



Neutral Citation Number: [2025] UKUT 027 (AAC)
CSM

Appeal Nos. UA-2024-000602-

UA-2024-000604-CSM

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

DB

Appellant

- v -

SECRETARY OF STATE FOR WORK AND PENSIONS

First Respondent

SB

Second Respondent

**Before: Upper Tribunal Judge Church
Decided on consideration of the papers**

Representation:

Appellant: Not represented

First Respondent: Ms Holly Taylor of the Decision Making and Appeals section of the Department for Work and Pensions

Second Respondent: Not represented

On appeal from:

Tribunal: The First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case Nos: SC228/20/00326 and SC337/23/00628

Tribunal Venue: Newcastle

Decision Date: 17 October 2023

SUMMARY OF DECISION

CHILD SUPPORT (5) (5.19 Other)

Judicial summary

This decision is about whether the Appellant father has ‘day to day’ care of his children to a lesser extent than their mother does for the purposes of assessing his liability to pay child support.

The Upper Tribunal gives guidance to the First-tier Tribunal about:

- a. the legal test the tribunal must apply to decide whether one parent provides “day to day care” in respect of a child to a lesser extent than another parent,
- b. fact finding, and
- c. what a tribunal needs to say in its reasons for them to be adequate in appeals like this one.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to allow the appeals. The decisions of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(i) and (3) of the Tribunals, Courts and Enforcement Act 2007, I set those decisions aside and remit the cases to be reconsidered by a fresh tribunal in accordance with this decision and the following directions.

DIRECTIONS

- 1. This appeals are remitted to the First-tier Tribunal for reconsideration at an oral hearing.**
- 2. The First-tier Tribunal hearing the remitted appeals shall not involve either the judge who decided the appeals on 14 February 2022 or the judge who decided the appeals on 17 October 2023.**
- 3. If any party has any further evidence to put before the First-tier Tribunal this should be sent to the regional office of His Majesty's Courts and Tribunals Service within one month of the date on which this decision is issued. Any such further evidence must relate to the circumstances as they were at the date of the decisions of the Secretary of State under appeal.**
- 4. The tribunal hearing the remitted appeals is not bound in any way by the decision of the previous First-tier Tribunal. Depending on the findings of fact it makes the new tribunal may reach the same or a different outcome from the previous tribunal.**
- 5. Copies of this decision shall be added to the bundle to be placed before the First-tier Tribunal hearing the remitted appeals.**

These Directions may be supplemented by later directions by a Tribunal Caseworker, Tribunal Registrar or First-tier Tribunal Judge.

REASONS FOR DECISION

Introduction: what this appeal is about

2. These appeals relate to the liability of the Appellant (whom I shall refer to as the “**Father**”) to make payments to the Second Respondent (whom I shall refer to as the “**Mother**”) in respect of the maintenance of the two children of their marriage.
3. They represent but one chapter in a lengthy and protracted dispute between the parties about financial provision for their children. They are ‘second time around’ appeals. That means that these appeals have already come to the Upper Tribunal once before, and the Upper Tribunal allowed the appeals and remitted them to the First-tier Tribunal for a new tribunal to decide afresh. Those new decisions are the decisions now under appeal.
4. In legal terms this case is mainly about whether the First-tier Tribunal made adequate findings of fact to support its decision that the Father provides “day to day care” of the children to a lesser extent than the Mother, and whether it explained its decisions clearly enough.
5. I give guidance to the First-tier Tribunal about:
 - a. the legal test the tribunal must apply to decide whether one parent provides “day to day care” in respect of a child to a lesser extent than another parent,
 - b. fact finding, and
 - c. what a tribunal needs to say in its reasons for them to be adequate in appeals like this.

Factual background

6. On 28 August 2019 the Child Maintenance Service on behalf of the Secretary of State decided that the Father was liable to pay child maintenance to the Mother in respect of both of his children with her from 28 August 2019 in the amount of £42.71 per week (the “**Initial CMS Decision**”). The Father requested a mandatory reconsideration of the Initial SoS Decision because he said that he and the Mother provided day to day care of the children in equal measure, so he was not the ‘non-resident parent’ and the child support scheme didn’t apply.

