IN THE UPPER TRIBUNAL **Appeal No. CCS/2807/2016**

ADMINISTRATIVE APPEALS CHAMBER

Before: Upper Tribunal Judge Gray

DECISION

The decision of the Upper Tribunal **is to allow the appeal**. The decision of the **Derby Becket Street** Tribunal made on **5 January 2016** under number **SC 052/14/00333** was made in error of law, and I set it aside: the First-tier tribunal had no jurisdiction to entertain the appeal against the decision of the agency dated 28 April 2014.

REASONS

1. This case concerns child maintenance which is governed by the original child support scheme ('the old rules') which was in effect for claims made between the commencement of the scheme under the Child Support Act 1991 and 3 March 2003. Originally two qualifying children were concerned, boys, Oliver and Peter. They were born on 17 February 1993 and 20 March 1994 respectively, and following their parents separation in 1996 the boys lived with their mother, the Second Respondent. Their father, the Appellant before me, has during two distinct periods (the first claim and the second claim) been liable to make contributions towards their upkeep under the original scheme. I will refer to the parents as the mother and the father in this decision.

2. Whilst the claims, and the legal proceedings have been ongoing the body that administers child support claims has had various names. I will refer to it as the agency, although at this stage of the legal process the First Respondent is the Secretary of State.

3. The administration of the claims by the agency is a sorry tale. Its failings have been compounded by what I feel compelled to describe as the father's lack of co-operation over many years (although he denies that) but also the mother's lack of contact with the agency for significant periods, although I understand that some of her conduct may have been due to frustration at the process. Because of my conclusions on the main legal issue, which I term the jurisdiction issue, I do not need to go into great detail as to the history but the broad outline below I hope captures the critical events and the essence of the various difficulties in the context of the legal issues I am considering.

4. I should make the point at the outset that as I am looking at the provisions which govern the old child support scheme much of what I say may not apply to the two schemes which have all but replaced it.

The current legal proceedings in the Upper Tribunal

5. These arise out of the father's appeal from the decision of a District Tribunal Judge who sat on 5 January 2016 to hear the mother's appeal against a decision of the agency made on 28 April 2014 in the First-tier tribunal (FTT). The decision of the FTT was that the child maintenance assessment required recalculation from the effective date of 27 March 2008 using the figures set out in the decision notice issued on that day as the father's salary and allowable deductions.

6. The request for permission to appeal to the Upper Tribunal was refused by the same judge, and renewed before Upper Tribunal Judge Turnbull.

7. Judge Turnbull granted permission to appeal. He was of the view that there may have been an arguable error of law in the way that the judge approached a disputed document. The document was a letter which had been put forward to the agency by the father in February 2013 on the basis that it had come from the mother. Judge Turnbull said that it appeared from the limited information available that the First-tier judge had taken the view that he need not decide whether the disputed letter was genuine. The limited information about what the FTT had decided was because the father's request for a statement of the tribunal's facts and reasons had been made late, and was refused.

8. Submissions were made as directed, but before a decision was made Judge Turnbull retired and the appeal was placed before me. On considering the papers I was of the view that a fundamental issue arose as to whether the FTT had jurisdiction to hear an appeal from what was said to be a decision made on 26 April 2014. Given the date of birth of the youngest child, 20 March 1994, the terminal date for a child support assessment to be in force would have been reached prior to the purported decision. Citing a case that I decided, *TB-v- Secretary of State for Work and Pensions& RB (CSM) [2017] UKUT 218 (AAC)* (hereafter *TB*) I gave the parties an opportunity to make further submissions on that central matter.

9. Those submissions are now to hand, and I am grateful to the parties, the mother acting in person, the father through FDR Law and the Secretary of State represented by Ms Massie, for the helpful points that they have made.

10. No party has asked for an oral hearing and I am of the view that I am fairly able to determine the legal issues without one.

