



Neutral Citation Number: [2025] UKUT 168 (AAC)

Appeal No. UA-2024-001095-SPC

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Secretary of State for Work and Pensions

Appellant

- v -

DS

Respondent

Before: Upper Tribunal Judge Wright

Hearing date: 25 February 2025

Representation:

Appellant: Richard Howell of counsel

Respondent: The respondent represented himself

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: SC312/23/00118

Tribunal Venue: Enfield

Decision Date: 8 December 2023

SUMMARY OF DECISION

This is a decision about the start date for entitlement to the state pension where that pension is claimed after the claimant reached their pensionable age, which in this case was their 66th birthday. The claimant claimed his state pension a year after reaching his pensionable age. In the on-line claim form he set out clearly that he wished to get his state pension from the date of his 67th birthday. The claim was decided by the Secretary of State on the same day as it was made on-line. The decision awarded the claimant his state pension from his 67th birthday with an additional weekly amount of 'Extra State Pension' because he had deferred claiming the state pension for one year. The claimant had, however, intended to claim his state pension from his 66th birthday. He had been in time to make a backdated claim to the state pension from his 66th birthday and would have received an arrears payment of one year's entitlement had he done so. The 67th birthday date he gave on the claim form was a mistake. The FTT

allowed the appeal on the basis that the Secretary of State's decision could be revised on any ground so as to correct this mistake.

The decision allows the Secretary of State's appeal and concludes that the decision could not be changed so as to correct the 'mistaken' date the claimant gave on the claim form. The date the claimant gave was clear and did not require any further investigation or clarification. It showed the claimant had chosen to defer entitlement to his state pension for one year, a choice which was deliberately built into the statutory scheme and reflected a focus on claimant autonomy as from when they would wish entitlement to their state pension to arise. That choice would be dependent on a variety of factors of which the claimant rather than the Secretary of State would be aware. Once the claim had been decided it ceased to exist (section 8(2)(a) Social Security Act 1998) and the claim could only be amended before it had been decided (regulation 5(1) Social Security (Claims and Payments) Regulations 1987. In these circumstances and absent anything else in the statutory scheme governing entitlement to the state pension that allowed the start of entitlement to be changed once the entitlement decision had been made, the FTT had been wrong in law in considering the start date could be changed. Moreover, nothing in the Court of Appeal's decision in SSWP v Miah [2024] EWCA Civ 186 affected this analysis. In addition, insofar as the FTT criticised the Secretary of State for not investigating with the claimant when he wanted his state pension entitlement to begin before the claim was decided, it erred in law in considering such an investigative duty arose.

KEYWORD NAMES (Keyword Numbers) Claims and payments (6); other (6.10) and Retirement pensions (31); deferred retirement (31.2)

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 judges follow.

DECISION

The decision of the Upper Tribunal is to allow the Secretary of State's appeal. The decision of the First-tier Tribunal made on 8 December 2023 under case number SC312/23/00118 was made in error of law. Under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007, that decision is set and I remake the decision. The remake decision is to dismiss the appeal of the claimant (who is now the respondent on this Upper Tribunal appeal) against the Secretary of State's decision of 17 August 2022.

REASONS FOR DECISION

Introduction

1. This appeal is about from when the claimant's entitlement to the state pension arose when he claimed the state pension after he had reached his pensionable and indicated on that claim that he wished to claim the state pension from one date, but where that was a mistake on the claimant's part and he had wished instead to claim the state pension from an earlier date (his pensionable age).

2. More particularly, the issue on the appeal is whether anything can be done under the social security statutory machinery to rectify such a mistake once the claim had been decided.

Relevant factual background

3. The claimant was born on 20 August 1955. He therefore attained pensionable age for the purposes of Part 1 of the Pensions Act 2014 on reaching his 66th birthday on 20 August 2021.
4. Because of the change to the social security statutory scheme following the decision of the House of Lords in *Insurance Officer v McCaffrey* [1984] 1 WLR 1353, and subject to immaterial exceptions, it is not possible for a claimant to secure entitlement to a social security benefit (including the state pension) without making a claim for that benefit: see section 1(1) of the Social Security Administration Act 1992.
5. The claimant carried on working after his 66th birthday until July 2022 when he retired due to health issues. He then made an on-line claim for the state pension on 17 August 2022. It is not disputed, and the First-tier Tribunal (“FTT”) found as a fact, that the claimant indicated clearly on the on-line claim form that he wished to claim the state pension from his 67th birthday, which was on 20 August 2022. This was by him answering the question “What date do you want to get your State Pension from?” with the answer “20 08 2022”.
6. It is also not disputed that the answer of “20 08 2022” which the claimant gave on the on-line claim form was a mistake by the claimant as he had intended to claim the state pension from his 66th birthday and so from 20 August 2021. It is important to emphasise that this ‘mistake’ was not in any sense apparent on the claim form the claimant completed. The FTT accepted the claimant had intended to claim the state pension from his 66th birthday. The mistake lay in the claimant putting the wrong date on the on-line claim form.
7. The FTT helpfully describes the relevant narrative in its findings of fact as follows:

“5. [The claimant] was entitled to apply for his state pension from his 66th birthday, 20/08/2021 but decided not to do so at this time. He did however apply for it on 17/08/2022. He had left it until nearly one year after his 66th birthday as back in August 2021 he was still working and had less need for his pension. However upon his retirement in July 2022 he decided then to make his pension claim knowing he would be entitled to it from his 66th birthday. He realised that would involve a significant “backdated” payment that he very much wanted as he had various debts he had accumulated over the years. He had never throughout his working life received such a backdated payment and was looking forward as far as he was concerned to receiving it. A number of his work colleagues had previously done similarly.

6 When he made his claim on 17/08/2022 he requested payment from 20/08/2022. This was an error on his part. He acknowledges this fact. He put down 20/08/2022 because that is when he wanted the payment to start, but he assumed this meant he would receive his pension from his 66th birthday. He did not want to defer obtaining his state pension until his 67th birthday.

7 He started receiving his state pension a few weeks later but when by October 2022 he had still not received any payments apart from his regular four weekly ones, he contacted the Pensions Service. He was told that since 2016 claimants were not entitled to a "lump sum payment" if they deferred payment of their pension but that instead he would receive a bit extra in each four weekly payment. He actually receives currently an extra £11.07 weekly.

8 [The claimant] however never intended to defer his state pension. He had always wanted to claim it from his 66th birthday, and although the law changed from April 2016 in that from then, if you deferred your pension you could no longer receive a lump sum payment, only an additional weekly amount in recognition of a deferral, this change in the law should not have affected [the claimant] because he claimed within the requisite 12 months maximum time limit to receive his pension from his 66th birthday.

9 This chain of events has however caused [the claimant] significant confusion because he has to all intents and purposes been talking at cross purposes with the Secretary of State. He has been told he can no longer receive a lump sum payment and evidently this is the case from April 2016 but [the claimant] only ever wanted a backdated payment. His error is the 20/08/2022 reference. If on 17/08/2022 he had input 20/08/2021 he would simply have been paid his pension from his 66th birthday that would evidently have meant he would have received a backdated payment of 12 months."

8. None of this is challenged or disputed by the Secretary of State. The issue on the appeal is whether the mistake could be rectified once the claim had been decided.
9. The decision on the claim for the state pension was made on the same day by the Secretary of State as the claim was made, on 17 August 2022. That decision decided that the claimant was entitled to state pension from 20 August 2022 of £199.10 per week. £11.07 of this weekly figure consisted of "Extra State Pension" which was awarded to the claimant because he had deferred claiming the state pension for one year from 20 August 2021 to 20 August 2022. It is not disputed that this £11.07 figure represents the increments to which the claimant was entitled if his entitlement to state pension had been deferred pursuant to section 17(8)(a) of the Pensions Act 2014 until 20 August 2022.

10. As set out above, the FTT found that *had* the claimant indicated to the Secretary of State prior to the decision of 17 August 2022 awarding him the state pension that he wished to claim state pension from 20 August 2021, the Secretary of State would have decided that he was entitled to state pension from that earlier date. It is accepted that this contingent finding is correct as the claim would have been within the period prescribed by regulation 19(1) of, and entry no.13 in Schedule 4 to, the Social Security (Claims and Payments) Regulations 1987. In that (contingent) event, the claimant would not have been awarded Extra State Pension, but would instead have been paid arrears of state pension that would have accrued in the one year period after 20 August 2021.
11. This contingent finding reflects in a nutshell the choice the claimant faced about from when he wanted his entitlement to the state pension to begin. He could either defer the entitlement (in this case for one year) and get his state pension from his 67th birthday together with the 'Extra State Pension' to reflect his one year of deferral. Or he could claim his state pension on his 67th birthday but backdated to his 66th birthday.
12. The claimant appealed the Secretary of State's decision of 17 August 2022 to the FTT. His grounds of appeal argued that he had deferred his state pension payment from August 2021 to August 2022.

The FTT's decision

13. The FTT heard the appeal on 8 December 2023. In its Decision Notice of that date the FTT allowed the claimant's appeal, set aside the Secretary of State's decision of 17 August 2022 and replaced it with a decision that the claimant was entitled to his state pension from his 66th birthday rather than his 67th birthday.
14. The legal basis for the FTT's decision, as expressed in the Decision Notice, was that the FTT applied regulation 3(4) of the Social Security and Child Support Decisions and Appeals Regulations 1999 to correct the 20 August 2022 error in the claim form (as from when the claimant wished to claim his state pension from), to the date of 20 August 2021. The FTT said that regulation 3(4) allowed for an error that has been made to be revised at any time by the Secretary of State.
15. The Secretary of State sought the reasons for the FTT's decision and these were provided in early January 2024. The FTT's reasoning differs from that given in its Decision Notice. It is worth setting out the relevant parts of that reasoning in full.

