



Neutral Citation Number: [2025] UKUT 353 (AAC)
Appeal No. UA-2025-000220-RP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

JB

Appellant

- v -

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

**Before: Upper Tribunal Judge Ovey
Decided on consideration of the papers**

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No.: 1682768766501030

Tribunal Venue: Cardiff

Decision Date: 29th November 2024

SUMMARY OF DECISION

RETIREMENT PENSIONS (31)

Deferred retirement (31.2)

The appellant attained pensionable age in November 2013 but deferred his retirement until April 2018. He chose to receive increased pension rather than a lump sum. He elected to de-retire in May 2021 and retired again in June 2022. His new pension was calculated on the footing that he was to be treated as if his claim was an entirely new claim and he had deferred his retirement from November 2013 to June 2022, that being the understanding of the Department of Work and Pensions of the relevant legislation (in particular ss.54 and 55 of the Social Security Contributions and Benefits Act 1992). The appellant contended that he continued to be entitled to pension at the rate he was receiving in May 2021, applying subsequent up-rating Orders, and that the period of deferment under the legislation was only the period May 2021 to June 2022. Despite the appellant's clear and forceful submissions, I conclude that the Department's method of calculation was correct, reflecting as it did the statutory phrase "as if he had not become entitled" to his previous pension and a lengthy previous legislative history which consistently pointed to the same conclusion.

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

The decision of the Upper Tribunal is that the decision of the First-tier Tribunal involved the making of an error on a point of law. That decision is set aside and a decision to the same effect is substituted.

REASONS FOR DECISION

Introduction

1. This is an appeal by the appellant against the decision of the First-tier Tribunal given on 29th November 2024. By its decision the tribunal dismissed the appellant's appeal against the decision of the Secretary of State for Work and Pensions as to the amount of his retirement pension from 24th June 2022. The decision was that the appellant, who was then the claimant, was entitled to a retirement pension of £323.35 per week from that date. That is, of course, also the figure which the Secretary of State has used as the starting point when calculating the appellant's entitlement following subsequent annual up-rating.
2. The appellant contends that the methodology adopted by the Department for Work and Pensions ("DWP") in calculating his entitlement was flawed, that the correct figure was at the outset £330.36 and that that is the figure which should have been used in the annual up-rating exercises.
3. On this appeal, the Secretary of State accepts that the tribunal fell into error, but contends that the error was immaterial and that the figure of £323.35 was correct.
4. I would like to pay tribute at the outset of this decision to the appellant's thorough research and the impressive way in which he has formulated his arguments. I shall do my best to do justice to them in this decision.

Factual background

5. The facts are not in dispute. The appellant was born on 29th November 1948 and so attained what was then state pension age on 29th November 2013. He deferred claiming his pension until 4th April 2018 and was then awarded a Category A retirement pension with effect from 12th April 2018.
6. The appellant then "de-retired" with effect from 28th May 2021 and ceased to be entitled his pension. He made a further claim to retirement pension on 20th June 2022 and was awarded a pension with effect from that date.
7. The appellant does not dispute the amounts of pension he was paid up until his de-retirement. What he says is that the DWP used the wrong methodology to calculate his pension when he made his second claim. The essence of his argument is that in June 2022 his pension was calculated as if he had deferred it for a single period running from 29th November 2013 to 20th June 2022, whereas it should have been calculated as if he had deferred his pension for two distinct

periods, the first being the period from 29th November 2013 to 12th April 2018 and the second being the period from 28th May 2021 to 20th June 2022.

8. To understand the practical consequences of the two approaches, it is helpful first to look at the component parts of the appellant's pension as identified by the DWP. They are set out in the Secretary of State's submission to the tribunal as follows:

Basic state pension	£141.85
Basic pension increments	£ 80.29
Pre-97 additional pension	£ 34.72
Pre-97 increments	£ 19.65
Post-97 additional pension	£ 0.64
Post-97 increments	£ 0.36
Post-02 additional pension	£ 5.35
Post-02 increments	£ 3.03
Graduated retirement benefit	£ 1.49
Graduated retirement benefit increments	£ 0.84
State pension top up	£ 28.06
State pension top up increments	£ 7.07

Total weekly state pension £323.35

9. As can be seen, this comes to £184.05 a week if the increments and the state pension top up are excluded, or £212.11 a week if the increments alone are excluded. The pension amounts other than the state pension top up amount are the amounts to which the appellant would have been entitled if he had claimed his pension with effect from 29th November 2013 but it had been payable at the rate which would have been applicable if any annual up-rating Orders made under the Social Security Administration Act 1992 up to the date of the appellant's second claim had been in force at 29th November 2013. Thus, the basic Category A retirement pension was £110.15 on 29th November 2013 but had been increased to £141.85 by June 2022: see s.44(4) of the Social Security Contributions Act 1992 and the Social Security Benefits Up-rating Order 2022, S.I. 2022 No. 292, art. 4. A similar approach was taken to the various tranches of the appellant's additional pension. The increments are the increases in pension to which the appellant is entitled because his pension was deferred. They have been applied to those various pension amounts following a calculation made on the footing that the appellant is entitled to increments for the number of 6 day increment periods which occurred during the period 29th November 2013 to 20th June 2022. The definition of "increment period", as explained below, is such that no increment periods occurred while the appellant was in receipt of state pension from 12th April 2018 to 12th May 2021.
10. The position as respects the state pension top up is different because the appellant was not entitled to such a component in November 2013. His entitlement accrued on 30th November 2016, when he paid additional national insurance contributions and became entitled to an additional £25 of state pension. He did so under a facility introduced into the Social Security Contributions and Benefits Act 1992 by the Pensions Act 2014 to enable, among others, any person with a deferred entitlement to a Category A pension to pay Class 3A contributions

in order to acquire units of additional pension. A cut-off date which was in general 5th April 2017 applied. Such units of additional pension are additional pension for the purposes of s.45 of the 1992 Act and are therefore up-rated in the same way as other elements of additional pension, but no increment period occurred between 29th November 2013 and 29th November 2016.

11. The appellant has done his own calculations of his entitlement, taking as a starting point his entitlement from 6th April 2021 as notified to him by the annual increase letter he received dated 30th January 2021 (i.e., the letter setting out the benefits he would receive from 6th April 2021) and applying the annual up-rating increase used to calculate benefits from 6th April 2022. The increase letter set out the appellant's entitlement as follows:

Basic state pension	£137.60
Pre-97 additional state pension	£33.68
Post-97 additional state pension	£5.82
Extra – basic state pension	£60.11
Extra – additional state pension	£18.02
Graduated retirement benefit	£2.10
State pension top up	£31.09
 Total weekly amount	 £288.42

The up-rating increase set out in the 2022 Up-rating Order is 3.1%, which produces an amount of £297.36 when applied to the 2021 starting point.

12. The appellant's contention is that he was permanently entitled to the amount of £297.36, which of course incorporates all the increments to which the Secretary of State had calculated he was entitled for the period of deferment between 29th November 2013 and 12th April 2018, and that he is therefore entitled to a pension of that amount from 20th June 2022 together with the increments appropriate to the further period of deferment from 28th May 2021 to 20th June 2022. Applying the formula for calculating increments in Schedule 5 to the 1992 Act, the appellant calculates that he is entitled to 60p for each increment period and that there were 55 increment periods during the second period of deferment. That produces a total amount of increments of £33.00, which would give the appellant a total weekly entitlement from the date of his second claim of £330.36 (i.e., £297.36 + £33.00). There was thus a shortfall of £7.01 in the weekly amount he was awarded in response to that claim. It follows that the shortfall increased slightly in subsequent financial years as the annual up-rating figure was applied to the wrong amount.
13. The question before the First-tier Tribunal was in substance which method of calculation is correct. The answer depends on the true construction of the various statutory provisions governing the calculation of a retirement pension in circumstances of this kind.
14. For completeness, I should add that the history of the appellant's second claim and of his appeal to the First-tier Tribunal has been unfortunate. He was originally notified that he was entitled to a state pension of £184.05 (i.e., the figure mentioned in paragraph 9 above, excluding increments and state pension top up)

and, as statutorily required, was given a choice between receiving extra pension or a lump sum in respect of the increments. He chose the extra pension. It then emerged that:

- a. During the period 13th April 2018 to 27th May 2021 the appellant had not been paid the weekly increments in respect of the state pension top up;
 - b. The state pension top up had not been included in the determination of the amount of £184.05 and the appellant's pension entitlement before increments were added was in fact £212.11.
15. This led to a string of communications from the DWP to the appellant notifying him separately of the points mentioned in paragraph 14(a) and (b) above, sending him a further choices letter (reflecting the revised entitlement) and notifying him that since he had chosen to receive extra pension he was entitled to arrears of state pension. All of this reached the appellant in early October 2022 and left him, at that stage, uncertain of how his entitlement had been calculated. He requested mandatory reconsideration so that he could understand the calculation, but no mandatory reconsideration notice was provided then or when he queried the 2023 annual increase letter.
16. In those circumstances, the appellant appealed to the First-tier Tribunal on 29th April 2023 referring to the communications as "confusing", stating that he had decided to ask for mandatory reconsideration because of the lack of clarity and setting out his understanding of the correct calculation as explained above. Following directions given by the tribunal, a mandatory reconsideration notice dated 26th July 2023 was produced which did not change the decision but did draw attention to the statutory provisions which the Secretary of State considered governed the position. It did not directly address the appellant's grounds of appeal. On 10th August 2023 the appellant confirmed that he wished to proceed with the appeal and the Secretary of State duly provided a response to the tribunal, but again did not directly address the grounds of appeal. It was the appellant himself who drew attention to the difference in methodology in a counter-response dated 20th October 2023 which contained a detailed discussion of the statutory provisions. The matter proceeded towards a hearing on the papers and the appellant produced a written submission dated 11th December 2023. By February 2024 the appellant was awaiting a new hearing date and had also received a further annual increase letter which he challenged for the same reasons as he relied on in relation to his previous challenges.
17. A new hearing date was eventually given and on 8th July 2024, in preparation, the appellant uploaded a further submission setting out what he proposed to say. The hearing was then adjourned for a face to face hearing and the Secretary of State was directed to put in a submission responding to the appellant's submission. The notice of the adjournment, itself dated 8th July 2024, correctly identifies the two different approaches to the relevant calculations. The Secretary of State made a further submission, dated 9th August 2024, and the appellant responded with a submission dated 2nd September 2024 in which he commented that the Secretary of State was relying on a line of argument not previously actively advanced. The appeal was eventually heard on 7th November 2024 and was dismissed.

