



Neutral Citation Number: [2026] UKUT 38 (AAC)  
Appeal No. UA-2025-000563-USTA

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**KU**

**Appellant**

**- v -**

**The Secretary of State for Work and Pensions**

**Respondent**

**Before: Upper Tribunal Judge Markus KC (sitting in retirement)  
Decided on consideration of the papers**

**Representation:**

**Appellant:** Durham County Council Welfare Rights Service  
**Respondent:** Decision Making and Appeals, Leeds

*On appeal from:*

Tribunal: First-tier Tribunal (Social Entitlement Chamber)  
Tribunal Case No: SC292/24/00042  
Digital Case No.: 1705046927915628  
Tribunal Venue: Durham Justice Centre  
Decision Date: 19 September 2024

**SUMMARY OF DECISION**

The appellant and his partner (P) had made a joint claim for UC. They failed to give correct information as to their caring responsibilities as a result of which the carer element was not included in the UC award. The appellant made a late application for revision but the Secretary of State refused to extend time and the FtT dismissed the appellant's appeal.

In allowing the appeal the Upper Tribunal decides that the FtT erred in law because in considering whether to extend time it applied regulation 36 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and

Support Allowance (Decisions and Appeals) Regulations 2013 (“the D&A Regulations”) rather than regulation 6. This was a material error because the FtT’s decision had turned on regulation 36(7)(b) of the D&A Regulations (which precluded account being taken of the appellant being unaware of or misunderstanding the law) but there is no comparable provision in regulation 6.

The Upper Tribunal also finds that the hearing was conducted unfairly because the judge repeatedly interrupted the appellant’s representative, failed to engage with her submissions, focussed on irrelevant matters, and failed to put to the representative the issue on which the FtT’s decision ultimately turned so that she was unable to deal with it.

The Upper Tribunal sets aside the decision of the FtT and remakes the decision allowing the appellant’s appeal, extending time for making the request for the revision and revising the UC award to include the carer element.

*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.*

#### **KEYWORD NAME (Keyword Number)**

- 30.4 Reviews, revisions and supersessions - late applications**
- 34.2 Tribunal practice and procedure - fair hearing**
- 45.7 Universal credit - care**

### **DECISION**

**The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal made on 19<sup>th</sup> September 2024 under case number SC292/24/00042 was made in error of law.**

**I set that decision aside and remake the decision as follows:**

**The appeal is allowed.**

**Time for making the application for a revision to the Universal Credit award is extended to 2<sup>nd</sup> November 2023.**

**The award of Universal Credit is revised to include the carer element with effect from 18<sup>th</sup> June 2023.**

## REASONS FOR DECISION

1. This appeal is about the Secretary of State's approach to considering whether to extend time for making a late application for revision of a decision. In particular, it makes clear that the relevant legislative provision is regulation 6 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 ("the D&A Regulations"). Regulation 36, which the First-tier Tribunal (FtT) applied, relates to late applications for supersession. In order to address fully the circumstances in which the error arose, this decision also deals with the distinction between revision and supersession.

### Factual background

2. The appellant and his partner (who I shall refer to in this decision as P) made a joint claim to Universal Credit (UC) on 30<sup>th</sup> June 2023. They had two children one of whom (C) was severely disabled and in receipt of Disability Living Allowance (DLA) including the highest rate care component. At the time of the claim, the appellant was in full time work. P was unemployed. The appellant declared on the UC claim form that he did not have caring responsibilities and that P was C's carer for more than 35 hours per week. It was decided that they were entitled to UC from 18<sup>th</sup> June 2023 and they were notified of that decision on 18<sup>th</sup> July 2023. P was awarded the limited capability for work related activity (LCWRA) element from the beginning of the UC claim and so was not entitled to the carer element.
3. On 2<sup>nd</sup> November 2023 the appellant completed a form "Change to: carer details" in which he stated that he had provided more than 35 hours care per week to C since 30<sup>th</sup> June 2023. He explained that he and P each cared for C for at least 35 hours per week and that they elected the appellant to be the main carer. He asked that the UC award be reviewed and the carer element be backdated to 30<sup>th</sup> June 2023, the date on which they had made the joint claim. He said that they had not been aware that they should report these circumstances when they made the claim.
4. On 14<sup>th</sup> November 2023 the respondent wrote to the appellant to notify him that the application had been considered as an application for supersession on the ground of change of circumstances and that the UC award would be adjusted only from the assessment period in which he reported the change. The appellant requested a mandatory reconsideration of that decision. He explained that he had not requested a supersession on the grounds of change of circumstances but an "any time" revision as he had been caring for C since the start of the joint UC claim. He asked for the application to be considered even though it had been made "late" due to special circumstances arising from C's behaviour, his DLA review and attendance at health-related appointments.
5. The respondent refused to change their decision. The respondent decided that the circumstances for an extension of time for a late application did not apply.