"10 This statement would venture to suggest this is an unusual set of circumstances. It is not in issue [the claimant] has claimed within the requisite prescribed time limit of 12 months as set out in Schedule 4 of the Social Security (Claims and Payments) Regulations 1987. It is important to emphasise at this juncture that this is not in issue as far as the [Secretary of State] is concerned. Indeed in their response they acknowledge in paragraph 21 of their Response that if [the claimant] had on 17/08/2022 said that he wanted payment from 20/08/2021 this would

have been effected. However they then say further on in the same paragraph in another bullet point that once a determination is made, that decision is final and as such that any change requests cannot be accepted.

11 The Tribunal though does not accept the [Secretary of State]'s "determination" submission. That is not to say that the [Secretary of State] was not legally entitled to take at face value exactly what [the claimant] had put on his claim form, with a start date of 20/08/2022, evidently they were so entitled, but they were not duty bound to do so. That is the important distinction this statement wants to emphasise.

12 This "determination" [Secretary of State] submission is analogous to the Universal Credit date of claim cases they have contested where they submit that once a determination had been made, that date of claim cannot be changed. The Upper Tribunal disagreed, stating in terms that such matters as a date of claim should be investigated either as part of the initial claim process or on mandatory reconsideration or appeal. Furthermore whilst this is still the subject of further challenge, in the meantime Decision Makers have been issued with guidance to follow the Upper Tribunal's decision.

13 Evidently [the claimant] has claimed his pension not UC but this statement contends that pension claims should also be subject to the same scrutiny as UC when claims are made. In [the claimant]'s case he had applied just before his 67th birthday. That raised surely the possibility he might want to claim it from his 66th birthday, and whilst the [Secretary of State] was entitled to take his claim at face value of a date of claim of 20/08/2022, to repeat they were not duty bound to do so. Whilst not wishing to stereotype or generalise, it is surely the case that many claimants approaching or of state pension age may not be particularly comfortable with making any kind of benefit claims, let alone information technology. A simple check with [the claimant] would have sufficed, that he did indeed want to defer his pension until his 67th birthday. It would then have become apparent this was not the case. It is also interesting to note the haste in which the [Secretary of State's] decision was made. The bundle refers to a date of claim of 17/08/2022 and a decision of the same date. Whilst of course it is important to deal with claims in an expeditious fashion, deciding a claim on the same date as it was submitted allows little if any room for a proper consideration of the contents of a claim.

14 This statement acknowledges that in its decision notice referencing Regulation 3(4) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 referring to "errors", arises in connection with occupational pensions as opposed to a state pension. That same Regulation, however allows a decision to be put right on any grounds under such circumstances including where an application is made by the claimant. Again this statement accepts that this should normally be done

within a month but Regulation 3(1)(iv) provides that it can be for such longer period as may be allowed under Regulation 4. Regulation 4 includes such provisions where an application has merit and is submitted within a maximum period of 13 months. This statement contends [the claimant's] circumstances fall squarely within such provisions.

15 In conclusion, this statement appreciates the [Secretary of State] has not acted incorrectly in so far as all they have done is taken [the claimant]'s claim at face value. This statement however contends three salient issues: first they had a choice to investigate the claim prior to it reaching its decision; second that it would surely be good practice to do so; and third that in any event, there is still a legal mechanism to revise their original decision in such circumstances as this appeal. [The claimant] wanted to claim his pension from 20/08/2021 his 66th birthday, but unfortunately he put down 2022 rather than 2021 because he made an error. That error should however have been checked. His pension claim can now be amended, he understands this will mean he loses his additional extra circa £11 weekly and that this will need to be removed and offset against his "backdated" payment but that is all this appellant wants, a backdated payment from his 66th birthday, from when he has always wanted to claim his pension.

Accordingly the appeal is allowed."

The grounds of appeal

16. The Secretary of State sought and was given permission to appeal to the Upper Tribunal against the FTT's decision on three grounds.
17. The first (and main) ground of appeal is that the FTT erred in law in deciding that, following a decision on a claim which gave effect to the claimant's decision as to the extent (if any) of any deferment of his entitlement to the state pension, the Secretary of State had power to revise her decision under section 9 of the Social Security Act 1998 to give effect to a different decision the claimant could have made on that question. This error of law then extended to the FTT considering it was entitled to set aside the Secretary of State's decision so as to give effect to a different decision that the claimant could have made as to the extent (if any) of any deferment of his entitlement than the claimant in fact did make. It is argued under this first ground of appeal that the issues in this appeal are distinguishable from that which was in issue and decided by the Court of Appeal in *SSWP v Miah* [2024] EWCA Civ 186; [2024] 1 WLR 3012.
18. The second ground of appeal argues, if it is necessary to do so, that the FTT erred in law in holding (to the extent that it did) that the Secretary of State was required in law to have made enquires of the claimant *before* giving effect to the claimant's decision, when he made his claim for the state pension, that he wished to get his state pension from 20 August 2022. It is argued under this ground that in relation to deferring entitlement to the state pension and the date that may be chosen by a claimant in relation to this, there will always be the possibility that a