The Initial CMS Decision was revised and the claim to child maintenance closed from 13 January 2020 (the “**2020 CMS Decision**”).

7. On 20 July 2022 the Child Maintenance Service, on behalf of the Secretary of State, superseded the calculation of the Father’s liability to pay child maintenance to the Mother under section 17 of the Child Support Act 1991, deciding that the son was no longer a “qualifying child” from 14 March 2022, with the consequence that from 14 March 2022 the Father was liable to pay child maintenance in respect of their daughter only, and that liability was in the amount of £43.94 per week (the “**2022 CMS Decision**”).
8. The Mother appealed the 2020 CMS Decision to the First-tier Tribunal and the Father appealed the 2022 CMS Decision. The appeals were linked and heard together.
9. I won’t say anything about the First-tier Tribunal proceedings that were set aside, because when I remitted the matter to be reheard it was on the basis that it would be decided by a different judge and that judge would consider the matter entirely afresh.
10. On 17 October 2023 a District Tribunal Judge of the First-tier Tribunal (the “**Tribunal**” or the “**judge**”) heard the linked appeals against the 2020 CMS Decision and the 2022 CMS Decision. The Tribunal:
 - a. allowed the Mother’s appeal against the 2020 CMS Decision, and
 - b. allowed the Father’s appeal against the 2022 CMS Decision and remade the decision, deciding that the Father was liable to pay £42.71 per week in child maintenance in respect of his daughter(the “**FtT Decision**”).

Legal framework

11. The Child Support Act 1991 (the “**1991 Act**”) establishes a scheme for the provision of child support, which is administered on behalf of the Secretary of State for Work and Pensions by the Child Maintenance Service.
12. The 1991 Act assumes that a child is cared for by one parent, and that parent is referred to as the ‘parent with care’. The other parent is, in most circumstances, the ‘non-resident parent’.

13.

Where both parents are involved in caring for a child the 1991 Act treats this as a 'special case' under section 42, and regulation 50 of The Child Support Maintenance Calculation Regulations 2012 (the "**Calculation Regulations**") applies.

14. If there is no 'non-resident parent' the child support scheme doesn't apply.

15. Section 50 of the Calculation Regulations provides:

"50.- (1) Where the circumstances of a case are that-

(a) an application is made by a person with care under section 4 of the 1991 Act; and

(b) the person named in that application as the non-resident parent of the qualifying child also provides a home for that child (in a different household from the applicant) and shares the day-to-day care of that child with the applicant, the case is to be treated as a special case for the purposes of the 1991 Act.

(2) For the purposes of this special case, the person mentioned in paragraph 1(b) is to be treated as the non-resident parent if, and only if, that person provides day to day care to a lesser extent than the applicant.

(3) Where the applicant is receiving child benefit in respect of the qualifying child the applicant is assumed, in the absence of evidence to the contrary, to be providing day to day care to a greater extent than any other person.

(4) For the purposes of paragraph (3), where a person has made an election under section 13A(1) of the Social Security Administration Act 1992 (election not to receive child benefit) for payments of child benefit not to be made, that person is to be treated as receiving child benefit."

The First-tier Tribunal's decision

16. The Tribunal produced a brief decision notice on the day of the hearing. The Father then requested further written reasons, which the Tribunal produced on 27 November 2023 (albeit that they were unfortunately not issued until 8 January 2024) (the "**Detailed Reasons**"). In those Detailed Reasons the

Tribunal correctly identified the relevant statutory provisions and case law and identified the issues as follows:

“The first appeal concerns the issue of day-to-day care, which was in dispute. The issue to be decided was which parent provided more day-to-day care. There is no current legal definition of day-to-day care. The issue in the second appeal is whether [the Father] is liable to pay child support liability of £43.94 per week, in respect of [his daughter] from 14/03/22.”

17. Because this decision mainly concerns the adequacy of the Tribunal’s fact-finding and its explanation of how it decided that the Mother had greater day-to-day care of the children, I set out below in full the section of the Detailed Reasons dealing with fact finding:

“Findings of Fact

10. A Child Arrangements Order made under Section 8 of the Children Act 1989 by consent was made to formalise the arrangements which were established in October 2019. The order sets out how care of the children is to be divided, in terms of how much and for how long, each of the children will spend with their respective parents.