Legal framework

18. As can be inferred from the various components making up the appellant's pension, he has become entitled to the state pension he now receives under various pieces of legislation. In order to set the context of the relevant provisions for present purposes, it is helpful to refer to some of the earlier legislation. For convenience, in explaining the various provisions I shall follow the appellant's example and refer to the person entitled under the legislation as "he" or "him" when the use of a personal pronoun is appropriate.
19. The National Insurance Act 1946 established the structure of post-war social security benefits, including retirement pensions. S.20 provided that a person over pensionable age who had retired from regular employment and who satisfied the relevant contribution conditions was entitled to a retirement pension. The rate was specified in Schedule 2. He was not to be treated as having retired from regular employment unless he had given the prescribed notice, but was in any event deemed to retire from regular employment on the expiration of five years from his attaining pensionable age if he had not previously retired. Under s.20(4) the weekly rate of pension was increased by one shilling for every 25 contributions paid by the pensioner in respect of the period after he attained pensionable age.
20. The National Insurance Act 1951 made various adjustments to the rate of benefits, including increasing the increment earned by late retirement from one shilling to one shilling and sixpence. S.7 gave power to make regulations to make provision for enabling persons less than five years over pensionable age to elect "to be treated as from the date of their election as if they had not so retired". This was the original right to de-retire, but was only available for a period of six months from "the prescribed date". The power to make regulations expressly envisaged that the regulations might provide for determining how contributions paid by such a person, "whether before or after his first retirement", were to be dealt with for the purposes of s.20(4).
21. That power was exercised in the making of the National Insurance (Increase of Benefit, Re-entry into Regular Employment and Miscellaneous Provisions) Regulations 1951, S.I. 1951 No. 1232. Reg. 9 specified those persons who had retired for the purposes of the 1946 Act who could de-retire, stating that they should "be treated from the date of their election as if they had not so retired" and reg. 11(2) provided that in the application of s.20(4) in such a case:

"contributions as an employed or self-employed person paid in respect of any period occurring after pensionable age and before as well as after his first retirement shall be taken into account."

It seems to me clear that on this wording, when a pensioner de-retired and then retired again his increments were calculated afresh from the date when he attained pensionable age to ensure that the contributions paid during the first period of retirement were taken into account. This was, of course, fairly straightforward, since his retirement pension at his new retirement date would be whatever the flat rate was then. The right to de-retire was, however, limited to

those who had retired at 16th July 1951 and the election had to be made within 6 months of that date.

22. A permanent right to de-retire, to be governed by regulations, was introduced by s.1 of the National Insurance Act 1957, which provided that the 1946 Act should apply to a person who exercised the right “as if that person had not retired or become entitled as aforesaid”. There was no limitation such as “from the date of the election”. The relevant regulations were the National Insurance (Widow’s Benefit and Retirement Pensions) Amendment Regulations 1957, S.I. 1957 No. 1309. Reg. 2 of those Regulations introduced new regs. 8 to 12 into the principal regulations governing widow’s benefit and retirement pensions.¹ The new reg. 8(1) provided that the consequence of an election was that the 1946 Act should have effect “as if that person had not retired or become entitled as aforesaid”. Reg. 10(1) repeated the wording set out in the preceding paragraph in relation to increments, which, as I have said, in my view has the effect that increments are to be calculated afresh from the date the person attained pensionable age.
23. Graduated retirement benefit was introduced by the National Insurance Act 1959, which made provision for the payment of graduated contributions related to income where remuneration exceeded a certain level and for graduated retirement benefit calculated by reference to the number of units notionally purchased from graduated contributions. Under s.4(5), where a person did not retire from regular employment on attaining pensionable age, for the purpose of calculating his graduated retirement benefit from the date of his retirement there was to be added an amount equal to half the graduated retirement benefit which would have been paid if he had retired on attaining pensionable age and had received the benefit for the whole of the period.
24. The appellant’s entitlement to graduated retirement pension arises under the National Insurance Act 1965. That was an Act which consolidated the National Insurance Acts 1946 to 1964 and some delegated legislation made thereunder, together with some related enactments. As originally enacted, and consistently with the earlier legislation, it provided for employers and employees to pay flat rate and, where remuneration exceeded a certain level and the employer had not contracted out, graduated contributions and for a range of social security benefits including retirement pension and graduated retirement benefit. Under s.30, a person who satisfied the contribution conditions would be entitled to a retirement pension at a flat rate if he was over pensionable age and had retired from regular employment. Under s.30(3) and (4) a person was not treated as having retired unless he had complied with prescribed requirements as to notice of the date of retirement, but if he had not previously retired he was deemed to retire on the expiration of five years from attaining pensionable age. Under s.30(6), subject to the provisions of the Act, a retirement pension commenced from the date of retirement and was payable for life. S.31 provided for increments in the flat rate pension in the case of late retirement.

¹ The National Insurance (Widow’s Benefit and Retirement Pensions) Regulations 1948, S.I. 1948 No.1261.

25. S.35 of the 1965 Act read as follows:

“(1) Regulations may provide that, in the case of a person of such description as may be prescribed who –

(a) has retired from regular employment or has otherwise become entitled to a retirement pension but is [less than five years over pensionable age]; and

(b) elects, in such manner and in accordance with such conditions as may be prescribed, that the regulations should apply in his case,

this Act shall have effect as if that person had not retired or become entitled as aforesaid ...”

There was also provision for the regulations to modify the Act as appeared to the Secretary of State to be necessary or expedient.

26. S.36 of the 1965 Act provided for payment of graduated retirement benefit to any person over pensionable age who was entitled to a retirement pension by reference to units of graduated contributions paid by him. As originally drafted, he was entitled to an extra 6d of pension for each unit. Under s.36(4), repeating the effect of the relevant provision in the 1959 Act, if a person did not retire on attaining pensionable age the graduated retirement benefit was calculated by treating the graduated contributions paid as increased by half the graduated retirement benefit which would have been paid if he had retired, with the consequence that extra units were acquired. No specific provision was made for the case where a person retired but exercised the right to de-retire, which was presumably left to be governed, if at all, by the regulations made under, or treated as made under, s.35.

27. The 1957 Regulations remained in force after the consolidation but were revoked by the National Insurance (Widow's Benefit and Retirement Pensions) Regulations 1972, S.I. 1972 No. 606. Reg. 8 of the 1972 Regulations was to the same effect as reg. 8 of the earlier Regulations. Reg. 10 was in similar terms to reg. 10 of the earlier Regulations, and so applied only to increments under s.31 of the 1965 Act, not to increases under s.36, which were dealt with under that section.

28. The system of contributions and benefits consolidated in the 1965 Act was substantially changed by the Social Security Act 1973, Part 1 of which introduced a system of four classes of national insurance contributions and provided for, inter alia, Category A retirement pensions payable to a person by virtue of his own contributions. By s.100 and Schedule 26, the 1973 Act provided that after the appointed day no person should be insured under the 1965 Act or entitled to benefit under it, subject to transitional provisions. The transitional provisions made included the Widow's Benefit, Retirement Pension and Other Benefits (Transitional) Regulations 1974, S.I. 1974 No. 1757, which by reg. 15 provided that s.36 of the 1965 Act should continue for the purpose of preserving any

existing entitlement to graduated retirement benefit and added the following at the end of s.36(4):

“Provided that, if a person to whom this sub-section applies has retired from regular employment after attaining pensionable age and has subsequently elected to re-enter employment, in computing the addition to be made in accordance with this sub-section to the amount of graduated contributions paid by him, no account shall be taken of such part (if any) of the period between the date of his first retirement and the date of his re-entry into regular employment as falls on or after 6th April 1975.”

This proviso appears to have been intended to correct the anomaly that under s.36(4) as originally drafted a person who exercised the right to de-retire would apparently become entitled on his second retirement to graduated retirement benefit calculated as if there had been no previous retirement and no receipt of benefit. It is consistent with making the increments calculation again from the date of the person's pensionable age, but disregarding the period during which he was receiving a pension.