The chronology

11. The case papers before the FTT, although considerable, contain little by way of detail concerning the early decision-making. I am indebted to the Secretary of State's representative Ms Massie for some detail, and the Independent Case Examiner's report (the ICE report), prepared in relation to an administrative complaint made by the mother, has also been a useful source. I pay considerable heed to that report which was made after an enquiry into the agency records by someone with experience of its practices, including its failings.

12. There have been two separate claims by the mother for child support maintenance, both under the 'old rules'. The first claim was received by the agency on 16 January 1997. The father did not return the enquiry form; the company the mother said employed him failed to co-operate with the agency: it seems probable that the father was a director or had some similar influence within that company. An Interim Maintenance Assessment warning letter was sent to the father and an initial maintenance assessment of £119.64 effective from 17 April 1997 was made on 15 August 1997. A few days later an assessment of the arrears already accrued was made. I should emphasise that agency decisions specifically concerning arrears, and those concerning approaches to enforcement, are not justiciable before the tribunal, although tribunal decisions in respect of matters that they can decide, raising or lowering the amount payable or the date from which it is payable, may have an effect on any arrears.

13. The agency closed the first claim from 23 June 1998 because it was satisfied that a private agreement had been reached.

14. The ICE report at paragraph 24 indicates that the mother telephoned the agency on 30 June 1998 regarding the case closure, was told that a letter would be sent to her to confirm that, and that the arrears balance was nil. That was confirmed in writing as a decision which included dispute and appeal rights. The mother made no further contact with the agency for about four years.

15. She made a fresh application for maintenance on 21 May 2002. That appears to have been because of payment difficulties under the mutual arrangement. Although on this occasion the father returned the enquiry form promptly, and on 10 September 2002 a weekly maintenance assessment was calculated (with the inevitable built in arrears given the delay in the decision making process) there were further payment problems, then the father informed the agency that he was to be made redundant, and in a decision dated 13 December 2002 the father's liability was assessed as nil from that date. That decision was issued to the parents with information as to their rights of appeal. On 16 December 2002 the mother telephoned the

agency saying that the father was still working, but she was unable to provide details. She did not appeal.

16. Further attempts were made to obtain details as to the father's financial circumstances, including through HMRC, but the nil assessment remained and enforcement action as to arrears was postponed due to that.

17. The mother's next documented contact with the agency was in a telephone call on 7 June 2007. She said that she would think about making a complaint about the way the case had been handled. That complaint was made some nine months later in a letter received by the agency on 27 March 2008. In that letter the mother once again queried the nil liability assessment of December 2002 saying that the father was still employed, but she did not provide any details. She said that she was still awaiting an update following the agency's enquiries with HMRC in February 2003, and that she had been receiving what was described as basic voluntary maintenance payments from the father, yet she asserted that he could afford luxury holidays, drove a new car and had recently bought an expensive property. She wanted explanations for what she described as neglect, and compensation as well as a review of the father's income.

18. There is no response to that letter, which although formulated as a complaint and sent to the agency's complaint department, should arguably have been treated as a late application to revise or an application to supersede the current assessment; the difference between the two processes is essentially that a revision is an acceptance that an earlier decision was wrong, and it is changed from its inception, whereas a supersession tends to rely on change of circumstance after a previous decision, and it changes matters from the payment week within which the application is made. Given the mother's allegations the letter might also have been treated as a departure application.

19. There is a dispute as to whether the mother contacted the agency between 2008 and 2011, but in 2011 she emailed, repeating the previous matters and on this occasion gave some details of the father's employment.

20. That led to further agency enquiries, for example with Companies House, and there was agency contact with the father in early 2012. He was once again asserting a private maintenance arrangement; the mother accepted that he had made some payments, but said that they were at his discretion and not based upon his earnings.

21. On 12 June 2012 a supersession decision was made that increased the father's weekly liability for both boys to £256.28 per week from 1 September 2011. That effective date, I surmise, was because it was the first day of the payment week in which the mother made the email contact, although she had clearly wanted the matter looked at from an earlier time.

