Neutral Citation Number: [2025] UKUT 299 (AAC)
Appeal No. UA-2024-000177-USTA and UA-2024-000528-HB

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

The Secretary of State for Work and Pensions
Appellant

- v -

SC
Respondent

MJ
Appellant

-v-

London Borough of Bromley
First Respondent

-and-

The Secretary of State for Work and Pensions
Second Respondent

Before: Upper Tribunal Judge Butler

Hearing date: 17 April 2025
Mode of hearing: In person, at Field House, London (with MJ observing by video)

Representation:

SSWP:	Mr Richard Howell (Counsel, instructed by the Government Legal Department)
SC:	Mrs LP
MJ:	Mr Martin Williams, Child Poverty Action Group ("CPAG")
London Borough of Bromley:	Did not participate

On appeal from:

SC v SSWP:
Tribunal: First-tier Tribunal (Social Entitlement Chamber)
Tribunal Case No: SC306/22/00175
Tribunal Venue: Boston
Decision Date: 28 July 2023

MJ v LB of Bromley:
Tribunal: First-tier Tribunal (Social Entitlement Chamber)
Tribunal Case No: SC154/23/02119
Tribunal Venue: Bexleyheath
Decision Date: 08 November 2023

SUMMARY OF DECISION

KEYWORD NAME (Keyword Number)

Housing Benefit – other (16.9)

Supersession – general (30.9)

Universal Credit – other (45.9)

Judicial summary

These appeals raise a shared legal issue about the legal mechanism for making closed period supersession decisions, which is where benefit entitlement is changed for a specific, closed period of time. They involve the question whether an award of universal credit or housing benefit can be superseded by a closed period supersession decision operating for a future fixed period of time (i.e., prospectively).

The Upper Tribunal analysed the legal mechanism for making closed period supersession decisions. It set out the relevant mechanism at paragraph 195 of its decision.

The Upper Tribunal decided a closed period supersession decision cannot be made on the ground of relevant change of circumstances, to preserve an existing award of UC or HB where, at the date of the supersession decision, the claimant does not meet a condition of entitlement (for example, being in Great Britain). Nor, in these circumstances, can a closed period supersession be made on the ground it is anticipated a relevant change of circumstances will occur.

The Upper Tribunal confirmed that where a retrospective closed period supersession decision is made about a universal credit award, the fixed period of non-entitlement does not amount to the decision-maker making a nil award of that benefit.

The Upper Tribunal decided it was not an abuse of power for the relevant decision-maker to make the supersession decision in question about SC and about MJ, rather

than wait for the claimant to return to Great Britain before making the supersession decision.

The Upper Tribunal decided that the decision made in respect of SC involved material errors of law by the relevant First-tier Tribunal. It remitted the appeal to be heard by a new Tribunal.

The Upper Tribunal decided that the decision made in respect of MJ did not involve material errors of law by the relevant First-tier Tribunal. It dismissed MJ's appeal.

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

DECISION in respect of appeal UA-2024-000177-USTA (SSWP v SC)

As the decision of the First-tier Tribunal involved the making of an error of law, it is SET ASIDE under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007. and the case is REMITTED to the First-tier Tribunal for rehearing by a fresh tribunal.

DIRECTIONS

A. **The case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.**

B. **The new Tribunal should not involve the Tribunal Judge previously involved in considering SC's appeal on 28 July 2023.**

C. **The new Tribunal should not list SC's appeal for hearing until the Upper Tribunal's decisions in UA-2023-001431-USTA (AA v SSWP) and KK v SSWP (UC) [2025] UKUT 259 (AAC) have been published.**

D. **Within six weeks of the date this decision is issued, the SSWP is directed to provide the First-tier Tribunal with a submission confirming the date when SC made a new UC claim after 30 May 2022, the effective date of her new UC award, and the start and end dates of her non-entitlement to UC as a result of the SSWP's decision dated 30 May 2022 (as revised on 04 July 2022).**

E. **The new Tribunal must not take account of circumstances that did not apply at the time of the SSWP's decision dated 30 May 2022. Later evidence can be considered as long as it relates to the circumstances at the time of the decision: see *R(DLA) 2/01* and *R(DLA) 3/01*.**

F. **The Tribunal hearing the remitted appeal is not bound in any way by the decision of the previous First-tier Tribunal. Depending on**

the findings of fact it makes, the new Tribunal may reach the same or a different outcome from the previous Tribunal.

These Directions may be supplemented by later directions by a tribunal judge, registrar, or case worker, in the Social Entitlement Chamber of the First-tier Tribunal.

DECISION in respect of appeal UA-2024-000528-HB
(MJ v (1) LB Bromley and (2) SSWP)

The decision of the First-tier Tribunal did not involve a material error of law under section 12 of the Tribunals, Courts and Enforcement Act 2007.

REASONS FOR DECISIONS

Introduction

1. These appeals involve a common legal issue. They were therefore heard and determined together. The SSWP's appeal against the First-tier Tribunal decision made about SC was registered first with the Upper Tribunal office. It therefore appears as the first named appeal.

2. The structure of these decisions is as follows:

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Factual background and the First-tier Tribunals' decisions

(a) SSWP v SC

3. SC claimed, and was awarded, universal credit ("UC") from 28 July 2021 onwards. SC contacted her work coach at the Department for Work and Pensions ("DWP") which administers benefit on behalf of the Secretary of State for Work and Pensions ("SSWP"). SC notified her work coach that she would be going abroad to Canada from 29 May 2022 to 15 July 2022 (a period of just under seven weeks).

4. On 30 May 2022, a DWP decision-maker decided SC was not entitled to UC, because she had left Great Britain, and her absence was planned to exceed one month. DWP notified SC of its decision through her online UC journal on 30 May 2022. The notification stated that SC's UC award ended on 28 April 2022. SC received the notification while in Canada.

5. SC asked DWP to reconsider its decision. DWP later accepted it had made an error in calculating the end date of SC's UC award as 28 April 2022. On 04 July 2022, having received a complaint from SC, DWP revised its decision dated 30 May 2022 to decide that SC's UC award ended on 28 May 2022. This was the first day of the assessment period in which SC went abroad.

6. On 16 September 2022, SC appealed to a First-tier Tribunal. On 29 July 2023, the First-tier Tribunal ("FTT1") allowed SC's appeal and set aside DWP's decision. In its Decision Notice, FTT1 decided SC's UC claim should have been suspended from the first day of the assessment period on 28 May 2022 to the first date of the assessment period following her return to the UK. FTT1 directed DWP to implement this decision.

7. The SSWP requested a Statement of Reasons for this decision. FTT1's Statement of Reasons stated the Tribunal had revised the SSWP's decision and made SC a nil award of UC from the first day of the assessment period in which she went abroad (28 May 2022) and a paying award of UC on the basis of a continuing claim for the assessment period commencing on 28 June 2022. On 15 January 2024, DWP requested permission to appeal to the Upper Tribunal. A salaried First-tier Tribunal Judge granted the SSWP permission to appeal in a decision dated 02 February 2024.

8. A summary of the SSWP's appeal grounds is:

   (a) FTT1 made an error of law by revising DWP's decision dated 30 May 2022 to make a "nil award" to SC until the assessment period in which she returned to Great Britain. This was an error of law because there are no legislative provisions allowing FTT1 to make this decision. The concept of a "nil award" is alien to, and inconsistent with, UC legislation;

   (b) A basic condition of UC entitlement is that a person is in Great Britain. Unless they satisfy the legislative provisions for being treated as only temporarily absent, a person who leaves Great Britain will no longer be entitled to UC, so their award will be superseded (changed) on the basis there has been a relevant change of circumstances. The superseding decision replaces the existing entitlement decision with a new outcome decision;

   (c) The new outcome decision is that the person is not entitled to UC, with effect from the first day of the assessment period in which they went abroad. The existing award will be replaced by a disallowance;

   (d) If a claimant has already returned to Great Britain before the supersession decision is carried out, the supersession will apply for a closed period of time (the past period in which the person was not entitled) and the existing award will remain. See the Upper Tribunal's decision in ***CIS/1305/2012***; and

   (e) In SC's case, she was still outside Great Britain when DWP superseded her entitlement to UC. There was no form of UC award that would remain after that point. A decision that a person is not entitled to UC is not a "nil award" decision. Instead, it is a decision that an award cannot be made because there is no entitlement to UC.

9. In granting permission to appeal, the salaried First-tier Tribunal Judge explained it would be useful to have guidance from the Upper Tribunal about whether, for a claimant in SC's position, a UC award could continue at a nil rate.

(b) MJ v (1) LB Bromley and (2) SSWP

10. MJ was receiving housing benefit ("HB"), which was administered by the London Borough of Bromley ("LB Bromley"). MJ was receiving several benefits administered by DWP in consequence of her ill health. On 05 January 2023, MJ booked return flights to Brazil, to leave on 19 March 2023 and to return on 20 April 2023 (a period of just under five weeks).

11. On 22 February 2023, MJ notified LB Bromley about her planned trip. LB Bromley suspended MJ's HB claim on 24 February 2023, due to a separate issue and sought further information. On 16 March 2023, MJ confirmed to LB Bromley that she was due to be away from 19 March 2023 to 20 April 2023. On 20 March 2023, LB Bromley closed MJ's claim with effect from 19 March 2023. MJ reclaimed HB but on 19 June 2023, LB Bromley informed her that she was not entitled to claim HB as she was instead entitled to claim UC with the housing element.

12. On 13 July 2023, with support from Annerley CAB and Bromley MIND, MJ appealed to the First-tier Tribunal. Her appeal was decided on 08 November 2023 by a First-tier Tribunal ("FTT2"). MJ was supported by a representative from Bromley MIND. LB Bromley did not take part in the appeal.

13. FTT2 refused MJ's appeal and confirmed LB Bromley's decision that MJ was not entitled to HB from 19 March 2023 as she was absent from her home for more than the 4 weeks permitted by housing benefit legislation. FTT2 stated in its Decision Notice that the change of circumstances (caused by MJ going abroad) was notified before the end of the period affected by the change and could not be treated as a closed period supersession.

14. MJ requested a Statement of Reasons, which was issued on 01 January 2024. Permission to appeal to the Upper Tribunal was refused by a salaried First-tier Tribunal Judge on 22 March 2024. MJ requested permission directly from the Upper Tribunal on 17 April 2024.

15. A summary of MJ's appeal grounds is:

    (a) Her case involves a novel issue not previously considered by the Upper Tribunal. This is whether it is possible to conduct a prospective supersession decision removing benefit entitlement for a specific period during which the conditions of entitlement will not be met but that also restores entitlement from the (future) date when it is known the conditions will again be met;

    (b) FTT2 misdirected itself in law by deciding it could not make a decision removing MJ's HB entitlement only for the period she was absent from Great Britain;

    (c) Regulation 7(2)(a)(ii) of the Housing Benefit (Decisions and Appeals) Regulations 2001 expressly provides a power to supersede a decision

awarding HB on the basis that it is anticipated a change of circumstances will occur;

(d) As a matter of law, regulation 7(2)(a)(ii) allows a decision-maker aware of a situation where there will be two changes of circumstances, the first of which reduces / ends entitlement, and the second would restore entitlement, can make a prospective supersession decision reducing or removing entitlement only for the period where the first change of circumstances applies;

(e) While the case law dealing with "closed period supersession" decisions all relate to decisions made after both sets of changes of circumstances have occurred, there is nothing in principle to prevent a similar approach being taken in advance, where it is known as a matter of fact, at the time the decision is taken, that there will be a further future change of circumstances that will restore entitlement;

(f) FTT2 should have treated the Upper Tribunal decision in ***SSWP v NC (ESA) [2023]*** UKUT 124 (AAC) as allowing it to apply a closed period supersession where, if a timely change of circumstances decision had been made, the claimant could no longer claim their legacy benefit and would have to claim UC. Instead, FTT2 incorrectly decided that on return to the UK, MJ could not have continued to qualify for HB because she was entitled to apply for UC instead (which permanently disentitled her to HB); and

(g) MJ's interpretation of the decision-making scheme and power to supersede for an anticipated change of circumstances restoring entitlement, is consistent with the wording of regulation 7(2)(a)(ii) but also achieves desirable policy consequences. In addition, it is only likely to apply in a few cases.

16. On 03 July 2024, Upper Tribunal Judge Stout decided that the appeal grounds MJ raised were arguable and granted her permission to appeal.

17. On 25 November 2024, Upper Tribunal Stout made case management directions to add the SSWP as a Second Respondent to MJ's appeal. This was on the basis that LB Bromley had not responded to the appeal as directed and the appeal grounds raised an issue of potential wider importance to the benefits scheme. This was whether it was possible to have a prospective supersession decision removing entitlement to a benefit only for a period during which the entitlement conditions will not be met but then restored entitlement from when it is known those entitlement conditions will again be met.

18. Upper Tribunal Stout explained she was reluctant simply to allow MJ's appeal in the absence of a response from LB Bromley, given the point of law raised was of some complexity and potentially much wider importance. Judge Stout therefore directed for the SSWP to be joined as Second Respondent to the appeal.

19. On 06 February 2025, the Government Legal Department ("GLD"), the legal department for the SSWP, filed a Response to MJ's appeal. It also wrote to the

Upper Tribunal, applying for a direction under rule 5(3)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the UT Rules 2008") for MJ's appeal to be heard together with SSWP v SC.

20. The GLD wrote that the two appeals raise a common issue of law, namely whether it is open to the SSWP in administering UC, or a local authority administering HB, to make a supersession decision terminating a claimant's benefit entitlement for a period of time after the decision is made, but otherwise not affecting the claimant's benefit entitlement after that period expires. The letter confirmed the SSWP agreed the point of law raised was complex and had a potential wider importance.

Hearing before the Upper Tribunal

21. By the time the request to hear the appeals together had been made, the SSWP's appeal against SC had already been listed for a hearing before me on 25 February 2025. The GLD's letter dated 06 February 2025 acknowledged that hearing the two appeals together would mean adjourning the hearing of the appeal about SC. The GLD made arguments about the importance of hearing both appeals together to ensure a common approach to the issue by the Upper Tribunal.

22. The GLD accepted that adjourning the appeal against SC was problematic for SC and was not a step to be taken lightly but requested that both appeals be listed as soon as possible. MJ was without any income-replacement benefit due to not having claimed UC after losing her HB. The GLD's letter asked if the Upper Tribunal could accommodate a hearing of both appeals in March or April 2025, to avoid causing too much delay for SC and to prioritise the hearing of MJ's appeal.

23. On 12 February 2025, I made case management directions for SC's mother and representative, Mrs LP, ("LP") to have until 4pm on 18 February 2025 to make representations about the GLD's request. This was because LP had emailed the Upper Tribunal on 07 February 2025, asking if she could make representations about GLD's request. She had not received any response from the Upper Tribunal Office.

24. LP made representations on 18 February 2025, which I read and took into account. On 18 February 2025, I made directions vacating the hearing of the appeal involving SC on 25 February 2025. I also directed for the two appeals to be heard together, and for the parties to provide dates of availability for a hearing in March, April, or May 2025.

25. I heard both appeals on 17 April 2025, in person, at the Upper Tribunal's London venue. SC was represented by her mother Mrs LP ("LP"). MJ was represented by Mr Martin Williams of the Child Poverty Action Group ("CPAG"). The SSWP was represented in both appeals by Counsel, Mr Richard Howell. MJ observed the hearing by video.

26. LB Bromley did not take part in the hearing, although I was informed late on during the hearing that an observer from the local authority was present at the back of the hearing room. In the circumstances and applying rules 2 and 38 of the UT Rules 2008, I was satisfied LB Bromley had been notified of the hearing or reasonable steps had been taken to notify it of the hearing, and that it was in the interests of justice to proceed. LB Bromley had not responded to the Upper Tribunal's grant of permission to appeal or to subsequent requests to provide a response. LB Bromley had not taken part in the hearing before the FTT either. The other parties were ready and willing to proceed on 17 April 2025, and the hearing of MJ's appeal was arranged on a relatively urgent basis due to her financial circumstances. It was in the interests of justice to proceed without LB Bromley participating in the hearing.

27. I was grateful to all the representatives for their clear, thoughtful, and constructive submissions. I particularly thank Mr Williams, who was not representing SC at the hearing. At my request, Mr Williams timed his response to Mr Howell's arguments about SC's position, to allow LP to hear what Mr Williams had to say before making her own submissions.