As will be seen in the discussion below, the respondent had applied the regulation applicable to a late application for supersession.

6. The appellant appealed to the FtT against the refusal to revise the UC award to add the carer element from the start of the award.

## Legal framework

### *Universal Credit*

7. UC is payable in respect of each complete monthly assessment period beginning from the date on which entitlement starts which is generally determined by reference to the date of claim.
8. The Universal Credit Regulations 2013 (“the UC Regulations”) provide for the amount of UC, which includes a standard allowance and sums in respect of various elements. By regulation 27, the LCWRA element is included where the claimant or one of the claimants is assessed as having limited capability for work and work related activity. Regulation 29(1) provides that the carer element is included where a claimant has regular and substantial caring responsibilities for a severely disabled person. Regulation 30 provides (by reference to the conditions of entitlement to carer’s allowance) that the definition of a severely disabled person includes someone in receipt of the highest or middle rate of the care component of DLA. A person has regular and substantial caring responsibilities in any week in which if they are caring or likely to be caring for the person for at least 35 hours.
9. Regulation 29(3) and (4) of the UC Regulations provides:
 

“(3) Where two or more persons have regular and substantial caring responsibilities for the same severely disabled person, an award of universal credit may only include the carer element in respect of one of them and that is the one they jointly elect or, in default of election, the one the Secretary of State determines.

(4) Where an amount would, apart from this paragraph, be included in an award in relation to a claimant by virtue of paragraphs (1) to (3), and the claimant has limited capability for work and work-related activity (and, in the case of joint claimants, the LCWRA element has not been included in respect of the other claimant), only the LCWRA element may be included in respect of the claimant.”

### *Revision and supersession*

10. Section 8 of the Social Security Act 1998 provides for the Secretary of State to make initial decisions on claims. Section 9 provides for the Secretary of State to revise any decision under section 8 or section 10 and that a revision takes effect from the date on which the original decision took effect. Section 10 provides that a decision made under section 8 or as revised under section 9 may be superseded. A supersession decision takes effect from the date that a decision is made or, where applicable, the date when the application is made (section 10(5), or from another date as prescribed by regulations (section 10(6))).

11. The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 ("the D&A Regulations") make detailed provision for revision and supersession of decisions on UC claims.
12. Regulation 5 is entitled "Revision on any grounds" and provides that a decision on a claim or as subsequently superseded may be revised by the Secretary of State. There are time limits for making an application for a revision. In this case, the applicable time limit was one month from the date of the original decision.
13. Regulation 6 provides for late application for a revision as follows:
  - "6.—(1) The Secretary of State may extend the time limit specified in regulation 5(1) (revision on any grounds) for making an application for a revision if all of the following conditions are met.
  - (2) The first condition is that the person wishing to apply for the revision has applied to the Secretary of State at an appropriate office for an extension of time.
  - (3) The second condition is that the application—
    - (a) explains why the extension is sought;
    - (b) contains sufficient details of the decision to which the application relates to enable it to be identified; and
    - (c) is made within 12 months of the latest date by which the application for revision should have been received by the Secretary of State in accordance with regulation 5(1)(b)(i) to (iii).
  - (4) The third condition is that the Secretary of State is satisfied that it is reasonable to grant the extension.
  - (5) The fourth condition is that the Secretary of State is satisfied that due to special circumstances it was not practicable for the application for revision to be made within the time limit specified in regulation 5(1)(b)(i) to (iii) (revision on any grounds).
  - (6) In determining whether it is reasonable to grant an extension of time, the Secretary of State must have regard to the principle that the greater the amount of time that has elapsed between the end of the time limit specified in regulation 5(1)(b)(i) to (iii) (revision on any grounds) and the date of the application, the more compelling should be the special circumstances on which the application is based:..."
14. The circumstances in which a decision may be superseded include (regulation 23(1)(a)) where there has been a relevant change of circumstances since the decision to be superseded had effect.
15. Chapter 3 and Schedule 1 of the D&A Regulations provide for the effective dates for supersession in various specified circumstances. Schedule 1 paragraph 21 provides that, where the superseding decision is advantageous to a claimant and the change of circumstances was notified after the end of the assessment period in which the change occurred, the superseding decision takes effect from the first day of the assessment period in which the notification was given. That period may be extended pursuant to regulation 36.