22. The ICE report at [53] says that decision notices were sent to the parents that same day. The decision notice provided them with dispute and appeal rights against any aspect of that sum including the effective date. Although she telephoned the agency on 14th June 2012 and said she wanted all the arrears collected, including those previously suspended, the mother did not appeal that assessment to dispute the effective date.

23. There was some lack of clarity in the amount of the assessment, as the elder child Oliver should have been removed from the calculations on 17 February 2012, but this was not done, and that omission (marginally) affected an arrears calculation made on 21 June 2012 of £9,392.87, and that amount was reassessed in November to a figure of around £11,500 when it was also realised that an earlier assessment had not been factored in.

24. In July 2012 the agency wrote to the mother to clarify the child benefit status of the youngest child Peter, this having a bearing on the date from which maintenance was no longer payable. In fact information was received from HMRC, the statutory authority dealing with child benefit that it would end on 3 September 2012.

25. The agency continued to make somewhat half hearted attempts to obtain payment from the father, who was asserting that he was once again unemployed, and on it being confirmed that he was in receipt of relevant benefit income from 8 November 2012 his liability became the minimum amount under a decision made to that effect on 27 December 2012. That decision ceased to be relevant, however, as on 14 January 2013 the agency made a decision formalising the case closure from 31 August 2012, the first day of the payment week in which child benefit entitlement in respect of Peter ceased, its end date being based around the new school year. The parties agree that this terminal date in respect of child support maintenance liability was correct. The decision notice was sent to the parties together with details of their appeal rights under it.

26. Calculations and attempt at action in respect of arrears continued, and in February 2013 the father called the agency and said that the parents had a private arrangement as to payments and he sent a letter dated 26 February 2013 purportedly from the mother. It said that the arrears had been cleared in full. Regrettably the letter is no longer available. The agency made attempts to contact the mother, but has said that she did not respond to messages, and a record was made on 9 April 2013 that the contents of the letter of 26 February were accepted, and the arrears balance was cleared. The agency says that notices were issued to both parents, but these are not available, although maintenance statements sent to the father later in that year record the arrears as nil. Decisions directly in respect of arrears are not appealable to the FTT.

27. From March 2014 the mother's MP became involved, and asked a number of questions of the agency on her behalf. It was asserted for the first time that the mother did not write the letter dated 26 February 2013.

28. The agency wrote to the MP apologising for failing to act on the mother's letter of March 2008, but said that she had not then provided evidence of the father's circumstances or of income that could be used for a maintenance assessment. A similar letter of 28 April 2014 written to the mother is described in the Secretary of State's original submission to the Upper Tribunal as "an official refusal to review letter". It was apparently sent to her with details of what were said to be her appeal rights, as well as information as to how she could make a further complaint.

29. A point which remains unclear is whether the agency ignored or otherwise failed to act upon the mother's letter of 2008 or whether, at or about that time, they refused to revise their previous assessments and issued a decision notice with appeal rights. According to the agency's response to the MP and in the proceedings before the FTT the agency did not then make a decision; however the ICE report, to which I give considerable weight, is equivocal on the point. In the event, because my conclusion rests on other issues it is not critical.

30. In a letter to the agency dated 30 June 2014, received on 3 July 2014, the mother, amongst other things, sought to appeal the agency decision communicated to her in the letter of 28 April 2014.

Proceedings in the FTT

31. The appeal by the mother was received by the FTT on 20 May 2015. The procedure was unusual in that the mother had not asked the agency to conduct a revision, or what is known as a Mandatory Reconsideration, prior to lodging the appeal, a process required as the decision was taken after 13 October 2013. The matter was put before a tribunal judge, however, who in directions made on 16 June 2015 found that the appeal was valid and admitted it, upon the basis that the "official Decision Notice" and information sheet concerning the requirement for mandatory consideration was not included in the letter of 28 April 2014. The appeal was against what was accepted as a decision notified on 28 April 2014.

32. This was said to be a decision not to allow the mother's request for what is described by the agency as "a review" from the effective date 27 March 2008. The mother's letter of that date asked that the issues be re-examined from at least 2002. It was either a late request for revision or a request for supersession of the nil assessment decision made in December 2002. Since it is clear that she was challenging the father's income historically, it was in the proper legislative terminology a late revision request, but so late as to be

beyond the absolute time bar. The agency could have decided to revise the decision from an earlier date of its own volition, or to treat the correspondence as a supersession request.