claimant has made a mistake, because the determination will typically give rise to alternative and inconsistent financial consequences for a claimant. It is submitted in consequence that absent any particular matter to put a reasonable Secretary of State on inquiry about the possibility of such a mistake having been made (which it is said is not this case given the FTT's finding that the Secretary of State was legally entitled to take at face value exactly what the claimant had put on his claim form), the Secretary of State is under no duty to check the position with each claimant before making an award on the claim. That would be to impose an unreasonable and disproportionate administrative burden on the Secretary of State.

19. The third ground of appeal contends that the FTT acted unfairly in criticising the lack of inquiries the Secretary of State made of the claimant before the state pension claim was decided on 17 August 2022 in circumstances where, it is argued, the Secretary of State was not given adequate notice that this was an issue the FTT would address as an issue arising on the appeal. This ground was subsumed within the second ground by the time of the hearing of the appeal before me.

The Upper Tribunal proceedings

20. In giving directions on the appeal, I commented that insofar as the FTT purported to set out an alternative basis for its decision in paragraph 14 of its statement of reasons (even assuming that as a matter of law such an alternative basis for the decision was open to the FTT given the sole basis for the decision it had seemingly given in the Decision Notice), it was arguable given the decision in *R(TC)1/05* that it was not for the FTT to extend time for an 'any grounds' revision under regulation 4 of the Social Security and Child Support (Decision and Appeals) Regulations 1999.
21. The oral hearing of the appeal took place before me on 25 February 2025. Through Mr Howell, the issues on the Secretary of State's appeal were said to amount to two:
 - “(1) whether the FTT erred in law, in holding that where a customer who has attained pensionable age makes a claim for state pension from a particular date within the limits contained in regs 15B(2) and 19(1) of the Claims and Payments Regulations, that date can be changed after an award has been made on the claim; and
 - (2) to the extent the FTT so held, whether it erred in law in holding that the Secretary of State should have investigated the claim further, as a matter of “good practice” or otherwise”.
22. The essence of the Secretary of State's argument on the first issue was that where a person claims state pension after attaining pensionable age, the effect of the statutory provisions on their proper construction is that the claimant must choose the date on which their entitlement is to begin, subject only to the time limits contained in regulations. Provided those express time limits are complied

with, that date (and so the extent, if any, of deferment of a customer's entitlement) is a matter for the claimant alone to determine, rather than a matter for the Secretary of State. Further, the statutory scheme further does not permit the claimant to alter their choice after an award on the claim has been made. The critical issue was whether the Secretary of State's decision was correct at the time it was made. In this case the decision was plainly correct at the time it was made on the information given in the claim. Moreover, *Miah* does not provide any authority to the contrary.

23. The claimant, as a litigant-in-person and not being a lawyer, was quite understandably not able to make legal arguments on these issues. He and his wife told me about numerous phone calls they had made to the Pensions Service within the Department for Work and Pensions to, as they put it, "put matters right", and were concerned that these calls had not been acknowledged. These phone calls, however, were all made after the 17 August 2002 decision had been made on the claim by the Secretary of State. The claimant further told me that he did not think he could put down a date in the past in answer to the question on the claim form "What date do you want to get your State Pension from?". I have to say that it is not readily apparent why a past date could not be provided by way of an answer, particularly where (as here) the claimant knew he had reached his (state) pensionable age a year earlier and taking account of information that may have been available to help with claiming the state pension, including from when to claim it if the claim is made after pensionable age. However, the claimant candidly accepted he had made a mistake in answering this question on the claim form. The issue on this appeal is whether the statutory scheme allowed for that mistake to be rectified once the claim had been decided.

The statutory scheme

24. I will address and set out as is necessary the relevant aspects of the statutory scheme as I consider the grounds of appeal.

Analysis and conclusion

The first ground of appeal

25. The cogency of the Secretary of State's first ground of appeal depends on an analysis of a number of inter-locking statutory provisions.
26. In terms of decision-making, section 8(2)(a) of the Social Security Act 1998 (the 1998 Act) provides that:

"[w]here 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."

27. The claim in this case was decided on the same day it was made. Moreover, the claimant did not seek to rectify the 'mistake' he had made on the claim before it was decided. It follows that an examination of the means, if there are such means,

to rectify that mistake has to be located in the way in which a Secretary of State's decision on a claim may be challenge and altered, the decision otherwise being final under section 17(1) of the 1998 Act.

