

IN THE UPPER TRIBUNAL

Appeal No. CJSA/2332/2016

ADMINISTRATIVE APPEALS CHAMBER

Before Upper Tribunal Judge Poynter

DECISION

The claimant's appeal does not succeed.

The decision of the First-tier Tribunal given at Oxford on 18 January 2016 under reference SC048/14/00530 did not involve the making of any material error on a point of law.

Therefore that decision continues to have effect and the claimant is not entitled to jobseeker's allowance from 4 April 2012 to 16 March 2014 (both dates included).

REASONS FOR DECISION

Introduction

1 The claimant appeals to the Upper Tribunal with the permission of an Upper Tribunal Judge against the above decision of the First-tier Tribunal ("FTT"). The appeal has now been released to me for decision.

2 The Secretary of State's representative does not support the appeal because, he submits, any error of law that may have occurred was immaterial.

3 Neither party has requested an oral hearing of the appeal. I have nevertheless considered whether I should hold one but I have decided that it would not further the overriding objective to do so. A hearing would cause delay and I judge that it would be unlikely to help my consideration of the issues that arise in this appeal.

Background

4 On 17 March 2014, the claimant made an online claim for jobseeker's allowance ("JSA"), which she asked to be backdated to 17 March 2012. The relevant part of her claim form contained the following series of questions and answers:

<i>Question</i>	<i>Answer</i>
Do you want to claim Jobseeker's Allowance from 17/03/2014?	No
What date do you want to claim from?	17/03/2012
Why has there been a delay in contacting us?	I applied on line on 4th April 2012, did not receive SMS message to confirm my appointment on 13th April 2012.
How did you find out you could claim?	Attending the Jobcentre
Did you ask anyone about claiming?	Yes
Who did you ask?	Jobcentre Plus Advsiors [<i>sic</i>]
When did you ask?	04/04/2012
What did you ask?	If I could have my claim backdated due to my breast cancer treatment
What did they tell you?	They said yes.
How did you find out that you could claim for the time since 17/03/2012	Jobcentre Plus Advisor
Have there been any changed in your circumstances since 17/03/2012?	No
As you are claiming since 17/02/2012 and you are claiming because you are unemployed, I need to ask you some further questions. Were you unable to work because you were unwell for any of the days since 17/03/2012?	Yes. Breast Cancer
Were you looking for work?	Yes

5 On 28 March 2014, a decision maker acting on behalf of the Secretary of State awarded the claimant JSA from and including 17 March 2014 but declined to make an award for any earlier date. In contravention of rule 24(4) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 ("the Procedure Rules"), the Secretary of State has not included a copy of that decision in the appeal papers and it is therefore necessary to infer what its exact terms were (see paragraph 24 below). That decision was confirmed on mandatory reconsideration on 2 July 2014.

The proceedings before the FTT

6 On 14 July 2014, the claimant appealed against that decision. The appeal was originally refused by District Tribunal Judge Sellar on 27 November 2014. However, on 10 April 2015, Judge Sellar set his decision aside under rule 37 of the Procedure Rules. At the next hearing before Tribunal Judge Daly on 26 June 2015, the proceedings were adjourned with directions for the Secretary of State to comply with directions that had been given by Judge Sellar on 4 February 2015.

7 The Secretary of State continued to disobey those directions and on 7 August 2015, District Tribunal Judge Collopy directed that the Secretary of State

must comply those directions no later than 14 days from the date on which he received her directions notice. Judge Collopy also directed that if the Secretary of State did not do so, the appeal was to be listed for an oral hearing and that a presenting officer must attend that hearing with the claimant's file.

8 The Secretary of State's disobedience to the FTT's orders persisted and, in accordance with Judge Collopy's directions, the appeal was listed before District Tribunal Judge Wyatt on 18 January 2016. The claimant did not attend that hearing (as had also been the case before Judge Sellar) and, consistently with his approach to every other direction that the FTT had given in these proceedings, the Secretary of State disobeyed Judge Collopy's direction to arrange for the attendance of a presenting officer with the claimant's file.

9 Judge Wyatt considered rules 2 and 32 of the Procedure Rules and decided to proceed in the absence of the parties. She then refused the appeal and confirmed the Secretary of State's decision. The decision notice explained that she had concluded that there were no grounds on which to backdate the claim received on 17 March 2014 and that there was no undecided claim from 2012 because, although the claimant had attempted to claim JSA I April 2012, that claim was defective (because of the claimant's failure to attend the new claim interview) and had not subsequently been perfected.