29. Under s.24 of the 1973 Act, the weekly rate of a Category A pension was the rate specified in Schedule 4, namely, a flat rate of £6.75 plus an age addition of £0.25 where appropriate. Graduated retirement benefit had been criticised as providing a very poor return for money contributed and as lacking any inflation-proofing, and a new earnings-related personal pension was to be provided from a state Reserve Pension Fund for employees who were not in “recognised pensionable employment”. S.24(4) made provision for the weekly rate of the Category A pension to be increased for the period between the person's attaining pensionable age and his retiring by 1/8th per cent of the weekly pension rate for every six days excluding Sundays in that period which were treated by regulations as being days of increment. It is to be noted that under s.23(5) a person was still deemed to retire on the expiration of 5 years from attaining pensionable age if he had not previously done so. S.26(2) of the Act was the same terms as s.35 of the National Insurance Act 1965, so far as material, although the pension to which it applied was the Category A (or potentially Category B) pension and it was only the relevant Part of the Act which was to have effect as if the person concerned had not retired. That is to say, a right to de-retire was given in relation to Category A pensions in addition to the right already given in relation to graduated retirement benefit under the 1965 Act.
30. The Social Security (Widow's Benefit and Retirement Pensions) Regulations 1974, S.I. 1974 No. 2059, included regulations made under ss.24(4) and 26(2) of the 1973 Act. They provided as follows, so far as material:

“2. (1) Subject to the provisions of these regulations, where any person
... -

(a) has retired for the purposes of the Act [i.e., the 1973 Act] from regular employment or has otherwise become entitled to either

a Category A or a Category B retirement pension but is [less than five years over pensionable age]; and

(b) elects that this regulation shall apply in his case,

the Act shall have effect as if that person had not retired or become entitled as aforesaid. ...

3. Where an election has been made in accordance with regulation 2 –

(a) ... no Category A retirement pension shall be payable to a person ... by virtue of his contributions for any period on or after the date of his election and before he subsequently retires for the purposes of the Act from regular employment or dies ...

4. (1) For the purposes of section 24(4) of the Act, a day shall be treated as a day of increment in relation to any person if it is a day in respect of which –

(a) if he had been treated as having retired from regular employment, he would have been entitled to a Category A retirement pension; and

(b) he has not received any of the following benefits [which include a retirement pension of any category].”

31. In the event most of the provisions of Part 1 of the 1973 Act, including those relevant for present purposes, were consolidated in the Social Security Act 1975, which took effect, so far as material, from 6th April 1975, and the provisions of the 1973 Act itself were repealed by the Social Security (Consequential Provisions) Act 1975, also taking effect on 6th April 1975. That Act in turn re-enacted the transitional provisions of Schedule 26 to the 1973 Act. The relevant parts of the Social Security Act 1975 are s.28, which is where the provisions of s.24 of the 1973 Act, including the right to increments in the case of deferment in subs.(4), are to be found, and s.30, which contains the right to de-retire in subs. (3). It was still the case that, under s.27, a person was deemed to retire on the expiration of 5 years from pensionable age if he had not already done so. The repeal of parts of the 1973 Act did not affect either set of 1974 Regulations, although they were made under the provisions of the 1973 Act, because para. 13 of Schedule 3 to the Social Security (Consequential Provisions) Act contained a saving in what was then the standard form for regulations made under any of the Acts being repealed if the regulations in question could have been made under one of the consolidated provisions.

32. It was, however, desirable to make some amendments to achieve conformity with the new regime. So far as material, this was done by the Social Security (Graduated Retirement Benefit) Regulations 1975, S.I. 1975 No. 557. Reg. 2 replaced s.36 of the National Insurance Act as maintained in force by S.I. 1974 No. 1757 with a revised version, of which the material change is that s.36(4)

thereafter referred to an election to de-retire under s.30(3) of “the Act”, defined as the Social Security Act 1975. Reg. 15 of S.I. 1974 No. 1757 was revoked.

33. Further changes to the state retirement pension were made by the Social Security Pensions Act 1975 as a result of the change of government in 1974. S.6 provided that the weekly rate of a Category A pension should consist of a basic component, at a flat rate initially of £11.60, and an additional component which was linked to earnings and became known as the state earnings-related pension (“SERPS”). The provisions of the Social Security Act 1975 relating to the Pension Reserve Fund were repealed by Schedule 5. No relevant amendments were made to s.30 of the Social Security Act, which continued to provide in subs.(3) the right to de-retire, but most of s.28 was also repealed and under s.12 of the Social Security Pensions Act the provisions of Schedule 1 were to govern increases to pension in the case of deferment. Schedule 1 provided as follows, so far as material:

“1. Where a person defers his retirement from regular employment after attaining pensionable age, the rate of his Category A or Category B retirement pension shall be increased by an amount equal to the aggregate of the increments to which he is entitled under paragraph 2 below ...

2. (1) Subject to paragraph 3 below, a person is entitled to an increment under this paragraph for each complete incremental period in his period of deferment.

(2) In this Schedule –

(a) “incremental period” means any period of six consecutive days, excluding Sunday ...; and

(b) “period of deferment”, in relation to any person, means the period beginning with the day on which he attains pensionable age and ending with the day before that of his retirement.

(3) Subject to paragraph 3 below, the amount of the increment for any such incremental period shall be 1/8th per cent of the weekly rate of the Category A or Category B retirement pension to which that person would have been entitled for the period if he had retired on attaining pensionable age.

...

(5) Where one or more [up-rating] orders have come into force ... during the period of deferment the rate for any incremental period shall be determined ... as if the order or orders had come into force before the beginning of the period of deferment.

3. Regulations may provide that a day shall be treated in relation to any person or his pension as not being a day of increment ...”

34. The provisions mentioned above were brought into effect from 6th April 1979 and gave rise to a need for further secondary legislation. In relation to Category A

retirement pensions, this took the form of the Social Security (Widow's Benefit and Retirement Pensions) Amendment Regulations 1978, S.I. 1978 No. 392, which amended S.I. 1974 No. 2059. Reg. 2 replaced the definition of "the Act" (i.e., the Social Security Act 1973) with definitions of "the 1975 Act" and "the Pensions Act", meaning the Social Security Act 1975 and the Social Security Pensions Act 1975 respectively. Reg. 4 then amended reg. 4 of S.I. 1974 No. 2059 by using the terminology and appropriate references contained in the Social Security Act 1975 and the Social Security Pensions Act, but without altering the substantive effect of the provisions as to the days to be treated as days of increment. The amended S.I. 1974 No. 2059 was then revoked by the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979, S.I. 1979 No. 642, reg. 18 and Schedule 2, and the relevant provisions were replaced with a new reg. 2 and reg. 4 to the same effect, so far as material.

35. In relation to graduated retirement benefit, the further legislation took the form of the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978, S.I. 1978 No. 393, which, so far as material, also took effect from 6th April 1979. Reg. 2 applied the up-rating provisions of the Social Security Act 1975 to graduated retirement benefit. Reg. 3 continued in force s.36 of the National Insurance Act 1965, but subject to modifications to bring s.36 into conformity with the provisions of the Social Security Act and the Social Security Pensions Act. Specifically, s.36(4), dealing with increases in the case of deferred retirement, was amended as set out in Schedule 1 to the Regulations to correspond with paragraphs 1 to 3 of Schedule 1 to the Social Security Pensions Act. As a result, s.36(4) read:

"Where a person defers his retirement from regular employment after attaining pensionable age or has made an election by virtue of section 30(3) of the [Social Security] Act and has not revoked it, then, for the purpose of calculating the graduated retirement benefit payable to him from the date of his retirement, there shall be applied the provisions of Schedule 2 to the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978, and those provisions shall be construed and have effect as if they were part of this subsection."

Schedule 2 itself read:

"1. Where a person defers his retirement from regular employment after attaining pensionable age, or has made an election by virtue of section 30(3) of the Act and has not revoked it, then for the purpose of calculating the graduated retirement benefit payable to him from the date of his retirement –

- (a) there shall be added to the amount of the graduated contributions properly payable by him as an insured person one-half of the aggregate graduated retirement benefit which would have been payable to him for any period before 6th April 1979 (disregarding the effect of any [up-rating] order ...) if he had retired from regular employment on attaining pensionable age and had received that benefit for the whole of the period without any interruption or abatement:

Provided that, in computing the addition to be made in accordance with this paragraph in the case of a person who made an election by virtue of section 30(3) of the Act ... no account shall be taken of any period between 6th April 1975 and 5th April 1979 ... which falls between the date of that election and the date of his previous retirement; and

(b) the rate of his graduated retirement benefit shall be increased by an amount equal to the increments to which he is entitled under paragraph 3 below, but only if either –

(i) that amount is enough to increase the rate of benefit by at least 1 per cent ...

...

3. (1) Subject to paragraph 4 below, a person is entitled to an increment under this paragraph for each complete incremental period (beginning not earlier than 6th April 1979) in his period of deferment.

(2) In this Schedule –

(a) “incremental period” means any period of 6 days which are treated by the Social Security (Widow’s Benefit and Retirement Pensions) (Amendment) Regulations 1978 as days of increment for the purposes of Schedule 1 to the Social Security Pensions Act 1975 ...

(b) “period of deferment”, in relation to any person, means the period beginning with the day on which he attains pensionable age and ending with the day before that of his retirement.

(3) ... the amount of the increment for any such incremental period shall be 1/7th per cent of the weekly rate of the graduated retirement benefit to which that person would have been entitled for that period if he had retired on attaining pensionable age, the result being rounded to the nearest whole penny ...

(4) Where one or more [up-rating] orders have come into force ... during the period of deferment the rate of the benefit for any incremental period shall be determined as if the order or orders had come into force before the beginning of the period of deferment.”