16. Regulation 36 includes the following:

“36.—(1) For the purposes of regulation 35(1) (effective dates: Secretary of State decisions) and paragraphs 6, 14 and 21 of Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances), the Secretary of State may extend the time allowed for a person (“the applicant”) to give notice of a change of circumstances in so far as it affects the effective date of the change if all of the following conditions are met.

(2) The first condition is that an application is made to the Secretary of State at an appropriate office for an extension of time.

(3) The second condition is that the application—

(a) contains particulars of the change of circumstances and the reasons for the failure to give notice of the change of circumstances on an earlier date; and

(b) is made—

(i) within 13 months of the date on which the change occurred; ...

(4) The third condition is that the Secretary of State is satisfied that it is reasonable to grant the extension.

(5) The fourth condition is that the change of circumstances notified by the applicant is relevant to the decision which is to be superseded.

(6) The fifth condition is that the Secretary of State is satisfied that, due to special circumstances, it was not practicable for the applicant to give notice of the change of circumstances within the relevant notification period.

(7) In determining whether it is reasonable to grant an extension of time—

(a) the Secretary of State must have regard to the principle that the greater the amount of time that has elapsed between the end of the relevant notification period and the date of the application, the more compelling should be the special circumstances on which the application is based;

(b) no account must be taken of the fact that the applicant or any person acting for them was unaware of, or misunderstood, the law applicable to the case (including ignorance or misunderstanding of the time limits imposed by these Regulations);....”

17. The effect of regulation 32, which there is no need to set out in full, is a) that a decision which may be revised may not be superseded and b) that revision must be considered before supersession.

**The First-tier Tribunal’s decision**

18. The FtT heard the appeal on 19<sup>th</sup> September 2024, by telephone. The appellant did not attend and was represented by Ms Sarah Batty from Durham Welfare Rights and the respondent was represented by a presenting officer, Mr Cumming.

19. The FtT refused the appeal. On the appellant’s request, it provided a written Statement of Reasons for its decision. The FtT found that, on the basis of the

original claim form, the Secretary of State had been correct to treat P as having been the main carer for C and so the carer element could not have been included because she had been assessed as having LCWRA. The FtT found that, if the statements on the claim form were to be treated as an election that P was the carer, then the later statement that the couple shared care was “a factual change in that declaration. It was not a clarification or omission as submitted by the Representative.”

20. The FtT noted that the time limit for applying for an “any ground revision” was one month and that it could be extended. It considered the provisions of regulation 36 in deciding whether time could be extended. The FtT found that, despite the pressures on family life and employment, the appellant and P could have made an earlier declaration of the change. Although the FtT found as a fact that the appellant and P had been unaware of or had misunderstood the applicable law and so had been ignorant of the fact that the appellant could have claimed the carer’s element, that could not be taken into account by reason of regulation 36(7)(b).
21. Accordingly the FtT upheld the Secretary of State’s decision. The FtT refused the appellant permission to appeal.