The appeal to the Upper Tribunal

10 On 28 June 2016, Judge Wyatt refused the claimant permission to appeal to the Upper Tribunal. The claimant renewed her application to the Upper Tribunal itself and, on 22 August 2016, permission to appeal was given.

11 The notice of the determination to give permission to appeal identified four questions that were described as "jurisdictional" and four arguable errors of law if the FTT did have jurisdiction.

12 The jurisdictional questions were summarised as:

- "(1) Was there an outstanding claim made on 4/4/12 that the Secretary of State had not (and has not) substantively decided?
- (2) Has the Secretary of State even determined whether or not such a claim was made and subsisting?
- (3) Did the tribunal have jurisdiction to decide whether there was an outstanding claim from 4/4/12?
- (4) What is the right course from now on?"

and the arguable errors of law are summarised as:

- "(a) Lack of explanation about failure to attend appointment
- (b) Lack of explanation about failing to follow up claim until July

- (c) Lack of finding and lack of explanation about unreturned messages
- (d) Deciding against the claimant in the face of the Secretary of State's persistent non-compliance"

13 The gravamen of the suggestion that the FTT lacked jurisdiction is set out at paragraphs 5 and 6 of the determination giving permission to appeal:

"5. So, the Secretary of State's submission to the tribunal was made on the basis (a) that the Secretary of State was considering only whether the claim of March 2014 should be backdated, rather than whether a valid claim had been made on 4/4/12, and (b) that, even if the claimant did claim on 4/4/12, she did not chase that claim until nearly 2 years later, whereas the tribunal found as a fact that she chased three months later. So, on the face of the Secretary of State's submission to the tribunal, he had not considered whether or not there was a claim made on 4/4/12 which remained to be decided by the Secretary of State. This raises the question of whether, by the time of the tribunal hearing, there was still a subsisting claim waiting to be decided (section 8(2)(a) and (3)(b) of the Social Security Act 1998). Although the decision under appeal was that the claimant was not entitled to JSA from 4/4/12, that decision had been made only on the basis (from the Secretary of State's perspective) that the claim of March 2014 could not be backdated. The Secretary of State had not purported to consider whether a claim was made on 4/4/12 that remains to be decided.

6. Did the tribunal have jurisdiction to decide whether there was an outstanding claim from 4/4/12? A possible reason that it might not have had such jurisdiction could be that the Secretary of State had not yet determined whether or not there was a (valid) claim made on 4/4/12 (as opposed to deciding that the claimant made in March 2014 could not be backdated to 4/4/12 which is a different question). Another question in considering whether the tribunal had such jurisdiction is this: even if the Secretary of State had determined that there was no valid claim made on 4/4/12, was that determination appealable to the tribunal (whether under section 12 of the Social Security Act 1998 or otherwise)? It would clearly be preferable for from the claimant's point of view if it was appealable to the tribunal. If the right forum for challenging the Secretary of State's determination that there was no valid claim (if there was such a determination, of which I am not persuaded), was not the tribunal, is the right forum for challenging the tribunal's decision on that nevertheless the Upper Tribunal?"

The relevant law

14 Under section 1 of the Social Security Administration Act 1992:

“(1) Except in such cases as may be prescribed, and subject to the following provisions of this section and to section 3 below, no person shall be entitled to any benefit unless, in addition to any other conditions relating to that benefit being satisfied—

- (a) he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations under this Part of this Act; or
- (b) he is treated by virtue of such regulations as making a claim for it.”

15 Under regulation 19(1) of, and paragraph 1 of Schedule 4 to, the Social Security (Claims and Payments) Regulations 1987 ("the Claims and Payment Regulations") the prescribed time for claiming JSA is “[t]he first day of the period in respect of which the claim is made”.

16 However, that time limit may be extended in the circumstances set out in regulation 19(4)-(7) of the Claims and Payments Regulations, which are in the following terms:

“(4) Subject to paragraph (8), in the case of a claim for income support, jobseeker's allowance, working families' tax credit or disabled persons' tax credit, where the claim is not made within the time specified for that benefit in Schedule 4, the prescribed time for claiming the benefit shall be extended, subject to a maximum extension of three months, to the date on which the claim is made, where—

- (a) any one or more of the circumstances specified in paragraph (5) applies or has applied to the claimant; and
- (b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier.