S.I. 1975 No. 557 was itself revoked.

36. The primary legislation, other than s.36 of the National Insurance Act 1965, was then consolidated again in the Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act 1992. The Social Security (Consequential Provisions) Act 1992 provided by s.2 that the consolidation did not affect the continuity of the law and anything done under a provision of the repealed enactments which could have been done under a corresponding provision of the new legislation should have effect as if done under the

corresponding provision. The provisions relating to the right to de-retire moved to s.54 of the Social Security Contributions and Benefits Act and the provisions relating to deferment moved to s.55 and Schedule 5. Those various provisions are still in force, although they have been amended, and so they govern the appellant's entitlement as respects his Category A pension. His entitlement as respects his graduated retirement benefit continues to be governed by s.36 of the National Insurance Act.

37. As originally enacted, s.54(1) and (2) of the Social Security Contributions and Benefits Act were in the same terms so far as material as s.30(3) of the Social Security Act 1975 (the power to make modifications having been moved to a separate subsection). It was therefore still necessary to identify the relevant regulations, which remained the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979, S.I. 1979 No. 642, on this occasion by virtue of the Consequential Provisions Act and, if necessary, s.17 of the Interpretation Act 1978, which provides that where an Act repeals and re-enacts a previous enactment, in so far as any subordinate legislation made under the enactment so repealed could have been made under the provision re-enacted, it shall have effect as if made under that provision. Those regulations are also still in force, although amended.
38. Again as originally enacted, s.55 provided that where a person's entitlement to a Category A pension was deferred, Schedule 5 should have effect for increasing the rate of his pension. It also provided that entitlement to a Category A pension was deferred if and so long as the person in question did not become entitled to the pension because he had not made a claim. The previous statutory provision under which a person was deemed to have retired if he was five years over his pensionable age and had not made a claim was not repeated. As a result, Schedule 5, while largely repeating the provisions of Schedule 1 to the Social Security Pensions Act (as set out in the Table of Derivations at the end of the 1992 Act), distinguished between the period of deferment, determined as set out in s.55, and the "period of enhancement", which began on the same day as the period of deferment and ended on the same day as the period of deferment or, if earlier, on the day before the fifth anniversary of that period. Incremental periods could only occur during the period of enhancement. The effect was that the right to increases was limited to the first five years of deferment, if deferment exceeded that length of time, and the financial effect of the increase provisions from the point of view of the Secretary of State was the same as it had previously been, except that the amount of the increment was increased from 1/8th per cent to 1/7th per cent of the weekly rate of pension.
39. Although the legislation has not been further consolidated, it has been amended, as I have said. For present purposes, the most significant amendments were made by the Pensions Act 2004, through amendments to the Pensions Act 1995 to bring into force earlier than originally intended a number of changes introduced by the latter Act and to give a right to a lump sum payment on deferment and by the Social Security (Deferral of Retirement Pensions) Regulations 2005, S.I. 2005 No. 453. The new legislative policy was to encourage potential pensioners to remain in work and so the right to de-retire is no longer restricted to persons who are less than five years over their pensionable age, there is no longer a maximum five year period of deferment, a person deferring retirement is now offered a

choice between a lump sum and an increased pension by reference to increment periods and the increment rate has increased from 1/7th per cent to 1/5th per cent. It is no longer necessary to distinguish between the period of deferment and the period of enhancement. Ss. 54 and 55 of and Schedule 5 to the Act and the 1979 Regulations have been amended accordingly. S.36 of the National Insurance Act 1965 and Schedule 2 to the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978 have also been amended to reflect the new policy.

40. The net effect is that at the date of the appellant's second claim the relevant legislation read as follows, so far as material:

Social Security Contributions and Benefits Act 1992

"S.54(1) Regulations may provide that in the case of a person of any prescribed description who –

- (a) has become entitled to a Category A or Category B retirement pension; and
- (b) elects in such manner and in accordance with such conditions as may be prescribed that the regulations shall apply in his case,

this Part of this Act shall have effect as if that person had not become entitled to such a retirement pension ...

(2) Regulations under subsection (1) above may make such modifications of the provisions of this Part of this Act ... as may appear to the Secretary of State necessary or expedient.

S.55(1) Where a person's entitlement to a Category A or Category B retirement pension is deferred, Schedule 5 to this Act has effect.

- (2) In that Schedule –

...

paragraphs 1 to 3 make provision about increasing pension where the pensioner's entitlement is deferred

...

- (3) For the purposes of this Act a person's entitlement to a Category A or Category B retirement pension is deferred if and so long as that person –

- (a) does not become entitled to that pension by reason only of not satisfying the condition of section 1 of the Administration Act (entitlement to benefit dependent on claim), or
- (b) in consequence of an election under section 54(1), falls to be treated as not having become entitled to that pension,

and, in relation to any such pension, “period of deferment” shall be construed accordingly.

Schedule 5:

1. (1) This paragraph applies where a person’s entitlement to a Category A or Category B retirement pension is deferred and one of the following conditions is met –

(a) the period of deferment is less than 12 months, or

(b) the person has made an election [to receive pension increases rather than a lump sum].

(2) The rate of the person’s Category A or Category B retirement pension shall be increased by an amount equal to the aggregate of the increments to which he is entitled under paragraph 2, but only if that amount is enough to increase the rate of the pension by at least 1 per cent.

2. (1) Subject to paragraph 3 below, a person is entitled to an increment under this paragraph for each complete incremental period in his period of deferment.

(2) In this Schedule –

“incremental period” means any period of six days which are treated by regulations as days of increment for the purposes of this Schedule in relation to the person and the pension in question.

(3) Subject to paragraph 3 below, the amount of the increment for any such incremental period shall be $\frac{1}{5}$ th per cent of the weekly rate of the Category A or Category B retirement pension to which that person would have been entitled for the period if his entitlement had not been deferred.

(4) Where an amount is required to be calculated in accordance with the provisions of sub-paragraph (3) above –

(a) the amount so calculated shall be rounded to the nearest penny, taking any $\frac{1}{2}$ p as nearest to the next whole penny above ...

...

(5) For the purposes of sub-paragraph (3) above the weekly rate of pension for any period shall be taken –

...

(b) not to include ... any graduated retirement benefit

...

(7) Where one or more [up-rating] orders have come into force ...during the period of deferment, the rate for any incremental period shall be determined as

if the order or orders had come into force before the beginning of the period of deferment.”

Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979

“Reg. 2(1) Subject to the provisions of these regulations, where any person ...

-

(a) has become entitled to either a Category A or a Category B retirement pension; and

(b) elects that this regulation shall apply in his case,

the Act shall have effect as if that person had not become entitled as aforesaid.

...

Reg. 3 Where an election has been made in accordance with regulation 2 –

(a) ... no Category A or B retirement pension ... shall be payable to a person for any period on or after the date of his election and before he subsequently becomes entitled to a Category A or Category B retirement pension ...

Reg. 4(1) For the purposes of paragraph 2 of Schedule 1 to the [Social Security Pensions] Act² a day shall be treated as a day of increment in relation to any person if it is a day in that person's period of deferment, other than a Sunday, in respect of which –

(a) if that person had not deferred his entitlement to a Category A or Category B retirement pension that person would have been entitled to such a pension ...; and

(b) that person had not received any of the following benefits [which include a retirement pension].”

National Insurance Act 1965

“S.36(1) Subject to the provisions of the Act, graduated retirement benefit shall be payable to any person who is over pensionable age and who is entitled to a retirement pension, and shall be an increase in the weekly rate of his retirement pension equal to 14.92 pence for each unit, ascertained in accordance with subsections (2) and (3) of this section, of the graduated contributions properly paid by him as an insured person, the result being rounded to the nearest whole penny, taking $\frac{1}{2}$ p as the nearest to the next whole penny above.

² Following the 1992 consolidation, the reference to Schedule 1 to the Social Security Pensions Act is to be read as a reference to Schedule 5 to the Social Security Contributions and Benefits Act 1992: see paras. 36 to 38 above.

(2) For the purpose of graduated retirement benefit, a unit of graduated contributions shall be £7.50.

...

(4) Where a person's entitlement to graduated retirement benefit is deferred

–

(a) Schedule 2 to the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978; and

(b) Schedule 1 to the [Social Security (Graduated Retirement Benefit) Regulations 2005],

shall have effect and both those Schedules shall be construed and have effect as if they were part of this subsection.

(4A) For the purposes of subsection (4), a person's entitlement to graduated retirement benefit is deferred –

(a) where he would be entitled to a Category A or Category B retirement pension but for the fact that his entitlement is deferred within the meaning in section 55(3) of the Social Security Contributions and Benefits Act 1992, if and so long as his entitlement to such a pension is deferred;

(b) ...

and in relation to graduated retirement benefit, "period of deferment" shall be construed accordingly."

Social Security (Graduated Retirement Benefit) (No. 2 Regulations 1978

[Schedule 2 as set out in paragraph 35 above has been amended by the Social Security (Graduated Retirement Benefit) Regulations 2005, S.I. 2005 No. 454, reg. 3, deleting paragraph 1(b) and paragraphs 2 to 4.]

Social Security (Graduated Retirement Benefit) Regulations 2005

Schedule 1

"1. This Part applies only in respect of a person who is deferring entitlement to graduated retirement benefit by virtue of section 36(4A)(a) of the 1965 Act.