### **The grounds of appeal**

22. Ms Batty on behalf of the appellant submitted detailed grounds of appeal to the Upper Tribunal which were helpfully distilled to 10 points by Upper Tribunal Judge Butler in granting permission to appeal. They can be further condensed as follows:
  - a. Inaccuracies in the Statement of Reasons as to the nature of the hearing, a statement by Ms Batty as to the character of her submissions, and a further statement as to whether she disputed the accuracy of the claim form.
  - b. Inadequate reasons in that it is unclear whether the FtT concluded the appellant’s circumstances changed between June and November 2023 and it is unclear why the FtT did not accept that the appellant had provided 35 hours care from June 2023.
  - c. Failure to address the provisions of regulation 6 of the D&A Regulations and instead considering regulation 36.
  - d. Failure to take into account the DWP’s Advice to Decision Makers guidance as regards “special circumstances”.
23. While expressing doubt about the grounds of appeal that I have grouped together under paragraph a, Judge Butler granted permission on all grounds. She also granted permission to appeal on the following grounds:

“8. Applying the incorrect legal test/adequacy of the FTT’s reasoning: it is arguable that the FTT made an error of law by deciding that it could not take into account your ignorance of the fact you could claim the carer element, as an example of special circumstances. The structure of regulation 6 of the 2013 regulations, compared with regulation 36, and the failure to replicate the terms

of regulation 36(7)(b) in regulation 6, suggests that ignorance or misunderstanding of the law cannot be excluded from consideration under special circumstances.

9. Linked to this, having listened to the audio recording of the telephone hearing, it appears the FTT pressed Ms Batty to identify a potential mistake or error by DWP, or failure to ask questions sufficiently clearly on the universal credit claim form that could be used to trigger an any ground revision under regulation 5(1). It is not clear that an any ground revision under regulation 5(1) required you to show any of those matters, which may indicate the FTT failed to understand what is required to establish an any ground revision under regulation 5(1)(b) of the 2013 regulations. This reflects the point Ms Batty has raised by her reference to paragraph 26 of the decision of *SSWP v Miah* [2024] EWCA Civ. 186.

10. Ms Batty also submitted during the hearing that DWP had conceded you provided care to your son from June 2023 onwards, that it was sufficient for the carer element, and that regulation 5 was capable of applying to you but you did not meet special circumstances in regulation 6 of the 2013 regulations. Ms Batty submitted that the DWP presenting officer should make a submission to the FTT about why the department did not think you met the threshold for special circumstances. The FTT did not address this with the DWP Presenting Officer, despite the fact his representations had been limited to whether DWP could be said to have made an error (which is relevant to the separate revision ground under regulation 9 instead). This may indicate that the FTT did not fully understand what was / remained in issue between the parties, and what it needed to address to resolve the appeal.

11. Procedural fairness of the hearing: it is for a First-tier Tribunal to regulate its own procedure. However, having listened to the audio record of proceedings for 19 September 2024, it appears the FTT judge may have intervened on several occasions while Ms Batty was trying to answer the questions that the judge had posed. On two occasions, Ms Batty observed that the judge was not allowing her to complete her submissions. The general pattern of the questions, what they were about, and the opportunity given to Ms Batty to answer them, may indicate the FTT was not fully evaluating her arguments, or giving her the opportunity to advance her arguments before reaching its decision. This may indicate an error of law in terms of the procedural fairness of the hearing.”

### **The parties' submissions**

24. The respondent supports the appeal and submits that the FtT decision should be set aside and remitted to a freshly constituted FtT. In summary, the respondent submits that the FtT wrongly addressed regulation 36 of the D&A Regulations, rather than addressing regulation 6. Reasonable ignorance of or a mistake as to the law could make it not practicable for a claimant to apply for a revision. The respondent also agrees with Judge Butler's observations at paragraph 9 of the grant of permission, as an any ground revision does not require an error in the original decision. The FtT was confused as to the

decision sought and failed to address the appellant's submission that the respondent had used the wrong regulations when deciding that the carer element was not payable from the start of the award. Finally, the FtT had spoken over Ms Batty and prevented her from making her submissions so that the hearing was unfair.

25. The appellant's representative maintains the grounds of appeal and has invited the Upper Tribunal to consider whether there is sufficient evidence to allow the decision to be remade by the Upper Tribunal rather than remitting to a new FtT.

### **Whether to have an oral hearing**

26. Neither party has requested an oral hearing of this appeal. The parties have provided me with detailed written submissions and I have a copy of the FtT bundle of documents. I am satisfied that I can fairly make a decision without a hearing, I would not be assisted by having an oral hearing and it would be disproportionate to have one. Accordingly I have decided this appeal without an oral hearing.