33. The latter course seems to have been adopted, as the decision letter from the agency dated 28 April 2014 (at page 54) is couched in terms suggesting that. It says that *"the change you told us about will not affect the amount you receive in child maintenance."* That was said to be because the agency had not been given any new information or evidence to warrant a change.

34. The tenor of the agency's Response in the FTT appeal was that the decision under appeal not to "review" the previous decision was no longer supported.

35. It is unfortunate that the complexities of the child support legislation are compounded by the failure of the agency and the first instance submission writers to analyse the decision making processes in the appropriate statutory terminology.

36. The FTT appears to have taken the approach of superseding the 2002 decision from 2008, but it is hard to be clear given the lack of a reasoned judgment (for the reason I set out in [7] above). As I am deciding this appeal on the basis of a jurisdiction point there is no need for me to say more than that the decision was to the effect that the father was to be reassessed in respect of an income the FTT found him to have had at the dates it considered from 2008.

The relevant legal provisions

37. **Section 55 Child Support Act 1991** (hereafter referred to as "the Act") defines "child". It read, at the relevant time

55 (1) for the purposes of this Act a person is a child if-

(a) he is under the age of 16;

(b) he is under the age of 19 and receiving full-time education (which is not advanced education)-

(i) by attendance at a recognised educational establishment; or

(ii) elsewhere, if the education is recognised by the Secretary of State;

(c) he does not fall within paragraph (a) or (b) but-

(i) either under the age of 18, and

(ii) prescribed conditions are satisfied with respect to him.

Further parts of this section are not relevant in this case.

38. **Paragraph 16 of Schedule 1 to the Child Support Act 1991**, headed *"Termination of assessments"* provided:

> *"(1) A maintenance assessment shall cease to have effect—*
>
> *(a) on the death of the absent parent, or of the person with care, with respect to whom it was made;*
>
> *(b) on there no longer being any qualifying child with respect to whom it would have effect;*
>
> *(c) on the absent parent with respect to whom it was made ceasing to be a parent of—*
>
> *(i) the qualifying child with respect to whom it was made; or*
>
> *(ii) where it was made with respect to more than one qualifying child, all of the qualifying children with respect to whom it was made;*
>
> *(d) where the absent parent and the person with care with respect to whom it was made have been living together for a continuous period of six months;*
>
> *(e) where a new maintenance assessment is made with respect to any qualifying child with respect to whom the assessment in question was in force immediately before the making of the new assessment."*
>
> *(2) a maintenance assessment made in response to an application under section 4 shall be cancelled by the Secretary of State if the person on whose application the assessment was made asked him to do so*
>
> *(3) a maintenance assessment made in response to an application under section 6 be cancelled by the Secretary of State if –*
>
> *(a) the person on whose application the assessment was made (the applicant) asks him to do so; and*
>
> *(b) he is satisfied that the applicant ceased to fall within subsection (1) of that section.*
>
> *(4) where the Secretary of State is satisfied that the person with care in respect to whom a maintenance assessment was made has ceased to be a person with care in relation to the qualifying child, or any of the qualifying children, with respect to the assessment was made, he may*

cancel the assessment with effect from the date on which, in his opinion, the change of circumstances took place.

(4A) a maintenance assessment may be cancelled by the Secretary of State if he is proposing to make a decision under section 16 or 17[1] *and it appeared to him –*

(a) that the person with care with respect to whom the maintenance assessment in question was made has failed to provide him with sufficient information to enable him to make the decision; and
(b) where the maintenance assessment in question was made in response to an application under section 6 , that the person with care with respect to whom the assessment was made has ceased to fall within subsection (1) of that section.