28. I also wish to recognise, and thank, SC and MJ, for taking part in the hearing to the full extent that they felt able to do so. They each experience difficult and enduring mental health conditions. MJ took part in the way that felt most comfortable to her. This was to observe the hearing remotely by video, and to have her camera switched off during the hearing. She was represented fully by Mr Williams and, having checked with him, I was satisfied that trying to address MJ directly would be unhelpful to her. I therefore acknowledged her participation via Mr Williams.

29. It was clear that SC found it stressful and distressing being present in the hearing room. She spoke at the end of the hearing, and what she had to say was clear and advocated for herself. I found her observations, and LP's representations about the impact of the SSWP's decision, to be powerful. It is important that when deciding complex issues of law, the Upper Tribunal is aware that what is decided also has a real impact on individual claimants.

30. I made some adjustments at the hearing to help SC to feel able to participate. These included where she wanted to sit in the hearing and whether she wanted to address me (or not). I encouraged SC to feel she could come and go during the hearing in whichever way worked effectively for her. She remained present throughout.

31. The appeals were listed before me on the basis that MJ's position was urgent because she had no access to any income-related benefit. However, at the hearing, Mr Williams confirmed MJ's circumstances had changed and she was no longer needing to claim income-related benefit. Mr Williams confirmed the appeal was no longer urgent.

32. I apologise to the parties that it has taken longer than I had hoped to produce these decisions. This is because it has taken time to consider all the arguments,

a substantial amount of legislation, and to explore the wide range of case law produced by the parties. More time was needed to undertake the comprehensive analysis the decisions required. I also apologise to the parties and their representatives for the overall length of the decisions and reasons.

Legal framework

33. Each appeal involves a range of legislative provisions including entitlement, claims, decision-making (including supersessions) and their effective dates. Setting out the detail of those provisions here would make these decisions more difficult to read and follow. The detailed legislative provisions relevant to these appeals are therefore set out in Annex A to this decision.

34. In summary, the relevant legislative framework applicable to the decisions about SC and MJ is:

    (a) The Social Security Contributions and Benefits Act 1992 ("the SSCB Act 1992") provides for the existence of, and entitlement to, HB. The detailed provisions about entitlement to that benefit are set out in the Housing Benefit Regulations 2006:

    (b) The Social Security Administration Act 1992 ("the Administration Act 1992") makes provision for claiming benefit (including UC and income-related benefits such as HB) and gives the Secretary of State power to make relevant regulations about these. It also provides for local authorities to be responsible for administering housing benefit;

    (c) The detailed provisions about claims for UC are set out in the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 ("the UC etc. (C&P) regulations 2013"). The detailed provisions about claims for HB are set out in the Housing Benefit Regulations 2006 ("the HB regulations 2006");

    (d) The Social Security Act 1998 ("the SS Act 1998") provides a legislative framework for decision-making about UC. This includes deciding claims, revising and superseding decisions and for decisions to be otherwise final (subject to appeal). Section 8 provides for claims to be decided. Section 9 provides for decisions to be revised. Section 10 provides for decisions to be superseded. Section 12 provides for appeals to a First-tier Tribunal;

    (e) The detailed provisions for revising and superseding UC decisions are set out in the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 ("the UC etc. (D&A) regulations 2013");

    (f) The Child Support, Pensions and Social Security Act 2000 ("the CSPSS Act 2000") provides a broadly similar legislative framework to the SS Act 1998 in terms of HB decisions, revisions, supersessions, finality and appeals;

(g) The detailed provisions for revising and superseding HB decisions are set out in the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 ("the HB & CTB (D&A) regulations 2001"). Some of the relevant provisions in the regulations interact with the Housing Benefit Regulations 2006 ("the HB regulations 2006"); and

(h) The Welfare Reform Act 2012 ("the WR Act 2012") provides for the existence of, and entitlement to UC. The detailed provisions about entitlement to UC are contained both in the WR Act 2012 and also in the Universal Credit Regulations 2013 ("the UC regulations 2013").

Summary of the legal issues and some terms used by the parties

35. SC and MJ each had a continuing award of benefit, meaning it would continue for as long as they continued to meet the entitlement conditions. Some of the parties described these as a "running decision", meaning a decision that has continuing effect because it carries on running after it is made.

36. The entitlement conditions for UC and HB each require a person to be in Great Britain. However, they also allow a person to be temporarily absent from Great Britain and to remain entitled to the benefit. A person must meet specific requirements about the length of their absence and / or the reasons for it.

37. DWP decided that SC's absence from Great Britain was not one where she continued to meet the conditions of entitlement for UC. LB Bromley made an equivalent decision for MJ in respect of her entitlement to HB.

38. A decision to award UC or HB is final unless and until it is changed validly by another type of decision. The decisions that can change an existing benefit award include called supersessions and revisions. The differences between supersessions and revisions include the dates from which they take effect, the reasons for the change being made and how (and when) they can be challenged. A benefit award can also be changed validly by appealing to a First-tier Tribunal.

39. A revision will (in most circumstances) change an earlier decision from the date that the earlier decision took effect. A supersession will change an earlier decision (but from a later date than a revision). A supersession may, but does not necessarily, change a decision from the date the supersession decision was made.

40. Where an existing benefit award is superseded or revised and comes to an end, depending on the effective date of the decision changing the award, the person may find they have been overpaid benefit, and that the public authority asks for it to be repaid.

41. Some of the earlier case law referred to by the parties refers to a "review ground" for looking at whether to change an entitlement decision through revision and that this type of decision would be a "review decision". This is a reference to the ground of review, which existed before the SS Act 1998 was brought into force.

The SS Act 1998 replaced the power of review when it introduced the powers to supersede decisions or to revise them.

42. Since around 2000, a number of decisions, initially by the Social Security and Child Support Commissioners, and later by the Upper Tribunal, have confirmed that where the SSWP discovers a benefit claimant did not meet the entitlement conditions for a fixed past period of time, the claimant's entitlement can be superseded and changed (removed) for the fixed past period of time. Some of the later case law, and DWP guidance, has described this type of decision has been described as a "closed period supersession". The phrase means the decision has superseded (changed) benefit entitlement, but for a closed period that contains a start point and an end point.

43. In a number of cases, the closed period supersession decision has been made at a time when the person meets the entitlement conditions once again. If so, the change in entitlement created by the closed period supersession is time-limited and does not prevent the person remaining entitled to their benefit on an ongoing basis.

44. This case law has confirmed it is possible to have a closed period supersession where the fixed period occurred in the past and, at the time that the SSWP makes the supersession decision changing a person's entitlement, the person meets all the entitlement conditions for the benefit. Mr Williams and Mr Howell described this as a "*retrospective closed period supersession*".

45. The common legal issue for SC and MJ relates to how closed period supersessions operate and whether one can operate into the future for a fixed period of time. This is relevant to SC and MJ because at the date of the decisions ending their benefit awards, they did not meet the entitlement conditions for their benefit due to the length of time they would be absent from Great Britain.

46. In the circumstances applicable to SC and to MJ, a closed period supersession decision would need to operate on a future looking basis, meaning the decision would provide for a period of non-entitlement stretching into the future, but with a definite end point, after which benefit entitlement resumes. During the hearing, Mr Williams and Mr Howell described this as a "*prospective closed period supersession*".

The parties' positions and the arguments put forward at the hearing

47. I set out below the parties' arguments and submissions as set out at the oral hearing. I have not set out in detail the contents of their written (skeleton) arguments. The legal arguments being put forward developed and evolved at the hearing. It is more relevant to address the arguments as put at the hearing, since these represent the final positions taken by the parties.

(a) CPAG's arguments on behalf of MJ and observations about SC

48. Mr Williams confirmed that his organisation (CPAG) and the SSWP agreed the structure of Chapter 2 of the SS Act 1998 and Schedule 7 to the CSPSS Act 2000 create separate decision-making structures for UC and HB producing materially identical results (meaning they act more or less in the same way). Mr Williams therefore focused his submissions on the provisions in Chapter 2 of the SS Act 1998 because there was more case law addressing it.

49. Mr Williams confirmed MJ accepted she was not entitled to HB from the Monday after she left the UK (20 March 2023), and no issue was being taken about the meaning of regulation 7(13D) of the HB regulations 2006.

50. Mr Williams submitted that section 8(1) of the SS Act 1998 places a duty on the SSWP to decide a claim for benefit. He argued the equivalent duty for HB is in regulation 89 of the HB Regulations 2006.

51. Mr Williams submitted that where a benefit claim is made and determined, there are two broad possible outcomes:

    (a) the entitlement conditions are not met. The claim is refused from the period when it is made down to the date of the decision refusing the claim. There will be no entitlement during that period; or

    (b) the public authority decision-maker (e.g., the SSWP) will make an award of benefit in respect of the claim and the award will be an open-ended indefinite award, typically starting with the date of claim and stretching forward into the future.

52. Mr Williams submitted that the indefinite nature of a UC award described in paragraph 51(b) above is confirmed by regulation 36(1) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 ("the UC etc. (C&P) Regulations 2013"). He argued the position is similar for HB. Mr Williams argued that given benefit weeks for HB had been revoked in 2004, periodic renewals were no longer required, indicating HB awards were now indefinite in nature.

53. Mr Williams submitted that for both situations described in paragraph 51 above, section 8(2)(a) of the SS Act 1998 provides that the benefit claim ceases to exist. Mr Williams submitted that section 8(2) of the SS Act 1998 was enacted to reverse the effect of the down to the hearing date rule applied by a Tribunal of Commissioners decision in ***R(S)2/98***. This rule treated a claim as continuing to exist once a decision had been made about it, including where the decision awarded benefit. Where a review decision changed an indefinite benefit award into a time limited one (by ending entitlement), it became a mixed decision, within which the benefit claim continued to run.

54. ***R(S)2/98*** decided that appeals against a decision refusing a benefit claim *and* appeals against a review decision ending a benefit award would each run up until the date of the tribunal hearing. Mr Williams submitted that section 8(2) of the SS Act 1998 was introduced to make clear that a claim dies at the point it is decided, and to overturn the decision in ***R(S)2/98*** (whose analysis relied on a claim continuing to exist after it had been determined).

55. Mr Williams argued that section 8(2) of the SS Act 1998:

    (a) ends the down to the date of hearing approach previously taken by tribunals in appeals against refusals of new benefit claims; and

    (b) prevents a decision refusing a benefit claim being challenged by a later supersession on the ground of changes in circumstances occurring after that decision is made.

56. Mr Williams agreed with the SSWP that where a claim is disallowed under section 8 of the SS Act 1998 (or the equivalent legislation for HB), it cannot be superseded for a later change of circumstances. He did not, however, agree with the SSWP that a closed period supersession decision could not itself be superseded.

57. Mr Williams confirmed he accepted the general principle that a supersession decision cannot itself be superseded for a change of circumstances. He argued, however, that this is not because of section 8(2). Instead, it is better stated as a principle established by (then) Mr Commissioner Mesher in paragraphs 12 and 13 of ***CIS/767/94***. Mr Commissioner Mesher decided that a decision disallowing benefit cannot be superseded where the change of circumstances being relied on is not relevant to the circumstances at the time when the supersession decision was made (because it arises afterwards).

58. Mr Williams submitted that given a decision awarding benefit is indefinite and runs into the future, if the SSWP supersedes that indefinite award, the supersession decision modifies and closes the period of the award. Mr Williams submitted that after the effective date of the supersession decision, a later change of circumstances cannot be relevant, because it covers a period which the supersession decision does not now deal with. Mr Williams submitted this is the key principle that generally prevents a supersession decision being capable of being superseded for a change of circumstances.

59. Mr Williams submitted that section 8(2) of the SS Act 1998 does not have any application to what the SSWP is doing in a closed period supersession decision, because section 8(2) applies to claims, not ongoing awards. He argued that none of the case law suggests otherwise.

60. Mr Williams argued a closed period supersession is also not caught by the principle in ***CIS/767/94***. This is because in a closed period supersession, the decision being superseded (decision A) is one that a claimant has an ongoing entitlement to benefit. The supersession decision (decision B) therefore does not

trespass on a period not governed by decision A, because decision A applies indefinitely until changed by a new decision.

61. Mr Williams' skeleton argument had argued that closed period supersessions involved a pair of supersession decisions (decision B and decision C), taken and given at the same time. Decision B would supersede the decision awarding benefit (decision A) and would bring benefit entitlement to an end. Decision C would supersede decision B and restore benefit entitlement. Because decisions B and C would be given at the same time, the claim would never be completely extinguished. This would avoid triggering the difficulty in section 8(2) of the SS Act 1998 that meant a claimant had to submit a new claim.

62. At the hearing, Mr Williams confirmed he was no longer pursuing the pair of supersessions argument because:

    (a) It had relied on section 8 and 8(2) of the SS Act 1998 being relevant to supersession decisions. However, section 8 was not relevant because it deals with decisions about claims, not decisions about decisions;

    (b) Although section 10 of the SS Act 1998 referred to an effective date (singular) rather than effective dates (plural), if needed, the singular could be taken to include the plural (section 6 of the Interpretation Act 1978);

    (c) In any event, section 10 of the SS Act 1998 referred to the date from which a supersession decision takes effect, and therefore only needs to have one date (the date on which the supersession starts);

    (d) He accepted Mr Howell's argument that the pair of supersession decisions argument caused difficulties for the effective dates used where UC awards are superseded for a change of circumstances. Mr Howell was correct that a pair of supersession decisions could inadvertently stretch and lengthen the period for which the SSWP decided a person was not entitled to past benefit they had been paid, inflating the overpayment created; and

    (e) Mr Williams had developed the pair of supersession decisions analysis partially to respond to the SSWP's argument that the outcome of a supersession decision must be related to the supersession ground used (***Wood v SSWP [2003]*** EWCA Civ 53, published as ***R(DLA)1/03***) ("***Wood***")). However, he no longer considered it was necessary to resort to the pair of supersession decisions analysis to answer this point.

63. Mr Williams argued his new analysis still meant the decision-maker was not trespassing on a period not governed by the benefit award being superseded. This was because the decision being superseded (decision A) was one making an indefinite award. Decision A therefore affected present and future entitlement, a period of time that would be affected by the supersession decision (decision B).

64. Mr Williams argued that the SSWP had incorrectly analysed the change of circumstances as SC or MJ leaving the UK for a period that would, from the outset, exceed the temporary absence provisions. Mr Williams submitted that for SC and for MJ, the relevant change of circumstances was that she was leaving Great Britain for a known fixed period. Mr Williams argued that if the relevant change of circumstances is analysed as leaving Great Britain for a known fixed period, the outcome of removing entitlement for that fixed period flows from the supersession ground. He argued this did not breach the principle in ***Wood*** that supersession grounds are outcome grounds, and the decision must flow from them.

65. Mr Williams said the cases of ***SSWP v NC [2023]*** UKUT124 (AAC) ("***NC***") and ***AK & DA v SSWP*** (UA-2024-000227-ULCW) did not undermine his arguments. He submitted Upper Tribunal Judge Rowland was not given submissions about closed period supersessions in ***NC***, and they did not need to be argued before him, given the facts of that particular case. In relation to ***AK & DA***, Mr Williams argued that the crucial difference between that case and MJ and SC, was that when AK contacted DWP, she did not know how long she and her partner would remain abroad. It would not have been possible to make a prospective closed period supersession in SK's appeal, because at the time the SSWP superseded AK's award, she did not know when AK planned to return to Great Britain.

66. Mr Williams argued the SSWP could not find a convincing alternative analysis to explain how closed period supersessions operate. This was why Mr Howell was forced to resort to arguing they exist through necessary implication. Mr Williams submitted that in terms of the SS Act 1998 and its equivalent for HB, the SSWP had not met the stringent test explained in paragraph 45 of ***R v Special Commissioner and another, ex parte Morgan Grenfell and Co [2002]*** UKHL 21. Lord Hobhouse of Woodborough explained a necessary implication is one which necessarily follows from the express provisions of the statute as construed in their context and is a matter of express language and logic not interpretation.

67. Mr Williams argued the SSWP was relying on the detailed (and restrictive) provisions for making an advance award of benefit, to dispute that prospective closed supersessions were possible (since there were no equivalent restrictions). He argued the comparison was misconceived; a claimant with a benefit award has an indefinite entitlement to that benefit and is in a fundamentally different position to a benefit claimant asserting entitlement that has not yet been established. He contrasted the restrictive circumstances in which an advance award can be made, compared with the unrestricted power to supersede a benefit award for an anticipated change of circumstances (see regulation 7(2)(a)(ii) of the HB & CTB (D&A) Regulations 2001 and regulation 23(1)(b) of the UC etc. (D&A) regulations 2013).