2. (1) Where a person's entitlement to a Category A or Category B retirement pension is deferred and that person elects –

(a) that paragraph 1 of Schedule 5 [of the 1965 Act] (increase of pension) is to apply in relation to the period of deferment, paragraph 3 shall also apply in relation to that period; ...

3. (1) This paragraph applies where –

- (a) entitlement to a Category A or Category B retirement pension is deferred and the period of deferment is less than 12 months; or
 - (b) paragraph 2(1)(a) applies.
- (2) The rate of the person's graduated retirement benefit shall be increased by an amount equal to the aggregate of the increments to which he is entitled under paragraph 4 but only if that amount is enough to increase the rate of the benefit by at least 1 per cent.
4. (1) A person is entitled to an increment under this paragraph for each complete incremental period in his period of deferment.
- (2) The amount of the increment for an incremental period shall be 1/5th per cent. of the graduated retirement benefit to which the person would have been entitled for the period if his entitlement to a Category A or Category B retirement pension had not been deferred.
- (3) For the purposes of sub-paragraph (2), the weekly rate of graduated retirement benefit shall be taken to include any increase in the weekly rate of that benefit and the amount of the increment in respect of such an increase shall be 1/5th of its weekly rate for each incremental period in the period of deferment beginning on the day the increase occurred.
- (4) Amounts under sub-paragraphs (2) and (3) shall be rounded to the nearest penny, taking any ½ p as nearest to the next whole penny.
- ...
- (6) In this paragraph, "incremental period" means any period of six days which are treated by the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 as days of increment for the purposes of paragraph 2 of Schedule 5 in relation to the person and pension in question.
- (7) Where one or more orders have come into force under [the up-rating provisions] during the period of deferment, the rate for any incremental period shall be determined as if the order or orders had come into force before the beginning of the period of deferment."

The arguments before the First-tier Tribunal

41. As already mentioned, on 8th July 2024 the appellant uploaded the written submission he proposed to make to the tribunal. In it, he said that the definition of "period of deferment" in s.55(3) of the Social Security Contributions and Benefits Act was at the heart of the appeal. To explain his arguments, he used the term "period of postponement" to mean the period between state pension age and the first claim to pension and the term "period of suspension" or period of de-retirement to mean the period from the exercise of the right to de-retire up to the second claim. He pointed out that the definition of "period of deferment" covered both those periods. The Secretary of State's approach meant that in a case such as his the two different periods were merged to constitute one period of deferment, in the middle of which was a period during which the person

concerned was receiving pension payments. He contended that his approach, involving two periods of deferment, gave effect to the natural and ordinary meaning of s.55(3). He also drew attention to the explanatory note prepared by the DWP in relation to the changes made by the Pensions Act 2004 mentioned in paragraph 39 above and to what he saw as difficulties in the Secretary of State's approach in relation to the lump sum option.

42. In addition the appellant explained that he continued to rely on the arguments put forward in his submission dated 20th October 2023 based on the Pensions Act 2014, which introduced the new state pension. He referred to ss. 16 and 17 of that Act and said that they were much more clearly expressed than the Social Security Contributions and Benefits Act, that accompanying material did not suggest any change in the approach to cases such as his and that they were therefore most useful in reaching an understanding of the true intention behind the provisions of the earlier Act. He submitted that they gave no support the Secretary of State's approach but made clear that a period of suspension was to be treated as a stand-alone, discrete period of deferment.
43. The Secretary of State's final submission to the tribunal was made on 9th August 2024 and, as directed, it addressed the fundamental question whether the appellant's pension should be calculated on the basis of a single period of deferment or of two periods. The submission:
 - a. sets out the material provisions of ss.54 and 55 and Schedule 5 of the Social Security Contributions and Benefits Act as amended;
 - b. refers to reg. 2 of the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 and quotes "The Act shall have effect as if that person had not become entitled as aforesaid". It is submitted that the effect of the de-retirement is to treat the first claim, including any election for extra weekly pension, as if it had never occurred;
 - c. refers to reg. 4 of those regulations as amended. It is submitted that when the second claim is received the days on which state pension was paid are excluded days for the purpose of calculating increments;
 - d. does not address the appellant's graduated retirement benefit, no doubt because the sums involved are minimal.
44. The effect is summarised as follows:

"In accordance with the above regulations his decision to de-retire had the effect that he had not previously become entitled to State Retirement Pension and any previous calculations are not considered."
45. The appellant then responded with a further submission dated 2nd September 2024. He makes the following points:
 - a. the concluding phrase of s.54(1), referring to "this Part of this Act", is very similar to the quoted final phrase of the 1979 Regulations, which the appellant defines as "the Final Phrase" and which refers simply to "the Act", meaning the Social Security Act 1975. He accepts for the purposes

of his submission that the relevant provisions of the Regulations relate to s.54, but draws attention to the fact that both Acts cover a wide range of benefit entitlements and associated rights;

- b. the Secretary of State appears to be relying exclusively on a line of argument not actively pursued before;
- c. the Secretary of State does not address the appellant's earlier arguments relating to the definition of "period of deferment" in s.55(3) or integrate the argument with s.55(3) and Schedule 5, paragraphs 2(1) and (3);
- d. the primary policy objective underpinning s.54 and the relevant regulations is to encourage and facilitate de-retirement. Any interpretation of the legislation which unreasonably diminishes the incentives of doing so or which somehow restricts or complicates it should be regarded as running counter to the policy objective. The Secretary of State's methodology and construction of the legislation have those effects;
- e. the words "shall have effect as if" mean that the Final Phrase is a deeming provision and the approach set out in *HMRC v. Vermilion Holdings Limited* [2023] UKSC 37 at para. 23 applies;
- f. the Secretary of State's interpretation involves a retrospective effect on the rights of the pensioner which arose before the decision to de-retire was taken, but the Secretary of State does not face up to the full consequences which would follow from a literal interpretation of the words "as if that person had not become entitled to" the relevant pension if combined with retrospective effect. Those consequences would be that the pensioner was never entitled to the benefits received during retirement. That would be an "unjust, absurd or anomalous" outcome for the purposes of *Vermilion*, albeit that the appellant recognises that it is difficult to contemplate that a court would allow recovery to be enforced;
- g. the Secretary of State looks selectively at the facts of the appellant's case and does not face up to the potentially wide implications of that interpretation. For example, where the pensioner has not deferred his pension before retiring, de-retirement would mean that he lost entitlement to that pension for having de-retired. Similarly, where the pensioner had originally chosen a lump sum on retirement, the lump sum would be repayable on de-retirement. The appellant also raises the case of the effect on the accrued rights of widows or other dependents.
- h. the alternative construction advanced by the appellant is that the words "shall have effect" in the Final Phrase are to be treated as looking to the future, so that it only applies to entitlement to pension which would otherwise have arisen after the pensioner elected to de-retire. The entitlement and rights which had previously accrued, including entitlement and rights to increments would be unaffected and would form the basis of the calculation of increment at the end of the de-retirement;

- i. in support of that construction the appellant points to reg. 2(4), which uses the words “shall take effect” in connection with providing for the forward-looking time when the election to de-retire takes effect. Reg. 2(1) is expressly subject to the other provisions of the Regulations, including that paragraph. He also points to reg. 3, providing that no retirement pension shall be payable after the election and before the pensioner subsequently becomes entitled to a pension again or dies. He submits that that is the sole substantive effect of the Final Phrase;
- j. the appellant submits that that approach is supported by s.55(3)(b), under which the period of deferment is to be construed as the period for so long as, in consequence of an election to de-retire, the pensioner is treated as not having become entitled to the pension. Disentitlement comes after the election;
- k. the appellant submits that his approach to reg. 3 is entirely consistent with the equivalent deferment provisions in the Pensions Act 2014 on which he had previously made submissions and better accords with the policy objectives of s.54;
- l. he makes clear that he does not contend that the period of his first retirement includes any incremental periods, but argues that that is because it was not a period of deferment and so the days would not be capable of constituting days of increment, not because on those days he received a state pension. Further, those were not days on which he would have been entitled to receive a pension if he had not deferred his pension, because on those days he actually did receive a pension.

The First-tier Tribunal’s decision

46. In its decision the tribunal summarised the undisputed facts and recorded the appellant’s initial submission that, having regard to the definition of “period of deferment” in s.55(3), he had two discrete stand-alone periods of deferment, not one single period. The tribunal went on to note briefly the submissions by the appellant which I have just summarised, including the policy intention behind s.54. The decision notice then continues:

“9. The Tribunal, having considered [the appellant’s] arguments, extensive and thorough as they are, is not persuaded by [the appellant’s] position. The Tribunal, in considering [the appellant’s] position, had in mind the Upper Tribunal decision of KH v SSWP [2014] UKUT 138 (AAC). Whilst the facts are different, similarities can be drawn from the Upper Tribunal’s conclusions, that being that the pension claim is determined at the outset and then the percentage increase then applied to the pension; the pension increase so earned then remained as part of his pension for life. This appears to be the approach followed by the Respondent, in that after [the appellant’s] de-retirement, his pension entitlement was determined afresh, and the percentage applied adopting the formula set out in Schedule 5 of the SSCBA 1992.”