(5) Where –

(a) at any time a maintenance assessment is in force that the Secretary of State would no longer have jurisdiction to make it if it were to be applied for at that time; and

(b) the assessment has not been cancelled, or has not ceased to have effect, under or by virtue of any other provision made by or under this act,

it shall be taken to have continuing effect unless cancelled by the Secretary of State in accordance with such prescribed provision (including provision as to the effective date of calculation) as the Secretary of State considers it appropriate to make.

39. **Section 20 Child Support Act 1991** provides

"Appeals to the First-tier Tribunal"

(1) where an application for a maintenance assessment is refused, the person who made that application shall have a right of appeal to the First-tier Tribunal against the refusal.

(2) Where a maintenance assessment is in force –

(a) the absent parent or parent with care with respect to whom it was made; or

(b) [omitted as relating only to Scotland]

[1] Pre 1/6/1999 certain reviews were carried out under these sections; after that date the power of review was replaced by revision (s16) and supersession (s17)

shall have a right of appeal to the First-tier Tribunal against the amount of the assessment or the date from which the assessment takes effect.

(3) Where a maintenance assessment is cancelled, or an application for the cancellation of the maintenance assessment is refused-

(a)the absent parent or person with care with respect to whom the maintenance assessment in question was, or remains, in force; or

(b)[omitted as relating only to Scotland]

shall have a right of appeal to the First-tier Tribunal against the cancellation or refusal.

The other parts of this regulation deal with procedural aspects of the appeal and notice of rights of appeal, and are not directly relevant.

Proceedings in the Upper Tribunal

The Secretary of State's position

The first submission

40. In response to Judge Turnbull's grant of permission to appeal Ms Massie made an initial submission supporting the tribunal decision. She expressed what she then thought to be the jurisdiction issue as whether the FTT had jurisdiction to hear the mother's appeal because, by the (disputed) letter of February 2013 she had effectively withdrawn her application for supersession (said to have been made in the letter of 27 March 2008). She argued then that there had been no clear withdrawal, and the tribunal had jurisdiction to consider the supersession issue.

The second submission

41. Following my directions the Secretary of State's position changed. Ms Massie points out that the agency had information that Peter was excluded from child benefit on 3 September 2012 because he had left full-time education. On 14 January 2013 a decision maker "closed the case" from 31 August 2012 because there was no longer any qualifying child.
42. Pausing there, an issue may be whether there was a need to cancel the maintenance assessment, and if so, whether it was 'in force' after 31 August 2012.
43. Returning to Ms Massie's submission, on the authority of *TB* she argues that the Secretary of State does not have the legislative power to go back in time and revise or supersede decisions affecting maintenance assessments while there is no maintenance assessment in force.
44. Further, she cites section 20 Child Support Act 1991, which deals with appeals to First-tier Tribunals. I set out the relevant parts of that provision above. Her argument is that the provision gives a right of appeal to the FTT

in respect of an initial refusal to make a maintenance application; otherwise the right of appeal is contingent upon there being *"a maintenance assessment in force".* Where there is a maintenance assessment in force the parties to it have a right of appeal to the FTT against the amount of the assessment or the date from which it takes effect. There is a further right of appeal under subsection 3 where a maintenance assessment is cancelled, or an application for the cancellation of a maintenance assessment is refused.

45. She concludes that at the time of the appeal, 20 May 2015, the maintenance assessment having ceased to have effect on 31 August 2012 there was no maintenance assessment in force and none of the other circumstances in which there is a right of appeal under section 20 applied. Accordingly, she argues, the FTT had no jurisdiction to entertain the appeal.

The father's position

46. The father adopts the Secretary of State's position set out immediately above, with the rider that should I find the issue concerning the genuineness of the letter or its effect to be of importance I should remit the matter for factual decisions to be made as to those issues.