68. Mr Williams confirmed he was not arguing that prospective closed period supersessions are made under regulation 7(2)(a)(ii) (or the UC equivalent). However, the SSWP had relied on that regulation to try to undermine the analysis that prospective closed period supersessions are not available. Mr Williams argued the SSWP's reliance on that provision was flawed, and so was the

argument that such supersessions decisions would cause uncertainty. Mr Williams submitted that prospective closed period supersessions would only apply in a narrow category of cases, where the end date of the disallowance period was known (in advance) and a proper end date could be determined. Mr Williams argued that at the time the decision-makers had made their decisions about MJ and SC, their absence from Great Britain for a known fixed period.

69. Mr Williams argued his analysis also avoided the unfair outcomes that MJ and SC were worse off than a claimant who only notified their absence after they returned to Great Britain, or who notified the absence before they left but where a decision-maker failed to act on it until they returned to Great Britain. In MJ's case, it would have held open the opportunity to continue claiming HB that was no longer open to her when she returned to Great Britain, because any new claim would have to be for UC. Mr Williams argued the scope for a decision-maker to change the outcome by failing to make a timely decision was the very definition of arbitrary and capricious as described by the Court of Appeal in ***SB v SSWP [2007]*** EWCA Civ 89 (***R(DLA)2/07***).

70. Mr Williams submitted that if the Upper Tribunal decided against his argument that a prospective closed period supersession decision could be made, he had a secondary argument. This was that it was an abuse of power for LB Bromley and the SSWP to make the supersession decisions ending MJ and SC's benefit awards. The FTTs had not made clear findings of fact but each claimant's evidence was that they discussed with the decision-maker or DWP and were told that they would face a short period of not being entitled to the benefit followed by becoming re-entitled to it.

71. Mr Williams submitted that the ability to supersede is a power, not a duty, and the SSWP could decide not to exercise it. In ***CIS/6249/1999***, Mr Commissioner Mesher had indicated it was open to DWP not to supersede on the basis that it would be an abuse of power to do so. Mr Williams confirmed, however, that this was his secondary argument, and he placed greater reliance on his submissions that there could, and should, be a prospective closed period supersession.

(b) The SSWP's arguments in relation to both appeals

72. Mr Howell confirmed CPAG and the SSWP were largely agreed about the relevant statutory framework. He submitted, however, that section 134 of the Administration Act 1992, not regulation 89 of the HB regulations 2006, obliges a local authority to decide HB claims.

73. Mr Howell submitted that the Court of Appeal's decision in ***Wood*** explains what a change of circumstances means in the context of the new decision-making regime provided by the SS Act 1998. In ***Wood***, the majority of the Court of Appeal agreed that: (a) supersession involves altering and replacing an existing decision, (b) the ground for supersession specified in the regulations must be satisfied before the power can be exercised and (c) the decision can only be altered in a way that follows from what has been established.

74. Mr Howell confirmed the SSWP agreed the wording of section 8(2) of the SS Act 1998 means it does not apply to supersession decisions. He argued that section 8(2) is relevant because it confirms that once a claim is decided, the claim itself is extinguished. Read together with section 1 of the Administration Act 1992, a person whose claim is refused must make a new benefit claim.

75. Mr Howell agreed that UC and HB awards run indefinitely, until they are validly changed. He did not agree this applied to all social security benefits. See, for example, personal independence payment, which is generally made as a time limited award.

76. Mr Howell argued that while a decision to award UC or HB is a running decision, a disallowance decision is not. After it is made, a claimant's circumstances might change, in which case they can make a new claim. Mr Howell explained there are exceptions to this principle, but argued they are limited. One exception applied for industrial injuries disablement benefit ("IIDB"). Mr Howell also referred to the regulation-making power in section 5(1)(f) of the Administration Act 1992 allowing a disallowance of a claim to be treated as operating for a longer period. Mr Howell argued that if disallowance decisions generally operated indefinitely, it would not be necessary to have a regulation-making power to provide for this to happen.

77. Mr Howell confirmed the SSWP agreed Mr Commissioner Mesher's decision in ***CIS/767/94*** is relevant and important to making closed period supersession decisions. Although the decision was made under the pre-1998 legislation, Mr Howell confirmed the SSWP considers it reflects the correct position under the SS Act 1998 as well.

78. Mr Howell explained the SSWP's position reflects paragraph 16 of ***R(I) 5/02***; namely that a decision to award benefit is generally a running decision, but a decision refusing a claim is not. This principle extends to where a decision awarding benefit is later superseded and disallowed. Mr Howell argued it would create unworkable consequences to treat a supersession decision disallowing an award as a running decision. It would also undermine the requirement in section 1 of the Administration Act 1992 to make a claim.

79. A claim can be treated as having been made but this requires regulations to be made under section 1(2) of the Administration Act 1992. This was the mechanism used to make regulation 32A of the UC etc. (C&P) regulations 2013. However, this applied to a limited group of UC claimants (whose income is too high for UC entitlement in a given assessment period). Mr Howell argued that unless there are specific regulations allowing a benefit claim to be treated as having been made, the SSWP cannot dispense with the requirement under section 1 of the Administration Act 1992 that a claimant must make a benefit claim to be entitled to it.

80. Mr Howell relied on the decisions of ***CIS/5170/1999*** and ***CSIS/745/2002*** to establish the principles underpinning, and supporting, closed period supersessions. In ***CSIS/745/02***, Mrs Commissioner Parker decided that where it

was later decided that a claimant was not entitled to benefit during a period, but had been paid it under an award, entitlement must be considered for each week within the period as if a claim for benefit still existed. Mrs Commissioner Parker stated that had the non-entitlement been identified earlier, the SSWP would have made a disallowance decision, and the claimant would have had to make a new claim (or claims) for benefit. Mr Howell argued this undermined Mr Williams' argument that there is no difference in principle between being able to make a retrospective closed period supersession decision and a prospective closed period supersession.

81. Mr Howell argued that at the conceptual heart of a closed period supersession decision, is a difference between making a closed period supersession where a past period of non-entitlement has been identified and the mechanism for changing a benefit award where, at the time the decision is made, the person is not entitled to benefit.

82. Mr Howell argued that applying ***Wood***, Mr Williams' argument could not succeed that the relevant change of circumstances was not meeting the entitlement conditions for a fixed period. A relevant change of circumstances identifies what is different to the earlier set of circumstances that gave the person benefit entitlement. Mr Howell argued the fact a period of non-entitlement is (or is likely to be) for a fixed period, is not a relevant change of circumstances. Once a person receiving benefit is absent from Great Britain for longer than permitted, it does not matter how long their absence will be after that time, because it is not relevant to the decision being superseded.

83. Mr Howell also argued that because UC and HB awards are running decisions applying for indefinite periods, Mr Williams' approach could lead to a series of complex and unworkable decisions, where a claimant moved in and out of meeting entitlement conditions, requiring a range of decisions to be made. Mr Howell argued the more straightforward and logical approach would be for a decision-maker to consider the position at the date they were making their decision. If the claimant did not meet the conditions of entitlement at that time, the decision-maker could, and should, make a supersession decision ending the award. In these circumstances, a person could reclaim benefit when they next met the entitlement conditions.

84. Mr Howell submitted that the mechanism for a closed period supersession cannot readily be found in express legislative provisions. He submitted that once Mr Williams' arguments were rejected (as they should be), the only possible explanation is that a closed period supersession is produced by necessary implication. Mr Howell acknowledged the test sets a high bar. He submitted this is for a very good reason, otherwise a tribunal or court is drawn away from its proper function and into legislating, which is reserved to Parliament and Ministers.

85. Mr Howell argued the two factors driving necessary implication as the reason for having closed period supersessions are:

(a) the duty on the decision-maker to consider all the circumstances down to the date of their decision (see section 12(8)(b) of the SS Act 1998); and

(b) the duty of the tribunal to consider the unreasonable consequences of not allowing for a closed period supersession. The unreasonable consequences are that all the benefit paid after the period of non-entitlement would otherwise be treated as overpaid. It was this result that Mr Commissioner Mesher said: "*cannot possibly be accepted*" in ***CIB/5170/1999***.

86. Mr Howell argued the basis for the necessary implication is that the non-entitlement is for a temporary period in the past. A closed period supersession avoids generating artificial overpayments that would be caused by the past period of non-entitlement to the benefit affecting the subsequent period when the person met the entitlement conditions again. It escapes the difficulty of requiring a claimant to make a fresh claim.

87. Mr Howell argued that where an existing benefit award is looked at again, and a claimant does not meet the entitlement conditions at that time, there is no reason not to supersede the entitlement decision. Supersession would give effect to the statutory requirement of considering all the circumstances down to the date of the SSWP's decision. Recognising that the person no longer meets the conditions of entitlement does not create any artificial overpayment. A claimant whose benefit ends in this way, would then make a fresh benefit claim once they satisfy the conditions of entitlement again.

88. Mr Howell submitted that in most of these cases, a claimant who reclaims benefit promptly and reasonably, will be able to restore their benefit entitlement. He acknowledged that for MJ, this was not possible as a result of living in an area that had become a UC area during the period of her HB award.

89. Mr Howell accepted that disallowing SC's UC award had "restarted the clock" in assessing whether she had limited capability for work. This was relevant to the effective date of awarding SC any LCWRA element. Mr Howell acknowledged that in a situation like SC's the clock might start again, potentially affecting when the LCWRA element could be awarded. Mr Howell submitted Parliament made this choice when legislating regulation 28 of the UC regulations 2013 and regulation 35(9) of the UC etc. (D&A) regulations 2013. These regulations collectively create the effective date for supersession decisions that a person has limited capability for work / work-related activity.

90. Mr Howell argued that a claimant who does not meet the entitlement conditions at the date of the supersession decision is in an objectively different position to a claimant who is entitled to benefit at the decision date but has a past period of time during which they were not entitled. He submitted the two situations are plainly distinguishable.

91. Mr Howell turned to SC's argument that closed period supersession decisions may have arbitrary effects on people reporting changes of circumstances and discourage timely and honest reporting of them. SC had argued that claimants

who don't report going abroad until after they have returned are, effectively, rewarded for failing to report relevant changes. Mr Howell submitted this could be an argument not to have any form of closed period supersession decision at all. He also pointed to the consequences claimants face where they do not report relevant changes of circumstances, including facing recoverable overpayments, civil penalties, and even potential criminal prosecution.

92. Mr Howell acknowledged that unacceptable delay by a decision-maker in making a supersession decision may also operate to the advantage of some claimants compared with others where a timely decision is made. He submitted this would not, however, be the system operating in a capricious or arbitrary way, but a consequence of a public authority failing in its duty to make a decision.

93. Mr Howell argued that using the power to supersede an award for anticipated changes of circumstances would also not provide the outcome Mr Williams wanted to achieve. Mr Howell argued the power is designed to be used for anticipated changes that are straightforward, knowable, and largely administrative.

94. Mr Howell invited me to apply the decisions in ***NC***, ***CIS/1305/2012*** and in ***AK & DA***. Mr Howell drew on paragraphs 24 to 26 of ***NC***. He argued the decision confirmed that had NC been in prison when the SSWP made her supersession decision, he would have had to make a fresh claim, but that once NC was released from prison, the circumstances giving rise to his non-entitlement to ESA had ended, and a closed period supersession should be applied.

95. Mr Howell submitted that ***NC*** and ***AK & DA*** are very recent decisions of the Upper Tribunal and, while the judges deciding them had not heard as full and detailed arguments as in the appeals regarding SC and MJ, they should be followed applying principles of comity. The word "comity" means the Upper Tribunal gives respect to decisions of equal status to its own decisions. It applies because decisions by a single Upper Tribunal Judge generally all carry the same weight as each other. Mr Howell argued that ***NC*** and ***AK & DA*** can be applied to conclude that a closed period supersession decision can only apply retrospectively, and, where a person does not meet the benefit entitlement conditions at the date their entitlement is superseded, they must make a new claim for benefit.

96. Addressing Mr Williams' secondary argument about abuse of power, Mr Howell submitted that supersession is not a discretion at large. It must be exercised applying the principle that claimants receive their correct benefit entitlement, neither more, nor less. He argued that subject to the detailed and restrictive advance award provisions, the SSWP has no statutory power to award benefit where the entitlement conditions are not met. Mr Howell argued the SSWP is administering scarce public funds, and it would be inappropriate to exercise her discretion and decide not to supersede an award, where this meant continuing to pay benefit to a person no longer entitled to receive it

97. Mr Howell submitted that in ***R(I)1/07***, Mrs Commissioner Brown rejected the argument that it was a potential abuse of power to exercise the discretion to supersede. She considered the abuse of power argument previously set out by Mr Commissioner Mesher in ***CIS/6249/1999***. Mrs Commissioner Brown was not, however, persuaded it meant DWP should not have used its power to supersede the award in the specific appeal she was dealing with. Mr Howell argued that ***R(I)1/07***, as a reported decision, should be followed.

98. Mrs Commissioner Brown explained that erroneous advice by DWP does not mean a benefit award cannot be superseded. Nor does it give a claimant a benefit entitlement they would otherwise not have. Where DWP has made incorrect representations and a party has relied on them, the person can claim payments for maladministration or complain to the Independent Case Examiner. Mr Howell argued this position was also supported by the decision in ***PS v SSWP [2016]*** UKUT 437 (AAC) that a non-binding promise cannot prevent revision or supersession decisions being made.

99. Mr Howell submitted that for this reason, the issue of what DWP may or may not have told SC about her benefit entitlement was not relevant to what the FTT needed to decide. It would not change the statutory position, no matter how strongly SC felt about what she had been told.

100. In allowing SC's appeal, FTT1 had decided that for a period of time while absent from Great Britain, SC had a nil award of UC. Mr Howell argued:

    (a) A nil award of UC could not be provided by making a prospective closed period supersession decision, for the reasons he had already set out; and

    (b) If, on the other hand, FTT1 meant the SSWP should have decided SC remained entitled to UC but it was not payable, this was a separate error of law.

101. Mr Howell submitted that applying paragraphs 3 and 36 of the decision in ***Ipswich BC v (1) TD and (2) SSWP [2024]*** UKUT 117 (AAC), there cannot be a nil award of UC. He argued that in UC, in particular, there is no basis for making nil awards.

102. In this context, Mr Howell submitted that the heading of regulation 32A of the UC regulations 2014, which states: "*Reclaims of universal credit after nil award due to earnings*" was unhelpful in describing of what regulation 32A does and also the position generally. This is because the SSWP's position is that there cannot be a nil award of UC. Mr Howell argued that the clearer position is set out in 32A(1)(b), which refers to "*entitlement to an award of universal credit ceases*".

103. Mr Howell acknowledged there is a power to suspend payment of benefit but argued this could not be used in situations like those SC and MJ faced. The power to suspend is used where there are questions whether a benefit award should be superseded but insufficient information to decide this. Mr Howell

argued this would not apply where (as for SC and MJ), it was clear a claimant no longer met the entitlement conditions.

104. Mr Howell argued that delaying making entitlement decisions to allow claimants to benefit from closed period supersessions, conflicted with the duty to make decisions without delay. He pointed out there is no discretion for the SSWP to simply delay (or defer) making decisions. Mr Howell submitted that where there are many claims to decide and competing demands on its resources, a public authority such as the SSWP or a local authority, should be entitled to balance its case load and decide where to focus its capacity. This means giving a broad margin to decision-makers about deciding when to take decisions (see paragraph 24 of ***R(DLA) 4/05***).

105. SC had argued the SSWP should not have taken the decision to supersede her entitlement to UC until she had exceeded the maximum period of temporary absence open to her. Mr Howell submitted this was not possible on the wording in regulation 11 of the UC regulations 2013. The requirements in regulation 11(1)(b)(i) were cumulative, meaning SC's absence had to *both* be expected not to exceed one month *and also* not to exceed it. As soon SC's absence was expected to exceed one month, she no longer met that requirement. Regulation 11(1)(b)(i) did not allow the SSWP to disregard her temporary absence for any period of time.

(c) LP's arguments in relation to the appeal against SC

106. LP explained there were some matters that SC asked her to raise on her behalf. These included that SC's work coach had told SC that there would be no problem with her going abroad and her UC claim would not be closed. LP explained that SC's UC journal had been wiped after her claim was closed and she could not obtain copies of what the work coach had told her.

107. LP highlighted that there are articles in the media where DWP had told the press that if a person went on holiday, their UC claim would not be closed, even if they went abroad for more than a month. LP also referred to the document in the House of Commons Library stating this. LP explained what when Mr Howell had said that the advice of a DWP employee is not a reason not to supersede an award, SC had said: "*Who do I ask then?*".