47. The appellant applied to the tribunal on 11th December 2024 for permission to appeal, stating as his grounds, in summary:
- a. the modern approach to statutory interpretation is contextual and purposive. The tribunal's decision fails to address the complete lack of any attempt by the Secretary of State to advance any argument based on such an approach. It does not consider the appellant's argument that the Secretary of State's construction would produce unjust, absurd or anomalous results or the Secretary of State's failure to comply with the direction to address the appellant's argument on s.55(3);
 - b. the decision also fails to address the appellant's own detailed arguments;
 - c. the decision in *KH* on which the tribunal relies involved one period of deferment only and is irrelevant.
48. Permission to appeal was granted by the District Tribunal Judge on 23rd January 2025 on the grounds that:
- a. it was arguable that there was an error of law in the tribunal's interpretation of the term "period of deferment";
 - b. it was arguable that the tribunal made an error of law in deciding that the increase in pension entitlement occurred only once;
 - c. it is arguable that *KH* could be distinguished as it was concerned with only one period of deferment.

The grounds of appeal and the parties' submissions

49. Not surprisingly, in his notice of appeal the appellant relies on the grounds set out in the application. Case management directions providing for the making of submissions were given by Judge West on 7th March 2025.
50. The Secretary of State's submission is dated 30th April 2025. It is accepted at the outset that the tribunal's reliance on *KH* was misplaced and an arguable error of law, but submitted that the tribunal reached the correct decision on the applicable legislation. To paraphrase the submission slightly, the Secretary of State says that the words in s.55(3) and the 1979 Regulations "have effect as if that person had not become entitled" mean what they say. "The consequence of de-retiring is that the person's period of deferment is determined as if he had never made the first claim for [retirement pension]". In calculating the increments, the whole period is looked at, but there are no incremental periods in the period for which the appellant was in receipt of pension.
51. The appellant responded with a further submission dated 10th June 2025. If the decision of the tribunal is set aside, he would invite the Upper Tribunal to re-make the decision. The points made in the submission are (and again I summarise):
- a. the only express and substantive set of reasons the tribunal gives for the decision is what is said in paragraph 9. That paragraph is wholly

dependent on the conclusion derived from *KH*, so if that decision is irrelevant the whole of the tribunal's decision cannot stand;

- b. in *KH* there was no dispute as the correctness of the calculation of pension made at the end of the single period of deferment. That is why it is irrelevant;
- c. if the appellant had not originally deferred his pension, he would have been entitled by April 2022 to a weekly rate of pension of £297.36, representing the rate of pension he would have been paid if his entitlement had not been deferred. The pension he had forgone would have been £15,953. On claiming his pension for the second time he would have been entitled to a pension at that rate together with 60p for each of 55 increment periods;
- d. he has in fact forgone during his period of de-retirement pension payments amounting to £15,953. The weekly reduction in increments of £7.01 is approximately 21% of the increment total. As a percentage of the pension forgone it represents a capital sum of £3,388. Most reasonable people would regard such a reduction as unfair and therefore likely to be contrary to the legislative intent in the absence of an overriding policy objective, which the appellant has not found;
- e. if he had exercised the lump sum option when he first retired, he would have received a lump sum of £38,915.04. If when he made his second claim he had chosen increments rather than a lump sum, then adopting the Secretary of State's approach he would have been entitled to the weekly sum of £323.35, as the Secretary of State has determined, but he would also have the lump sum. That would be anomalous, but there is no basis in such circumstances for the Secretary of State to limit the calculation of increments to the 55 weeks of de-retirement;
- f. the Secretary of State's approach removes the permanent increase to which he had already become entitled as a result of his first claim, which constitutes a retrospective removal of a vested right and is inconsistent with some of the statements in *KH*;
- g. the words in s.55(3) that entitlement "is deferred if and so long as" the person in question falls to be treated as not having become entitled to the pension should be construed as a cross-reference to reg. 3 of the 1979 Regulations providing that no pension shall be payable for any period on or after the date of the election to de-retire. The most reasonable interpretation is that those specific words were intended to be a more detailed and clear version of the words in s.54(1) and a similar interpretation should be given to s.55(3). Before making the election, the pensioner was not in fact deferring the pension;
- h. the explanatory notes to the Pensions Act 2004 would have been an obvious place to explain the effect of the cancellation provisions in s.54 if they were understood as the Secretary of State now contends,

especially given the obscure and counter-intuitive construction which the Secretary of State now seeks to give those provisions;

- i. the Pensions Act 2014 is a useful guide to interpretation of the relevant provisions and does not provide for the approach now being put forward by the Secretary of State. There is no indication that the provisions were intended to operate differently, so it is reasonable to conclude that the Secretary of State cannot apply its method under the 1992 Act any more than under the 2014 Act.

Analysis

52. It is convenient to begin with the tribunal's reliance on *KH v Secretary of State for Work and Pensions* [2014] UKUT 138 (AAC). That was a case in which the claimant, who attained state pension age in December 2006, deferred his retirement for 50 weeks and thereby became entitled, under Schedule 5 of the Social Security Contributions and Benefits Act, to an increment of 10% of the total of his basic Category A pension, graduated retirement benefit and additional pension. His total pension was calculated accordingly. The effect of subsequent annual up-rating orders was that the element representing the increment ceased to be 10% of the total pension. The claimant contended that he was entitled to a pension calculated on the footing that the increment element should always be 10% of the aggregate of the other elements of his pension. As Judge Wikeley pointed out, that would require an annual recalculation rather than the once-and-for-all calculation provided for by the legislation, which, in the absence of revision, supersession or appeal, is final. Up-rating is governed by ss.150 and 150A of the Social Security Administration Act 1992, which provides for separate up-rating of the individual elements of the pension, including the increment element. The claimant's approach was "completely inconsistent with the statutory mechanism".
53. I accept the submissions of both the appellant and the Secretary of State that *KH* is not relevant to the present case, essentially for the reasons clearly and convincingly explained in the appellant's submission. The appellant's challenge is to the methodology used when the DWP made a new once-and-for-all determination of his pension entitlement following his second retirement, not to the making of such a determination in principle. Since *KH* did not involve de-retirement and a second retirement, it does not assist on the point at issue here.
54. I also accept the appellant's further submission that the only reasoning for the tribunal's rejection of his arguments is that based on *KH*, as set out in paragraph 9 of the decision. As I understand it, the similarity that the tribunal had in mind was that there was a once-and-for-all decision in both *KH* and the appellant's own case. It follows, as the Secretary of State recognises, that the tribunal erred in law in relying on *KH* as its ground for dismissing the appellant's appeal. Although the Secretary of State submits otherwise, in my view the error was material, since it was central to the tribunal's reasoning. The appropriate course is therefore to set aside the decision.

55. The appellant, however, invites me, if I take that course, to re-make the decision, a course which is open to me under s.12(2)(b) of the Tribunals, Courts and Enforcement Act 2007. The Secretary of State does not make such a submission in terms, but does submit that it is clear from the legislation that the tribunal reached the correct conclusion, although for the wrong reasons. That is a submission which is well suited to consideration in the course of re-making the decision. There are no outstanding issues of fact and I see nothing to be gained by remitting the matter to the First-tier Tribunal. I therefore proceed to re-make the decision.
56. As appears from paragraph 19 above, the right to an increment if the pensioner does not retire at the state pensionable age has been established since the National Insurance Act 1946. As appears from paragraph 22 above, the general right to de-retire with the statutory consequence that the pensioner is treated as if he had never become entitled to his pension has been established since the National Insurance Act 1957. A situation such as the situation in which the appellant finds himself has been possible since then, although the practical consequences may have been limited by the fact that retirement for the statutory purposes could only be deferred for five years.
57. It follows that in all probability the DWP has had, since 1957, a methodology, developed by reference to the statutory provisions in force from time to time, for making the necessary calculation. In my view, as I have already explained, when the right to de-retire was introduced the applicable provisions required increments to be calculated afresh from the date on which the person in question attained pensionable age, by reference to the national insurance contributions paid during the period from that date until his second retirement. I assume that the DWP's methodology proceeded accordingly, both because that is what the legislation required and because that is what the DWP's current, disputed, methodology does, although against a background of much more complex legislation. As set out above, the material statutory provisions since 1965 have consistently required that in relation to a person who exercises the right to de-retire the relevant provisions should have effect as if that person had not retired or become entitled to the pension. This consistency appears in relation to graduated retirement benefit as well as Category A retirement pension and it seems to me inconceivable that the two types of pension were intended to be treated differently. Given this consistent terminology, it would be surprising if the current legislation were to be construed as requiring a different methodology.
58. It is nevertheless necessary to consider the appellant's arguments carefully to ascertain whether he is correct in contending for his preferred two-phase methodology.
59. In doing so, I begin with s.54 of the Social Security Contributions and Benefits Act, which contains the enabling mechanism under which the 1979 Regulations are to be treated as having been made. It permits the making of regulations under which an election to de-retire may be made by a person who "has become entitled to a Category A or Category B retirement pension" and specifies that the consequence of an election will be that Part II of the Act "shall have effect as if that person had not become entitled to such a retirement pension". This phrase is then effectively repeated in the 1979 Regulations. As the appellant points out,

the Regulations in fact refer to “this Act” having effect as if the person in question had not become entitled to the pension rather than “this Part of this Act”, but in my view that does not affect the construction of the words “as if that person had not become entitled” to the pension. The natural meaning of those words is, as I have already said, that the Act applies as if the person had never become entitled to the pension. The words “had not become entitled” look back to the time when the person became entitled to a pension and provide that the whole of the relevant legislation shall apply as if that had not happened.