11. The issue to be considered in the first appeal is who provides the more day to day care. This judgment does not cover every aspect of care each parent gives to the children, but it provides examples which I find show their respective day to day care and who provides the more significant share and why.

12. Both parents provide day to day care for the children and their respective love for their children is demonstrable. However, I found that [the Mother] provides more in terms of both the practical and emotional needs of the children.

13. [The Father] explained that he has a routine when the children stay with him. He plans and prepares meals, he eats meals with the children as he thinks it is important to eat together, as they did when they were married. He washes the school uniforms and ensure [sic] they are ironed

and pristine for school. He prepares the packed lunches for school. He described doing homework with [his daughter] and likes to chat with the children and listens to their worries. He described the fun the children have when they stay, enjoying hairstyling and fashion shows with [his daughter].

14. [The Father] attends medical and dental appointments. He pays for her gymnastics at the Benfield centre. He explained that he pays for extra-curricular activities, but he could not continue to pay for [his daughter]'s school dinners or repay the arrears of child maintenance. At no point did [the Father] voice any concerns about the potential effect on [his daughter] of him not paying the school dinners arrears. He was more focused on the financial matters and took quite a rigid approach to what he was made to pay by CMS. He stated that only one parent can book school dinners and as [the Mother] uses the child maintenance to pay for them, he had no obligation to pay. However, the arrears were built up when the case was closed, and I felt that he had not considered this and more importantly how the stress of this may indirectly affect [his daughter].

15. [The Mother] gave examples of the day-to-day care which she gives to the children. Like [the Father], she is organised and ensures the children look well presented. She emphasised that most of what she does is automatic, and she does not keep a note of it. However, she explained how she organises and forward plans. She purchases their school uniforms well in advance of the new school year, she pays the dinner money: [her daughter] has two school dinners and one packed lunch, which she prepares. She pays for [her daughter]'s gymnastics and [her son]'s junior gym membership and pays for most of the guitar lessons.

[The Mother] described examples of the children returning from the care of [the Father] and [her son] asked her to provide items of stationery for school which he had not felt able to ask whilst in the care of [the Father]. She stated that the children both know that she will drop everything and

rush out to get what they need She also explained that they contact her when staying with [the Father] to drop items off at his home because they know she has always been the one to do things for them and they continue to rely on her.

17. [The Mother] described how she ensures [her daughter]'s long hair is cared for properly. [The Mother] ensures [her daughter] is in a good routine of washing, drying and she straightens her hair. She described cutting their nails and other personal care such as buying spot creams, deodorants, and hair treatments for the children. She also explained that she had to pay for the children's school meals as [the Father] refused to pay them. The school dinners went into arrears and despite asking [the Father] repeatedly to contribute to the costs of school dinners he would not do so. The school contacted [the Father] to pay a share of the arrears, but he had not done, so [the Mother] paid the arrears in full because she did not want it to affect [her daughter] adversely if the school withdrew meals.

18. The children also both require her input when they are upset or worried. She provided examples of the emotional support she provides to the children on a day-to-day basis. She explained that every night she sits with the children, and they discuss their day. She described how much the children enjoy this time. She explained that when [her son] is quiet, she takes the time to sit down and ask him if he [sic] ok. She described that she lends him an ear and they both take comfort from that. She mentioned that [her daughter] is very hormonal and gets emotional some days. [The Mother] described how her part-time working hours enable her to spend time with the children when they return from school and to establish a good routine. She makes their dinner early every night so [her son] can go to the gym. She spends time with [her daughter] doing craft books and they sit and chat and cuddle. She described a secure, comfortable, loving home environment for children."

The permission stage and the parties' submissions

18.

The Father's grounds of appeal were wide ranging. I granted permission to appeal. In my grant of permission I said:

"C. Why I have given permission to appeal

5. I am very sorry to see this dispute again. In my decision allowing the previous appeal to the Upper Tribunal in SC228/20/00326 I described this as an appeal with a "long and unhappy history". Seeing it come around a second time, its history can only be said to be longer and yet more unhappy.