(5) The circumstances referred to in paragraph (4) are—

- (a) the claimant has difficulty communicating because—
 - (i) he has learning, language or literacy difficulties; or
 - (ii) he is deaf or blind,

and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;

- (b) except in the case of a claim for jobseeker's allowance, the claimant was ill or disabled, and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;

- (c) the claimant was caring for a person who is ill or disabled, and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;
- (d) the claimant was given information by an officer of the Department of Social Security or of the Department for Work and Pensions or in a case to which regulation 4A applies, a representative of a relevant authority or of the Board which led the claimant to believe that a claim for benefit would not succeed;
- (e) the claimant was given written advice by a solicitor or other professional adviser, a medical practitioner, a local authority, or a person working in a Citizens Advice Bureau or a similar advice agency, which led the claimant to believe that a claim for benefit would not succeed;
- (f) the claimant or his partner was given written information about his income or capital by his employer or former employer, or by a bank or building society, which led the claimant to believe that a claim for benefit would not succeed;
- (g) the claimant was required to deal with a domestic emergency affecting him and it was not reasonably practicable for him to obtain assistance from another person to make his claim; or
- (h) the claimant was prevented by adverse weather conditions from attending the appropriate office.

(6) In the case of a claim for income support, jobseeker's allowance, working families' tax credit or disabled persons' tax credit, where the claim is not made within the time specified for that benefit in Schedule 4, the prescribed time for claiming the benefit shall be extended, subject to a maximum extension of one month, to the date on which the claim is made, where—

- (a) any one or more of the circumstances specified in paragraph (7) applies or has applied to the claimant; and
- (b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier.

(7) The circumstances referred to in paragraph (6) are—

- (a) the appropriate office where the claimant would be expected to make a claim was closed and alternative arrangements were not available;
- (b) the claimant was unable to attend the appropriate office due to difficulties with his normal mode of

transport and there was no reasonable alternative available;

- (c) there were adverse postal conditions;
- (d) the claimant or, in the case of income support or jobseeker's allowance, the claimant or his partner was previously in receipt of another benefit, and notification of expiry of entitlement to that benefit was not sent to the claimant or his partner, as the case may be, before the date that his entitlement expired;
- (e) in the case of a claim for working families' tax credit, the claimant had previously been entitled, or the partner of the claimant had previously been entitled in relation to the claimant, to income support or jobseeker's allowance and the claim for working families' tax credit was made within one month of—
 - (i) the expiry of entitlement to income support ignoring any period in which entitlement resulted from the person entitled not being treated as engaged in remunerative work by virtue of paragraphs (2) and (3), or paragraphs (5) and (6), of regulation 6 of the Income Support (General) Regulations 1987; or
 - (ii) the expiry of entitlement to jobseeker's allowance;
- (f) except in the case of a claim for working families' tax credit or disabled persons' tax credit, the claimant had ceased to be a member of a married or unmarried couple within the period of one month before the claim was made;
- (g) during the period of one month before the claim was made a close relative of the claimant had died, and for this purpose "close relative" means partner, parent, son, daughter, brother or sister; or
- (h) in the case of a claim for disabled person's tax credit, the claimant had previously been entitled to income support, jobseeker's allowance, incapacity benefit or severe disablement allowance and the claim for disabled person's tax credit was made within one month of—
 - (i) the expiry of entitlement to income support ignoring any period in which entitlement resulted from the claimant not being treated as engaged in remunerative work by virtue of paragraphs (2) and (3), or paragraphs (5) and (6), of regulation 6 of the Income Support (General) Regulations 1987; or

- (ii) the expiry of entitlement to jobseeker's allowance, incapacity benefit or severe disablement allowance;
- (ha) in the case of a claim for disabled person's tax credit, the partner of the claimant had previously been entitled in relation to the claimant to income support or jobseeker's allowance, and the claim for disabled person's tax credit was made within one month of—
 - (i) the expiry of entitlement to income support ignoring any period in which entitlement resulted from the partner of the claimant not being treated as engaged in remunerative work by virtue of paragraphs (2) and (3), or paragraphs (5) and (6), of regulation 6 of the Income Support (General) Regulations 1987; or
 - (ii) the expiry of entitlement to jobseeker's allowance;
- (i) in the case of a claim for a jobseeker's allowance by a member of a joint-claim couple where the other member of that couple failed to attend at the time and place specified by the Secretary of State for the purposes of regulation 6;
- (j) the claimant was unable to make telephone contact with the appropriate office where he would be expected to notify his intention of making a claim because the telephone lines to that office were busy or inoperative.”