108. LP explained SC was due to go on holiday in 2020, cancelled because of COVID-19. Her holiday had been discussed many times with DWP. The media, and SC's UC work coach (and their supervisor) and all the other people SC and LP had spoken to, told them that SC would be paid for four weeks of her absence but probably not the other three. LP said she does not know where DWP expects claimants to get their information from.

109. LP explained SC had declared to DWP she had limited capability for work in September 2021. DWP's guidelines were that the limited capability for work assessment would be carried out within 3 months, but it had still not been done by the date SC went on holiday in May 2022. Had SC been told that being abroad

for seven weeks would mean her claim ended, she would not have planned a holiday abroad for seven weeks, or she could have flown home early. LP argued that SC's mental health has been severely impacted by DWP's decision making, as well as being financially impacted.

110. LP argued that DWP is required to make reasonable adjustments for people with disabilities, and closing their benefit claims is not making reasonable adjustments. When SC came back from Canada, she had to make a completely new claim, wait for her money, undergo a habitual residence test with her passport and documents to prove she had the right to reside in Great Britain and claim benefit. SC had lived in the UK since birth and had only gone abroad for 7 weeks. LP argued that DWP's treatment of a young woman who had developed PTSD because she was at the Manchester Arena bombing, was appalling.

111. LP explained that when SC first claimed UC, she was on fit notes from her GP. After she claimed UC again, SC's LCWRA element was only backdated to July 2022 (linked to the second claim). LP submitted she believes in principles, and it may not relate to the law, but that how DWP treated SC was wrong.

112. After LP made her submissions, SC also spoke. I am grateful that SC felt in a position to speak. I have no doubt it felt stressful to do so. It was very helpful to hear what SC wanted to say. She told me that she does not know all the laws but if she had not been living with her mother at the time, she would have been homeless when DWP closed her claim. LP had to cover all SC's bills, and she ended up so badly affected, she was using a good bank. SC told me she would never have gone away for 7 weeks if she had known what would happen. In addition, DWP initially backdated the closure to April 2022, so she had no benefit for 3 or 4 months.

Legal analysis

113. The Upper Tribunal is in the unusual position of being invited to explain the legal basis for a principle or approach that has been applied since around 2000, largely without challenge by either SSWP / local authority decision-makers or by benefit claimants. The approach in question straddles existing decision-making legislation (e.g., the SS Act 1998 and Schedule 7 to the CSPSS Act 2000) and historic decision-making legislation (the Administration Act 1992).

114. The mechanism for making closed period supersession decisions has not previously been considered in detail. This is probably because they operate in a (mostly) benign way. They allow a benefit claimant whose entitlement has been interrupted by a temporary, fixed period of non-entitlement, to remain entitled overall to benefit without having to make a fresh claim. They prevent artificial inflation of overpayments of benefit. I use the word "artificial" to mean an overpayment that carries on increasing even when the person starts to satisfy the entitlement conditions again. A closed period supersession means the overpayment is restricted to the specific period during which the claimant did not meet the entitlement conditions. It provides both continuity and accuracy of benefit entitlement.

115. The ability to make a closed period supersession decision has been identified in guidance issued by the SSWP to its own decision makers (Decision Makers Guidance – "DMG") and also to local authorities (Housing Benefit Guidance Manual and A Circulars). The SSWP also published guidance about closed period supersession decisions for UC awards, called Going abroad. That guidance was deposited in the House of Commons Library in 2022. SC referred the FTT to it in her appeal.

116. The reason closed period supersession decisions have become an issue in the present appeals is because given the circumstances for the claimants, it has either not been possible to make a fresh claim for the benefit that ended (for MJ) or there have been adverse consequences caused by a break in the continuity of the benefit award (for SC). Both claimants have therefore argued that a closed period supersession decision should have been made in their circumstances to maintain the benefit award they already have.

(a) Case law dealing with closed period supersessions decided before the Social Security Act 1998

117. In ***CIB/5759/1999***, a claimant was awarded invalidity benefit in 1990 on the basis he was incapable of work. In 1995, his award was transferred to become long-term incapacity benefit. In 1998, it was discovered the claimant he had been working, which he admitted in a taped interview in August 1998. An adjudication officer reviewed the decision in November 1998 and decided the claimant had been working since April 1995 and was not entitled to incapacity benefit after that point. The adjudication officer also decided the claimant had been overpaid benefit from 1995 to 1998 and this was recoverable from him. When the appeal went before a tribunal, it confirmed the SSWP's decision and refused the appeal.

118. One of the appeal grounds to the Social Security and Child Support Commissioners was the tribunal should have considered the effect of a regulation transferring the claimant's invalidity benefit award over to incapacity benefit. The transferring regulation effectively preserved treating the person as incapable of work under the earlier, more generous, exempt work regime applicable for invalidity benefit.

119. The adjudication officer treated the overpayments of both invalidity benefit and incapacity benefit as caused by the claimant failing to disclose a material fact relating to his entitlement to invalidity benefit (his earlier benefit). Mr Commissioner Bano decided that, as a matter of causation, the adjudication officer was entitled to treat both overpayments as having been made in consequence of the claimant failing to disclose a material fact (his work) while receiving the earlier benefit of invalidity benefit.

120. Mr Commissioner Bano decided, however, that when the adjudication officer made his revised decision about the claimant's benefit entitlement up until the date his award was reviewed, this should have taken into account any matter that would have given him entitlement to incapacity benefit during the period before the review decision.

121. Mr Commissioner Bano acknowledged the claimant had not brought a claim for incapacity benefit and was being paid it on the basis he had been entitled to invalidity benefit before transferring across to incapacity benefit. However, in explaining the requirement to look at whether the claimant had *any* underlying entitlement to incapacity benefit during the period in question, Mr Commissioner Bano stated:

> "…*any other approach would mean the claimant would be liable to repay all the incapacity benefit which he received even if he became entitled to that benefit after the transition date, for example by giving up work permanently."* (paragraph 9 of decision)

122. In ***CIB/5170/1999***, a claimant had been receiving invalidity benefit in 1976, which later became an award of long-term incapacity benefit in April 1995. The claimant started working in 1994, before he was transferred to incapacity benefit. The SSWP became aware he was working and in November 1996, appeared to make some form of review decision about his ongoing entitlement to incapacity benefit. In May 1997, the SSWP decided the claimant was not entitled to a past period of benefit and had been overpaid a recoverable overpayment.

123. Mr Commissioner Mesher decided that when giving a revised decision on review where benefit had actually been paid, the SSWP could not simply say the claimant had no entitlement to any incapacity benefit from April 1995 onwards without making an incapacity benefit claim. Mr Commissioner Mesher stated:

> "*The principle that on a review the question of entitlement must be considered in relation to each week within the period in issue must be applied in such a case as if a claim for incapacity benefit was in being. Take the following example. A recipient of invalidity benefit starts work in March 1995 and does not tell the Department. He goes on receiving invalidity benefit and moves onto incapacity benefit. He stops work completely in May 1995. This is all discovered in 1998, when the person has passed several all work tests. The Secretary of State's submission would mean that the revised decision would be that there was no entitlement to incapacity benefit at all and that all the incapacity benefit paid down to 1998 would be recoverable as resulting from the failure to disclose. Such a result cannot possibly be accepted. There should in my example be no revision in relation to the period after the person stopped work."* (paragraph 15 of decision)

124. Mr Commissioner Mesher emphasised the review decision had affected retrospectively the period for which incapacity benefit had actually been paid on the authority of the award of invalidity benefit. He observed his approach was similar to Mr Commissioner Bano's in ***CIB/5759/1999*** (decided around three weeks earlier) and stated he agreed with Mr Commissioner Bano's analysis.

125. In ***CIB/4090/1999***, Mr Commissioner Levenson considered an appeal where a claimant had been entitled to incapacity benefit, but in relation to some of the period covered by the award, the SSWP had (later) identified that he was working. Under regulation 16 of the Social Security (Incapacity for Work)

(General) Regulations 1995, a person who will be treated as capable of work on each day he works, subject to certain exceptions (for example, exempt work).

126. Mr Commissioner Levenson decided the adjudication officer had made an error in not putting a closing date on the effect of the decision, made after the claimant had finished doing the relevant work. He explained that regulation 16(1) can only operate in respect of periods during which a claimant is doing work to which regulation 16(1) applies and which does not come within one of the exceptions. Mr Commissioner Levenson decided that unless and until entitlement to benefit was reviewed on the other grounds, a claimant continued to be entitled to incapacity benefit during any periods when regulation 16(1) did not operate.

127. In ***CIS/2595/2003***, a claimant appealed against a decision that he had to repay income support because he had failed to disclose to DWP that he was working. The claimant denied working. The tribunal dealing with his appeal decided the claimant had worked and that there were valid grounds to revoke his entitlement under regulation 16 of the Social Security (Incapacity for Work) (General) Regulations 1995. It decided a recoverable overpayment had also arisen. In its Statement of Reasons, the tribunal judge expressed uncertainty about whether regulation 16 only applied for the weeks when work was done or whether it ended a claim for benefit on the basis of incapacity.

128. Mr Commissioner Bano decided that a valid review and revision decision would have involved an overpayment recoverability decision being limited to the periods when the claimant was shown to be working. Mr Commissioner Bano stated the position was correctly set out by the (SSWP's) representative in ***CSIS/745/2002***, and a similar position had been taken in ***CIB/5759/1999***, ***CIB/5170/1999*** and ***CIB/4090/1999***.

(b) Case law about closed period supersessions made under the Social Security Act 1998

129. In ***CSIS/745/02***, the SSWP revised an earlier disallowance of income support and decided a claimant was not entitled to it (from presumably an even earlier date). The SSWP decided the claimant was not entitled to income support because she was in paid employment, which she failed to disclose, and as a result there was an overpayment, which was recoverable from her.

130. The claimant appealed on the basis she was off work sick for a period of time during the period she was paid income support. The SSWP submitted to the tribunal that an overpayment still arose because if the claimant had told DWP she was working, her claim would have been closed down and she would have had to make a new income support claim for any period of sickness she wanted to claim. The tribunal confirmed the SSWP's decision.

131. On appeal to the Social Security Commissioners, the SSWP conceded that both it, and the tribunal, had adopted the wrong approach. The SSWP's representative relied on ***CIB/5759/1999*** and ***CIB/5170/1999*** and submitted:

> "*If, during the currency of an award, an overpayment arises because a claimant ceases to satisfy the conditions of entitlement, but later, and still within the currency of the award, he satisfies the conditions of entitlement, the disentitlement on revision or supersession is not indefinite because he has not made a new claim at the relevant time, but is instead limited to the period where the conditions of entitlement are not satisfied, unless some other ground for disentitlement arises*."

132. Mrs Commissioner Parker accepted this submission. She decided that if it is decided retrospectively that a claimant is not entitled to benefit during a period when it was actually paid under the authority of an award, entitlement must still be considered in relation to each week within the period in issue, as if the award still existed. She explained that even though the income support claim would have been closed down earlier if the true facts had been known (and new claims required after that point), when calculating the overpayment amount, DWP must still take account of any matter that would have entitled the claimant to IS during the period before the revision decision.

133. Mrs Commissioner Parker's decision was made under the SS Act 1998. It did not address in specific terms, the fact that the cases the SSWP had relied on were made under the decision-making legislation in place before the SS Act 1998. Mrs Commissioner Parker's decision was made before Mr Commissioner Bano's decision in ***CIS/2595/2003***, even though Mr Commissioner Bano made his decision under the legislation existing before the SS Act 1998.

134. Around 10 years later, in ***CIS/1305/2012***, Upper Tribunal Judge Wikeley dealt with an appeal where a claimant had been receiving IS and was then taken into, and remanded in, police custody. The claimant was granted bail by the court. A few days later a DWP decision-maker decided the claimant no longer met the entitlement conditions for IS because when he was taken into police custody, he had become a "prisoner". A First-tier Tribunal upheld DWP's decision. Judge Wikeley decided it was wrong to do so because:

> "…*by the time the DWP decided the claimant was no longer a prisoner, the appropriate (and proportionate) decision would have been to apply a 'closed period supersession' withdrawing entitlement to income support only for the short and defined period in custody*" (paragraph 3 of decision).

135. In ***CIS/1305/2012***, the appellant's representative argued that the case should have been dealt with by way of a "closed period supersession" as explained by Mr Commissioner Bano in ***CIS/2595/2003*** (see above at paragraphs 127 to 128). Judge Wikeley explained he agreed with Mr Commissioner Bano's analysis. He noted Mr Commissioner Bano's decision had been taken under the decision-making regime existing before the SS Act 1998. Judge Wikeley explained that decision ***CSIS/745/2002*** was, however, decided under the regime introduced in the SS Act 1998. Judge Wikeley then observed, at paragraph 14 of his decision:

> "*That approach makes obvious good sense. As the Department's own guidance notes (Decision Makers Guide, Vol 1, ch 04, paragraph 04117):*

> *"A decision awarding benefit may be superseded for a fixed period to take account of a change of circumstances which has already come to an end. The supersession only replaces the original decision for that period."*

136. Judge Wikeley concluded that when a claimant notified a change of circumstances that had already ended by the time the (supersession) decision was taken, the correct way to deal with any period of non-entitlement was by a closed period supersession decision. He decided there was no requirement for a new claim where there was a fixed period of non-entitlement. Judge Wikeley decided the award should be superseded for that limited fixed period and the supersession only replaced the original decision to that extent.

137. Judge Wikeley's decision was not published on the relevant Upper Tribunal website (possibly because it referred to established case law and DWP's published guidance). As a result, it was not known about publicly although, as a party to that appeal, the SSWP had a copy of the decision.

138. In ***SSWP v NC (ESA) [2023]*** UKUT 124 ("***NC***"), Upper Tribunal Judge Rowland dealt with the situation where the SSWP had decided a benefit claimant was not entitled to employment and support allowance ("ESA") for a past period because he had been in prison. At the time of the SSWP's decision, NC had been released from custody. Upper Tribunal Judge Rowland explained the SSWP could (and arguably should) have made her decision about continued entitlement sooner, namely once it was realised that NC had been sentenced to a period of imprisonment lasting longer than six weeks.

139. Judge Rowland stated that because NC had been released by the time the decision was made, it was not correct to say he had to make a new claim to have his current entitlement determined. Judge Rowland decided that NC had an ongoing benefit award, even though the SSWP had decided to suspend payment of it. Judge Rowland stated, at paragraph 27:

> *"A decision that the award should be superseded because the claimant had not been entitled to contributory employment and support allowance during a period that had ended before the supersession decision was made cannot justify a decision that he had no entitlement during a later period or at the date of the decision merely because he had not made a new claim. A person who has a current award of a benefit cannot be expected to, and is neither obliged nor entitled to, make a new claim for the same benefit, even if payments have been suspended. A supersession decision must therefore determine entitlement up to the date of the decision itself without a new claim having been made."*

140. Judge Rowland did not refer to the earlier decisions by Commissioners Mesher, Bano and Parker, but the wording of his decision at paragraph 27 makes clear that he likely had in mind the principle they had established. Judge Rowland also did not refer to Judge Wikeley's decision in ***CIS/1305/2012***, but this is unsurprising as it had not been published.

141. In ***AK & DA v SSWP*** (UA-2024-000227-ULCW), another unpublished decision by the Upper Tribunal, Upper Tribunal Judge Brewer considered the SSWP's published policy called "Going abroad", which dealt with temporary absences abroad. This policy guidance states, at the relevant section:

> "**Temporary absences abroad**
>
> It is a general requirement that a claimant must be in Great Britain (GB) to be entitled to Universal Credit but there are circumstances when a person is still entitled to Universal Credit whilst temporarily being absent from GB.
>
> Where a person does not inform Universal Credit of their temporary absence abroad until after the event, they will not be entitled for the period of absence. (Whole assessment periods only).
>
> When Universal Credit are notified after the event and this does not fall under circumstances when 1 month can be extended, the assessment periods in question will be reduced to nil. This prevents the claimant terminating their claim and having to make a new one.
>
> For payment purposes, legislation allows a claimant to go abroad for any reason for up to 1 month. If the claimant is entitled to Universal Credit immediately before they go abroad and their absence will not exceed 1 month, they can be treated as being in GB. However, they must still satisfy their work-related requirements and meet their Claimant Commitment."

142. Judge Brewer decided that the SSWP's Going abroad policy, when correctly interpreted, was limited to retrospective closed supersession cases. She decided the language and guidance within the policy reflected the decision-making steps required where there was a closed supersession decision, which Judge Brewer observed reflected the decision in ***CIS/1305/2012*** (Judge Wikeley's decision).