6. As with the previous appeal to the Upper Tribunal, much of what [the Father] says in his criticisms of the First-tier Tribunal's decisions of 17 October 2023 (which relates to two decisions of the Secretary of State, dated 13 January 2020 and 20 July 2023) amounts simply to a robust and heartfelt disagreement with the judge's assessment of the evidence her findings of fact and a disagreement with the decision that [the Father] was responsible for a lesser proportion of the children's day to day care than [the Mother]. That on its own is insufficient to warrant permission to appeal to the Upper Tribunal.

7. However, I am satisfied that it is arguable with a realistic (as opposed to fanciful) prospect of success that the judge who heard [the Mother]'s appeal in SC228/20/00326 and [the Father]'s appeal in SC337/23/00628 erred in law because she may not have applied the correct legal tests, may not have made adequate findings of fact to support her decision, or may not have explained her decision with adequate clarity.

8. While in her statement of reasons under the heading "Findings of Fact" the judge summarised examples of the evidence she heard from the father and mother about the care that the children receive from each of them, she may not have explained with adequate clarity what evidence she accepted and what she rejected (for example, both parents claim to have paid for their daughter's gymnastics classes), or why.

9. Given that the examples given on the face of it indicate that they provide remarkably similar care to the children when the children are living with them, the judge may not have explained with adequate clarity why she decided that [the Mother] “provides more in terms of both the practical and emotional needs of the children” (see paragraph 12 of the statement of reasons).

10. The First-tier Tribunal was considering two decisions which were made over 3 years apart. As such it was incumbent on it to make findings of fact about the care provided by the mother and father at different points in time. To the extent that it did make findings of fact, it is perhaps insufficiently clear whether these facts applied at the relevant time for the first decision, at the relevant time for the second decision, or both.

11. [The Father] has said that the First-tier Tribunal’s decision in relation to SC337/23/00628 was erroneous because the judge recorded a liability to pay for their daughter, while the appeal was about liability to pay for their son. The decision of the Secretary of State under appeal in SC337/23/00618 was its maintenance calculation supersession decision of 20 July 2023 removing the son from the maintenance calculation as a qualifying child, and calculating the father’s liability to pay maintenance in respect of the daughter (who remained a qualifying child) from 13 March 2022 at £43.94 per week. That decision was appealed to the First-tier Tribunal by [the Mother] because she considered that she should receive maintenance payments in respect of their son.

12. What the judge said in relation to that decision is very limited indeed:

“Regarding the second appeal, I found on the totality of the evidence before me that [the Father] is liable to pay the sum of £42.71 per week child maintenance in respect of [the daughter]”.

13. This explanation is arguably inadequate to explain her decision-making.”
19. I directed the parties to make submissions on the appeals.
20. Ms Holly Taylor of the Decision Making and Appeals section of the Department for Work and Pensions provided a clear submission on behalf of the Secretary of State supporting the appeal. She adopted the reasons I gave in my grant of permission.
21. The Second Respondent opposed the appeal. She maintained that the Tribunal had decided the appeals fairly and explained them clearly. Much of what she says amounts to the giving of new evidence about the day to day care that she and the Father provide to the children now. She has attached evidence of payments made for school meals and gymnastics activities in respect of periods falling after the 2020 CMS Decision. None of this is relevant to the issues I must decide in this appeal.
22. The Appellant maintained his position that the Tribunal had erred materially in law. He asked that I set aside the FtT Decision. While he invited me to exercise my discretion to remake the decision, he said that he was content for the matter to be remitted to the First-tier Tribunal for rehearing if necessary and he would be willing to attend to give evidence.