60. The appellant draws attention to the decision of the Supreme Court in *Vermilion Holdings Limited v. Revenue and Customs Commissioners* [2023] UKSC 37, [2023] 1 W.L.R. 3908, in which Lord Hodge, with whom the remaining members of the Supreme Court agreed, accepted as a correct statement of the law the guidance given by Lord Briggs on the interpretation and application of deeming provisions in *Fowler v. Commissioners for Her Majesty’s Revenue and Customs* [2020] UKSC 22. That statement is:

“(1) The extent of the fiction created by a deeming provision is primarily a matter of construction of the statute in which it appears.

(2) For that purpose the court should ascertain, if it can, the purposes for which and the persons between whom the statutory fiction is to be resorted to, and then apply the deeming provision that far, but not where it would produce effects clearly outside those purposes.

(3) But those purposes may be difficult to ascertain, and Parliament may not find it easy to prescribe with precision the intended limits of the artificial assumption which the deeming provision requires to be made.

(4) A deeming provision should not be applied so far as to produce unjust, absurd or anomalous results, unless the court is compelled to do so by clear language.

(5) But the court should not shrink from applying the fiction created by the deeming provision to the consequences which would inevitably flow from the fiction being real ...”

61. The appellant contends that the purpose of s.54(1) is to encourage and facilitate de-retirement and that the DWP’s methodology gives rise to unjust, absurd or anomalous results, although he recognises that some of the results which he identifies may be more theoretical than real.
62. The purpose of s.54(1) in a broad sense is clearly to make de-retirement possible and to that extent it must follow that the purpose of the section as a whole is to facilitate de-retirement. It does so against the background of the general rule in s.43 that a person is not entitled for the same period to more than one retirement pension and the provisions of ss.44 and 45 to the effect that a person is entitled, subject to the provisions of the Act, to a category A pension including additional pension from the day on which he attains pensionable age for the rest of his life. Entitlement is, however, dependent on the person having made a claim to retirement pension, as provided by s.1 of the Social Security Administration Act.

The fiction created by s.54(1) therefore has the effect that the person is able to make a fresh claim to a retirement pension taking effect from the day of that claim without continuing entitlement to the original pension presenting an obstacle under ss.43 and 44. The 1979 Regulations repeat the fiction, but reg.3(a) states expressly that no pension shall be payable from the date of the election to de-retire. In my view that provision implies that the original pension was properly paid up to that date and the fiction is not to be applied to the extent of making past payments theoretically recoverable. To the extent required, if any, this is to be taken as a modification such as is envisaged by s.54(2). The potentially unjust, absurd or anomalous results which might otherwise follow in this respect are therefore avoided. Incidentally, reg.3(a) also makes clear that the person does not have a crystallised right to the amount of the original pension as calculated immediately before de-retirement which lasts for his lifetime. The view that he does have such a right underlies much of what the appellant says.

63. The question then arises how the new Category A pension on the second retirement is to be calculated. The starting point is with the fiction that, as between the claimant and the DWP, the claim is a new claim and the pension will be calculated accordingly, subject again to any modifications made by regulations under s.54(2). The answer is to be found in the deferment provisions of s.55 and Schedule 5. This follows from s.55(3)(b), which provides that entitlement to a pension is deferred for as long as a person is treated as not having become entitled to the pension in consequence of an election to de-retire under s.54(1). Since such an election can only be made by a person who has become entitled to a pension (i.e., a person who falls within s.44), if the claimant is treated as not having become so entitled it must be the fictional absence of a claim which disentitles him to the pension. It necessarily follows that the period of deferment is the period from the date when the claimant would have become entitled to a pension if he had claimed it (i.e., the date on which he attained pensionable age) up to the date of the new claim.
64. The effect of this approach is that, taking as an example a person who makes the relevant claim to a pension on his 72nd birthday, the period of deferment will be of the same length whether the deferment is because no previous claim has been made or because the person has previously elected to de-retire and the provisions of Schedule 5 apply equally in both cases. When the calculation is made, the pension entitlement before increments will be the same in both cases. The ultimate outcome will be different only because a different number of incremental periods will be taken into account, reflecting the fact that where there has been a de-retirement, the person will have received a retirement pension during part of the period of de-retirement. Except in so far as the number of incremental periods is affected, it is irrelevant whether the original pension in such a case was received from pensionable age or after an earlier period of deferment.
65. In principle, this is an approach which seems entirely fair and reasonable and which promotes the policy of encouraging persons who have attained state pension age to remain in, or to return to, employment. The appellant contends, however, that in practice it leads to unjust, absurd or anomalous results. I have already explained in paragraph 62 why in my view this construction does not require a person to repay the retirement pension actually received before de-retiring. The point made there applies equally whether or not the person

originally retired on attaining pensionable age or after an initial period of deferment. For similar reasons, repayment of a lump sum would not be required. In this connection it is to be noted that a lump sum is calculated under paras. 3A and 3B of Schedule 5 by reference to the number of payments of retirement pension (without increments) which were not received during the period of deferment, together with interest: that is to say, it is effectively a payment of arrears of pension payments plus interest. It is not an actuarially determined capitalisation of the value at the date of pension entitlement of the increments to which the person would otherwise be entitled in the future.

66. This point, based so far as necessary on reg. 3 of the 1979 Regulations, is also consistent with reg. 4 of those regulations, which explains what days are to be treated as days of increment. A day is only a day of increment if the person would have been entitled to a retirement pension if he had not deferred the entitlement (which is to be treated as the case of the appellant on the construction of the fiction created by the deeming provision as I have construed it) and the person did not in fact receive one of a number of state benefits, including retirement pension. It is implicit in reg. 4 that a person might have received retirement pension in fact during the period of deferment, although the effect of applying the fiction is that the person is deemed to have deferred entitlement during the period for which it was received.
67. The appellant accepts that if a person de-retires without having previously deferred his pension, there is a period of deferment for the purposes of s.55(3) but, as I understand his submissions, treats the period as being the period from the date of de-retirement to the date of the new claim. He says that that is the period covered by s.55(3)(b). In my view, that is a wrong construction of s.55(3)(b), which imports the s.54 fiction that the person had not become entitled to the pension. It is not to be read as providing that the person was entitled to the pension but ceased to be so entitled, which is the effect of the appellant's construction. In any case of de-retirement, therefore, there will be "a curious period" in which the person was in fact in receipt of a retirement pension but is treated as not having become entitled to that pension. If there is no earlier deferment, the curious period will be at the beginning of the period of deferment rather than in the middle. To the extent that the appellant contrasts the position of a person de-retiring after a period of deferment with the position of a person de-retiring having retired at pensionable age, he is mistaken in doing so.
68. The appellant also relies on para. A1 of Schedule 5, which contains the right to receive a lump sum rather than increased pension payments "if the period of deferment is at least 12 months". He says that on the basis of the DWP's construction of "period of deferment" it would be possible in a case such as his to add together periods of deferment of less than 12 months on either side of a period of entitlement and thereby satisfy the 12 months criterion, which he further says was clearly not intended by the legislation. I agree that "period of deferment" must have the same meaning in para. A1 as it has in s.55, but thereafter I part company with the appellant. On the DWP construction, when the new claim to pension is made, there is a single period of deferment which is the whole period from pensionable age to the new claim. The question of adding together periods of deferment separated by a period of receipt of pension does not arise because of the effect of the s.54 fiction. It follows that there is nothing to suggest that the

result was not intended by the legislation. The appellant refers to the DWP's own published guidance but does not identify the passage he has in mind. If he has in mind guidance which refers to deferring the claim "for at least 12 months in a row", the effect of ss.54 and 55 is that the person in question is treated as having deferred the claim for what would be 12 months in a row in the case he envisages. If he has in mind the explanatory note to which he referred in his submission of 8th July 2024, the reference to there being in effect two possible opportunities to earn increments does not lead to the conclusion that s.54 should not be construed in accordance with the language used. Even on the DWP's construction, the appellant has earned increments over two different periods. The question is how the pension resulting from the election to de-retire is to be calculated.

69. As I read the appellant's submissions, his understanding is that the DWP methodology is inherently adverse to the person claiming the pension. It is not immediately obvious to me that that is correct, because the outcome in an individual case presumably depends on the combination of increases in the basic pension, annual uprating Orders and incremental periods. The appellant points out that on his original retirement he was offered a lump sum of £38,915 and an ongoing pension of £191 and on his second retirement he was offered a lump sum of £54,815 and an ongoing weekly pension of £212, meaning that the marginal increase in the lump sum payment was £15,900, together with a substantially reduced weekly pension compared with the pension he was receiving before his de-retirement. Further, the marginal increase was slightly less than his pension sacrifice, which amounted to £15,953. He says it would therefore have made no commercial sense to choose the lump sum offer. This seems to me to disregard the facts that:
- a. on the face of the choice made to him, he would have been entitled to the full £54,815 and not simply to the marginal amount. That is to say, he was presented with a fresh choice of whether a lump sum of £54,815 (subject to tax) and a weekly pension of £212.11 or a pension of £323.35 suited his personal circumstances better. It may well be that the pension with increments was preferable, but it is not self-evidently so, bearing in mind that the lump sum could be invested and might enable the pension of £212.11 to be topped up for a period which in theory might exceed the appellant's life expectancy;
 - b. the pension sacrifice is calculated by reference to his original pension including increments. The lump sum calculation is based on the pension entitlement before increments, because the lump sum, which includes interest, is an alternative to the increments. The "amount of pension deferred" for this purpose is not to be equated with the amount of pension which the appellant would have received during the period of his de-retirement if he had not de-retired.
70. The appellant recognises that the logic of his position is that he ought not to have been offered a lump sum of £54,815 but asks what would have been the position as respects the increment component of his pension during his first retirement if he had taken the lump sum. This point is not addressed in the Secretary of State's submission, but my understanding as at present advised is that the lump sum represents arrears of pension exclusive of increments for the period from the

appellant's attaining pensionable age to his first retirement and for the period from his de-retirement to his second retirement together with interest. There were no arrears while the appellant was receiving his pension, which was properly calculated on the facts as they then existed, since he had not then received a lump sum. There is no obligation on the appellant to make any repayment of the increments and I am not aware of any provision under which the increments are treated as paid on account of the lump sum. For that part of the period of deferment which constitutes the period between first retirement and de-retirement the appellant, when the new calculation is made, is entitled neither to increments nor to arrears, because he was in receipt of pension, and no adjustment is required. If, however, the appellant had exercised the lump sum option on the occasion of his first retirement, there would have been no arrears for the period from pensionable age to first retirement and the lump sum on the occasion of his second retirement would have been calculated accordingly.

