

IN THE COURT OF APPEAL
CIVIL DIVISION

APPEAL REF: C4/2114/2014

ON APPEAL FROM:
UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)
FILE NO: CAF/3579/2012

BETWEEN:

SECRETARY OF STATE FOR DEFENCE

Appellant

-and-

SPENCER LEWIS VAUGHAN

Respondent

STATEMENT OF REASONS

1. The Respondent, Mr. Vaughan, was catastrophically injured after executing a shallow dive into the sea at Puerto de Mogán, Gran Canaria. He was at the beach during free time in the course of a week's Adventure Training Exercise in which he was participating as a Royal Marine, along with others from his company.
2. Mr. Vaughan made a claim under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 ("the AFCS"). In order for that claim to succeed, it was necessary for him to show that his injury was caused wholly or partly by his service in the Royal Marines.
3. Both the Appellant Secretary of State and the First-tier Tribunal ("the FtT") incorrectly approached Mr. Vaughan's claim under the AFCS on the basis that it could succeed only if he was "on duty" at the time of the accident. Mr. Vaughan accordingly appealed to the Upper Tribunal ("the UT"). The Secretary of State accepted before the UT that the decision of the FtT contained an error of law, but contended that it was not

a material error as Mr. Vaughan's injury was, on the facts, plainly not caused by service.

4. The UT allowed Mr. Vaughan's appeal and remitted it to the FtT. The Secretary of State sought and was granted permission to appeal to this Court on four grounds relating to the circumstances in which the UT should exercise its discretion not to set aside a decision of the FtT reached upon an erroneous understanding of the law and, if it does set aside the decision, in what circumstances the UT should properly re-make the decision for itself.
5. Since the grant of permission to appeal, there have been a number of material developments. Firstly, on 20 May 2015, Mr. Vaughan's civil claim for damages against the Ministry of Defence was dismissed by William Davis J.: [2015] EWHC 1404 (QB). In the light of the factual findings in that judgment, Mr. Vaughan no longer maintains that his injuries were caused wholly or partly by his service in the Royal Marines. The outcome of the appeal is therefore now academic from his point of view.
6. Secondly, on 11 June 2015, a three-judge composition of the UT, including the Chamber President Charles J., gave judgment in the case of JM v Secretary of State for Defence [2015] UKUT 332 (AAC) ("JM"). In JM, the UT held that the FtT had been correct to proceed on the basis that the "ground" for the purposes of section 5A(1) of the Pensions Appeals Tribunals Act 1943 was that "the appellant was not entitled to an award under the relevant provisions of the AFCS (and the reasons given for that conclusion were not the ground or grounds)."
7. The second ground of appeal, and the main reason for the Secretary of State bringing this appeal, was the interpretation of section 5A of the 1943 Act. The UT in this case had held that where, as in this case, the reasoning in the Secretary of State's decision letter was flawed, the FtT's decision upholding that decision and so "confirming that ground" could not be allowed to stand. The Secretary of State was concerned that this approach, if followed in the UT and FtT, would lead to numerous appeals being remitted in cases that could not, on their facts, found a successful claim under the AFCS.

8. Following the UT's decision in JM, that concern has been assuaged as the UT has authoritatively reached the contrary conclusion. The remaining grounds of appeal concern the proper approach to whether the error of law in this case was material. As Mr. Vaughan no longer wishes to pursue his claim for compensation, those grounds are now academic so far as the Secretary of State is concerned.

9. In the circumstances, the parties are agreed that the decision of the UT should be set aside and replaced with a decision that Mr. Vaughan's appeal be dismissed. Neither party seeks their costs of the appeal.



By the Court