Analysis

The proper test under section 50 of the Calculation Regulations

23. To decide whether a parent named as the “non-resident parent” in an application for child maintenance under section 4 of the 1991 Act is to be treated as the non-resident parent, the Tribunal must first decide whether that parent has day to day care of qualifying children to a lesser extent than the parent with care. That is a question of fact to be determined based on the evidence.
24. There is no definition in the 1991 Act, or elsewhere in the statutory framework for the child maintenance scheme, of what “day to day care” means.
25. The meaning of the phrase “day to day care” and the proper approach to assessing it was discussed by Judge Wikeley in CCS/1875/10 at [48]:

"... rather than considering who had (in legal terms) parental responsibility for S, and effectively using that as a proxy for being the person with care, the tribunal should have focussed on who was providing the hands-on care or the "immediate, short-term and mundane aspects of care" (*R(CS) 11/02*, at [19]), bearing in mind that "child support law is concerned with maintenance and the costs of bringing up a child are more related to the aspects of day to day care as I have analysed it than to the longer-term decisions about upbringing" (*R(CS) 11/02* at [24]). As I postulated at the oral hearing, it is about who puts food on the table, washes the child's clothes, deals with the letters from school and reads a bedtime story."

26. Another helpful statement of how to approach the assessment of whether the named parent is to be treated as the "non-resident parent" was made by Judge Jacobs in *MR v SSWP and LM* [2018] UKUT 340 (AAC):

"19. Details can be significant, but it is important not to lose sight of the pattern, which is what the tribunal has to find. Fluctuations may cancel themselves out: here the father accepted that the week-long holidays with each parent "would largely balance themselves out". And a child's specific needs may vary from time to time: it may be pure chance whether a child is with their father or mother when they fall and need to go to the hospital.

20. The tribunal had to look for a pattern or distribution of care by taking account of the evidence as a whole, including all the details that the parents provided. These are easy words for the Upper Tribunal to write, but they are not so straightforward for the First-tier Tribunal to apply and explain. There is no formula that a tribunal can apply to take account of all the different aspects of care. Suppose the father pays for his children to attend an after school club, their mother picks them up, unless she is working, when her parents stand in for her. How is the care involved to be allocated? And how does any of that compare with making sure that the children go to bed at a sensible time and don't eat too much

junk food? Unless the facts make the decision clear cut, it must involve a broad and impressionistic evaluation.”

27. I echo what Judge Jacobs says about the difficulty of the First-tier Tribunal’s task, and I acknowledge that the First-tier Tribunal’s task is not a simple matter of totting up the hours spent with the children, but rather a more “impressionistic evaluation”.
28. However, as I said in the first appeal in these proceedings (see *DB v (1) SSWP and (2) SB (CSM)* [2023] UKUT 70 (AAC)), the assessment must be made based on findings of fact rooted in evidence, and not on value judgments. I decided that the First-tier Tribunal in that case had not taken that approach:

“Instead, the First-tier Tribunal based its decision that the mother provided a greater proportion of the children’s day to day care on a value judgment on the relative merits of the parents’ respective values, philosophies and motivations. The only differentiating finding of fact was about the cutting of the nails, and the judge expressly stated that this finding was “not a clinching factor”. Rather the First-tier Tribunal appears to have been persuaded by its impression that the mother was motivated by what was best for the children, while the father was focussed on the money spent on them.”
29. Turning to the appeals before me now, the Tribunal decided that the Mother provided a greater proportion of the children’s day to day care in terms of both their practical and emotional needs (see paragraph [12] of the detailed written reasons).
30. There is nothing in the Detailed Reasons or in the decision notice relating to the FtT Decision to indicate that the judge was not aware of the proper legal test for establishing whether one parent had a greater share of day to day care than another, and given that the legislation and case law cited by the judge were pertinent, I am not persuaded that the judge was unaware of the proper test.
31. I shall now consider whether the FtT Decision’s foundations in terms of the findings of fact on which it stood, were inadequate.