### **Analysis**

#### *a) The legal test*

27. Unfortunately there has been a great deal of muddle, on the part of both the respondent and the FtT, as to the nature of the decision in question.
28. In order to understand the muddle, it is important first to identify the legal character of the decision that was before the FtT. The appellant's case had consistently been that a) the award of UC was correct on the information provided in the UC joint claim; but b) on the basis of the actual facts, which were that both he and P had each provided more than 35 hours care to C per week since the date of their joint UC claim, the UC award should have included the carer element from the outset. As the appellant had advanced a factual case indicating that the initial award was incorrect from the outset, this called for consideration of whether the award should be revised under regulation 5 of the D&A Regulations. The power to revise has been explained as follows by the Court of Appeal in *Miah v Secretary of State for Work and Pensions* [2024] EWCA Civ 186, [2024] 1 WLR 3012, at [28]:

“The purpose of the power to revise conferred by those provisions is evidently that the Secretary of State should be able, to the extent permitted, to alter his original determination in any case where it does not correspond to the claimants correct entitlement (whether the error is in his favour or the claimants). As it was put by a tribunal of Social Security Commissioners chaired by Judge Hickinbottom (as he then was) in R(IB)2/04 21 January 2004, para 10(2) the decision can be revised simply on the basis that it is considered to have been wrong as at the date when it was made. An example canvassed in argument before us is where an award of UC was too low because the claimant had failed to mention a dependent child; but in truth there could be any number of mistakes by a claimant (or the DWP) which could lead to an incorrect determination.”

29. As the application for revision had been made outside the one month time limit, extension of the time limit pursuant to regulation 6 of the D&A Regulations came into play.
30. I turn now to the appellant's application for the decision to be changed and the respondent's decision-making.
31. When the appellant notified the respondent that he was also a carer, he used a digital process that required a declaration of a change in circumstances. Ms Batty explained to the FtT judge that there was no other means for a claimant to alter or amend the information relevant to the decision after the original decision had been made. Despite the terms of the declaration, it was clear from the information provided by the appellant that he was not reporting a change of circumstances since the original decision had effect. He was reporting facts that had subsisted at the time of the UC claim.
32. The respondent's record of the decision at pages 55-57 of the FtT bundle shows that the decision-maker at that time was aware that they were dealing with a late application for revision of the original decision and that they had considered whether to extend the time for making the application under the provisions of regulation 6 of the D&A Regulations. Thus the record states at page 55, in regard to the information provided on 2 November 2023, "This information was not provided when the claim was made on 03/07/2023. This declaration is treated as a request to change the original award (application for revision)...". The record then addresses regulations 5 and 6 of the D&A Regulations. Inconsistently with this, the decision notification letter dated 14<sup>th</sup> November (FtT bundle page 58-59) recorded the decision as relating to a late notification of a change of circumstances and stated that UC "will only be adjusted from the assessment period in which you reported the change", thus dealing with it as a supersession.
33. In the application for mandatory reconsideration, the appellant said explicitly that he was not reporting a change of circumstances but was requesting an "any grounds revision" under regulation 5 of the D&I Regulations. Despite this, the record of the respondent's decision on mandatory reconsideration (FtT bundle page 64-66) and the notification to the appellant of the decision which followed, the respondent compounded the muddle by stating that the "declaration on 2 November 2023 is treated as a request to change the original award decision (application for *revision*)" but also referred to the obligation to "report a *change of circumstances*" (emphasis added in both citations). The criteria for an extension of time which were set out by the respondent were those in regulation 36(2)-(6), although regulation 36 was not itself mentioned.
34. The appellant's representative clearly spelt out in the grounds of appeal to the FtT that the main issue was that the respondent should have treated the matter as a late application for a revision not for a supersession, but the respondent failed to address this in its response to the appeal. Instead it again dealt with the matter as one of extending time for an application for supersession on the grounds of change of circumstances and cited the provisions of regulation 36 of the D&A Regulations.
35. It is apparent that the FtT was also muddled about whether it was dealing with an application for a revision or a supersession. At paragraph 3 of the Statement