(c) Published DWP guidance about the application of closed period supersession decisions

143. For completeness, although it is simply setting out the SSWP's position and is not binding in any way, the current version of the SSWP's Decision Making Guidance ("DMG") about this issue (Chapter 04) describes a supersession for a closed period at paragraph 04117. This states:

> "A decision awarding benefit may be superseded for a fixed period to take account of a change in circumstances which has already come to an end. The supersession only replaces the original decision for that period."

144. For HB, the relevant guidance includes HB/CTB Circular A6/2009 and Part C of the Housing Benefit and Council Tax Guidance (13 September 2013). The parties referred me to the first piece of guidance, but not the second (which I identified myself when making these decisions). The gov.uk website explains that

the SSWP updates the Housing Benefit guidance manual frequently through Housing Benefit and Council Tax benefit 'A circulars'.

145. The substance of Part C6 of the Housing Benefit and Council Tax Guidance is dated July 2009. It states, at 6.662, citing ***CIS/2595/2003*** as authority:

> "When a person notifies a change of circumstances which has already ended then the correct way of dealing with any period of non-entitlement is by way of a closed period supersession. There is no requirement for a new claim when there is a fixed period of non-entitlement. The award may be superseded for that period and the supersession only replaces the original decision to that extent."

146. Paragraph 6.662 of the Guidance provides the earliest reference I have found to the phrase "closed period supersession", which Judge Wikeley used subsequently in ***CIS/1305/2012***.

147. At paragraph 6.663, the Housing Benefit Guidance states:

> "Closed period supersession should not be used when an advance notification of a change can be actioned before the change takes place because the change notified in advance may not take place. If the notification cannot be actioned before the anticipated date of change then the period may be dealt with by way of a closed period supersession."

(d) Comparing the different legislation addressed by the case law

(i) The legislation before the Social Security Act 1998

148. Before the relevant provisions of the SS Act 1998 were brought into force, the power allowing the SSWP to consider whether to change an existing decision was review.

149. Mr Commissioner Jacobs (as he then was) explained in paragraph 19 of ***CIS/3655/2007*** that decisions about benefit entitlement may have to be changed from time to time, for example, to correct mistakes or to update the decision to take account of changes of circumstances. The concept used for this purpose from 1948 onwards was review and only allowed on specified grounds. It provided a framework for decision-making. It also provided protection for claimants against decisions (including those awarding benefit) being changed arbitrarily.

150. As Mr Commissioner Jacobs also explained in paragraph 20 of his decision, the conceptual essence of review remained relatively straightforward until scrutinised by the Social Security Commissioners in the mid-late 1980s. The Commissioners undertook a more sophisticated analysis, distinguishing between review (a process of considering whether to change a decision) and revision (the change, if any were made, to a decision).

151. At the time when the decisions were made described at paragraphs 117 to 128 above, the power to review decisions was set out in Part II of the Social Security Administration Act 1992 ("the Administration Act 1992"). It was structured into a general power, covered by sections 25 to 29, with powers at sections 30 to 35 for the specific benefits of attendance allowance, disability living allowance and disability working allowance.

152. The power of review in the Administration Act 1992 allowed an adjudication officer (or the social security tribunal) to consider whether benefit decisions made under the Administration Act 1992 were correct, had always been wrong, or had initially been correct but were no longer correct based on subsequent events (including what was anticipated to happen). The third category included relevant changes of circumstances and situations where the decision was based on another decision that had itself been reviewed

153. More specific provisions in relation to reviewing different benefit decisions (including whether they could be reviewed in a particular way or in terms of a particular element of them), were set out in a series of regulations called the Social Security (Adjudication) Regulations. Those regulations also provided for dates on which revision decisions following a review would take effect. The final set of these adjudication regulations in force before the SS Act 1998 was introduced, was called the Social Security Adjudication Regulations 1995 (SI reference:1995/1801).

154. Section 60 of the Administration Act 1992 made the decision of a benefit claim final unless it could be changed by a provision in Part II (adjudication) of the Act, or by regulations made under section 58 of the Act.

155. I have looked at the case law described at paragraphs 117 to 128 above in the context of those legislative provisions. The fact the decisions being considered were revision decisions made following a review, simply meant they were decisions changed by the SSWP on one of the individual grounds allowing him or her to review whether a previous benefit entitlement decision was ever, or still remained, correct.

156. The components of the decisions were therefore:

    (a) A valid entitlement decision had been made to award benefit. The claimant was paid under the authority of that decision;

    (b) The entitlement decision was final under the Administration Act 1992 unless changed validly using a power in the Act itself or in regulations made under section 58 of that Act;

    (b) there was a power in the Administration Act 1992 to review (consider again) the decision making that award;

    (c) the applicable legislation allowed the decision to be revised (changed); and

    (f) the evidence showed a past period of non-entitlement that was consistent with changing the entitlement decision for that past period.

157. None of the case law described the change being made as a closed period supersession. This is not surprising because the power of supersession had not yet been introduced.

158. In considering the legislation, I have not been able to identify a dedicated provision for making a closed period supersession type decision. This is consistent with the fact the Commissioners' decisions described above refer to revision decisions having been made on the ground of review (setting out the ground in question) and do not describe other provisions allowing for that change to be made.

159. ***CIB/5759/1999*** was the first decision referred to me that dealt with this issue but is different to a number of the other cases. The first difference is that Mr Commissioner Bano confirmed the appropriate review ground was not a relevant change of circumstances, but ignorance of a material fact. This was because the claimant had worked from before he transitioned from invalidity benefit to incapacity benefit, so his circumstances had arguably not changed.

160. The second difference is that when Mr Commissioner Bano remade the tribunal's decision, the outcome was that the claimant had no entitlement to benefit during the period from when he started working, up to the date of the review decision.

The period of non-entitlement was therefore closed only in the sense that it was ended by the review decision.

161. However, in making his decision, Mr Commissioner Bano took into account any matter that could have given the claimant entitlement to benefit in the period leading up to that review decision (irrespective of the fact there was no fresh claim for benefit during that time). This was the principle taken forward into subsequent case law, which included cases where factually, a claimant had started, once again, to meet the entitlement conditions by the date of the review decision.

162. The decisions described at paragraphs 117 to 128 above focused on benefits where entitlement was based on not being able to work, where the SSWP later decided the claimant was not entitled to the benefit as a result of having actually worked. I do not consider this means a closed period supersession type decision could only be made in those circumstances. It is clear the mechanism for changing the entitlement decisions was the decision-making legislation summarised at paragraph 156 above, rather than specific legislation about capacity for work.

163. I do not consider it matters that the case law dealt with weekly benefits, as opposed to more recent benefits that operate on a different, longer-term basis. Nor did any of the parties suggest that this was a relevant distinction to draw.

(ii) The Social Security Act 1998 and equivalent provisions in Schedule 7 to the Child Support, Pensions and Social Security Act 2000

164. Section 8(1)(a) of the Social Security Act 1998 ("the SS Act 1998") places a duty on the SSWP to decide a claim for a relevant benefit. Relevant benefit is defined in section 8(3). Section 8(1)(c) places a duty on the SSWP to make any decision falling to be made under a relevant enactment. That phrase is defined at section 8(4) and includes Chapter II of the SS Act 1998.

165. These provisions are not replicated in Schedule 7 to the Child Support Pensions and Social security Act 2000 ("CSPSS Act 2000"). Instead, section 134 of the Administration Act 1992 provides for HB to be funded and administered by a local authority.

166. Mr Williams and Mr Howell spent some time dealing with section 8(2). I address it in more detail below.

167. Once again, Mr Commissioner Jacobs' decision in ***CIS/3655/2007*** usefully summarises the legislative steps taken in the SS Act 1998 to reform the benefits adjudication process. Review was abolished and replaced by the twin concept of revision and supersession. Revision as defined in the SS Act 1998 should not be confused with the revision element of review in the Administration Act 1992. See paragraph 20 of ***CIS/3655/2007***.

168. Section 17 of the SS Act 1998 Act confirms that a UC decision is final, subject to being changed by revision (section 9), supersession (section 10) or on appeal to a First-tier Tribunal (section 12).

169. Sections 9 and 10 of the SS Act 1998 do not themselves set out all the individual grounds on which a decision may be changed. Those grounds are set out in regulations dealing with decision-making, made using powers in the Administration Act 1992. The decision-making regulations relevant to UC are in the UC etc. (D&A) regulations 2013. There are equivalent regulations for the benefits administered by DWP that have been replaced by UC (the Social Security (Decisions and Appeals) regulations 1999). Sections 9 and 10 of the SS Act 1998 provide for regulations to set out the dates on which a revision or supersession takes place ("the effective date). Both sections also provide a default effective date, if no regulations have been made.

170. In a similar way to the SS Act 1998, Schedule 7 to the CSPSS Act 2000 provides that a HB decision is final, subject to being changed by revision (paragraph 3), supersession (paragraph 4) or appeal to a First-tier Tribunal (paragraph 6). The HB & CTB (D&A) regulations 2001 provide for the grounds on which a decision may be superseded or revised and the dates for these (as well as effective dates being provided in the HB Regulations 2006 - see, for example, part 9 of those regulations).

171. Section 12(1) of the SS Act 1998 confirms the right of appeal applies to a tribunal applies against a decision made under section 8 (on a claim) or section 10 (supersession). Section 12(1) includes a right of appeal against a decision revised under section 9.

172. Section 12(8) of the SS Act 1998 provides that in deciding an appeal, the First-tier Tribunal need not consider any issue not raised by the appeal (section 12(8)(a)) and shall not take into account any circumstances not obtaining at the time when the decision appealed against was made (section 12(8)(b)).

173. Paragraph 6 of Schedule 7 to the CSPSS Act 2000 makes equivalent provision for appeals against HB decisions (including decisions changing earlier decisions). See paragraph 6(1)(a) of Schedule 7. It also makes equivalent provision to section 12(8)(a) and (b) of the SS Act 1998 (see paragraph 6(9)(a) and (b)).

174. Just as Mr Williams and Mr Howell submitted at the hearing, I have not been able to identify provisions in the SS Act 1998 and related decision-making regulations that give a dedicated mechanism for making closed period supersession decisions. None are mentioned in the case law decided under the SS Act 1998 and described at paragraphs 129 to 142 above.

175. As described above for the pre-SS Act 1998 legislation, the components of the closed period supersession decisions under the SS Act 1998 and related regulations appear to be:

(a) A valid entitlement decision was made, under which benefit was paid;

(b) As a final decision, the entitlement decision can only be changed by revision or supersession (or on appeal). See section 17 of the SS Act 1998;

(b) there is a general power in the SS Act 1998 (or the CSPSS Act 2000) to supersede the decision making that award;

(c) there is a specific supersession ground in the relevant decision-making regulations allowing for entitlement to be changed; and

(e) the evidence shows a past period of non-entitlement that fits with a specific supersession ground applying to allow the entitlement decision to be changed.

176. None of the legislative provisions describe making a supersession decision with an end date as well as a start date. Section 10(5) of the SS Act 1998 provides a default date on which a supersession decision shall take effect. This is the date on which the decision was made or the date when an application was made. It applies where the power in section 10(6) has not been used to make regulations for the supersession to take effect from some other date. Section 10(5) and (6) describe the date (singular) from which the decision takes effect. There are equivalent provisions to these in Schedule 7 to the CSPSS Act 2000.

177. I do not consider it makes any difference to the analysis that the SS Act 1998 distinguishes supersessions from revisions. The previous legislation only had one basis for considering changing a decision. The SS Act 1998 has two. It makes sense that the power being used in the context of the SS Act 1998 case law is supersession. Those cases involve the entitlement decision being changed with effect from a later date than when it first took effect.

(e) The role of section 8 of the SS Act 1998 in closed period supersessions

178. As Mr Williams and Mr Howell each accepted, section 8(2) deals expressly with claims and does not apply to existing decisions. A Tribunal of Commissioners confirmed the following, in paragraphs 30 to 32 of ***R(I) 5/02***:

(a) Section 8(2)(a) reverses the rule that a claim continued to run throughout the period of any decision made on it and, as established in ***R(S)2/98***, that this provides for it to run down to the date of an appeal hearing. Section 8(2)(a) provides a claim only runs until it is decided. This effect is reinforced by section 12(8)(b) of the SS Act 1998, which prevents an appeal tribunal taking account of circumstances not obtaining at the date when the decision under appeal was made;

(b) Section 8(2)(b), which starts with the word "*accordingly*", shows that whatever it provides, follows from section 8(2)(a). It can only be understood within the context of section 8(2)(a). Whatever section 8(2)(b) provides, it operates as a consequence of the benefit claim ceasing to exist;

(c) Section 10 operates differently from section 8(2)(a). It authorises the supersession of a decision. A decision may exist after the claim has ended. Any limitations on the scope of the supersession power in section 10 are therefore not created as a result of section 8(2)(a); and

(d) Section 8(2)(b) means that a refusal of a claim cannot be superseded for a relevant change of circumstances. This codifies the rule that a change that occurs after the period covered by a decision cannot be relevant to it. Section 8(2)(b) sets this rule on the new basis as being the consequence of the claim ceasing to exist.

179. I apply this authoritative analysis by the Tribunal of Commissioners in ***R(I)5/02***. It confirms the power to supersede in section 10 of the SS Act 1998 is not affected by section 8(2) of that Act.

180. Section 8(1)(c) of the SS Act 1998 does, however, impose a duty on the SSWP to make any decision that could be made under Chapter II of that Act. This includes making supersession or revision decisions. Section 8(1)(c) is therefore relevant and applicable to supersession decisions.

181. I agree with Mr Howell that section 8(2) is relevant to making supersession decisions, although it does not impose any limits on that power. This is because section 8(2) confirms a claim no longer exists after it has been decided. As Mr Howell submitted, this must be considered in the context of the requirement in section 1 of the Administration Act 1992 that a person must make a claim for benefit (unless treated as having made a claim). Where an existing benefit award has been ended by a supersession decision, the claimant cannot remain entitled to benefit without either making a new claim, being treated as making one, or challenging (appealing) the supersession decision.

(f) The legal mechanism for making a closed period supersession

182. My analysis focuses on the SS Act 1998 and related legislation, to avoid discussing multiple pieces of legislation that are more or less the same to each other. The analysis should therefore be read as also applying to the equivalent provisions in the CSPSS Act 2000 and related legislation.

183. The power in section 10 of the SS Act 1998 to change decisions through supersession is clarified, and limited, by other legislative provisions and by case law.

184. A decision awarding either HB or UC creates an indefinite award (a running decision). This is confirmed for UC in regulation 36 of the UC etc. (Claims and Payments) regulations 2013. It is confirmed for HB by the removal of the previously periodic nature of a HB award from around 2004 onwards.

185. A decision awarding UC or HB is also a final decision, meaning it is conclusive that a person is entitled to that benefit, unless and until it is changed by revision,

supersession, or through an appeal. This is confirmed by section 17 of the SS Act 1998, and by paragraph 11 of Schedule 7 to the CSPSS Act 2000.

186. In contrast, a supersession decision disallowing a benefit award is not a running decision. See the principles established in paragraph 13 of ***CIS/767/94*** and in paragraph 16 of ***R(I)5/02***. The principle established applies both to decisions disallowing an initial benefit claim and also to decisions disallowing an existing benefit award. Supersession decisions that change, and disallow, an existing award of UC or HB will therefore generally apply only within the period covered by the award decision leading up to, and including, the date of the disallowance decision.

187. The specific grounds allowing for a decision to be superseded and changed are set out in the relevant decision-making regulations. See, for example, regulation 23(1)(a) of the UC etc. (D & A) regulations 2013. Regulation 23(1)(a) allows a decision to be superseded for a relevant change of circumstances but only where there has been a relevant change. A change of circumstances can only be relevant to an existing award of benefit if it changes the award in some way (for example, by bringing it to an end).

188. Regulation 23(1)(a) only authorises a benefit award to be changed to the extent that the relevant change of circumstances applies. It does not provide a legal ground to change the benefit award for any periods of time when the change of circumstances is not present. There must be a legal ground allowing for the change and there must also be the factual circumstances to support that change being made.

189. This allows, and indeed requires, the decision-maker to look at all the period of time covered by the benefit award. The decision-maker must identify whether there are periods of time when the claimant meets the entitlement conditions as well as those where they do not. The benefit award cannot be changed during the periods of time when the claimant meets the entitlement conditions. Doing so would change the award outside the scope of the supersession ground and also breach the finality of the award decision.