The mother's position

47. The mother, despite her lack of legal representation, makes a variety of thought provoking observations, and goes to some lengths to distinguish the decision that I made in *TB* from the position here. I summarise her points as follows.
    (i) Understandably given the history she refers me to the failures of the agency by its own admission and as set out in the ICE report. She asks me to take into account the fact that she had made contact with the agency between June 2007 and September 2011 despite the agency at one point denying that.
    (ii) As to whether or not the maintenance assessment was *"in force"* she points to statements from the agency covering the time of appeal where it is said "we worked out the Mr Jones should pay £0.00 every month (known as "a nil assessment"). She explains that she requested the agency to stop sending her these letters on the basis that neither of the children were qualifying age, and that they caused confusion as to the position of the maintenance assessment status.
    (iii) The differences with *TB* include her argument that in her case the agency records show evidence that a maintenance assessment had been refused for the period 2002 to 2011. And at that time both children were of qualifying age. That contrasted with the position in *TB* when both children were over 19 when the father contacted the agency with information.
    (iv) She argues that despite having the opportunity to do so the agency has never been able to validate the authenticity and content of the letter dated 26 February 2013. She asserts that the contents of both the letters provided by the father, the more recently disputed letter and

the letter going back to the initial case closure in 1998, were not genuine and therefore the case could not be closed or withdrawn under section 4 (5) Child Support Act 1991.

(v) She says that she made requests that the agency reassess the case prior to the children ceasing to be qualifying children, and sets out what she says are errors of the agency in respect of those matters, including the nil assessments already mentioned, as well as the fact that the father was in paid employment for the vast majority of the period covered by the agency involvement. She feels that she did all in her power to seek reassessments through the agency before the children reached the terminal age.

(vi) She accepts in that respect that the younger boy reached the terminal age in the payment period beginning 31 August 2012

(vii) She asserts that the father failed to update the agency as to changes in his employment and circumstances, and cites section 14A (3A) child support act 1991 which requires him *"to notify a change of address or… any other change of circumstances."*

(viii) She points out that the agency acted outside their service standards for completing reviews while the children were of qualifying age, and that they failed to pursue periodic checks in the case as would have been required to them under the legislation prior to 2007.

My observations on the mother's submissions

48. I think, unfortunately, that the mother may have assumed that complaining about the agency's approach and pursuing the statutory appeals process amounted to the same thing. There may be points of contact between the processes, for example the agency being given information in the context of a complaint might in some circumstances be expected to trigger action within the case itself, but administrative complaints, even when escalated to the ICE, are not part of the legal procedure under which agency decisions as to maintenance assessments can be changed. The history shows that there were some decisions with which the mother disagreed, but which she did not appeal. These are set out in my chronology.

49. At (iii) her assertion that the agency refused to assess the case between 2002 and 2011 is legally incorrect. On 13 December 2002 what is known as "a nil assessment" was made. A nil assessment is not a refusal to assess. It is an assessment which can be altered on information being given in the context of an existing claim. A refusal to assess will require a new claim.

50. Her point at (iv) in relation to the historical closure in 1998 and the 2013 closure action, in which she argues that the agency was not empowered to close the case under section 4 Child Support Act 1991 if there was no genuine consent from her to that course, ignores the fact that she received notification of the closure in 1998 together with her statutory appeal rights, and did not appeal it, although she had some contact with the agency at that time. The 2013 events (the disputed letter of February in that year) are too late given that Peter ceased to be a qualifying child in 2012 and the decision

of 14 January 2013 cancelling the assessment with effect from 31 August 2012.

51. It seems to me that the mother's real issue is as to the arrears having been written off, and that was not a decision that was appealable to the FTT.
52. Other matters she refers to are what I might term the general failings of the agency, for example in not instituting criminal proceedings against the father for his failure to inform it about various changes in his circumstances, and for its failure to conduct reviews, and neither are these matters amenable to correction under the statutory appeals process.

My analysis

53. I agree with the mother that the conclusion that I arrived at in the case of *TB* was in somewhat different circumstances; the question is whether there is such legal similarity that the factual differences become unimportant.

54. A point of similarity lies in the question whether, once a terminal date is reached the agency has the power to go back in time and alter previous decisions. But even if, contrary to my judgment in *TB*, it has, there is an additional point raised in this appeal as to whether such a decision can carry appeal rights under the old scheme because section 20 Child Support Act 1991 appears to exclude the right of appeal (as is relevant in this case) unless the maintenance assessment is in force.

