so, they allow tax credits awards to be finalised during the tax year (i.e. in-year) when a tax credit claimant makes the transition to UC, rather than after the end of the tax year.
28. It was said this would reduce administrative complexity and confusion for claimants (Explanatory Memorandum, paragraph 7.5). The claimant in HMRC's current appeal may well question whether that worthy intention has been realised.
29. In any event, what is now Schedule 1 to the 2014 Transitional Regulations makes a series of modifications to the Tax Credits Act 2002 and assorted tax credits secondary legislation which are to be applied in cases of in-year finalisation of tax credit entitlements. In particular, section 7(1)-(5) of the Tax Credits Act 2002 are modified by paragraph 2 of Schedule 1 to the 2014 Transitional Regulations so that they read as follows. In this version the relevant modifications are underlined (and note that subsections (6)-(10) have been omitted altogether as not material to this appeal):

Income test

7.—(1) The entitlement of a person or persons of any description to a tax credit is dependent on the relevant income—

(a) not exceeding the amount determined in the manner prescribed for the purposes of this paragraph in relation to the tax credit and a person or persons of that description (referred to in this Part as the income threshold), or

(b) exceeding the income threshold by only so much that a determination in accordance with regulations under section 13(2) provides a rate of the tax credit in his or their case.

(2) Subsection (1) does not apply in relation to the entitlement of a person or persons to a tax credit for so long as the person, or either of the persons, is entitled to any social security benefit prescribed for the purposes of this subsection in relation to the tax credit.

(3) In this Part “the relevant income” means—

(a) if an amount is prescribed for the purposes of this paragraph and the notional current year income exceeds the previous year income by not more than that amount, the previous year income,

(b) if an amount is prescribed for the purposes of this paragraph and the notional current year income exceeds the previous year income by more than that amount, the notional current year income reduced by that amount,

(c) if an amount is prescribed for the purposes of this paragraph and the previous year income exceeds the notional current year income by not more than that amount, the previous year income,

(d) if an amount is prescribed for the purposes of this paragraph and the previous year income exceeds the notional current year income by more than that amount, the notional current year income increased by that amount, and

(e) otherwise, the notional current year income.

(4) In this Part “the current part year income” means—

(a) in relation to persons by whom a joint claim for a tax credit is made, the aggregate income of the persons for the part tax year to which the claim relates, and

(b) in relation to a person by whom a single claim for a tax credit is made, the income of the person for that part tax year.

(4A) In this section “the notional current year income” means—

(a) in relation to persons by whom a joint claim for a tax credit is made, the aggregate income of the persons for the part tax year to which the claim relates, divided by the number of days in that part tax year, multiplied by the number of days in the tax year in which the part tax year is included and rounded down to the next whole number of pence; and

(b) in relation to a person by whom a single claim for a tax credit is made, the income of the person for that part tax year, divided by the number of days in that part tax year, multiplied by the number of days in the tax year in which the part tax year is included and rounded down to the next whole number of pence.

(5) In this Part “the previous year income” means—

(a) in relation to persons by whom a joint claim for a tax credit is made, the aggregate income of the persons for the tax year preceding that to which the claim relates, and

(b) in relation to a person by whom a single claim for a tax credit is made, the income of the person for that preceding tax year.

30. The language used in these modifications is telling. Thus for end of year final decisions section 7(3) (as originally enacted) is predicated in part on the claimant’s “current year income”, whereas for in-year final assessments the calculation under the modified section 7(3) is based on a “notional current year income”. This terminology perhaps suggests some degree of detachment from reality.

31. As already noted in the context of end of year final decisions, tax credits entitlement depends in part on a person’s “relevant income” as defined in various different ways by section 7(3). Once the modifications have been applied, the first of the three variables is the recipient’s *notional* current year income. So, whichever way one turns, an essential component figure for defining “relevant income” in an in-year finalisation case is that person’s “notional current year income”. This expression is defined in turn by section 7(4A), also added by the modifications. In the case of a single person, as with the claimant in the present appeal by HMRC, her “notional current year income” is defined by section 7(4A)(b) as being “the income of the person for that part tax year, divided by the number of days in that part tax year, multiplied by the

number of days in the tax year in which the part tax year is included and rounded down to the next whole number of pence”.