28. Other than an appeal against the decision under section 12 of the 1998 Act, the means by which the Secretary of State may alter her section 8 decision is under section 9 or 10 of the 1998 Act and the regulations made under those sections. The former deals with revision of the decision and the latter supersession of the decision. Broadly speaking, revision allows the section 8 decision to be changed from the date on which it was made or the date from which it was effective (per section 9(3) of the 1998 Act), whereas supersession changes the decision from a later (effective) date, for example, where a claimant's circumstances subsequently change.
29. In this appeal, of the revision and supersession routes only revision on the face of it could potentially provide a vehicle for changing the 17 August 2022 decision to make entitlement to the state pension arise from the year before. However, as the FTT belatedly recognised, regulation 3(4) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (the DMA Regs 1999) did not provide a ground for revision of the 17 August 2022 decision as regulation 3(4) is only about decisions made by HMRC under the Pensions Schemes Act 1993 and is not about decisions concerning entitlement to the state pension, which is governed by the Pensions Act 2014.
30. As this was the (sole) route by which the FTT decided the appeal, it would arguably be possible to allow the appeal on this basis alone. However, the Secretary of State has not sought this as the basis for the remedy on the appeal as that would leave unanswered whether she, at the mandatory reconsideration stage, or the FTT on the appeal could lawfully have rectified the claimant's mistake and changed the date from which he was entitled to the state pension.
31. I should add, however, that I do not consider the FTT's later reliance on regulation 3(1) and 4 of the DMA Regs 1999 assists the claimant either. This is because, insofar as the Secretary of State by her mandatory reconsideration decision (i.e., a decision under regulation 3 and 3ZA of the DMA Regs 1999) had *also* refused to extend time under regulation 4 of the DMA Regs 1999 for an 'any grounds' revision under regulation 3(1) of the same regulations, that refusal to extend time decision under regulation 4 was not itself an appealable decision (see *R(TC)1/05*) and so was not a matter before the FTT.
32. This last point does not, however, really matter because it was not disputed that following mandatory reconsideration (under regs 3(1) and 3ZA of the DMA Regs 1999), the claimant had brought an in-time appeal under section 12 of the 1998 Act against the 17 August 2022 decision. And the issue on that appeal was whether there was 'any ground' on which the 17 August 2022 decision could be changed. That is the key issue under the first ground in this appeal and by its decision the FTT concluded that it was lawful to change the decision so as to alter the start date of the claimant's entitlement to his pension to 20 August 2021. If

that decision was one which it was lawfully open to the FTT to make, the flawed reasoning by which it did so may not amount to a material error of law.

33. I agree with the Secretary of State that there was no lawful basis for either her or the FTT to have altered the start date of the claimant's entitlement to the state pension from the clear date the claimant gave on the claim form as from when he wanted that entitlement to start. The FTT 'stands in the shoes' of the Secretary of State on appeal and can give any decision the Secretary of State could and ought to have given on the claim (*R(IB)2/04* at paragraphs [15] and [25]), but in my judgement there was no proper basis for the Secretary of State to decide entitlement on the claim other than she did.
34. An important starting point for this analysis is that entitlement to the state pension is dependent on a claim being made for it: see sections 1(1) and 5(1) (and 1(4)(zb) and 5(2)(zb)) of the Social Security Administration Act 1992 ("the SSAA"). The relevant regulations are made under section 5(1) of the SSAA (see *Miah* at paragraph [10]) and are the Social Security (Claims and Payments) Regulations 1987 ("the CP Regs"). It was under regulation 4ZC(1) and regulation 4ZC(2)(g), read with schedule 9ZC, of the CP Regs that the claimant was authorised to make an on-line claim for his state pension.
35. A critical relevant provision in the CP Regs is regulation 5(1). This provides that a claimant who has made a claim for, here, the state pension, "may amend it at any time before a determination has been made on the claim" (my underlining added for emphasis). If a claim is amended, it is treated as if it was amended at the outset of the claim: per regulation 5(1A) of the CP Regs. Consistently with this pre-decision focus, regulation 5(2) of the CP Regs allows a claimant to withdraw a claim "at any time before a determination has been made on it". Following paragraph [9] of *Miah*, which dealt with different but analogous provisions, the effect of these provisions is that "an amendment can only be made before the claim has been determined".
36. However, once the claim has been decided, the statutory fiction created by sections 8(2)(a) of the 1998 Act is that the claim no longer exists once it has been decided. This is reinforced by section 12(8)(b) of the 1998 Act and its provision that on deciding an appeal the FTT "shall not take into account any circumstances not obtaining at the time when the decision appealed against was made".
37. Pausing there and standing back, the claim the claimant made for his state pension clearly set out that he wished to get his entitlement to the state pension to start from 20 August 2022. There was nothing which was unclear in that answer. Nor did anything else in the claim form suggest this date may not have been correct. That date was not amended on the claim before the claim was decided under section 8 of the 1998 Act. Once it was decided the claim ceased to exist and so the claim could no longer be amended. There is no dispute that the decision made on that claim, with its specific and clear start date for the entitlement, was correctly made. Given all of this, I can identify no lawful basis for the Secretary of State or the FTT on appeal changing the start date of entitlement

to the state pension, as to do so would be to amend the claim after it had been decided and after it had ceased to exist.