of Reasons, the FtT said that the accuracy of the claim form was not disputed by Ms Batty. That was incorrect as is apparent both from listening to the recording of the hearing and reading the grounds of appeal. Ms Batty did not dispute that the form in the bundle was the form completed by the appellant, but it had always been at the forefront of the appellant's case that in completing the claim form the appellant and P had not provided accurate or complete information. Be that as it may, the FtT's mistake in this regard may then have contributed to its finding at paragraph 6 of the Statement of Reasons that the information provided on 2<sup>nd</sup> November was not a clarification of the original claim form but was a factual change. It is most unfortunate (and most surprising, given the emphasis that Ms Batty placed on this in her oral submissions at the FtT hearing) that, in reaching that conclusion, the FtT appears to have disregarded that the respondent had accepted that the appellant had been providing regular and substantial care for C since the UC claim had been made. In any event, on the basis of the finding that the information provided was a factual change, the FtT should have progressed down the supersession rather than revision route. But it did not. It purported to consider whether the decision could be revised. Yet more muddle.

36. Sadly, even though the FtT then correctly identified that it was dealing with an "any grounds" revision, it did not stick to the correct path for long. In addressing the question of an extension of time, the FtT said that Ms Batty had submitted that regulation 36 of the D&A Regulations applied, whereas on the contrary Ms Batty's written submissions had clearly stated that the respondent was wrong to have applied regulation 36 and that regulation 6 was the applicable provision. At the hearing she argued that regulation 6 applied. This incorrect representation of Ms Batty's case was not a mere typing error. The FtT proceeded to set out the provisions of regulation 36 (at one point incorrectly referring to it as regulation 35) and then applied those provisions to the matter in hand.
37. This was fundamentally in error. As I have explained, this was a case in which the appellant had notified the respondent that the facts as reported in the UC claim were incorrect and was seeking a decision based on the correct facts from the outset. This was an application for a revision. There could be no question of superseding a decision which could be revised (regulation 32). The FtT should therefore have considered whether the time for applying for a revision could be extended under regulation 6 of the D&A Regulations. Regulation 36 was inapplicable.
38. Both regulation 6 and regulation 36 require the Secretary of State to be satisfied that it is reasonable to extend the time limit. However, regulation 36(7)(b) constrains the Secretary of State's discretion in that regard: it prohibits the taking into account of the applicant being unaware of or misunderstanding the applicable law. The application of that prohibition was the key consideration in the FtT's decision. But there is no comparable provision in regulation 6. The FtT applied the wrong regulation in relation to the type of requested change it was considering. As a result, it incorrectly excluded relevant matters that it could have taken into account.

39. I cannot be sure that the unfortunate muddles which I have rehearsed contributed to the FtT relying on the wrong regulation, but certainly they cannot have helped. I have set out the whole story because it so clearly illustrates the importance of distinguishing between revision and supersession.
40. Save as already addressed within the above paragraphs, I do not need to consider the other grounds of appeal summarised at paragraph 22 above.
41. The above fundamental error of law is a sufficient basis on which to allow the appeal and set aside the decision. However, for completeness I now consider the other main set of grounds in which permission was given, relating to the conduct of the hearing.