190. This moves the analysis away from an argument it is unfair to fix claimants with artificial overpayments generated after they start to meet entitlement conditions again. It becomes an analysis where a claimant who has been paid under the authority of a benefit decision can only have that entitlement changed in the specific way permitted by the supersession ground and the circumstances in which it can properly be applied.

191. As explained by the majority of the Court of Appeal in ***Wood,*** (a) a supersession decision alters and replaces an existing decision, (b) the ground for supersession specified in the regulations must be satisfied before the power to supersede can be used, and (c) the existing decision can only be altered in a way that follows from what has been established. See paragraphs 23, 34 and 42 of that decision. As Mr Howell put it, the outcome decision must flow from the supersession ground relied upon.

192. If the supersession decision identifies past periods of non-entitlement, followed by the claimant meeting the entitlement conditions once more, it will alter and change the benefit award decision by modifying past entitlement to reflect this. However, the overall benefit award will remain a running decision and continue to apply into the future.

193. This analysis moves the situation away from one where closed period supersession decisions are justified by it being impractical or inconvenient to require a new benefit claim to be made, or because a new claim could not go back far enough to cover the whole period after entitlement was interrupted. It becomes an analysis where a new benefit claim cannot be made because there is (and remains) an ongoing benefit award that cannot be ended legally or factually by the supersession ground but can be modified by that ground for a fixed period of time.

194. If, however, a supersession decision is made disallowing an existing award of benefit, the decision will alter the indefinite award of benefit, turning it into a time-limited benefit award. This, together with the fact that a UC or HB supersession decision is not a running decision, explains why the supersession decision cannot be superseded for a later change of circumstances. The later change of circumstances is not relevant to the supersession decision, because that decision ceased to have effect after it changed and ended the benefit award.

195. This combination of legislative provisions and case law, explains how a closed period supersession is made. Drawing on these, the mechanism is that, at the time the supersession decision is made:

    (a) there is an award of benefit that is a running decision, meaning it runs up until the date of the supersession decision;

    (b) the decision awarding benefit is a final decision that only be changed by supersession or revision or appeal;

    (c) there is a legal ground available to supersede the award and the factual situation supports it being superseded;

    (d) the supersession decision outcome can, and does, flow from the supersession ground relied upon (see ***Wood***);

    (e) the clamant was paid past benefit under the authority of a valid benefit award; and

    (f) the supersession decision alters and replaces the existing award decision, making it a decision including a fixed period of non-entitlement to benefit, but with any other periods of entitlement remaining.

196. This analysis would also work with the legislation before the SS Act 1998 and CSPSS Act 2000, in terms of a review ground allowing the SSWP to consider

whether to revise an otherwise final benefit award decision. It is consistent with the relevant case law for both sets of legislation.

197. None of the parties suggested an analysis in the specific terms I have reached. I have, however, relied on a number of Mr Howell's and Mr Williams' arguments in reaching it. Having identified this analysis, I consider the mechanism is consistent with, and contained within, the existing legislative framework. It is also compatible with the legislative framework previously applicable.

198. It is therefore not necessary to imply legislative provisions into the relevant legislation for UC and for HB to allow a closed period supersession decision to be made. All the architecture required to allow it to be made is already present, as a result of the legislation and the case law dealing with how supersession decisions operate.

199. I have also compared my analysis to the guidance issued by DWP, including for housing benefit. That guidance is not binding. However, it draws on Mr Commissioner Bano's decision in ***CIS/2595/2003***, which in turn drew on several other Commissioners' decisions, summarised above. For what it is worth, my analysis does not obviously conflict with the guidance provided by DWP.

(g) Addressing the supersession mechanism put forward by Mr Williams

200. I have applied the analysis explained at paragraphs 183 to 198 above to Mr Williams' arguments.

201. Mr Williams' written skeleton argument submitted that a closed period supersession decision involves a pair of supersession decisions. At the hearing, Mr Williams very fairly acknowledged there were several difficulties with that argument (see paragraph 62 above). I agree those difficulties apply. I consider the following difficulty also applies. It incorporates some of the arguments Mr Howell put forward.

202. Making a closed period supersession using a pair of supersession decisions would involve three decisions. Decision A (awarding HB or UC) would be superseded by decision B (claimant does not meet entitlement conditions). Decision C would then in turn supersede decision B (claimant once again meets the entitlement conditions) and restore the benefit award.

203. Until decision B is made, decision A is a final decision operating as an indefinite award. As soon as decision B is made, it alters the award decision (decision A) and creates a new mixed decision where decision A is changed from applying indefinitely, to a time-limited award that ends. Once decision B is made, the award will cease to exist. Section 8(2)(a) of the SS Act 1998 confirms the claim that led that benefit award also no longer exists. The claimant must therefore make a new benefit claim to become entitled to benefit once more.

204. Mr Williams' skeleton argument argued at paragraph 20 that the better analysis was that decision B and decision C would be made at the same time and

promulgated together. The skeleton argument stated this meant there would never be a moment within the decision-making process where the award was completely extinguished. It did not, however, explain how the two decisions could be made and given at the same time.

205. The skeleton argument confirmed the legal ground for making each supersession decision would be that there had been a relevant change of circumstances. However, decision B (claimant does not meet entitlement conditions) would have to be made before decision C (claimant once again meets entitlement conditions). Decision C only represents a relevant change of circumstances to those addressed by decision B.

206. If decision B is not made before decision C, the only decision available to be changed through supersession is decision A. Decision C cannot change decision A because both decisions involve circumstances where the claimant meets the entitlement conditions for benefit. Legally and factually, there is no relevant change of circumstances (even an anticipated one) that would allow decision C to change decision A.

207. Decision C therefore would require decision B to have been made first, to be able to identify a set of circumstances that decision C can operate against. Once decision B has been made, however, the circumstances in paragraph 203 apply, the award ends and a new claim must be made.

208. For the reasons set out above, I do not consider the pair of supersession decisions argument is viable.

209. At the hearing, Mr Williams argued that closed period supersession decisions are made using a single supersession decision. Decision A awards a claimant UC or HB for an indefinite period. Decision B is the supersession decision changing decision A. The relevant change of circumstances is that the claimant is not going to meet the entitlement conditions for a fixed and known period of time. Mr Williams argued that if this is identified as the relevant change of circumstances, the supersession (giving non-entitlement) only operates for that fixed period.

210. I agree with Mr Howell that the relevant change of circumstances allowing MJ and SC's UC or HB award to be superseded, was not that they would be abroad for a fixed period, but the fact that the length and circumstances of their absences meant they could not be treated as still present in Great Britain (or have their absences disregarded).

211. This was a relevant change because it meant each claimant no longer met a condition of entitlement to their benefit. It did not matter that they would, or might, meet that entitlement condition again at a future point. Nor did it matter that the future point was more clearly identifiable in their cases than a claimant who goes abroad and does not know when they will return.

212. Applying the principles established in ***Wood***, what Mr Williams argued for as the outcome decision - a current period of non-entitlement followed by a future period

of entitlement - would not flow from the supersession ground on which he relied. The supersession ground of relevant change of circumstances therefore does not authorise changing MJ and SC's benefit awards in the way Mr Williams argued.

213. Mr Williams did not argue that any other supersession ground applied to SC and MJ. The written appeal grounds for MJ argued that her award should have been superseded using an anticipated change of circumstances. I deal with that below. Turning to the remaining supersession grounds available under the applicable legislation, I have considered them but decided they are not relevant to SC and MJ's situations.

214. At the times that the individual decision-makers superseded SC and MJ's individual benefit awards, the relevant change of circumstances was that each claimant no longer met the entitlement condition of being present in Great Britain. The outcome decision that flowed from this change of circumstances was that each claimant was not entitled to benefit. Making that supersession decision altered the indefinite benefit award, turning it into a time-limited award that came to an end.

215. By reason of section 8(2)(a) of the SS Act 1998 (and paragraph 11 of Schedule 7 to the CSPSS Act 2000), once their benefit award ended, neither SC nor MJ could be entitled to benefit without making a fresh claim. Since the supersession decision disallowing and ending the award did not operate indefinitely, MJ and SC could, in principle, make a new claim for benefit.

216. The reason SC and MJ have argued for a different outcome is the practical effects they experience through being required to make a fresh claim. In SC's circumstances, this would restart the clock for her UC limited capability for work assessment. In MJ's circumstances, it prevents her being able to make a fresh claim for HB, because UC is now the applicable income-related benefit where MJ lives. HB cannot be claimed where a claimant can instead claim UC.

217. Without wishing to diminish the fact these situations present considerable difficulties for SC and for MJ, the difficulties are practical ones rather than conceptual legal difficulties with the mechanism of supersession. The supersession ground of relevant change of circumstances does not allow SC or MJ's benefit award to be changed in the way they contend it should be.

218. I have checked my analysis with my analysis about closed period supersessions generally. I am satisfied they are consistent and apply the same principles. They produce different outcomes because at the supersession date, SC and MJ did not meet the conditions of entitlement to their benefit and that was the relevant change of circumstances allowing each benefit award to be changed.

(h) Application of the anticipated change of circumstances supersession ground to MJ or SC

219. One of MJ's appeal grounds in her UT1 form to the Upper Tribunal was that the power to supersede for an anticipated change of circumstances, would allow a supersession decision to be made reducing / removing entitlement for the period where one anticipated change will end entitlement, and the second one will restore it. This was argued under regulation 7(2)(a)(ii) of the HB & CTB (D & A) regulations 2001.

220. At the hearing, Mr Williams confirmed he was not arguing that the power to supersede for an anticipated change of circumstances in regulation 7(2)(a)(ii) would allow a closed period supersession to be made.

221. For the avoidance of doubt, regulation 7(2)(a)(ii) does not operate to allow a closed period supersession decision to be made. It faces the same difficulty as the arguments Mr Williams made at the hearing regarding supersession for a relevant change of circumstances that has already occurred.

222. As explained above, analysing the single supersession decision argument, decision A is that a claimant meets the entitlement conditions for HB. The relevant change of circumstances allowing decision B to be made is that the claimant no longer meets the conditions of entitlement. The relevant change of circumstances is not the length of that non-entitlement, but the fact it has occurred.

223. In MJ's case, the power in regulation 7(2)(a)(ii) would only authorise a supersession decision to be made where: (a) the change of circumstances was relevant, and (b) it had not yet happened but was anticipated to happen. However, MJ could not satisfy either requirement. At the date LB Bromley made its supersession decision, MJ's circumstances had <u>already</u> changed because she no longer met an entitlement condition due to her planned absence from Great Britain. The only change of circumstances relevant to changing her existing HB award was that MJ no longer met that entitlement condition. This change would be one where regulation 7(2)(a)(i) was applicable (i.e., that there <u>had</u> been a relevant change of circumstances).

224. MJ's written appeal ground about regulation 7(2)(a)(ii) did not argue that the closed period supersession would involve a pair of supersession decisions. However, to be able to rely on the anticipated change that MJ would meet the entitlement conditions once more, there would need to be some form of intervening supersession decision (decision B) that she no longer met all the entitlement conditions for HB. Once decision B had been made, decision C could operate against it. Decision C would be able to identify a relevant change of circumstances (namely that MJ would meet the entitlement conditions once again) and this change would be anticipated rather than something that had already happened. This would theoretically satisfy the requirements of regulation 7(2)(a)(ii).

225. As explained above at paragraph 203, applying the pair of supersession decisions analysis, once decision B is made, it would end MJ's HB award. Under

paragraph 2 of Schedule 7 to the CSPSS Act 1998, MJ could not be entitled to benefit again without making a new claim for it.

226. The same difficulties would apply in trying to use the power to supersede SC's UC award for an anticipated change of circumstances (regulation 23(1)(b) of the UC etc. (D&A) regulations 2013).

227. I have considered whether paragraph 6.663 of the Housing Benefit guidance is relevant to the analysis about using the anticipated change of circumstances supersession ground in MJ and SC's situation. See paragraph 147 above. The first sentence of paragraph 6.663 does not make grammatical sense. It suggests an advance notification of a change can be actioned by a decision but then suggests that the change notified in advance may not occur. Paragraph 6.663 then suggests a closed period supersession can be made after the anticipated date of change. It does not explain the mechanism for this or what the consequences will be.

228. Due to its imprecise language and lack of explanation, I have not found this paragraph of the Housing Benefit guidance useful in deciding these appeals. In any event, it is not binding in any way.

(i) Could a prospective closed period supersession decision be made about SC or MJ to preserve their benefit award?

229. The answer is no. At the date, the relevant decision-maker superseded the benefit award in question, neither claimant met an entitlement condition for it, due to their planned absence from Great Britain. This was a relevant change of circumstances that authorised and justified each benefit award being superseded. The outcome decision that flowed from that change of circumstances was that each claimant was no longer entitled to the benefit in question. Once that supersession decision was made, it ended the benefit award. At this point, SC and MJ needed to make a new claim to benefit to be entitled to it once more.

230. I appreciate this outcome involves a complicated analysis. I also appreciate it will disappoint SC and MJ greatly that the closed period supersession mechanism does not provide the power to preserve their underlying awards with a fixed period of non-entitlement, to overcome the circumstances in which they found themselves. I am, however, satisfied the relevant legislation and case law supports the analysis I have set out above.

(j) Delaying the supersession decision until each claimant returned to Great Britain (the abuse of power argument)

231. This was Mr Williams' secondary argument if his principal argument on closed period supersession decisions failed.

232. The power to supersede in section 10 of the SS Act 1998 and in paragraph 4 of Schedule 7 to the CSPSS Act 2000 is expressed as "*may*", not "*must*". As

explained in ***CIS/6249/1999*** and in ***R(I)1/07***, it provides a power, not an obligation, to supersede.

233. SC and MJ each say they were given incorrect advice about the effect of being abroad on their benefit entitlement. I describe this as their position, rather than as fact, because neither FTT1 nor FTT2 made any factual findings about what SC or MJ were told. The primary role of the First-tier Tribunal is to find facts, the primary role of the Upper Tribunal is to consider points and issues of law based on those factual findings.

234. I acknowledge the importance to SC and to MJ of having recognition that they were given incorrect information about their benefit entitlement if they went abroad and that they relied on that information and advice.

235. Having considered the decisions in ***CIS/6249/1999*** and ***R(I)1/07***, I have decided the correct approach to take in the appeals before me is that set out by Mrs Commissioner Brown in ***R(I)1/07***. She gave her decision with the benefit of having considered Mr Commissioner Mesher's earlier decision in ***CIS/6249/1999***. Her decision is a reported decision, denoted by the "*R*" in its title. This means that it was considered by, and agreed with in broad terms, by the majority of the other Social Security Commissioners in post around the time it was made.

236. The factual circumstances in ***R(I)1/07*** are similar to the specific situation described by each of SC and MJ. In ***R(I)1/07***, the claimant was given wrong advice by DWP staff member, and relied on it, meaning he did not take a necessary step at the relevant time. Having considered those circumstances, and Mr Commissioner Mesher's decision in ***CIS/6249/1999***, Mrs Commissioner Brown acknowledged the decision-maker has a discretion whether to supersede or not. She stated at paragraph 21:

> "*It can hardly, however, be said to be an abuse of power for that discretion to be exercised so as to put a correct decision in place….This is not a matter of practice or policy or of a promise made. It is a matter of entitlement or non-entitlement according to statutory provisions*".

237. Mrs Commissioner Brown decided the decision made in ***CIS/6249/1999*** should not apply to her case because the circumstances were different. She concluded that any unfairness in DWP applying its statutory powers to change an earlier incorrect decision was not so extreme that it outweighed the public interest in ensuring the correct amount of benefit entitlement was reached for the claimant in question. Mrs Commissioner Brown explained the claimant could not have a legitimate expectation to be entitled to benefit where he did not meet entitlement conditions for it.

238. Applying that principle to SC and to MJ, at the date the relevant decision-maker looked at making their decision for each claimant, neither claimant met all the necessary entitlement conditions for their benefit. To delay making the supersession decisions in question would have involved a conscious decision to

pay each claimant benefit the decision-maker knew they were no longer entitled to receive. Even if a later decision could be made that those claimants had been overpaid benefit, this would not guarantee that the money would be repaid. Recovering it would have potentially adverse consequences for the claimants. In SC's case, it would be recovered from her ongoing UC award, leaving her less money to live on while that happened.

239. In these circumstances, it cannot be said that the circumstances that: (a) SC and MJ had been given incorrect advice about their position and (b) they would face difficult consequences of the fact they would have to make a fresh claim for benefit, was so extreme that it outweighed public interest in ensuring that SC and MJ were paid their correct entitlement to benefit.