38. It is important, moreover, to note that the statutory architecture governing entitlement to the state pension places in the hands of a claimant the choice between claiming the state pension on reaching pensionable age or deferring entitlement to the state pension until a later date.
39. In the case of the former, the claim can be made immediately on reaching pensionable age or by making a 'backdated' claim within 12 months of reaching pensionable age under entry number 13 in Schedule 4 to the CP Regs. It is accepted that had the claimant said in his 17 August 2022 claim form that he 'wanted to get his state pension from' 20 August 2021, he would have been taken as making such a backdated claim from his 66th birthday on 20 August 2021. And that would have led to him receiving a lump sum of his year's entitlement to the state pension back to 20 August 2021 as well as his ongoing entitlement based on him having claimed the state pension from the age of 66.
40. Instead, however, the claimant's answer to the above question of '20 August 2022' was taken as the claimant deferring his entitlement to the state pension for one year pursuant to section 17(8)(a) of the Pensions Act 2014. That section 17 provides as follows:

"Effect of pensioner postponing or suspending state pension

17.- (1) If a person's entitlement to a state pension under this Part has been deferred for a period, the weekly rate of the person's state pension is increased by an amount equal to the sum of the increments to which the person is entitled.

(2) But the weekly rate is not to be increased under subsection (1) if the increase would be less than 1% of the person's weekly rate ignoring that subsection.

(3) A person is entitled to one increment for each whole week in the period during which the person's entitlement to a state pension was deferred.

(4) The amount of an increment is equal to a specified percentage of the weekly rate of the state pension to which the person would have been entitled immediately before the end of that period if the person's entitlement had not been deferred.

(5) In subsection (4) "specified" means specified in regulations.

(6) The amount of an increase under this section is itself to be increased from time to time in accordance with any order made under section 150 of the Administration Act (annual up-rating of benefits).

(7) For the purposes of this section and section 18 a person's entitlement to a state pension under this Part is deferred for a period if the person has opted under section 16 to suspend his or her entitlement for that period.

(8) For the purposes of this section and section 18 a person's entitlement to a state pension under this Part is also deferred for a period if the person is not entitled to it for that period by reason only of—

(a) not satisfying the conditions in section 1 of the Administration Act (entitlement dependent on claim etc), or
(b) subsection (9) below.

(9) A person is not entitled to a state pension under this Part for any period during which his or her entitlement to any other state pension under this Part is deferred.

41. The effect of the claimant's answer – of “20 08 2022” – was that he was not seeking to make a backdated claim under section 1 of the SSAA for the period from 20 August 2021, he therefore (per section 17(8)(a) of the Pensions Act 2014) had not made a claim for (and from) 20 August 2021, and had only made a claim from 20 August 2022. It was thus by this route that the claimant deferred his entitlement to the state pension for a year, until 20 August 2022. The increments to which he then became entitled under section 17(1) of the Pensions Act 2014 are commonly referred to as “Extra State Pension”.
42. As the Secretary of State explained, although the Pensions Act 2014 introduced a benefit called the “state pension”, deferment of entitlement to this type of state retirement pension was not new. As the Explanatory Notes to the Pensions Act 2014 set out, under Part 2 of the Social Security Contributions and Benefits Act 1992 a claimant could “choose not to claim their pension at pensionable age or to give up their pension for a period of time after they have started to receive it” (paragraph 95 of the Explanatory Notes). The previous legislative scheme (per paragraph 94 of the Explanatory Notes) allowed the person who deferred claiming their state retirement pension to “qualify for either an increase to their weekly pension (known as increments) or for a lump sum payment from the point they claim (subject to some conditions)”. The change from this brought in by the Pensions Act 2014 was that the “basic principle of deferral [was] retained... but only the ability to accrue a weekly increase”. In other words, the option on deferral to obtain a lump sum was removed. The reason, however, for retaining deferral within the Pensions Act 2014 was because (as the Department for Work and Pensions explained in its 2013 paper *“The single-tier pension: a simple foundation for saving”* (Cm8528), at pages 29 and 99) “the option to defer the state pension [was] an important flexibility to retain” and “individuals should have the flexibility of choice in terms of drawing their pension if they decide to stay economically active and to continue working after State Pension age”.
43. It is this ‘claimant autonomy’, in terms of choosing whether or not to defer the start of their entitlement to their state pension, which the Secretary of State points to as being a key aspect of entitlement to the state pension. I agree. That choice is one which it is for the individual claimant to exercise, and is not for the Secretary of State to make. It is a choice which has an implicit statutory grounding in section 17(8)(a) of the Pensions Act 2014, as it is the claim (or lack thereof) made by the claimant for their state pension, and the period for which such a claim is made by the claimant, upon which deferment of entitlement to the state pension depends. Deferral of entitlement to the state pension (from a person's pensionable age) is automatic where no claim is made under section 17(8)(a) of the Pensions Act 2014. However, as we have seen on the potential outcomes that were available on this claimant's case and where the claim is made after pensionable age, in