Regulation 19(8), to which regulation 19(4) is expressed to be subject, was revoked by section 12(2)(c)(iii) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 with effect from 14 June 2007.

17 So far as is relevant, section 8 of the Social Security Act 1998 ("the 1998 Act"):

“Decisions by Secretary of State.

8.—(1) Subject to the provisions of this Chapter, it shall be for the Secretary of State—

- (a) to decide any claim for a relevant benefit; and

...

- (c) subject to subsection (5) below, to make any decision that falls to be made under or by virtue of a relevant enactment;

(2) Where at any time a claim for a relevant benefit is decided by the Secretary of State—

- (a) the claim shall not be regarded as subsisting after that time; and
 - (b) accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time.
- (3) In this Chapter “relevant benefit” means any of the following, namely—
- ...
- (b) a jobseeker's allowance;
- ...
- (4) In this section “relevant enactment” ... the Jobseekers Act...”,

section 12(1) and (2) reads as follows:

“Appeal to First-tier Tribunal

- 1.—(1) This section applies to any decision of the Secretary of State under section 8 or 10 above (whether as originally made or as revised under section 9 above) which—
- (a) is made on a claim for, or on an award of, a relevant benefit, and does not fall within Schedule 2 to this Act; or
 - (b) ...
- (2) In the case of a decision to which this section applies, the claimant and such other person as may be prescribed shall have a right to appeal to the First-tier Tribunal ...”

and section 17(1) reads as follows:

“Finality of decisions

17.—(1) Subject to the provisions of this Chapter and to any provision made by or under Chapter 2 of Part 1 of the Tribunals, Courts and Enforcement Act 2007, any decision made in accordance with the foregoing provisions of this Chapter shall be final; and subject to the provisions of any regulations under section 11 above, any decision made in accordance with those regulations shall be final.”

The jurisdiction questions

18 I do not agree that this appeal is as complicated as the determination giving permission to appeal appears to suggest.

19 In particular, it is well-established that appeals are against decisions—which in the social security context will usually mean what are known as “outcome decisions”—rather than against the reasons for those decisions. It follows that, in the absence of legislative provisions restricting the right of appeal in respect of a particular issue (and there are no such provisions in this case), the limits of the FTT’s jurisdiction depend upon what the decision maker actually decided (or, in some cases, should have decided). The reasons given by the decision maker for that decision have no bearing on the extent of the FTT’s *jurisdiction* (although they will, of course, be highly relevant to whether the appeal should be allowed or refused).

20 That being the case, I am unable to accept the proposition, upon which the paragraphs I have quoted above appear to be predicated, that the FTT’s *jurisdiction* is in some way limited by what the appeals officer chooses to say in the response to the appeal. Were it so, the Secretary of State could potentially limit the proper exercise of the FTT’s inquisitorial jurisdiction, simply by omitting to mention an issue in the response.

21 In my judgment, the FTT had jurisdiction in this appeal to decide whether the claimant had made a valid claim in 2012 that had not been decided by the time of her claim on 17 March 2014. Further, the FTT would have erred in law if it had not decided that issue.

22 My reasons are as follows.

23 The appeal is against a decision made by the Secretary of State on 28 March 2014

24 As I have noted at paragraph 5 above, the appeal papers do not include a copy of that decision. However, Section 3 of the response records that it was in the following terms:

“[The claimant] is not entitled to Jobseeker’s Allowance from 04/04/2012 to 16/03/2014. This is because the claim was not made within the prescribed time limit for claiming Jobseeker’s Allowance. The prescribed time cannot be extended because none of the specified circumstances provided in regulation 19 of the Social Security Regulations 1987 [sic] apply in relation to this case.”

That is consistent with the mandatory reconsideration notice dated 2 July 2014—which *is* in the papers—and states:

“On 28/03/2014 a decision was made to allow Jobseeker’s Allowance (JSA) from 17/03/2014 but not for the backdated period from 04/04/2012. I have not changed this decision.”