240. I recognise the outcome decisions made for SC and for MJ has caused each of them difficult consequences. They have lost entitlement to a benefit (or continuity of that benefit), from which they cannot recover simply by claiming it again. In each case, there has also been a gap in any entitlement to benefit. The consequences of these are substantial for SC and for MJ.

241. However, I agree with Mr Howell that these consequences flow from the policy choices Parliament has made. For MJ, they flow from the policy choices made in the regulations it made about entitlement to HB in circumstances where a claim to UC can be made.

242. For SC, they flow from the policy choices Parliament made when it legislated for the date of entitlement to the LCWRA element of UC. Parliament did deal with the situation where a limited capability for work assessment is started, but not completed before a claim ends. However, to have their LCWRA element timed back to their first UC claim rather than their subsequent one, a claimant must meet the conditions in regulation 28(3), (4) or (5) of the UC regulations 2013. Very unfortunately, SC did not meet any of those conditions. Parliament did not legislate to cover her specific circumstances.

243. In ***NC,*** a decision-maker delayed for a lengthy period in making their supersession decision about NC, and as a result, the only supersession decision that could properly be made about him was a closed supersession decision. Mr Williams argued this left NC better off than MJ and SC, is the very definition of capricious and arbitrary, and should be avoided.

244. I agree with Mr Howell that it is an example of something having gone wrong in the decision-making process the SSWP applied to NC. It is not an example of the decision-making that was applied to MJ and to SC, producing its own set of capricious or arbitrary results.

245. As Mr Howell submitted, it is generally up to a public authority to decide about managing its case load, including when to make its decisions. Arguing that the decision-maker should have acted more slowly, and delayed making the supersession decision that naturally fell to be made once a claimant did not meet

the benefit entitlement conditions, cuts across the broad margin of respect given to public authorities to decide when to make their decisions.

246. SC argued that a UC claimant who fails to notify DWP that they have gone abroad appears to be rewarded for not disclosing that information and treated more favourably than a claimant who notifies DWP about the change. In my assessment, the difference in outcome does not come from favourable treatment being given to the non-notifying claimant. It comes from whether the person meets the entitlement condition at the date the SSWP decision-maker makes their supersession decision. Nor is the non-notifying claimant necessarily better off. They will have been overpaid benefit, which will be recoverable from them, at a rate that DWP chooses to recover. Depending on the circumstances, DWP may decide to apply an additional £50 civil penalty for the failure to disclose the change in circumstances. In some instances, DWP might decide to prosecute that claimant for a criminal offence.

247. LP made the powerful point on behalf of SC that "*Who do I ask then (if not DWP)?*". I accept the force of this. A claimant applies for benefit, believing that DWP and its staff will know the correct approach to take, and will give them accurate advice. DWP staff are much more familiar with benefit rules than many claimants. The starting point is that a person cannot create an entitlement to benefit they do not have through being given incorrect advice by DWP. Instead, where DWP gives incorrect advice, which a claimant relies on to their disadvantage, the claimant can make a complaint, which should be investigated and may result in a compensatory payment being made. If a claimant remains unhappy with the outcome of their complaint, they can complain to the Independent Case Examiner, who will look again at their complaint.

248. I do not consider the circumstances for either MJ or SC made it an abuse of the supersession power for the relevant decision-maker to make the relevant supersession decision at the time that they did. It was consistent with the exercise of that discretionary power for the decision-maker to act, rather than wait until each claimant returned home (and which would fix them with the consequences of an overpayment).

249. There is a power to suspend the payment of UC. See regulation 44 of the UC etc. (D&A) regulations 2013. The power is available for UC in a range of situations, including where a question arises about whether the entitlement conditions are met. A suspension power is available in similar situations for HB. The situations allowing benefit to be suspended are largely about where there is a doubt whether a person is entitled to benefit. They are not available where the decision-maker is satisfied the person is not entitled to benefit.

250. At the time the supersession decisions were made, it was clear that MJ and SC no longer met the entitlement condition of being present in Great Britain. I do not consider any of the grounds for suspending UC or HB would have applied as an alternative to making a supersession decision at that point.

251. In its Decision Notice dated 28 July 2023, FTT1 decided that SC's UC award should have been suspended from the first date of the assessment period in which she left Great Britain. FTT1 failed to make clear findings about SC and address whether (and if so, how) SC's circumstances fell within the terms in which the suspension power could be used. Furthermore, FTT1's Statement of Reasons did not refer to suspending SC's UC award, so does not provide adequate reasoning to explain its decision notice dated 28 July 2023 on this issue. These were material errors of law.

(k) The argument that DWP should only have removed SC's UC entitlement once she exceeded the one-month absence allowed under regulation 11 of the UC regulations 2013

252. This issue only applies to SC. MJ accepted that as soon as she went abroad, her entitlement to HB ended because she would be abroad for longer than the temporary absence provisions for HB allowed.

253. Section 4(1)(c) of the WR Act 2012 makes it a basic condition of entitlement to UC that a person is in Great Britain. The starting point is that all claimants must physically be present in Great Britain to be entitled to UC. However, section 4(5)(a) and (b) allows Parliament to make regulations providing for a claimant to be treated as present in Great Britain, or to set out circumstances in which their absence from Great Britain is disregarded. That regulation-making power was used to make regulation 11 of the UC regulations 2013, which disregards a temporary absence from Great Britain in specific circumstances.

254. The only parts of regulation 11 that could apply to SC's circumstances were those in regulation 11(1)(a) and (b). She had to satisfy both (a) and (b). As Mr Howell acknowledged, SC met the requirement in regulation 11(1)(a) of being entitled to UC immediately before she went abroad. In terms of satisfying regulation 11(1)(b), the only provision that could apply to SC was regulation 11(1)(b)(i).

255. Regulation 11(1)(b)(i) contains two elements – that the absence is not expected to exceed one month, and that the absence does not in fact exceed a month. Mr Howell argued these are cumulative requirements and SC had to meet them both to satisfy regulation 11(1)(b) and to have her temporary absence from Great Britain disregarded.

256. Because SC always intended to go to Canada for longer than a month, it appears she could not satisfy the first element in regulation 11(1)(b)(i) to have her temporary absence from Great Britain disregarded. This would mean SC stopped meeting the entitlement condition of being in Great Britain once she was no longer in the country.

257. In ***AM v SSWP [2024]*** UKUT 137 (AAC), Upper Tribunal Judge Church decided that a claimant who intended to go abroad for three weeks but ended up staying for more than a month (due to COVID-19 travel restrictions), was entitled to have part of his absence from Great Britain disregarded. This meant AM remained entitled to UC for a period of time after he went abroad. Judge Church made his

decision on the basis that AM's circumstances changed once he was abroad. At first consideration, the decision in ***AM*** would not clearly apply to SC. It does not appear SC's circumstances changed *after* she went abroad, and the evidence suggests she had always intended to go abroad for longer than the one-month period.

258. Since hearing these appeals, I have been made aware that the Upper Tribunal is considering two appeals about how regulation 11(1)(b) of the UC regulations should be interpreted and applied across different assessment periods, where a change of circumstances takes place during the absence. The appeals are UA-2023-001431-USTA (***AA v SSWP***) and ***KK v SSWP (UC) [2025]*** UKUT 259 (AAC). I understand the decisions will shortly be issued and published. I understand those appeals follow on from the circumstances in ***AM*** and are therefore likely to involve different circumstances to SC's. I deal further with this point at paragraphs 285 to 286 below.

(I) Was it open to FTT1 to revise the SSWP's decision about SC and make a nil award of UC?

259. FTT1 did not refer to nil awards of UC in its Decision Notice dated 28 July 2023. However, at paragraphs 9 to 11 of its Statement of Reasons dated 10 December 2023, FTT1 referred to nil awards of UC. FTT1 stated that the Going Abroad guidance confirmed nil awards are permissible for keeping a claim alive and that it had experience of the SSWP making a nil award decision for UC where it knew or expected a claimant would become eligible for a paying award again soon.

260. Some benefits allow a claimant to have an underlying entitlement to the benefit at a time when it is not payable. This is sometimes described as a "nil award", meaning the continuity of benefit entitlement is preserved while nothing is paid to the claimant.

261. In ***Ipswich BC v (1) TD & (2) SSWP [2024]*** UKUT 117 (AAC), Upper Tribunal Judge Wright confirmed it is not possible to have a have a nil award of, or nil entitlement to, UC where a claimant fails to meet the financial conditions for it in section 5(1)(b) of the WR Act 2012 and regulation 17 of the UC regulations 2013 (see paragraphs 3 and 37 of that decision).

262. Mr Howell placed substantial reliance on the decision in ***Ipswich***. In my assessment, what Upper Tribunal Judge Wright stated at paragraphs 3 and 37 of his decision, was addressed directly at the financial condition of entitlement to UC, which required entitlement to be dependent on being awarded at least one penny of it. The situation for SC is different, because the issue in her appeal is whether she met a different condition of entitlement to UC instead.

263. FTT1 stated the DWP's Going Abroad guidance described making a nil award of UC. This statement was incorrect. Firstly, the guidance was clearly addressing a retrospective closed period supersession decision, which was not the situation faced by SC. See paragraph 3 under the heading "Temporary absence" of that

guidance, which explained the position applied where DWP was notified of the absence after the person came back to Great Britain.

264. Secondly, the legal mechanism for making a closed period supersession decision would not create a nil award of UC. Instead, it alters and changes an existing benefit award to provide for a closed period of non-entitlement within that award, but which continues, overall, as an indefinite award of benefit. This is the position irrespective of what DWP might have stated in the guidance, which is not binding. Furthermore, the wording in the guidance about reducing an assessment period to nil is not tantamount to stating a nil award of UC has been made.

265. Having referred to the Going Abroad guidance and stating it was aware of the SSWP making nil award decisions, FTT1 did not explain how the UC legislation allowed a claimant to have a nil award of UC at a time that the person did not meet the condition of entitlement in section 4(1)(c) of the WR Act 2012. FTT1 therefore made an error of law by misdirecting itself in law about whether a nil award of UC could be made. FTT1 did not explain what its experience of other nil award decisions involved. Nor did it explain how they could be made within the UC legislation. FTT1 therefore failed to provide adequate reasoning to support this part of its decision. These were material errors of law.

Conclusions

266. The legal mechanism allowing a closed period supersession decision to be made contains the elements set out at paragraph 195 above.

267. A closed period supersession decision cannot be made preserving an existing UC or HB benefit award on the ground of relevant change of circumstances, where, at the date of the supersession decision, the claimant does not meet a condition of entitlement (here, of being in Great Britain).

268. Nor, in these circumstances, can a closed period supersession be made preserving the award on the ground it is anticipated a relevant change of circumstances will occur.

269. The correct approach to apply to the circumstances faced by SC and by MJ was to use the supersession ground that there had been a relevant change of circumstances, namely that each claimant did not satisfy an entitlement condition to benefit, and to make a decision disallowing each claimant's benefit award.

270. It was not an abuse of power for:

    (a) A SSWP decision-maker to exercise the discretionary power to supersede SC's UC entitlement on 28 May 2022 and to bring that entitlement to an end; or

(b) a LB Bromley decision-maker to exercise the discretionary power to supersede MJ's HB entitlement on 20 March 2023 and to bring that entitlement to an end.

271. A closed period supersession decision does not create a nil award of UC.

272. FTT1's Statement of Reasons regarding SC's appeal does not explain the decision expressed in its Decision Notice that SC's UC award should be suspended. FTT1's Statement of Reasons explains a different decision, namely that FTT1 decided SC should have a nil award of UC and revised the SSWP's decision in the terms. FTT1 has therefore failed to provide adequate reasoning to support its decision, because the Statement of Reasons does not explain the contents of the Decision Notice.

273. To the extent that it decided SC's UC award should have been suspended by the SSWP, FTT1 failed to make adequate factual findings or provide adequate reasons to explain how SC fell within any of the circumstances providing for this in regulation 44 of the UC etc. (D&A) regulations 2013.

274. FTT1's Statement of Reasons failed to provide adequate reasoning to support its conclusion that the SSWP should have made a nil award of UC to SC for the period while she was absent from Great Britain. To the extent that it was using "nil award of UC" to describe a closed period supersession decision and concluded one could be made in SC's circumstances, FTT1 misdirected itself in law. FTT1 also failed to make adequate findings of fact or provide adequate reasoning to explain how a nil award of UC could generally be made.

275. The matters described at paragraphs 272 to 274 above were material errors of law by FTT1.

276. MJ's primary argument is that FTT2 made an error of law in not deciding a prospective closed period supersession could apply. MJ's secondary argument is that it was an error of law not to decide that it was an abuse of power by LB Bromley to make the supersession decision it made on 20 March 2023, rather than wait until MJ returned to Great Britain, and make a closed period supersession decision instead. I have decided that FTT2 did not make an error of law in relation to either matter.

277. At the hearing, Mr Williams confirmed the parties (MJ and the SSWP) agreed the Upper Tribunal did not need to spend much time looking at FTT2's decision beyond considering his primary and secondary arguments. Having considered and rejected those arguments, I therefore have not identified any material error of law by FTT2 in its decision dated 08 November 2023.

Disposal

(a) SC's appeal

278. Having decided FTT1's decision regarding SC's appeal involved material errors of law, it is appropriate to exercise my discretion to set aside the FTT's decision dated 28 July 2023 under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. Having done so, section 12(2)(b) of that Act provides that I must either remit the case to the First-tier Tribunal with directions for it to be decided afresh or to remake the FTT's decision myself.

279. LP asked me to remit SC's appeal to a new First-tier Tribunal, if I decided FTT1 made an error of law. LP felt not all of the arguments SC wanted made had been put forward at the FTT hearing. She had learned a lot from the experience and would have presented SC's case differently.

280. Mr Howell submitted that if the Upper Tribunal decided FTT1 had made an error or errors of law, the SSWP considered the correct approach was to re-make FTT1's decision, rather than to remit it for redetermination.

281. I have taken both sets of representations into account. Applying the overriding objective in rule 2 of the UT Rules 2008, I have decided to remit SC's appeal to be decided by a new First-tier Tribunal.

282. The reasons favouring remitting SC's appeal to a new Tribunal include that LP feels there are other arguments she would wish to put forward (for example, the disability discrimination argument raised in her appeal form to the FTT). That does not mean I consider those arguments are likely to succeed. Instead, it simply acknowledges that there are other areas where SC challenged the SSWP's decision, but they were not resolved when her appeal was decided.

283. SC's FTT appeal form stated she could not access her UC journal for her first UC claim because it was closed. SC said her journal would confirm what her work coach and other DWP staff had told her about the consequences of going abroad. LP also mentioned this at the hearing. Looking at the FTT appeal bundle, while there are claim history notes (see pages 6-7 and 21 of the FTT bundle), these do not appear to contain messages exchanged between SC and her work coach. DWP would have access to SC's full UC journal. It appears DWP may have instead produced a summary of what DWP staff say occurred instead of the actual events. Under rule 24(3)(c) of the Tribunal Procedure (First-tier Tribunal) (SEC) Rules 2008, DWP is required to provide copies of all documents relevant to the appeal in its possession. The UC journal notes and messages are arguably relevant to one of SC's appeal grounds to the First-tier Tribunal.

284. A new First-tier Tribunal can consider SC's arguments about what DWP told her and, to the extent it considers it relevant, make findings about that. Such factual findings may be relevant if SC decides to make a formal complaint to DWP and, ultimately, to pursue a complaint to the Independent Case Examiner. Addressing

whether SC was given incorrect advice and the distress that this caused her, will more likely allow her to feel heard about this element of her appeal.

285. Finally, the Upper Tribunal is considering the meaning of regulation 11(1)(b) of the UC regulations 2013 in two other appeals, which follow on from the decision in ***AM***. The Upper Tribunal has heard arguments from the parties in both those appeals. I cannot say this will make any difference to the outcome of SC's appeal, because her circumstances appear to be different to those in ***AM***. However, it would be preferable for her appeal to be dealt with by a First-tier Tribunal that can hear all the arguments, make factual findings, and apply the law as the Upper Tribunal will shortly confirm it to be.

286. I have made directions at pages 3 to 4 above about the rehearing of SC's appeal. These include for her appeal not to be re-listed until the two Upper Tribunal decisions dealing with ***AM*** are published. It is open to the next Tribunal hearing SC's appeal to make directions about whether DWP should provide copies of her full UC journal entries for the relevant period.