such a case it is the period for which the claim is subsequently made by the claimant that may govern whether deferral is effective. And even in cases where a claimant has deferred entitlement to their state pension (under either section 16 or 17 of the Pensions Act 2014), identifying when the state pension becomes payable depends on identifying, per regulation 22DA(1)(a)(ii) of the CP Regs, “the first day in respect of which the person makes a claim for their state pension”.

44. The making of this choice may depend on a number of variables of which only the individual claimant may have knowledge or be concerned about. Thus, whether a claimant in the same position as the claimant in this case wishes to receive the ‘Extra State Pension’ that deferral will bring, or instead the arrears of state pension in respect of a past period of up to a year by ‘backdating’ the claim, may depend on a number of considerations including: (i) whether the claimant is retired or is still economically active; (ii) the claimant’s health and life expectancy at the date of claim; (iii) the claimant’s current and expected future financial position (including the incidence of taxation); and (iv) possible returns available to the claimant on investing an award of benefit. These (and other) considerations will vary from claimant to claimant. I accept, moreover, that the Secretary of State is not equipped to make the choice as to the commencement of entitlement on behalf of individual claimants or determine what is in their best interests. That choice is best exercised by the individual claimant before, at, or after they reach their pensionable age. Properly construed the legislative scheme respects this choice. In this sense, the identification of the date from which a claimant wishes their entitlement to their state pension to begin is a ‘constitutive’ element of the claim, and cannot be altered once the claim has been decided.
45. There is nothing, moreover, in the language of statutory scheme which allows a claimant to alter this choice once the claim for the state pension has been made and the decision has been made on that claim. This may be contrasted with other specific situations where the Pensions Act 2014 does allow for changes to be made. For example, section 8 of the Pensions Act 2014 allows for a “choice of lump sum or survivor's pension under section 9 in certain cases”. Importantly, by section 8(7) it provides for (and thus recognises) regulations to be made that “allow a person, in specified circumstances, (a) to alter his or her choice under this section; or (b) to make a late choice”.
46. I accept the Secretary of State’s argument that this result is unsurprising. As she puts it, permitting a claimant to change their election about from when they want their entitlement to the state pension to begin after the claim has been decided would have significant consequences for the administration of the state pension system which cannot have been intended. For example, if a claimant elects to backdate their claim for entitlement to the state pension to a date 12 months before the date of claim, they will be paid a significant sum (possibly over £10,000) in arrears of state pension out of the National Insurance Fund. If that election could be changed by revision of the awarding decision, or on appeal, that significant sum would be expected to be recovered, but the legislation provides no clear means by which recovery could occur. Regulation 5(1) of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 would not seem to apply as it does not allow for offsetting of amounts owed to

the Secretary of State against future payments of benefit. And section 71 of the SSAA would not apply either, absent misrepresentation or failure to disclose of a material fact.

47. I therefore consider that the FTT erred in law in altering the date on which the claimant's entitlement to the state pension was to begin when there was no legal basis for it to alter the claimant's election about that issue as set out in the on-line claim form. The right of appeal found in section 12(1) of the 1998 Act is against a decision of the Secretary of State. However, it was not for the Secretary of State to determine or decide from when the claimant wished to obtain his entitlement to his state pension. What the Secretary of State (and the FTT on appeal) had to decide was the correct level of the entitlement to the state pension based on, and giving effect to, the date from which the claimant wanted his entitlement to the state pension to begin. Putting this perhaps another way, giving effect to the claimant's election as to when his entitlement to the state pension should begin, was a decision that corresponded to his correct entitlement based on his election. Moreover, the FTT was not permitted to take into account the wish of the claimant, raised after the decision under appeal was made, to change the claim in terms of his election as to when entitlement was to begin, as to do so would run contrary to section 8(2) of the 1998 Act.
48. Nor does anything decided in *Miah* alter this analysis. The issue at the heart of *Miah* was about whether a claim for universal credit had been made within the time for which that benefit had to be made and where there was an absence of evidence about the date from when Mr Miah wished to claim his universal credit. The essence of the Court of Appeal's decision is at paragraph [50] where, as I read it, it concluded that whether the claim for universal credit had in fact been made in time could be determined (on revision or on appeal) like any other issue going to entitlement. Here, by contrast, there is no issue on the FTT's findings that the claim was made within time and on the basis of the claimant having clearly elected on the claim form to defer his claim and his entitlement by one year, to his 67th birthday. Those issues were clear and required no further findings to be made. The issue in this case was not whether a claim for state pension from 20 August 2021 when the claimant reached his pensionable age was, in principle, "within the time" prescribed by regulation 19(1) of the CP Regs. It is common ground that had the claimant (instead of what he in fact did) elected to make a claim from 20 August 2021, the Secretary of State would have made an award from that date. *Miah* provides no assistance on identifying the correct date of entitlement in the context of the state pension where the identification of when entitlement to the state pension, and the choices which lie behind that identification, lies with the claimant alone, and where the claimant clearly and unambiguously identified that date.
49. I therefore agree with the Secretary of State that:
- "While it goes without saying that a state pension claim must be properly considered by the Secretary of State, it is very different to a claim for universal credit.....in the universal credit context, claims are generally "forward looking" only, and, in the exceptional cases where they may be