32. The starting point for the modified calculation is therefore “the income of the person for that part tax year”. We know what is the “part tax year”, namely the period from 6 April 2019 to 22 April 2019. But what then was the claimant’s “income ... for that [period]”?
33. This income figure is identified by reference to the Tax Credits (Definition and Calculation of Income) Regulations 2002 (SI 2002/2006; ‘the Tax Credits (DCI) Regulations 2002’). This is just one of the several sets of secondary legislation which are modified by Schedule 1 to the 2014 Transitional Regulations (and in particular by paragraphs 11-23). In particular, paragraph 12 of Schedule 1 modifies regulation 2(2) of the Tax Credits (DCI) Regulations 2002 to insert the same definition of a “part tax year” as noted above. Regulation 3(1) then specifies the four steps to be used when calculating a person’s income for tax credits purposes (Step 4 is omitted from the extract below as it relates to trading income, which is immaterial in this case). As modified by paragraph 13 of Schedule 1 to the 2014 Regulations, and with the modifications underlined again, regulation 3(1) of the Tax Credits (DCI) Regulations 2002 reads as follows:

Calculation of income of claimant

3.—(1) The manner in which income of a claimant or, in the case of a joint claim, the aggregate income of the claimants, is to be calculated for a part tax year for the purposes of Part 1 of the Act is as follows.

Step One

Calculate and then add together—

- (a) the pension income (as defined in regulation 5(1)),
- (b) the investment income (as defined in regulation 10),
- (c) the property income (as defined in regulation 11),
- (d) the foreign income (as defined in regulation 12) and
- (e) the notional income (as defined in regulation 13)

of the claimant, or, in the case of a joint claim, of the claimants received in or relating to the part tax year.

If the result of this step is £300 or less, it is treated as nil.

If the result of this step is more than £300, only the excess is taken into account in the following steps.

Step Two

Calculate and then add together—

- (a) the employment income (as defined in regulation 4),
- (b) the social security income (as defined in regulation 7),
- (c) the student income (as defined in regulation 8) and
- (d) the miscellaneous income (as defined in regulation 18)

of the claimant, or in the case of a joint claim, of the claimants received in or relating to the part tax year.

Step Three

Add together the results of Steps One and Two.

34. In the claimant's case, the only type of income which comes into the equation is "employment income", which is governed by regulation 4 of the Tax Credits (DCI) Regulations 2002. Regulation 4(1) itemises a total of 13 different types of income that are stated to fall within the meaning of the umbrella term "employment income" (sub-paragraphs (1)(a)-(m)). They include, for example, the cash equivalent of certain types of vouchers and credit-tokens (sub-paragraphs (1)(c)-(e)). However, the income in the present case is straightforward salary income. This falls squarely within regulation 4(1)(a). As modified by paragraph 14(a) of Schedule 1 to the 2014 Transitional Regulations, this sub-paragraph covers (text in bold for emphasis):
- (a) any earnings from an office or employment **received in the part tax year.**
35. Therein lies the error of law made by the First-tier Tribunal. In a nutshell, the Tribunal looked at and took into account the claimant's "earnings from an ... employment **attributable to** the part tax year" rather than her "earnings from an ... employment **received in** the part tax year".
36. There is no dispute in this case but that the claimant received earnings in the sense of taxable pay in the sum of £1,244 on 15 April 2019. That date plainly fell within the part tax year of 6 April 2019 to 22 April 2019. It follows that £1,244 was the figure that ought to have been incorporated into the Tribunal's calculation for the purposes of determining the "notional current year income" in accordance with section 7(4A)(b) of the Tax Credits Act 2002. This means – with the appropriate figures inserted – "the income of the person for that part tax year [£1,244], divided by the number of days in that part tax year [17], multiplied by the number of days in the tax year in which the part tax year is included [366] and rounded down to the next whole number of pence". Doing that calculation produces a figure for the claimant's notional current year income – with the emphasis very much on the word "notional" – of £26,782.
37. The figure for the notional current year income is then subjected to further number-crunching in accordance with the various provisions of the tax credits legislation. The next stage, having found the notional current year income, is to identify the claimant's "relevant income" as defined by section 7(3). In this instance, the circumstances are such that section 7(3)(b) applies. With the modifications underlined and the appropriate figures again included in parentheses, this provides that the claimant's "relevant income" is as follows:
- (b) if an amount is prescribed for the purposes of this paragraph [£2,500] and the notional current year income [£26,782] exceeds the previous year income [£12,000] by more than that amount [£2,500], the notional current year income [£26,782] reduced by that amount [£2,500].
38. The subtraction required by section 7(3)(b) necessarily produces a "relevant income" figure in this case of £24,282 (£26,782 - £2,500).
39. As previously explained, the determination of the actual rates of entitlement to tax credits is then governed by regulations 7 and 8 of the Tax Credits (Thresholds and Determination of Rates) Regulations 2002. As modified by paragraphs 26 and 27 of Schedule 1 to the 2014 Transitional Regulations, Step 3 specifies in each case as follows:

Step 3 – Finding the income for the relevant period

Find the income for the relevant period by using the following formula:

$$\frac{I}{N1} \times N2$$

where:

“I” is the relevant income for the part tax year to which the claim for the tax credit relates;

“N1” is the number of days in that part tax year;

“N2” is the number of days in the relevant period.