55. In *TB* a key provision, Regulation 7 of the Maintenance Arrangements and Jurisdiction Regulations 1992 provided for the cancellation of an assessment where such an assessment *"is in force".* I decided that a maintenance assessment which has ceased to have effect because the only remaining qualifying child has turned 19 is not in force.

56. I go through the following points upon the basis of the most favourable legal position for the mother; it is right for me to do so to test my conclusion that she has no right of appeal.

57. The mother is right in saying that in *TB* the father's contact with the agency in 2007 was after the terminal date in that case, and that here there was what the agency regarded as a supersession request made by her in 2008, well before that date, which seems not to have been decided until 2014, after the terminal date.

58. There was a supersession decision made following her email contact in 2011. She did not appeal that decision, although she could have argued on appeal that the agency, instead of superseding from 2011 should have revised for error of fact from an earlier date given the information she provided in 2008.

59. However, in her favour I assume for the purposes of argument that as the decision of 2011 took effect only from that year there was a period of some three years that had not been adjudicated upon, 2008-2011. I know that the

mother would maintain that the gap was from 2002 or even back into the first claim, but for the argument all that is necessary is a period not adjudicated upon.

60. In the mother's favour I assume that the letter of complaint in March 2008 in which she sought to persuade the agency to reinvestigate the father's employment position did amount to a valid supersession request.

61. Her difficulty is that one or other of two legal positions pertains.

    (i) There was a decision made in or about 2008 that was an effective decision with appeal rights and that it was communicated to her even thought there is no apparent record. The agency had poor standards of document retention and recording at that time.

    (ii) The agency did not make a decision on her application (or it did not communicate any decision it made to her, triggering appeal rights) until 28 April 2014.

62. If (i) is correct then by 2014 she was out of time for appealing, the absolute time bar being 13 months.

63. If (ii) is correct then the mother had no right of appeal under section 20 of the Act against the decision. This is because it was a refusal to supersede (or possibly a refusal to revise) and it falls outside section 20 of the Act: section 20 (3) (a) affords a right of appeal only where a maintenance assessment is cancelled or an application for the cancellation of a maintenance assessment is refused, and section 20 (2) applies to confer a right of appeal only where there is a maintenance assessment *'in force',* and the maintenance assessment was not in force on 28 April 2014, the date of decision.

64. The agency may not have had the right to make that decision given either the assessment ceasing to have effect from 31 August 2012, or at latest the cancellation decision in January 2013, but in any event I will explain why the maintenance assessment could not have been *in force* when the purported decision was made, and so it could not have carried appeal rights.

65. All parties accept that the last date Peter was a qualifying child was 3 September 2012, which provokes an end date for a maintenance liability of 31 August 2012.

66. Here the agency made a decision to cancel the assessment on 14 January 2013 (with retrospective effect to 31 August 2012) and it issued that decision together with details of appeal rights, but the mother did not appeal.

67. Either that decision was made without jurisdiction after automatic cessation of the maintenance assessment on 31 August 2012, or it was made with jurisdiction and it remains extant, because it was not appealed. In either event the maintenance assessment had come to an end prior to the decision

of 28 April 2014. It was in force only until it came to an end. That was either when it ceased to have effect under Paragraph 16 (1) (b) of Schedule 1 to the Child Support Act 1991, providing that

(1) A maintenance assessment shall cease to have effect—

(b) on there no longer being any qualifying child with respect to whom it would have effect;

or when it was cancelled, probably from 31 August 2012, but at the latest from the date of the cancellation decision on 14 January 2013.

Section 20 Child Support Act 1991

68. The structure of section 20 of the Act in its form applicable to old rules cases may be of assistance in answering the question whether the maintenance assessment might be considered to have remained in force after that date for any purpose, perhaps, to preserve appeal rights.

69. Section 20(2) provides for a right of appeal <u>against the amount of the assessment and its effective date</u> (my emphasis) *Where a maintenance assessment is in force* (the wording of the provision).