*b) The conduct of the hearing*

42. I have listened to the recording of the hearing. The judge repeatedly interrupted Ms Batty to put to her his own understanding of the issues. His principal concern was in essence that a revision required there to have been a mistake by the DWP in the original decision. As Ms Batty correctly responded at the hearing, there is no such requirement under regulation 5, which is on “any grounds”. Ms Batty’s submission was clearly correct: the title to the regulation tells us everything we need to know in this regard: “Revision on *any grounds*” (my emphasis). The citation from the Court of Appeal’s decision in *Miah*, set out at paragraph 28 above, makes this abundantly clear.
43. In his questions to Ms Batty, the judge persisted in his incorrect approach despite Ms Batty very clearly explaining the correct position. One gets the impression that the judge was not listening to Ms Batty. Certainly he maintained his incorrect approach and failed to grapple with her submissions.
44. Just over 13 minutes into the hearing, Ms Batty commented on the judge’s regular interruptions. The interruptions continued. Just over 22 minutes into the hearing, she was driven to ask the judge not to interrupt her and said that the hearing was not proceeding fairly. She said that every time she tried to put across her argument the judge rebutted her before she had finished speaking. That was a fair description of what took place.
45. After this point, the judge did allow Ms Batty to speak with fewer (albeit some) interruptions. She was finally able to explain the basis on which she submitted that regulations 5 and 6 applied. Ms Batty made detailed submissions as to why the facts showed special circumstances (regulation 6(5)). The judge barely engaged with that submission and continued to focus on his mistaken view as to the requirements of regulation 5. This is illustrated by what happened when, after Ms Batty had completed her submissions, the presenting officer gave his view which was in summary that the original decision was based on the information supplied to the DWP at the time and they had not made an error. In response to this, the judge asked Ms Batty: “What do you say to that?”. The judge then suggested that the problem was that the parents had made the wrong election as to who was the carer, effectively reverting to his incorrect view of the requirements of regulation 5. Although Ms Batty had argued that there were special circumstances within regulation 6, the presenting officer did not address this and the judge did not ask him to do so.

46. It appears that it was only after the hearing that the judge engaged with the conditions for extending time. The first time that the issue of regulation 36(7)(b) arose was in the statement of reasons. The judge at no point of the hearing suggested that he thought that provision applied. Consequently Ms Batty had no opportunity to address it.
47. I conclude that the hearing was unfair. The judge repeatedly interrupted Ms Batty so that it was difficult for her to make her submissions, he failed to engage with her submissions and, due to his persistence in focussing on irrelevant matters, failed to put to Ms Batty the issue on which the FtT's decision ultimately turned.

### **I remake the FtT's decision**

48. Having decided to set aside the FtT's decision, I must consider whether to remake the FtT's decision or remit it to another FtT to make afresh.
49. It is now 2.5 years since the appellant and P made their joint UC claim, over 2 years since he asked for a revision, and 16 months since the FtT made its decision. I am reluctant to remit the matter for a fresh decision by the FtT as this will add considerably to delay in a decision being reached. The law is clear, only limited findings of fact are required and I am able to make the necessary findings on the written material that is available.
50. I have decided that, in accordance with the overriding objective, it is appropriate for the Upper Tribunal to remake the decision.
51. The issues that I have to consider are:
  - a. Whether to extend time for the appellant to apply for a revision of the UC decision.
  - b. Whether to revise the decision.
52. As regards extension of time, only the third and fourth conditions are in issue.
53. The third condition is that it is reasonable to grant an extension. Regulation 6(6) requires consideration of the principle that the greater the time that has elapsed between the end of the time limit and the date of the application, the more compelling should be the special circumstances on which the application is based.
54. The original decision was notified to the appellant and P on 18<sup>th</sup> July 2023, so the application for a revision should have been received by 18<sup>th</sup> August. It was in fact received on 2nd November, approximately 2.5 months late. This is a relatively short delay.
55. The reasons for the delay were explained in the grounds of appeal to the FtT along with the further evidence from the appellant and P dated 21<sup>st</sup> August 2024 and was placed before the FtT. In summary, the position explained then was:
  - a. The last year had been extremely difficult for them.
  - b. The appellant had been working for 40 hours per week (although had since reduced it due to the caring responsibilities).