(b) MJ's appeal

287. FTT2's decision did not contain material errors of law. MJ's appeal to the Upper Tribunal is therefore dismissed.

Judith Butler
Upper Tribunal Judge
Authorised by the Judge for issue on 03 September 2025

Annex A: relevant applicable legislation

Universal Credit

1. Relevant provisions in the Welfare Reform Act 2012 ("the WR Act 2012") are:

1 Universal credit

(1) A benefit known as universal credit is payable in accordance with this Part.

(2) Universal credit may, subject as follows, be awarded to—

(a) an individual who is not a member of a couple (a "single person"), or

(b) members of a couple jointly.

(3) An award of universal credit is, subject as follows, calculated by reference to—

(a) a standard allowance,

(b) an amount for responsibility for children or young persons,

(c) an amount for housing, and

(d) amounts for other particular needs or circumstances.

3 Entitlement

(1) A single claimant is entitled to universal credit if the claimant meets—

(a) the basic conditions, and

(b) the financial conditions for a single claimant.

4 Basic conditions

(1) For the purposes of section 3, a person meets the basic conditions who—

(a) is at least 18 years old,

(b) has not reached the qualifying age for state pension credit,

(c) is in Great Britain,

(d) is not receiving education, and

(e) has accepted a claimant commitment.

(2) Regulations may provide for exceptions to the requirement to meet any of the basic conditions (and, for joint claimants, may provide for an exception for one or both).

(3) For the basic condition in subsection (1)(a) regulations may specify a different minimum age for prescribed cases.

(4) For the basic condition in subsection (1)(b), the qualifying age for state pension credit is that referred to in section 1(6) of the State Pension Credit Act 2002.

(5) For the basic condition in subsection (1)(c) regulations may—

(a) specify circumstances in which a person is to be treated as being or not being in Great Britain;

(b) specify circumstances in which temporary absence from Great Britain is disregarded;

(c) modify the application of this Part in relation to a person not in Great Britain who is by virtue of paragraph (b) entitled to universal credit.

7 Basis of awards

(1) Universal credit is payable in respect of each complete assessment period within a period of entitlement.

(2) In this Part an "assessment period" is a period of a prescribed duration.

(3) Regulations may make provision—

(a) about when an assessment period is to start;

(b) for universal credit to be payable in respect of a period shorter than an assessment period;

(c) about the amount payable in respect of a period shorter than an assessment period.

(4) In subsection (1) "period of entitlement" means a period during which entitlement to universal credit subsists.

2. Relevant provisions in the Universal Credit Regulations 2013 ("the UC regulations 2013") are:

Temporary absence from Great Britain

11.—(1) A person's temporary absence from Great Britain is disregarded in determining whether they meet the basic condition to be in Great Britain if—

(a) the person is entitled to universal credit immediately before the beginning of the period of temporary absence; and

(b) either—

(i) the absence is not expected to exceed, and does not exceed, one month, or

(ii) paragraph (3) or (4) applies, or

(ii) paragraph (4A) applies.

(2) The period of one month in paragraph (1)(b) may be extended by up to a further month if the temporary absence is in connection with the death of—

(a) the person's partner or a child or qualifying young person for whom the person was responsible; or

(b) a close relative of the person, or of their partner or of a child or qualifying young person for whom the person or their partner was responsible,

and the Secretary of State considers that it would be unreasonable to expect the person to return to Great Britain within the first month.

(3) This paragraph applies where the absence is not expected to exceed, and does not exceed, 6 months and is solely in connection with—

(a) the person undergoing—

(i) treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner, or

(ii) medically approved convalescence or care as a result of treatment for an illness or physical or mental impairment, where the person had that illness or impairment before leaving Great Britain; or

(b) the person accompanying their partner or a child or qualifying young person for whom they are responsible for treatment or convalescence or care as mentioned in sub-paragraph (a).

(4) This paragraph applies where the absence is not expected to exceed, and does not exceed, 6 months and the person is—

(a) a mariner; or

(b) a continental shelf worker who is in a designated area or a prescribed area.

(4A) [*left out as not relevant to these appeals*]

(4B) Where a person is temporarily absent from Great Britain, the total period of absence disregarded in determining whether they meet the basic condition to be in Great Britain will not exceed 6 months.

(5) In this regulation—

…

"medically approved" means certified by a registered medical practitioner;
…

"qualified practitioner" means a person qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

Housing Benefit

3. Relevant provisions in the Social Security Contributions and Benefits Act 1992 are:

123 Income-related benefits.

(1) Prescribed schemes shall provide for the following benefits (in this Act referred to as "income-related benefits")—

(a) income support;

(b) and (c) [*repealed*]

(d) housing benefit; and

(d) council tax benefit.

130 Housing benefit.

(1) A person is entitled to housing benefit if—

(a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home;

(b) there is an appropriate maximum housing benefit in his case; and

(c) either—

(i) he has no income or his income does not exceed the applicable amount; or

(ii) his income exceeds that amount, but only by so much that there is an amount remaining if the deduction for which subsection (3)(b) below provides is made.

137 Interpretation of Part VII and supplementary provisions.

…

(2) Regulations may make provision for the purposes of this Part of this Act—

(a) as to circumstances in which a person is to be treated as being or not being in Great Britain;

(b) continuing a person's entitlement to benefit during periods of temporary absence from Great Britain;

[(*c) to (m) left out as not relevant.]*

4. Relevant provisions in the Housing Benefit Regulations 2006 ("the HB Regulations 2006") include:

Circumstances in which a person is or is not to be treated as occupying a dwelling as his home

7(13D) Subject to paragraphs (13E), (13G), (17C), (17D) and (17E) a person to whom paragraph (13C) applies shall be treated as occupying the main dwelling as his home whilst he is absent from Great Britain, for a period not exceeding 4 weeks beginning with the first day of that absence from Great Britain, provided that—

(a) the person intends to return to occupy the main dwelling as his home;

(b) the part of the main dwelling normally occupied by the person has not been let or, as the case may be, sub-let; and

(c) the period of absence outside Great Britain is unlikely to exceed 4 weeks.

Date on which change of circumstances is to take effect

79.—(1) Except in cases where regulation 34 (disregard of changes in tax, contributions, etc) applies, and subject to regulation 8(3) of the Decisions and Appeals Regulations and the following provisions of this regulation, and to regulation 80(5)), a change of circumstances which affects entitlement to, or the amount of, housing benefit ("change of circumstances") shall take effect from the first day of the benefit week

following the date on which the change of circumstances actually occurs, and where that change is cessation of entitlement to any benefit under the benefit Acts, the date on which the change actually occurs shall be the day immediately following the last day of entitlement to that benefit.

Benefit claims, entitlement and adjudication

5. Relevant provisions in the Social Security Administration Act 1992 ("the Administration Act 1992") include:

1 Entitlement to benefit dependent on claim

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

(a) he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations under this Part of this Act; or

(b) he is treated by virtue of such regulations as making a claim for it.

…

(3) In this section and section 2 below "benefit" means—

(za) universal credit;
…

(b) any income-related benefit.

5 Regulations about claims for and payments of benefit

(1) Regulations may provide—

…

(f) for the disallowance on any ground of a person's claim for a benefit to which this section applies to be treated as a disallowance of any further claim by that person for that benefit until the grounds of the original disallowance have ceased to exist;

…

(2) This section applies to the following benefits—

(za) universal credit;

…

(e) housing benefit;

134 Arrangements for housing benefit

(1) Housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (in this Part referred to as "the housing benefit scheme") shall be funded and administered by the appropriate housing authority or local authority.

6. Relevant provisions of the Social Security Act 1998 ("SS Act 1998") are:

Decisions

8 Decisions by Secretary of State

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

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

(b) [*repealed*] and

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

(d) [*repealed*]

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

(a) the claim shall not be regarded as subsisting after that time; and

(b) accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time.

(3) In this Chapter "relevant benefit" means any of the following, namely—

(a) benefit under Parts II to V of the Contributions and Benefits Act;

(aa) universal credit;

10 Decisions superseding earlier decisions

(1) Subject to subsection (3) below, the following, namely—

(a) any decision of the Secretary of State under section 8 above or this section, whether as originally made or as revised under section 9 above;

(aa) any decision under this Chapter of an appeal tribunal or a Commissioner; and

(b) any decision under this Chapter of the First-tier Tribunal or any decision of the Upper Tribunal which relates to any such decision,

may be superseded by a decision made by the Secretary of State, either on an application made for the purpose or on his own initiative.

(2) In making a decision under subsection (1) above, the Secretary of State need not consider any issue that is not raised by the application or, as the case may be, did not cause him to act on his own initiative.

(3) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this section.

(4) [*repealed*]

(5) Subject to subsection (6) and section 27 below, a decision under this section shall take effect as from the date on which it is made or, where applicable, the date on which the application was made.

(6) Regulations may provide that, in prescribed cases or circumstances, a decision under this section shall take effect as from such other date as may be prescribed.

12 Appeal to First-tier Tribunal

(1) This section applies to any decision of the Secretary of State under section 8 or 10 above (whether as originally made or as revised under section 9 above) which—

(a) is made on a claim for, or on an award of, a relevant benefit, and does not fall within Schedule 2 to this Act; or

(b) is made otherwise than on such a claim or award, and falls within Schedule 3 to this Act;

(8) In deciding an appeal under this section, the First-tier Tribunal—

(a) need not consider any issue that is not raised by the appeal; and

(b)shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.

(9) The reference in subsection (1) above to a decision under section 10 above is a reference to a decision superseding any such decision as is mentioned in paragraph (a) or (b) of subsection (1) of that section.

17 Finality of decisions

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

(2) If and to the extent that regulations so provide, any finding of fact or other determination embodied in or necessary to such a decision, or on which such a decision is based, shall be conclusive for the purposes of—

(a) further such decisions;

(b) decisions made under the Child Support Act; and

(c) decisions made under the Vaccine Damage Payments Act.

7. Relevant provisions in the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 ("the UC etc. (C&P) regulations 2013") include:

Duration of awards
36.—(1) A claim for universal credit is to be treated as made for an indefinite period and any award of universal credit on that claim is to be made for an indefinite period.

[remainder of regulation left out as not relevant]

8. Relevant provisions in the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 ("the UC etc. (D&A) regulations 2013") include:

Introduction
22. Subject to regulation 32 (decisions which may not be superseded), the Secretary of State may make a decision under section 10 ("a superseding decision") of the 1998 Act in any of the cases and circumstances set out in this Chapter.

Changes of circumstances
23.—(1) The Secretary of State may supersede a decision in respect of which—

(a) there has been a relevant change of circumstances since the decision to be superseded had effect or, in the case of an advance award under regulation 32, 33 or 34 of the Claims and Payments Regulations 2013, since it was made; or

(b) it is expected that a relevant change of circumstances will occur.

Error of law, ignorance, mistake etc.

24. A decision of the Secretary of State, other than one to which regulation 25 (decisions against which no appeal lies) refers, may be superseded where—

(a) the decision was wrong in law, or was made in ignorance of, or was based on a mistake as to, some material fact; and

(b) an application for a supersession was received, or a decision was taken by the Secretary of State to act on the Secretary of State's own initiative, more than one month after the date of notification of the decision to be superseded or after the expiry of such longer period as may have been allowed under regulation 6 (late application for a revision).

Suspension in prescribed cases

44.—(1) The Secretary of State may suspend, in whole or part, payment of any benefit to a person ("P") in the circumstances described in paragraph (2).

(2) The circumstances are where—

(a) it appears to the Secretary of State that—

(i) an issue arises whether the conditions for entitlement to the benefit are or were fulfilled;

(ii) an issue arises whether a decision relating to an award of the benefit should be revised under section 9 or superseded under section 10 of the 1998 Act,

(iii) an issue arises whether any amount of benefit paid to P is recoverable under or by virtue of section 71ZB, 71ZG or 71ZH of the Administration Act,

(iv) the last address notified to the Secretary of State of P is not the address at which P resides,

(b) an appeal is pending in P's case against a decision of the First-tier Tribunal, the Upper Tribunal or a court; or

(c) an appeal is pending against a decision given by the Upper Tribunal or a court in a different case and it appears to the Secretary of State that, if the appeal were to be decided in a particular way, an issue would arise as to whether the award of any benefit to P (whether the same benefit or not) ought to be revised or superseded.

CHAPTER 3

EFFECTIVE DATES FOR SUPERSESSIONS

Introduction

34. This Chapter and Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances) contains exceptions to the provisions of section 10(5) of the 1998 Act as to the date from which a decision under section 10 of that Act which supersedes an earlier decision takes effect.

SCHEDULE 1

EFFECTIVE DATES FOR SUPERSEDING DECISIONS MADE ON THE GROUND OF A CHANGE OF CIRCUMSTANCES

PART 3

UNIVERSAL CREDIT

20. Subject to the following paragraphs and to Part 4, in the case of universal credit, a superseding decision made on the ground of a change of circumstances takes effect from the first day of the assessment period in which that change occurred or is expected to occur.

…

29. Where the superseding decision is advantageous to a claimant and is made on the Secretary of State's own initiative, it takes effect from the first day of the assessment period in which the Secretary of State commenced action with a view to supersession.

9. Relevant provisions of the Child Support, Pensions and Social Security Act 2000 ("the CSPSS Act 2000") are section 68 and contained in Schedule 7:

68 Housing benefit and council tax benefit: revisions and appeals.

Schedule 7 (which makes provision for the revision of decisions made in connection with claims for housing benefit or council tax benefit and for appeals against such decisions) shall have effect.

Schedule 7

Introductory

1(1) In this Schedule "relevant authority" means an authority administering housing benefit or council tax benefit.

(2) In this Schedule "relevant decision" means any of the following—

(a) a decision of a relevant authority on a claim for housing benefit or council tax benefit;

(b) any decision under paragraph 4 of this Schedule which supersedes a decision falling within paragraph (a), within this paragraph or within paragraph (b) of sub-paragraph (1) of that paragraph;

but references in this Schedule to a relevant decision do not include references to a decision under paragraph 3 to revise a relevant decision.

Decisions on claims for benefit

2 Where at any time a claim for housing benefit or council tax benefit is decided by a relevant authority—

(a) the claim shall not be regarded as subsisting after that time; and

(b) accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time.

Decisions superseding earlier decisions

4(1) Subject to sub-paragraphs (4) and (4A), the following, namely—

(a) any relevant decision (whether as originally made or as revised under paragraph 3),

(aa) any decision under this Schedule of an appeal tribunal or a Commissioner, and

(b) any decision under this Schedule of the First-tier Tribunal or any decision of the Upper Tribunal which relates to any such decision,

may be superseded by a decision made by the appropriate relevant authority, either on an application made for the purpose by a person affected by the decision or on their own initiative.

(3) In this paragraph "the appropriate relevant authority" means the authority which made the decision being superseded, the decision appealed against to the tribunal or the First-tier Tribunal or, as the case may be, the decision to which the decision being appealed against to the Commissioner or the [Upper Tribunal relates.

(4) In making a decision under sub-paragraph (1), the relevant authority need not consider any issue that is not raised by the application or, as the case may be, did not cause them to act on their own initiative.

(5) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this paragraph.

(4A) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision relating to housing benefit must be made by the appropriate relevant authority.

(6) Subject to sub-paragraph (6) and paragraph 18, a decision under this paragraph shall take effect as from the date on which it is made or, where applicable, the date on which the application was made.

(7) Regulations may provide that, in prescribed cases or circumstances, a decision under this paragraph shall take effect as from such other date as may be prescribed.

Finality of decisions

11 Subject to the provisions of this Schedule and to any provision made by or under Chapter 2 of Part 1 of the Tribunals, Courts and Enforcement Act 2007, any decision made in accordance with the preceding provisions of this Schedule shall be final.

10. Relevant provisions in Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 ("the HB & CTB (D&A) regulations 2001") are:

PART II: REVISIONS AND SUPERSESSIONS

Decisions superseding earlier decisions

7.—(1) Subject to the provisions in this regulation, the prescribed cases and circumstances in which a decision may be made under paragraph 4 of Schedule 7 to the Act (decisions superseding earlier decisions) are as set out in paragraph (2).

(2) The appropriate relevant authority may make a decision under paragraph 4 of Schedule 7 to the Act upon its own initiative or on an application made for the purpose on the basis that the decision to be superseded is a decision—

(a) in respect of which–

(i) there has been a change of circumstances since the decision had effect; or

(ii) it is anticipated that a change of circumstances will occur;

(b) which is erroneous in point of law or made in ignorance of, or was based upon a mistake as to, some material fact provided that the decision—

(i) cannot be revised on the basis of that error, ignorance or mistake; and

(ii) is not a decision prescribed in regulations under paragraph 6(2)(e) or (4)(a) of Schedule 7 to the Act;

[remainder of regulation left out as not relevant].