70. Section 20(3) (a) confers a right of appeal *Where a maintenance assessment is cancelled, or an application for the cancellation of a maintenance assessment is refused.* That right of appeal is <u>against the cancellation or refusal</u>.

71. An argument that a general right of appeal might be preserved following cessation due to a terminal event (here the youngest qualifying child ceasing to be a qualifying child) by the maintenance assessment remaining in force for the purposes of an appeal is in my judgment defeated by the need to confer by section 20 (3) (a) a right of appeal in respect of a cancellation (or refusal to cancel), with the distinct limitation that such an appeal is against the cancellation or refusal only: it does not offer the possibility of challenging the main features of a maintenance assessment, that is to say the amount payable and the date from which it should be paid (the effective date).
72. I have considered whether the position might be different where an application is outstanding, on the assumption for present purposes that the communication of March 2008 constituted an effective supersession (or late revision) request; however the wording of section 20 is unambiguous.
73. It should be remembered that this version of section 20 is in force only in relation to old scheme cases, and although it was brought into force on 1 June 1999, having been inserted by section 42 Social Security Act 1998 which changed the decision making processes fundamentally, may have echoes in the adjudication process that applied under the old child support scheme until 1998. As I said in *TB:*

65. Under the pre-1999 power of review, the right to apply for a review under section 17 of the 1991 Act was limited to an application in respect of a maintenance assessment *"in force*" at the date of application, and section 17(1) provided for rights of appeal by the various parties *"where a maintenance assessment is in force "*
65. After 1995 section 17 (4A) provided

"Where a child support officer is conducting a review under this section, and the original assessment has ceased to have effect, he may continue to review as if the application for a review related to the original assessment and any subsequent assessment.

66. There is no case law in respect of that provision, but Edward Jacobs and Gillian Douglas the learned commentators to "Child Support: The Legislation" 1997 edition interpreted it thus: if, whilst a Child Support Officer was conducting a review the original assessment ceased to have effect the Child Support Officer could continue the review, but *"an application may only be made so long as an assessment remains in force. Once it ceases to be so it is too late for an application to be made"*
67. By necessary implication a maintenance assessment could cease to have effect without a decision from the adjudicating authority. Indeed, it could do so during the decision making process in respect of an application within the case made prior to the event triggering cessation, the fact that the application was under consideration affording protection in relation to that ongoing process (and any rights of appeal in respect of it, subject to time limits); without such application the assessment simply ceasing to have effect would have automatically ended any possibility of alteration. That was the position where there was no ongoing review; no further application within the case could be made.

74. There is no similar provision protecting an ongoing application under the adjudication regime set out in the Social Security Act 1998.
75. Although it is not critical to my decision I add that my consideration of section 20 in the circumstances of this case and my conclusion that there is no right of appeal fortifies me in the view I expressed in *TB* that there is no jurisdiction for the Secretary of State to go back into a maintenance assessment which has come to an end under the old scheme and alter it. That there are no statutory appeal rights in respect of such a decision militates against a decision making power in those circumstances.

The error of law

76. The FTT wrongly admitted the appeal against the decision of 24 April 2014, when the mother had no right of appeal against that decision. There is no other decision that her appeal can be treated as being against.
77. Although the April 2014 decision is couched in terms that suggest it is a supersession decision, even if it is a refusal to revise which might extend the time for appealing such an extension cannot in my judgment survive the occurrence of a terminal event which, because of the wording of section 20 of the Act, precludes the right of appeal as to the amount maintenance payable or the date from which it is payable in respect of a maintenance assessment which is not in force.

78. There is no possibility of jurisdiction which does not exist being conferred: a statutory tribunal has no power to act outside its own jurisdiction even with the consent of the parties: *Essex County Council v Essex Incorporated Congregational Church Union [1963] AC 808 at 820-821 and 828.*

My decision

79. The FTT acted outside its jurisdiction, and the decision therefore cannot stand.

Upper Tribunal Judge Gray **(Signed on the original)**

5 February 2018