71. In this connection the appellant draws attention to the provisions of para. A1(3) of Schedule 5, which makes provision for the case where a person has made, or is treated as having made, an election and then changes his mind. Para. A1(3)(b) specifically provides that any regulations made under the paragraph by virtue of which a person who has already received increases in pension may elect to receive a lump sum instead may also provide that the increases may be recovered from that person or treated as paid on account of the lump sum. The relevant regulations are the Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations 2005, S.I. 2005 No. 2677. Those regulations provide by reg. 5 that any such change must be made no later than three months from the date of the notice from the Secretary of State confirming the original election, subject to a discretion in the Secretary of State to extend the period if he considers it reasonable in any case. Reg. 5 goes on to provide that the election may not be changed from an election for a lump sum to an election for increased pension unless the lump sum is repaid within the three month period or from an election for increased pension to a lump sum if the person has already received by way of increases more than the lump sum. If the person has not received by way of increases more than the lump sum, the increases are treated as paid on account of the lump sum. The intention is clearly that a person should have only a fairly short window in which to change his mind and that in effect the accounts should be corrected. It does not seem to me that these provisions shed light on the proper approach to the very different situation which arises as a result of de-retirement.
72. In his submission to the Upper Tribunal the appellant presents an imaginary scenario to demonstrate how he contends the legislation should be interpreted and applied. The scenario assumes that he had retired on attaining pensionable age and there was therefore no initial deferment of his pension but he then de-retired and retired again as he did in fact. As I understand it, the object of making the assumption is to demonstrate that s.55(3)(a) had no application and the period of deferment arose solely under s.55(3)(b). (Slightly confusingly, the appellant then proceeds to use his actual pension figures, although those figures include the increments resulting from the original deferment.) He rightly says that the first step is to identify the period of deferment and argues that the period under s.55(3)(b) is the period "so long as" he had "cancelled, or given up or suspended"

his pension as allowed by the relevant regulations. He says that “that period of cancellation” began on 28th May 2021 and ended on 19th June 2022 and consisted of 55 incremental periods. He then further says that the increments for that period of deferment must be calculated by reference to the pension he would have been receiving at the end of that period because of the requirement to give effect to up-rating Orders. This method, he says, should be uncontroversial and a similar method should be applied on the actual facts, which include the initial period of deferment. That is to say, the only relevant period of deferment is the period which followed his de-retirement.

73. In my view that is not correct, as I have explained. The allegedly uncontroversial method assuming no initial period of deferment is controversial as respects the figures, because the increments are included, but more fundamentally is controversial because of the construction given to the words “in consequence of an election under section 54(1), falls to be treated as not having become entitled to that pension”. As already discussed, the effect of s.54 is that Part II of the Act shall have effect as if a person who has become entitled to a Category A retirement pension had not become entitled to such a pension, subject to any modifications made by regulations. In this context, “had not” is equivalent to “had never” and s.55(3)(b) must be construed accordingly. The appellant’s construction requires it to be read as if, instead of applying a deeming provision, ss.54 and 55 provided that a person who de-retires ceases to be entitled to the relevant pension or (given the continuing weight the appellant gives to the level of pension achieved at the date of de-retirement) that a person who de-retires suspends the entitlement. Neither of those constructions is what the Act says. Whether or not there has been an earlier period of deferment the period of deferment resulting from an election under s.54 runs from the date on which the person attained pensionable age as if he had never claimed his pension.
74. The appellant’s submissions as to unfairness in the light of a comparison between the imaginary scenario and the actual facts are misplaced, given the inclusion in that scenario of the increments the appellant actually received. In the imaginary scenario, the DWP construction would have led to identifying the same basic pension but a much lower level of increments because there would have been no incremental periods between state pension age and de-retirement.
75. The submission to the Upper Tribunal goes on to address the possibility that the appellant might have chosen to take the lump sum on the occasion of his first retirement, which I have already considered, and then raises an argument that the removal under the DWP methodology of increments previously awarded constituted the retrospective removal of a vested right and was inconsistent with *KH*, which refers to the calculation made at the time of the claim as being final, the end of the matter, and the increments as staying added for life. Those expressions were used, however, in the context of statements that the entitlement to pension was decided and the rate calculated once only, at the time when the original claim was made. *KH* does not assist the appellant in a situation where the original claim is treated as not having been made and a new calculation has to be made following a new claim. Judge Wikeley was clearly not dealing with de-retirement and the case cannot be relied on as an authority, or even guidance, as to the correct construction of ss.54 and 55.

76. The appellant suggests that the natural and ordinary meaning of the verb “to defer” as used in s.55(3) is “to delay something until a later date; to postpone” or “to suspend”. Delaying or postponing on the one hand and suspending on the other are two different concepts when applied to entitlement to a pension. Delaying or postponing entitlement to a benefit means that the entitlement has not yet arisen, whether or not that consequence results from applying a statutory fiction. Suspending entitlement to a benefit means that entitlement has arisen in the past and is inconsistent with words such as “treated as not having become entitled to that pension”. The appellant treats the two concepts as equivalent and then applies the concept of suspension alone in support of his construction. Given the inconsistency with the statutory wording, I cannot accept that approach. The position under the Pensions Act 2014 is different, in that s.17(7) expressly provides that an exercise of the right to suspend constitutes deferral for the period of suspension for the purposes of that section.
77. Finally, the appellant relies on the explanation of deferral of retirement pensions given in the DWP’s explanatory notes to s.297 of the Pensions Act 2004, but I do not read those notes as stating that the effect of de-retirement is to suspend entitlement with the consequences he suggests. Rather, the notes refer to an election “to cancel” entitlement. It is common in a variety of contexts for a right to cancel a contract to have the effect of avoiding the contract, so that it is treated as never having been effective, and the use of the word “cancel” in the explanatory notes can readily be understood in that way as an explanation of the statutory provisions. There is nothing in what is said in the notes to imply that “cancel” is to be understood as “terminate for the future”, still less that it is to be understood as “suspend”. I add that on any view the explanatory notes are not a fully comprehensive explanation of the deferment provisions but are a summary for comparison with the new provisions which are described and in my view no inference is to be drawn from the absence of a comprehensive explanation.
78. Accordingly, having considered the various contentions advanced by the appellant, I remain of the view that the provisions of ss.54 and 55 of and Schedule 5 to the 1992 Act and of regs. 2 to 4 of the 1979 Regulations, when properly construed, do not lead to the conclusions for which the appellant argued in his submission dated 2nd September 2024 and has continued to argue in his submission to the Upper Tribunal. I accept that the legislation could have taken the approach for which he contends and that that might also have been a reasonable approach, but it was not the one for which I conclude the legislation provides and which has been consistently adopted for over 60 years. I accept further that the provisions of the Pensions Act 2014 relating to postponement and suspension of the new state pension appear to adopt the approach for which the appellant contends, although I do not make a decision on the point. The new state pension differs in various ways from a Category A retirement pension, including the fact that the rate of increment is the lower rate of 1/9th of a percent rather than 1/5th and the fact that there is no entitlement to a lump sum, and it is not necessarily to be assumed that the de-retirement provisions operate in the same way. Indeed, s.16 gives a right expressed to be a right to suspend entitlement rather than a right to de-retire with the accompanying fiction that the person in question had not become entitled to the pension. This difference in the statutory wording appears to me to be one of concept rather than clarity. In any event, in my view the 2014 Act cannot be used as an aid to the construction of

provisions which have in substance been in their current form for over 60 years and through various consolidations.

79. For the avoidance of doubt, the approach to the construction of the relevant provisions which I have adopted is in my view consistent with the modern approach to statutory interpretation to which the appellant refers in his submissions.
80. The reasoning set out above applies equally to the comparable provisions relating to graduated retirement benefit. Those provisions have not been the focus of extended submissions, no doubt because, as I have already noted, the relevant sums are very small, but I see no basis for taking a different approach.

Conclusion

81. For those reasons, I conclude that the decision of the First-tier Tribunal was made in error of law but that the construction of the relevant provisions which has been adopted by the DWP in the appellant's case is the correct construction. I therefore set aside the decision of the First-tier Tribunal and substitute my own decision. My decision is that the appellant's entitlement to pension was correctly calculated in the sum of £323.35 with effect from 20th June 2022, made up as set out in the DWP submission dated 9th August 2024 to the First-tier Tribunal.

E. Ovey
Judge of the Upper Tribunal

Authorised by the Judge for issue on 13th October 2025