- c. They refer to taking C to hospital appointments, staying up with him at night when he won't sleep, and helping P who was struggling with her own mental health and caring for the other child who was waiting for a diagnosis. They explain that in February 2024 the other child was diagnosed with autism.
  - d. C had DiGeorge Syndrome, global developmental delay, autism, learning difficulties and behavioural issues. He needed constant one to one supervision as he had no awareness of danger, is non verbal, was still in nappies, hit out at this brother who also had behavioural issues, and had countless anger meltdowns during the day.
  - e. P suffers from anxiety and depression.
  - f. In the light of all the above, they did not have time to go through emails, fill in forms, etc.
  - g. The couple had not been aware that by electing the appellant to be the carer they could obtain the carer element. If they had not been contacted by Welfare Rights, they would not have known what they were entitled to.
56. This account is plausible and consistent with all known facts. P was in receipt of LCWRA, C was in receipt of the highest rate of DLA and the DWP had verified that the appellant provided over 35 hours per week care since the date of the UC claim.
57. The circumstances relied on by the appellant have not been disputed at any time by the respondent. The FtT accepted that there were "pressures on family life and employment". The respondent did not dispute or challenge the appellant's claim that he and P had not been aware that they could have relied on the appellant's caring responsibilities. The FtT stated that it had no credible evidence to suggest that the couple was aware that the appellant could receive the carer element at an earlier date, and the FtT found that had they been aware that they could receive the carer element earlier they would have reported it. While the FtT's findings are not binding on me, there has been no indication by the respondent that there was any error in those findings. Having listened to the recording before the FtT, it was no part of the respondent's case to dispute the facts relied on by the appellant.
58. For these reasons, on balance of probabilities, I accept that the facts are as set out above.
59. Although the Guide for Decision-Makers is not a definitive statement of the law and does not bind me, I find it helpful as indicating a common sense approach which reflects the ordinary meaning of the regulation. It states:
- "A3055 The term "special circumstances" is not defined in legislation and should be interpreted broadly. It can include factors such as
1. the applicant, partner or dependant has died or suffered serious illness
  2. the applicant is not resident in UK
  3. normal postal services were adversely affected.
  4. the claimant has learning or language difficulties

5. the claimant has difficulty in obtaining evidence or information to support their application

6. ignorance or misunderstanding of the law or time limits

The list is not exhaustive, and each application should be considered on its merits. For example, where the application concerns a benefit awarded because of LCW or disability, it may be appropriate to accept serious illness as a special circumstance.

A3056 Note that the later the application the more compelling the special circumstances for lateness must be although applicants are not expected to show that their circumstances are exceptional. Where the delay is not excessive, the person's circumstances can be less compelling."

60. In the present case, I find that the reasons for delay were that the appellant and P had not understood that the carer allowance could not be included in respect of P, that it was possible to include in the claim form that they were both carers for C, and that they could elect under 29(3) that the carer allowance be included in respect of the appellant. There was nothing in the UC claim form nor in any other information which they had seen which put them on notice as to this. It is not surprising that neither the appellant nor P had been aware of or understood the true legal position. Without being alerted to there being any issue in this regard, there would have been no reason for the couple to seek further advice about it. Furthermore, the evidence clearly establishes that they were struggling with the significant caring responsibilities and I accept that this would have taken most of their attention.
61. As I have said, there is no restriction under regulation 6 which is equivalent to that in regulation 36(7)(b). I am able to take into account my findings as to the state of the couple's knowledge and understanding of the law.
62. I take into account that, if time is not extended, the effect is that a couple who are struggling in very difficult circumstances to care for their children will lose out on the carer element for four months.
63. Taking all these considerations into account, it is reasonable to extend time.
64. I also consider that due to special circumstances it was not practicable for the application for a revision to have been made within the primary time limit. The delay was relatively short and so the threshold for the required strength of the special circumstances under regulation 6(6) is relatively low. In this case, the application was late because the couple was not aware of the error in their completing the claim form until shortly before they applied for the revision. They became aware when they were advised of the position. As I have said, given the pressures and challenges of their daily lives, it was not practicable for them to have sought advice earlier and it was not practicable for them to apply for a revision until they knew that there was a basis for doing so.
65. I therefore extend the time limit for making the application for revision so that the application has been made in time.
66. The factual basis for revision is clearly established on the papers. At page 49 and 50 of the FtT bundle the respondent has verified that the appellant had been caring for C for 35 hours or more each week since 30 June 2023. The

respondent decided that the carer element would be included in the UC award from 18th October 2023. Aside from the question whether time could be extended for revision, that decision was not in issue before the FtT and is not in issue in this appeal. Having decided to extend time, and applying regulation 32, the decision must be revised rather than superseded.

### **Conclusion**

67. I allow the appeal, set aside the decision of the FtT and remake it as set out at the top of this decision.

**Kate Markus KC**  
**Judge of the Upper Tribunal**  
**(Sitting in retirement)**

Authorised by the Judge for issue on 28<sup>th</sup> January 2026