In other words, what the Secretary of State decided was that the claimant was not entitled to JSA for the whole period for which the claimant requested backdating, i.e., from 4 April 2012 to 16 March 2014 (“the disputed period”).

25 Once mandatory reconsideration was complete, section 12(1) of the Social Security Act 1998 gave the claimant a right of appeal against the whole of that decision, and the claimant exercised that right.

26 I can therefore see no basis for any suggestion that the FTT lacked jurisdiction over the whole of the disputed period. The decision under appeal related to that period and therefore that was the period that was before the FTT on appeal.

27 Indeed, although it is not necessary to do so in this appeal, I would go further. The FTT has power to make any decision the Secretary of State could lawfully have made at the time he made the decision under appeal. So, if the FTT took the view that the Secretary of State should have decided that the claimant was not entitled to JSA from some earlier date—possibly 17 March 2012 in this case, given what the claimant said when claiming (see paragraph 4 above)—it would have had had *jurisdiction* to give a decision beginning with that earlier date.

28 As the Tribunal was seised of the whole of the disputed period, I do not see how it could have refused to consider the issues raised by the claimant as to the existence of an earlier claim for JSA that allegedly remained extant and covered all or part of that period.

29 The decision maker on 28 March 2014 may have decided as he or she did on the basis that the claim made on 17 March 2014 was the only relevant claim. However, it was open to the claimant to argue on appeal that the decision was wrong precisely because that was not so and that an earlier claim had been made remained extant on the former date. If it is the case that the decision maker did not direct his mind to that issue when making the decision, then all that can be said—given that the claimant had raised the issue unambiguously—is that he or she should have done so. Every working day, the FTT overturns decisions of the Secretary of State because the decision maker has omitted to consider all the relevant issues. In my judgment, it is not the case that such an omission deprives the FTT of jurisdiction to correct the resulting decision.

30 In that context it is relevant that, even if—contrary to what the FTT decided—there was an undetermined claim for JSA immediately *before* the decision on 28 March 2014, there was no such claim *afterwards*. Whether or not the decision maker realised it, the effect of deciding that the claimant was not entitled to JSA for the disputed period was to determine all and any claims that may have been extant in relation to that period.

31 It is not possible for there to be more than one outcome decision for any given period at any given time. If the effect of the decision under appeal had been to leave an earlier claim in respect of the same period undecided, the Secretary of State would have remained under a duty to decide that earlier claim and therefore to give a second outcome decision in respect of that period which might, or might not, have been the same as the decision under appeal. The 1998 Act does not contemplate that such a state of affairs could exist. Under section 17 of that Act, the decision dated 28 March 2014 was final. The FTT had power to change it on appeal and the Secretary of State had power (if grounds existed) to revise or supersede it. What the Secretary of State could not do is give another decision under section 8 for the same period on a different claim. The decision under appeal was only final—as section 17 required—if it determined all the claims relating to the period it covered.

32 As the decision dated 28 March 2014 determined the alleged claim from 2012 if it had not previously been decided, Judge Wyatt was seised of the issues whether such a claim had been made, and whether it remained extant and, if so,

how it should have been decided. Not only did she have jurisdiction to decide those issues. She was obliged to do so.

33 On that basis, the question whether the Upper Tribunal is the right forum for challenging the FTT's decision on those issues does not arise.

The arguable errors of law

34 As I have concluded that the FTT had jurisdiction, I need to consider whether the FTT erred in law in reaching the decision it did.

The Secretary of State's non-compliance

35 It is convenient to take the last of the suggested errors first, namely the suggestion that the FTT may have erred by deciding against the claimant in the face of the Secretary of State's persistent non-compliance with directions.

36 Nothing I say below should be taken as in any way excusing or endorsing the Secretary of State's conduct of the proceedings before the FTT. On the contrary, I place on record my deprecation of the Secretary of State's that conduct. The Secretary of State was under a legal duty either to obey the FTT's directions or to explain why he could not do so and seek to have the directions set aside or amended. His refusal to take either course of action in the face of repeated notices from the FTT borders on contumely.