The Tribunal's fact finding

32. In the nine paragraphs of the tribunal's Detailed Reasons that follow the heading "Findings of Fact" the Tribunal first refers to the Child Arrangements Order to which the Mother and Father consented, and then identifies the question it must answer to decide the appeal against the 2020 CMS Decision: "which parent provides more day to day care?"
33. The Tribunal explains that it won't cover every aspect of care each parent gives to the children, but will instead provide examples which show their respective day to day care, and who provides the more significant share and why. That is a permissible approach to explaining the tribunal's reasons.
34. Paragraphs [13] to [19] relate to the evidence given about what the respective parents do in terms of day to day care. Many of the sentences open with phrases like "[the Father] explained that..." of "he described..." "he stated that...", "[the Mother] gave examples of...", "she emphasised that...", "she explained how...", "she stated that..." As such, they are recitations, or perhaps summaries, of the evidence given by the Father (paragraphs [13]-[14]) and the Mother (paragraphs [15]-[19]). None of those sentences includes a clear statement of what the Tribunal made of the evidence recounted. As such the reader can't be at all sure that they are findings of fact at all.
35. Other sentences in this section of the written reasons contain no such introductory words. These sentences could be findings of fact, but sandwiched as they are between recitations of evidence, it is not entirely clear whether they are a continuation of the evidence in the previous sentence (and so attributable to the witness referred to in the preceding sentence), or whether they reflect the judge's own findings based on her assessment of the witness's evidence.
36. Even if one infers from its location under the heading "Findings of Fact" that everything in paragraphs [10]-[19] amounts to a finding of fact by the Tribunal, it is not clear how the Tribunal resolved the conflicts between the accounts given by the parents: the Father said that he pays for his daughter's gymnastics (see paragraph [14]), while the Mother says that she does (see paragraph [15]). There is no indication of whether, and if so how, the judge resolved this conflict which might well have been important. Neither is there any mention of the voluminous documentary evidence in the appeal bundle, which included evidence of payments made.

37.

Even putting all of this to one side, when one looks at the day to day care described in paragraphs [13]-[19], what is being attributed to the Father and Mother (whether by themselves or as found by the Tribunal) is remarkably similar. It is instructive to look at it in tabular form:

Father	Mother
Has a routine when children stay with him [13]	Like Father she is organised and forward plans [15]
Plans and prepares meals [13]	Makes dinner early every night so son can go to gym [19]
Prepares packed lunches for school [13]	Makes packed lunch for daughter [15]
Washes uniforms and ensures ironed and pristine for school [13]	Ensures the children look well presented, buys school uniform well in advance of new school year [15]
Chats with children and listens to their worries [13]	Every night sits with the children, and they discuss their day [18] When son is quiet takes time to sit down and ask if he is OK [18]
Children have fun with him [13]	Provides emotional support [18]
Hairstyling and fashion shows with daughter [13]	Ensures daughter's long hair is cared for properly; ensures daughter is in a good routine of washing and drying, and straightens her hair [17]
Pays for gymnastics and extra-curricular activities [14]	Pays for daughter's gymnastics and son's junior gym membership and most of guitar lessons [15]
	Children ask her to buy stationery as they don't feel able to ask their Father, Mother drops items off for children when they stay with Father

	[16]
Attends medical and dental appointments [14]	
	Cuts nails, buys spot creams, deodorants and hair treatments [17]
Eats with children [13]	
	Pays the dinner money, including arrears [15]
Does homework with daughter [13]	
	Spends time with daughter doing craft books and they chat and cuddle [19]

38. The table above suggests that the parents each provide broadly equivalent day to day care when they have the children. So, what separates the parents in terms of day to day care?

39. Taking their evidence at face value, the Father takes responsibility for medical and dental appointments, while the Mother takes the lead on personal grooming. The father eats with the children and does homework with the daughter, while the mother buys the children’s stationery, fetches and carries for them when they are at their Father’s and forget things, and does craft activities with the daughter. Although in some domains the parents take responsibility for different aspects of day to day care, there is broad equivalence and it might be thought that, looking at the situation holistically and seeking to identify the overall pattern, neither parent provides more day to day care than the other.

40. The main differentiating factor appears to be on the issue of payment for school meals, and the arrears that built up when the Father refused to pay. Payment for school lunches is, of course, an element of day to day care, and so it is relevant to the assessment of whether the Father is to be treated as the “non-resident parent” for the purposes of the child maintenance legislation, with less day to day care than the Mother. However, there is a problem here too because, as the judge herself pointed out in paragraph [14] of the Detailed

Reasons, the arrears in school meal payments arose in the period “when the case was closed”. In other words, after the 2020 CMS Decision. The judge doesn’t appear to have made any findings about the situation in the period up to the 2020 CMS Decision, which was the relevant period for the purposes of the appeal against the 2020 CMS Decision.