back-dated, it is for the Secretary of State to “extend the time for claiming” universal credit by a decision, having regard to a number of objective considerations then in existence. There is moreover no requirement on claimants to indicate that they wish to back-date their claim. In the state pension context, by contrast, the legislation deliberately confers a subjective choice on customers, and them alone, as to when their entitlement is to begin. That is a defining parameter of their claim to state pension.”

50. This disposes of the first ground of appeal.

The second ground of appeal

51. Insofar as it remains relevant, I consider that the Secretary of State is also entitled to succeed on his second ground of appeal.

52. The continuing relevance of the second ground may be doubted given (i) I have accepted under the first ground of appeal that it was for the claimant, and not the Secretary of State, to choose the date from which he wished his state pension entitlement to begin, (ii) that the claimant clearly identified this date as being 20 August 2022 in the claim form, thus deferring his entitlement for one year, and (iii) the FTT found as a fact that the Secretary of State was entitled to take this answer at face value. Given these considerations, and given I have accepted under the first ground of appeal that this date could not be altered after the claim had been decided, it may be difficult to identify the factual and legal basis for the Secretary of State investigating this issue before she decided the claim. However, insofar as the FTT considered it was a material failing of the Secretary of State in making his decision on 17 August 2022 not to have investigated the claim further, I consider it erred in law in so deciding.

53. Given this is very much a secondary (and contingent) ground of appeal, I can set out my reasons on it quite shortly.

54. The overall starting point is that it is for the Secretary of State to ask the relevant questions of a claimant sufficient to establish their entitlement: *Kerr v Department of Social Development* [2004] 1 WLR at [16], [58] and [62]. The duty in *Kerr* may be seen as an application of the *Tameside* principle in the particular context of administration of state benefits: see *R (Turner) v Secretary of State for Work and Pensions* [2021] PTSR 1312 [89]. It does not therefore impose an obligation on the Secretary of State to take unreasonable or disproportionate steps: see *R (Balajigari) v Secretary of State for the Home Department* [2019] 1 WLR 4647 at [70].

55. I accept in the present case that it was sufficient for the Secretary of State to ask the claimant the date from when he wished to get his state pension. Given the clear and unambiguous answer the claimant gave to that question, no further investigation was required. Had the claimant answered the question with, for example, “Not sure, either my 66th or 67th birthday”, the claim may not have been

thought to be complete and may have required investigation, but that was not what occurred in this case.

56. Whenever a claim for a state pension is made after a person has attained pensionable age, there will always be the possibility that the claimant may wish his entitlement to commence up to a year before the date of claim. However, absent some indication in the claim itself that would give the Secretary of State reasonable cause to investigate, the theoretical possibility that a claimant *might* have chosen another date than the one positively set out by him in the claim is not a matter that in my judgement places the Secretary of State under a duty to investigate, or engage in an iterative process with claimants following the claim: see relatedly paragraphs [17] and [56] of *Miah*.
57. As for the criticisms the FTT seemingly made about the speed with which the claim was decided (on the same day), that speed on its face was consistent with good administration, at least in terms of deciding the claimant's entitlement "without undue delay" (per *R(DLA)* 4/05 at paragraph [22]) and given the clear answers the claimant had provided on his claim.
58. Nor can I see that recourse to "good practice" assists. If this is an argument for investigating all answers (clear or otherwise) given by claimants in the claim form when they have made claims for the state pension after they have attained pensionable age, it would in my plain judgement place an unreasonable and disproportionate burden on the Secretary of State, and one which would arguably subvert rather than give effect to *Kerr*.

Conclusion

59. I therefore allow the Secretary of State's appeal in the terms set out above .

Stewart Wright
Judge of the Upper Tribunal

Authorised for issue on 23rd May 2025