37 But what was the FTT to do in those circumstances? This was not a case in which it meekly surrendered its inquisitorial jurisdiction in the face of the Secretary of State's disobedience. Before the appeal was listed before Judge Wyatt, two District Tribunal Judges and one very experienced Tribunal Judge had done their best to assert that jurisdiction, but to no effect. The FTT had power to bar the Secretary of State from taking further part in the proceedings, but that course of action has obvious disadvantages when what is being sought is to compel a first-tier agency to divulge information that is exclusively within its knowledge. Judge Collopy's solution was to require the presence of a presenting officer with the claimant's file at the hearing. That was a direction she had power to give and was probably the best way to proceed, given that the FTT would have difficulty in exercising its inquisitorial jurisdiction properly without the Secretary of State's co-operation.

38 When the Secretary of State defied Judge Collopy's direction too, Judge Wyatt had to decide how she would respond. Her record of proceedings shows that she consciously considered both whether she should proceed in the absence of the parties and how to respond to the Secretary of State's non-compliance. In all the circumstances, I consider she was entitled to take the view that, in the light of the two documents referred to in the statement of reasons, she had enough evidence to decide the appeal fairly and justly and that attempting to obtain further evidence by continuing to press the FTT's directions would be disproportionate. The latter course could only have involved issuing a witness summons and it was not even certain that the Secretary of State had the information he had been directed to produce (although, even if he did not, that does not excuse his failure to say so). I do not consider Judge Wyatt erred in law in this respect.

Failure to find facts and explain

39 Once that basis, I judge that, read together, the decision notice and statement of reasons contain sufficient findings of fact to support the FTT's decision and an adequate explanation of that decision.

40 Judge Wyatt's decision on the regulation 19 issue was the only one she could lawfully have reached. The matters on which the claimant relied to extend the time covered by the March 2014 claim were not circumstances that fell within regulation 19(5) (or 19(7)) and, in any event that regulation would only have permitted time to be extended for three months (or one month). Judge Wyatt explained that that was so and, in particular, that ill-health is not a valid reason for extending the time in which to claim JSA.

41 On the issue of whether there was a valid and extant claim, I consider that findings of fact have been made, and explanations given, to the extent allowed by the evidence. It must be remembered that the presenting officer was not the only person who did not turn up to the hearing. The claimant's non-attendance put it beyond Judge Wyatt's power to ask the questions that might have enabled more detailed findings of fact to be made and more detailed explanations given on the points identified in the grant of permission to appeal.

42 Overall, the statement of reasons explains that Judge Wyatt decided that the claim in April 2012 was invalid by virtue of regulation 4(6)(a) of the Claims and Payments Regulations and I regard that explanation as adequate. The claimant's evidence was not that she was not told of the meeting on 13 April 2014 but only that she did not receive a text *confirming* that meeting (see the passage from the claim form quoted at paragraph 4 above).

43 I should say finally, that even if I considered Judge Wyatt had made the errors of law identified in the grant of permission to appeal, I would have regarded them as immaterial both for the reasons given by the Secretary of State's representative relating to regulation 6(4A) of the Claims and Payments Regulations and also because of the claimant's evidence that at the time of the April 2012 claim she was undergoing chemotherapy and radiotherapy for breast cancer "on a daily basis" and was subsequently admitted to hospital for seven months. It is a condition of entitlement to JSA that the claimant does not have limited capability for work (see Jobseekers Act 1995, section 1(2)(f)). On the available evidence, it is far more probable than not that the claimant did have limited capability for work at the time of the 2012 claim. Moreover, the degree of ill-health the claimant describes would probably have prevented her from satisfying the conditions that she should be available for work and actively seek employment even if it did not amount to limited capability for work.

44 So, even if her April 2012 claim had been decided on the merits rather than closed for non-attendance, the claimant probably would have had no entitlement to JSA. The main thing that appears to have gone wrong in this case is not anything considered by the FTT, but rather that the claimant probably claimed the wrong benefit and should instead have claimed employment and support allowance ("ESA"). That is not something that can be rectified by the FTT or the Upper Tribunal although, if she feels she was wrongly advised to claim JSA—or wrongly not advised to claim ESA—the claimant may wish to take advice about the Department's *Financial Redress for Maladministration* scheme, details of which can be obtained online. I stress that I make no finding that incorrect advice has, or has not, been given.

Conclusion

45 For all those reasons, the FTT's decision is not materially wrong in law and it therefore continues in effect. The claimant is not entitled to jobseeker's allowance from 4 April 2012 to 16 March 2014 (both dates included)

(Signed on the original)

Richard Poynter
Judge of the Upper Tribunal

3 February 2017