41. To the extent that the matters set out in the Detailed Reasons for the FtT Decision amount to findings of fact at all, they are not clearly anchored in time. It is therefore unclear whether the findings relate to the date of the 2020 CMS Decision, the date of the 2022 CMS Decision, the date of the hearing before the First-tier Tribunal, some other date, or to a period spanning several of these dates.
42. Most of what is said under the heading “Findings of Fact” is written in the present tense, which suggests that the evidence given by the Mother and Father was about how day to day care was being managed around the date of the hearing before the First-tier Tribunal, and on an ongoing basis. Therefore, to the extent that the Tribunal was making findings, those findings might have been made based on evidence that related to a time more than three and a half years before the relevant date (i.e. when the 2020 CMS Decision was made). Given the way that children’s needs change over time it is highly unlikely that the day to day care that the children required in January 2020 was the same as that which they required in October 2023, and so it is similarly unlikely that what was provided to them by their parents in January 2020 was the same as what was provided in October 2023. The absence of any facts found in relation to payment for school meals during the relevant period creates a large hole in the Tribunal’s decision.

Reasons

43. A failure to give adequate reasons for a decision amounts to an error of law, even if the decision itself is sound. The extent of a tribunal’s duty to give reasons, and what amounts to “adequacy” was explained by Lord Brown in his summary of the authorities in paragraph [36] of *South Bucks DC v Porter (No.2)* [2004] UKHL 33, [2004] 1 WLR 1953 as follows:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law

or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds.”

44. Given what I have said above under the heading ‘The Tribunal’s fact finding’, and given Lord Brown’s explanation of what adequacy means, it will already be apparent that I consider the Tribunal’s reasons for its decision on the 2020 CMS Decision to be inadequate. I needn’t analyse this any further.

45. In relation to the Tribunal’s decision on the 2022 CMS Decision, all that the Tribunal said was:

“Regarding the second appeal, I found on the totality of the evidence before me that [the Father] is liable to pay the sum of £42.71 per week child maintenance in respect of [his daughter].”

46. This is a statement of what was decided. As a statement of the reasons for the Tribunal’s decision on the appeal against the 2022 CMS Decision it is plainly inadequate. That is because it provides no reasons at all.

47. Because I have decided to remit these cases to the First-tier Tribunal for re-hearing, and because I don’t want to risk them coming back to the Upper Tribunal a third time, I shall now give some brief guidance on what will need to be covered by the judge hearing the remitted appeals for their reasons to meet the required standard of “adequacy”.

What the reasons must cover

48. The judge hearing the remitted appeal must explain:

- a. the issues to be decided,
- b. how they assessed the evidence before them (upon which they based their material findings of fact) including how they resolved conflicts of evidence that resulted in material findings of fact. There is no need to recite evidence except insofar as that may be necessary to explain how the evidence was evaluated,

c.

the material facts found (by reference to the evidence), including the date(s) or period(s) to which each finding relates (by reference to the decisions under appeal),

d. what legal tests they applied to their findings of fact to reach their decision on each appeal, and

e. in the light of all the facts found, why they decided the issue of whether or not the Father had a lesser share of the children's day to day care as they did, and any other issues in the appeals.

Please don't tell us what was "not the clinching factor", as the tribunal which heard the appeal in February 2022 did. Tell us instead what the "clinching factor" was, if there was one.

Conclusion

49. I conclude that the decision of the First-tier Tribunal involves an error of law. I allow the appeal and set aside the decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the "TCEA").

What happens next

50. Given the tortured history of these proceedings and the quite understandable frustration of both the Mother and Father I have given serious consideration to exercising my discretion to re-make the decisions under appeal.

51. However, because further facts need to be found, even if I were to remake the decisions there would realistically need to be an oral hearing before me, and so it is unlikely that any time would be saved. Because of that, I consider that it is appropriate, and in the interests of justice, for the appeal to be remitted to the First-tier Tribunal for rehearing.

52. Under section 12(2)(b)(i) of the TCEA these appeals are remitted for re-hearing by a new tribunal subject to the directions above.

**Thomas Church
Judge of the Upper Tribunal**

Authorised by the Judge for issue on 21 January 2025