40. As such, Step 3 requires the following calculation. First, the amount indicated by the letter “I” is identified, namely “the relevant income for the part tax year to which the claim for the tax credit relates”. At first blush I took this to be simply the relevant income figure of £24,282, but applying the formula this would result in the very strange if not outlandish outcome of the claimant being treated as having a relevant income in that same amount for the 17-day part tax year. I therefore agree with Mr Eland’s submission that an amount “must first be produced by dividing the relevant income (such being the applicable annual or annualised amount as determined with reference to modified section 7(3)), by the number of days in the tax year and then multiplying the result by the number of days in the part tax year”. This is an appropriately purposive interpretation which gives practical effect to the full expression “the relevant income *for the part tax year to which the claim for the tax credit relates*”.
41. In the claimant’s case, that means the annual relevant income figure of £24,282 is divided by 366 and multiplied by 17, producing a relevant income figure for the one relevant period of £1,127.85. Applying the formula in Step 3 then results in a worked calculation where the outcome is £1,127.85 – namely £1,127.85 (I) divided by 17 (N1) and multiplied by 17 (N2). This may appear to be unnecessarily circuitous, but as Mr Eland rightly points out there may be more than one relevant period in issue and so the Step 3 calculation may need to be repeated.
42. Mr Eland also rightly accepts on behalf of HMRC that “as it stands the rule is perhaps not as clear as it ought to be” in the context of the modified Step 3. He reports that HMRC “are liaising with the Secretary of State’s officials to have this regulation amended at the earliest available opportunity”.
43. I have not overlooked the claimant’s argument that she should not be penalised for a lack of clarity in the regulations. However, as noted above, the alternative reading of the modified Step 3 would have resulted in an even more disadvantageous outcome for her. The construction advanced by Mr Eland (see paragraph 40 above) is the only reasonable interpretation of the modified Step 3 and is consistent with the overall purpose of the legislative scheme.
44. I have also not overlooked the claimant’s argument that she never had annual earnings of £24,282 (let alone £26,782). As Mr Eland explained, there is no suggestion that she had. The clue lies in the terms of the modified tax credits legislation which applies to in-year final decisions e.g. where a claim for

universal credit is made, so terminating a tax credits award. In such cases the calculations are based on a *notional* current year income, not an actual current year income – not least because at the time the decision is taken the actual earnings for the tax year in question will not yet be known. The legislative scheme as modified for in-year final decisions focusses on earnings actually received in the part tax year concerned, and not simply the earnings directly attributable to that period. The policy justification for the approach adopted in the modified tax credits legislation may not be immediately obvious, but the statutory focus is clearly on “any earnings from an... employment received in the part tax year.”

45. In contrast, the approach to the calculation taken by the First-tier Tribunal in this case, while superficially understandable, had no basis whatsoever in the modified statutory provisions governing the assessment of entitlement to tax credits.
46. I just make one final observation. It is unclear from the paperwork on file whether HMRC has already sought recovery of the resulting overpayment of tax credits. That is a discretionary decision over which neither the Upper Tribunal nor the First-tier Tribunal has any jurisdiction. In deciding whether to recover the overpayment, and if so on what terms, I hope that HMRC will bear in mind that the claimant, through no fault of her own, has experienced considerable anxiety as this matter has taken several years to resolve.

Conclusion

47. I can sum up as follows. The First-tier Tribunal was wrong as a matter of law. It follows I must allow HMRC’s appeal (section 11 of the Tribunals, Courts and Enforcement Act 2007), set aside the First-tier Tribunal’s decision and re-make the First-tier Tribunal’s decision accordingly.

The claimant’s appeal is dismissed. The claimant’s final entitlement for the tax year 2019/20 was £0.00 WTC and £36.74 CTC for the part tax year from 6 April 2019 to 22 April 2019.

**Nicholas Wikeley
Judge of the Upper Tribunal**

Authorised for issue on 13 March 2023